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2 91st General Assembly
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4

A Bill

SENATE BILL 344

5 By: Senator Rapert
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For An Act To Be Entitled

8 AN ACT TO MODERNIZE THE INSURANCE HOLDING COMPANY
9 REGULATORY ACT; AND FOR OTHER PURPOSES.
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Subtitle

12 TO MODERNIZE THE INSURANCE HOLDING
13 COMPANY REGULATORY ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 23-63-506 is amended to read as follows:

20 23-63-506. Control of or merger with domestic insurer – Filing
21 requirements.

22 (a)(1) No person other than the issuer shall make a tender offer for
23 or a request or invitation for tenders of, or enter into any agreement to
24 exchange securities for, seek to acquire, or acquire, in the open market or
25 otherwise, any voting security of a domestic insurer if, after the
26 consummation thereof, the person would, directly or indirectly, or by
27 conversion or by exercise of any right to acquire, be in control of the
28 insurer.

29 (2) No person shall enter into an agreement to merge with or
30 otherwise acquire control of a domestic insurer or any person controlling a
31 domestic insurer unless at the time the offer, request, or invitation is made
32 or the agreement is entered into, or prior to the acquisition of the
33 securities if no offer or agreement is involved:

34 (A) The person has filed with the Insurance Commissioner
35 and has sent to the insurer a statement containing the information required
36 by this section and §§ 23-63-507 – 23-63-513; and



(B) The offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section and §§ 23-63-507 – 23-63-513.

(b)(1) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control.

(2) The commissioner shall determine those instances in which the person seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction.

~~(b)(1)~~(c)(1) For the purposes of this section and §§ 23-63-507 – 23-63-513, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in § 23-63-527(b), sixty (60) days prior to the proposed effective date of the acquisition. Failure to file is subject to § 23-63-529(c).

(2) As used in this section, “person” shall not include any securities broker holding, in the usual and customary brokers’ function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

SECTION 2. Arkansas Code § 23-63-508(a), concerning the control of or merger with a domestic insurer under the Insurance Holding Company Regulatory Act, is amended to read as follows:

(a) The statement to be filed with the Insurance Commissioner pursuant to this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in § 23-63-506 is to be effected, hereinafter called “acquiring party”, and:

(A) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years and any conviction of crimes other than minor traffic violations during the

1 past ten (10) years; and

2 (B) If the person is not an individual, a report of the
3 nature of its business operations during the past five (5) years or for such
4 lesser period as the person and any predecessors thereof shall have been in
5 existence; an informative description of the business intended to be done by
6 the person and the person's subsidiaries and a list of all individuals who
7 are or who have been selected to become directors or executive officers of
8 the person, or who perform or will perform functions appropriate to the
9 positions. The list shall include for each individual the information
10 required by subdivision (a)(1)(A) of this section;

11 (2) The source, nature, and amount of the consideration used or
12 to be used in effecting the merger or other acquisition of control, a
13 description of any transaction wherein funds were or are to be obtained for
14 any such purpose, and the identity of persons furnishing the consideration.
15 However, where a source of the consideration is a loan made in the lender's
16 ordinary course of business, the identity of the lender shall remain
17 confidential if the person filing the statement so requests;

18 (3) Fully audited financial information as to the earnings and
19 financial condition of each acquiring party for the preceding five (5) fiscal
20 years of each acquiring party, or for such lesser period as the acquiring
21 party and any predecessors thereof shall have been in existence, and similar
22 unaudited information as of a date not earlier than ninety (90) days prior to
23 the filing of the statement;

24 (4) Any plans or proposals which each acquiring party may have
25 to liquidate the insurer, to sell its assets or merge or consolidate it with
26 any person, or to make any other material change in its business or corporate
27 structure or management;

28 (5) The number of shares of any security referred to in § 23-63-
29 506 which each acquiring party proposes to acquire, the terms of the offer,
30 request, invitation, agreement, or acquisition referred to in § 23-63-506,
31 and a statement as to the method by which the fairness of the proposal was
32 arrived at;

33 (6) The amount of each class of any security referred to in §
34 23-63-506 which is beneficially owned or concerning which there is a right to
35 acquire beneficial ownership by each acquiring party;

36 (7) A full description of any contracts, arrangements, or

1 understandings with respect to any security referred to in § 23-63-506 in
2 which any acquiring party is involved, including, but not limited to,
3 transfer of any of the securities, joint ventures, loans or option
4 arrangements, puts or calls, guarantees of loans, guarantees against loss or
5 guarantees of profits, division of losses or profits, or the giving or
6 withholding of proxies. The description shall identify the persons with whom
7 the contracts, arrangements, or understandings have been entered into;

