

1 State of Arkansas
2 91st General Assembly
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4

As Engrossed: H2/13/17
A Bill

SENATE BILL 247

5 By: Senator Rapert
6 By: Representatives Collins, Warren
7

For An Act To Be Entitled

9 AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT
10 GENERAL OMNIBUS BILL; CONCERNING THE ARKANSAS PREPAID
11 FUNERAL BENEFITS LAW; CONCERNING DISCLOSURE OF
12 NONPUBLIC PERSONAL INFORMATION BY THE INSURANCE
13 COMMISSIONER; CONCERNING THE POLICYHOLDER'S BILL OF
14 RIGHTS; CONCERNING THE DISCLOSURE OF AN EXAMINATION
15 REPORT BY THE INSURANCE COMMISSIONER; CONCERNING
16 IMMUNITY FROM PROSECUTION IN PROCEEDINGS OF THE STATE
17 INSURANCE DEPARTMENT; CONCERNING ANNUAL STATEMENTS
18 FILED WITH THE INSURANCE COMMISSIONER; CONCERNING THE
19 APPLICATION AND LICENSING REQUIREMENTS OF CAPTIVE
20 INSURERS; TO REVISE THE QUALIFICATIONS FOR HOLDING AN
21 INSURANCE ADJUSTER'S LICENSE; CONCERNING LICENSURE
22 UNDER THE ARKANSAS HEALTH INSURANCE MARKETPLACE
23 NAVIGATOR, GUIDE, AND CERTIFIED APPLICATION
24 COUNSELORS ACT; CONCERNING IMMUNITY FROM PROSECUTION
25 IN PROCEEDINGS OF THE STATE INSURANCE DEPARTMENT; TO
26 CLARIFY THE PROCEDURE FOR MANDATORY REPORTING OF
27 FRAUDULENT INSURANCE ACTS; TO REPEAL THE COMPILATION
28 OF COMPARISON DATA FOR PRIVATE PASSENGER AUTOMOBILE,
29 HOMEOWNERS MULTI-PERIL, AND DWELLING FIRE INSURANCE
30 POLICIES; TO REPEAL THE ANNUAL REPORT REGARDING
31 PERSONAL INSURANCE; CONCERNING THE APPLICABILITY OF
32 THE ARKANSAS INSURANCE CODE TO HEALTH MAINTENANCE
33 ORGANIZATIONS; TO REVISE THE DEFINITION OF "COVERED
34 CLAIM" UNDER THE ARKANSAS PROPERTY AND CASUALTY
35 INSURANCE GUARANTY ACT; CONCERNING THE RISK RETENTION
36 AND PURCHASING GROUPS ACT; TO CLARIFY THE ANNUAL



1 PAYMENT DATE FOR AN INSURER'S ANTIFRAUD ASSESSMENT;
2 AND FOR OTHER PURPOSES.

3
4
5 **Subtitle**

6 TO ENACT THE STATE INSURANCE DEPARTMENT
7 GENERAL OMNIBUS BILL.
8

9
10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
11

12 SECTION 1. Arkansas Code § 23-40-106(a), concerning violations of the
13 Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

14 (a)(1) ~~Any~~ An officer, director, agent, or employee of ~~any~~ an
15 organization subject to ~~the terms of~~ this chapter who makes, or attempts to
16 make, ~~any~~ a contract in violation of this chapter, or refuses to allow an
17 inspection of the organization's records shall be punished by a fine of not
18 less than one thousand dollars (\$1,000) and not more than ten thousand
19 dollars (\$10,000), or by imprisonment in the county jail for ~~not fewer than~~
20 at least six (6) months and not more than twelve (12) months, or by both fine
21 and imprisonment.

22 (2)(A) ~~Any~~ An officer, director, agent, or employee of ~~any~~ an
23 organization is guilty of a Class D felony if the officer, director, agent,
24 or employee:

25 (i) ~~who collects~~ Collects contract proceeds on cash-
26 funded prepaid funeral contracts and fails to deposit ~~such funds~~ the proceeds
27 with a trustee as required under § 23-40-114; or

28 (ii) Collects proceeds on insurance-funded or
29 annuity-funded contracts, or both, and fails to forward the proceeds to the
30 insurance company or the third-party administrator within twenty (20)
31 business days shall be guilty of a Class D felony.

32 (B) A person convicted of a violation of § 23-40-114 shall
33 be ordered to pay restitution to persons aggrieved by the violation.