8 (8) A description of the purchase of any security referred to in
9 § 23-63-506 during the twelve (12) calendar months preceding the filing of
10 the statement by any acquiring party, including the dates to purchase, names
11 of the purchasers, and consideration paid or agreed to be paid therefor;

12 (9) A description of any recommendations to purchase any
13 security referred to in § 23-63-506 made during the twelve (12) calendar
14 months preceding the filing of the statement by any acquiring party or by
15 anyone based upon interviews or at the suggestion of the acquiring party;

16 (10) Copies of all tender offers for, requests or invitations
17 for tenders of, exchange offers for, and agreements to acquire or exchange
18 any securities referred to in § 23-63-506 and, if distributed, of additional
19 soliciting material relating thereto;

20 (11) The terms of any agreement, contract, or understanding made
21 with any broker-dealer as to solicitation of securities referred to in § 23-
22 63-506 for tender, and the amount of any fees, commissions, or other
23 compensation to be paid to broker-dealers with regard thereto; ~~and~~

24 (12) An agreement by the person required to file the statement
25 referred to in § 23-63-506 that it will provide the annual report specified
26 in § 23-63-514(m) for as long as control exists;

27 (13) An acknowledgement by the person required to file the
28 statement referred to in § 23-63-506 that the person and all subsidiaries
29 within its control in the insurance holding company system will provide
30 information to the commissioner upon request as necessary to evaluate
31 enterprise risk to the insurer; and

32 (14) Such additional information as the commissioner may, by
33 rule or regulation, prescribe as necessary or appropriate for the protection
34 of policyholders and security holders of the insurer or in the public
35 interest.

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1 SECTION 3. Arkansas Code § 23-63-514(b), concerning the annual
2 registration of insurers under the Insurance Holding Company Regulatory Act,
3 is amended to read as follows:

4 (b) Information and Form Required. Every insurer subject to
5 registration shall file a registration statement on a form prescribed by the
6 National Association of Insurance Commissioners, which shall contain current
7 information about:

8 (1) The capital structure, general financial condition, and
9 ownership and management of the insurer and any person controlling the
10 insurer;

11 (2) The identity of every member of the insurance holding
12 company system;

13 (3) The following agreements in force, relationships subsisting,
14 and transactions currently outstanding between the insurer and its
15 affiliates:

16 (A) Loans, other investments, purchases, sales, or
17 exchanges of securities of the affiliates by the insurer or of the insurer by
18 its affiliates;

19 (B) Purchases, sales, or exchanges of assets;

20 (C) Transactions not in the ordinary course of business;

21 (D) Guarantees or undertakings for the benefit of an
22 affiliate which result in an actual contingent exposure of the insurer's
23 assets to liability, other than insurance contracts entered into in the
24 ordinary course of the insurer's business;

25 (E) All management and service contracts and all cost-
26 sharing arrangements;

27 (F) Reinsurance agreements covering all or substantially
28 all of one (1) or more lines of insurance of the ceding company;

29 (G) Dividends and other distributions to shareholders; and

30 (H) Consolidated tax allocation agreements;

31 (4) Any pledge of the insurer's stock, including stock of any
32 subsidiary or controlling affiliate, for a loan made to any member of the
33 insurance holding company system; and

34 (5) (A)(i) If requested by the commissioner, the insurer shall
35 include financial statements of or within an insurance holding company
36 system, including all affiliates.

1 (ii) Financial statements may include without
2 limitation annual audited financial statements filed with the United States
3 Securities and Exchange Commission pursuant to the Securities Act of 1933, as
4 it existed on January 1, 2017, or the Securities Exchange Act of 1934, as it
5 existed on January 1, 2017.

6 (B) An insurer required to file financial statements
7 pursuant to this section may satisfy the request by providing the
8 commissioner with the most recently filed parent corporation financial
9 statements that have been filed with the United States Securities and
10 Exchange Commission;

11 (6) Other matters concerning transactions between registered
12 insurers and any affiliates as may be included from time to time in any
13 registration forms adopted or approved by the commissioner; and

14 (7) Statements that the insurer's board of directors oversees
15 corporate governance and internal controls and that the insurer's officers or
16 senior management have approved, implemented, and continue to maintain and
17 monitor corporate governance and internal control procedures.

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19 SECTION 4. Arkansas Code § 23-63-515(a), concerning the standards for
20 insurers under the Insurance Holding Company Regulatory Act, is amended to
21 read as follows:

22 (a)(1) Material transactions by insurers registered with the Insurance
23 Commissioner under § 23-63-514 with their affiliates shall be subject to the
24 following standards:

25 (A) The terms shall be fair and reasonable;

26 (B) The books, accounts, and records of every party shall
27 be so maintained as to clearly and accurately disclose the precise nature and
28 details of the transactions, including such accounting information as is
29 necessary to support the reasonableness of the charges or fees to the
30 respective parties;

31 (C) The insurer's surplus as regards policyholders
32 following any dividends or distributions to shareholder affiliates shall be
33 reasonable in relation to the insurer's outstanding liabilities and adequate
34 to its financial needs;

35 (D) The charges or fees for services performed shall be
36 reasonable;

1 (E) The expenses incurred and payment received shall be
2 allocated to the insurer in conformity with customary insurance accounting
3 practices consistently applied; and

4 (F) The commissioner by rule may establish additional
5 requirements for a cost-sharing service agreement or a management agreement.

6 (2)(A) A domestic insurer subject to this subchapter and a
7 person in its holding company system may not enter into a transaction, as
8 described in subdivision (a)(2)(B) of this section, unless the insurer
9 notifies the commissioner in writing of its intention at least thirty (30)
10 days before, or less, as the commissioner may permit, and the commissioner
11 does not disapprove of the transaction within such a period.

12 (B) A transaction that requires prior notice to the
13 commissioner by a domestic insurer includes:

14 (i) Sales, purchases, exchanges, loans or extensions
15 of credit, guarantees, or investments, provided the transactions are equal to
16 or exceed as of December 31 next-preceding:

17 (a) With respect to nonlife insurers, the
18 lesser of three percent (3%) of the insurer's admitted assets or twenty-five
19 percent (25%) of surplus as regards policyholders; and

20 (b) With respect to life insurers, three
21 percent (3%) of the insurer's admitted assets;

22 (ii) Loans or extensions of credit to any person who
23 is not an affiliate when the insurer makes the loans or extensions of credit
24 with the agreement or understanding that the proceeds of the transactions, in
25 whole or in substantial part, are to be used to make loans or extensions of
26 credit to, to purchase assets of, or to make investments in any affiliate of
27 the insurer making the loans or extensions of credit, provided that the
28 transactions are equal to or exceed as of December 31 next-preceding:

29 (a) With respect to nonlife insurers, the
30 lesser of three percent (3%) of the insurer's admitted assets or twenty-five
31 percent (25%) of surplus as regards policyholders; and

32 (b) With respect to life insurers, three
33 percent (3%) of the insurer's admitted assets;

34 (iii) Reinsurance agreements or modifications
35 thereto, including:

36 (a) All reinsurance pooling agreements; and

1 **(b) Agreements** in which the reinsurance
2 premium, a change in the insurer's liabilities, any projected reinsurance
3 premium, or a change in the insurer's liabilities in any of the next three
4 (3) years equals or exceeds five percent (5%) of the insurer's surplus as
5 regards policyholders, as of December 31 next-preceding, including those
6 agreements that may require as consideration the transfer of assets from an
7 insurer to a nonaffiliate, if an agreement or understanding exists between
8 the insurer and nonaffiliate that any portion of the assets will be
9 transferred to one (1) or more affiliates of the insurer;

10 (iv) All management agreements, service contracts,
11 tax allocation agreements, and all cost-sharing arrangements;

12 (v) Any material transactions specified by
13 regulation that the commissioner determines may adversely affect the
14 interests of the insurer's policyholders; and

15 (vi)(a) Any amendment or modification of an
16 affiliate agreement that is subject to the materiality standards under
17 subdivision (a)(1) of this section, including the reason for the amendment or
18 modification and the financial impact on the domestic insurer.

19 (b) A domestic insurer shall notify the
20 commissioner within thirty (30) days after a termination of a previously
21 filed agreement in a format that is acceptable to the commissioner, to
22 determine if further reporting or filing is required.

23 (3) A domestic insurer subject to this subchapter may not enter
24 into transactions which are part of a plan or series of like transactions
25 with persons within the holding company system if the purpose of those
26 separate transactions is to avoid the threshold amount and thus avoid the
27 review that would otherwise occur. If the commissioner determines that those
28 separate transactions were entered into over any twelve-month period for such
29 a purpose, the commissioner may exercise his or her authority under § 23-63-
30 522.

31 (4) In reviewing transactions pursuant to subdivision (a)(2) of
32 this section, the commissioner shall consider whether the transactions comply
33 with the standards set forth in subdivision (a)(1) of this section and
34 whether they may adversely affect the interests of policyholders.

35 (5) The commissioner shall be notified within thirty (30) days
36 of any investment of a domestic insurer subject to this subchapter in any one

1 (1) corporation if the total investment in such a corporation by the
2 insurance holding company system exceeds ten percent (10%) of the
3 corporation's voting securities.
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