34 (C) Restitution shall be ordered in addition to a fine or
35 imprisonment.
36

1 SECTION 2. Arkansas Code § 23-40-115(b), concerning investment of
 2 trust funds under the Arkansas Prepaid Funeral Benefits Law, is amended to
 3 read as follows:

4 (b) The trustee shall maintain the trust fund in a manner consistent
 5 with the following investment policies:

6 (1) ~~{Repealed.}~~

7 ~~(2)~~ The trust fund shall contain at all times liquid investments
 8 having a cost basis not less than thirty percent (30%) of the total contract
 9 proceeds disbursed from the trust fund as described in § 23-40-116(1)-(3)
 10 during the preceding calendar year;

11 ~~(3)(2)(A)~~ ~~No~~ An investment shall not be sold, exchanged, or
 12 liquidated at less than its cost if it would result in the aggregate cost
 13 basis of the trust fund minus undistributed net investment income being less
 14 than the aggregate amount of contract proceeds held in the trust fund.

15 (B) However, this prohibition shall not apply if the
 16 seller contemporaneously deposits with the trustee a sum of money or other
 17 property in an amount equal to the loss realized upon the sale, exchange, or
 18 liquidation of ~~such~~ the investment; ~~and~~

19 ~~(4)(3)(A)~~ The For cash-funded trust contracts, the portion of
 20 the contract proceeds collected for cash accommodation items pursuant to the
 21 terms of a contract shall be deposited into a separate account which shall be
 22 clearly identified as "cash accommodation funds" and shall ~~set forth~~ state
 23 the name of the contract buyer.

24 (B) All income earned on the cash accommodation funds
 25 shall become a part of the principal of the respective accounts; and

26 (4) For insurance-funded or annuity-funded contracts, if
 27 nonguaranteed cash accommodation items are included in the contract total,
 28 the entire amount may be included in the purchase premium of the insurance or
 29 annuity policy used to fund the contract if a proration calculation is used
 30 to identify the portion of the accrued interest income that is associated
 31 with the nonguaranteed portion of the contract.

32
 33 SECTION 3. Arkansas Code § 23-40-119(e)(1), concerning the penalty for
 34 failure to timely file an annual report under the Arkansas Prepaid Funeral
 35 Benefits Law, is amended to read as follows:

36 (e)(1) Absent the commissioner's approval of an extension for good

1 cause shown, licensees failing to timely report and pay any administrative
2 and financial regulations fees to the State Insurance Department Prepaid
3 Trust Fund may be subject to a penalty of up to one hundred dollars (\$100)
4 per day for each day of delinquency, payable to the ~~fund~~ State Insurance
5 Department Prepaid Trust Fund.

6
7 SECTION 4. Arkansas Code § 23-61-113 is amended to read as follows:
8 23-61-113. Disclosure of nonpublic personal information.

9 (a) ~~No~~ A person shall not disclose any nonpublic personal information
10 contrary to the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L.
11 No. 106-102.

12 (b)(1) The Insurance Commissioner shall adopt rules ~~and regulations~~
13 governing the treatment of consumer financial and protected health
14 information by the Arkansas Comprehensive Health Insurance Pool and by all
15 licensed insurers, health maintenance organizations, or other insuring health
16 entities regulated by the commissioner, producers, and other persons licensed
17 or required to be licensed, authorized or required to be authorized, or
18 registered or required to be registered by the commissioner.

19 (2)(A) An entity or person described in subdivision (b)(1) of
20 this section or a legal entity engaged in the business of insurance,
21 including without limitation an individual, corporation, association,
22 partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal
23 benefit society, agent, broker, and adjuster, shall:

24 (i) Provide notification of a data breach to the
25 commissioner in the same time and manner as required under § 4-110-105; and

26 (ii) Comply with all requirements for disclosure and
27 notification of a data breach as required under § 4-110-105.

28 (B)(i) This section does not affect the right of the commissioner to
29 impose other penalties provided for in the insurance laws of this state.

30 (ii) The commissioner may promulgate rules necessary
31 for or as an aid to the effectuation of any provision of the Arkansas
32 Insurance Code.

33 (c)(1) The commissioner shall waive any provision of this section that
34 creates ~~any~~ a conflict with similar federal laws or regulations, or which,
35 due to the enactment of any ~~such~~ similar federal laws or regulations, creates
36 an undue burden or increased financial or operational demands upon ~~any~~ a

1 person or entity ~~referenced in subsection (b)~~ described in subdivision (b)(1)
 2 of this section in order to comply with this section, the ~~regulations~~ rules
 3 to be promulgated by the commissioner, and similar federal laws and
 4 regulations.

5 (2) ~~Any~~ A person or entity ~~referenced in subsection (b)~~
 6 described in subdivision (b)(1) of this section may request a hearing before
 7 the commissioner to seek the waiver referenced in subdivision (c)(1) of this
 8 section.

9 (3)(A) Under § 23-61-307, ~~any~~ a person or entity ~~referenced in~~
 10 ~~subsection (b)~~ described in subdivision (b)(1) of this section is entitled to
 11 appeal the commissioner's decision to deny a waiver.

12 (B) In ~~any~~ an appeal ~~pursuant to~~ under this section, the
 13 commissioner shall be named as defendant.

14 (C) In any such action, the commissioner may ~~but shall not~~
 15 ~~be obligated to~~ defend the action, in his or her discretion.

16
 17 SECTION 5. Arkansas Code § 23-61-115(b), concerning the rights of a
 18 policyholder, is amended to read as follows:

19 (b) Policyholders ~~shall~~ have the right to:

20 (1) Competitive pricing practices and marketing methods that
 21 enable them to determine the best value among comparable policies;

22 (2) Insurance advertising and other selling approaches that
 23 provide accurate and balanced information on the benefits and limitations of
 24 a policy;

25 (3) An insurer that is financially stable;

26 (4) Be serviced by a competent, honest insurance producer;

27 (5) A readable policy;

28 (6) An insurer that provides an economic delivery of coverage
 29 and that tries to prevent losses; ~~and~~

30 (7) Balanced and positive regulation by the State Insurance
 31 Department; and

32 (8) A reasonable expectation that the policyholder's nonpublic
 33 personal information is securely maintained.

34
 35 SECTION 6. Arkansas Code § 23-61-205(c), concerning the period of time
 36 an examination report is held as private and confidential by the Insurance

1 Commissioner, is amended to read as follows:

2 (c)(1) Upon the adoption of the examination report under subdivision
3 (a)(3)(A) of this section, the commissioner shall continue to hold the
4 content of the examination report as private and confidential information for
5 ~~a period of thirty (30) days from the date the company received by United~~
6 ~~States mail or by electronic mail the order issued by the commissioner to~~
7 adopt the examination report, except ~~to the extent~~ as provided in subdivision
8 (a)(2) of this section.

9 (2) ~~Thereafter,~~ After the expiration of thirty (30) days, the
10 commissioner may open the report for public inspection ~~so long as no~~ if a
11 court of competent jurisdiction has not stayed its publication.

12

13 SECTION 7. Arkansas Code § 23-61-302 is amended to read as follows:

14 23-61-302. Examination, investigation, or hearing – Testimony
15 compelled ~~—Immunity from prosecution.~~

16 ~~(a)(1) If any person asks to be excused from attending or testifying~~
17 ~~or from producing any books, papers, records, correspondence, or other~~
18 ~~documents at or in connection with any examination, hearing, or investigation~~
19 ~~being conducted by the Insurance Commissioner or his or her examiner on the~~
20 ~~ground that the testimony or evidence required of the person may tend to~~
21 ~~incriminate the person or subject him or her to a penalty or forfeiture and~~
22 ~~shall, notwithstanding, be directed to give the testimony or produce the~~
23 ~~evidence, the person must nonetheless comply with the direction, but he or~~
24 ~~she shall not thereafter be prosecuted or subjected to any penalty or~~
25 ~~forfeiture for or on account of any transaction, matter, or thing concerning~~
26 ~~which he or she may testify or produce evidence pursuant thereto.~~

27 ~~(2) No testimony so given or evidence produced shall be received~~
28 ~~against him or her upon any criminal action, investigation, or proceeding,~~
29 ~~except that no individual so testifying shall be exempt from prosecution or~~
30 ~~punishment for any perjury committed by him or her while testifying and the~~
31 ~~testimony or evidence so given or produced shall be admissible against him or~~
32 ~~her upon any criminal action, investigation, or proceeding concerning the~~
33 ~~perjury; nor shall he or she be exempt from the refusal, suspension, or~~
34 ~~revocation of any license, permission, or authority conferred, or to be~~
35 ~~conferred, pursuant to the Arkansas Insurance Code.~~

36 ~~(b)(1)(a)(1)~~ Any such An individual may execute, acknowledge, and file

1 in the State Insurance Department a statement expressly waiving immunity or
 2 privilege ~~in respect to~~ for any transaction, matter, or thing specified in
 3 the statement, ~~and, thereupon,~~

4 (2) the If a statement is filed under subdivision (a)(1) of this
 5 section, the testimony of the person or the evidence in relation to the
 6 transaction, matter, or thing may be received or produced before any judge or
 7 justice, court, tribunal, grand jury, or otherwise.

8 ~~(2)(b)~~ If ~~se~~ testimony or evidence is received or produced under
 9 subdivision (a)(2) of this section, the individual ~~shall not be~~ is not
 10 entitled to any immunity or privilege on account of any testimony he or she
 11 may ~~se~~ give or evidence ~~se~~ produced.

12
 13 SECTION 8. Arkansas Code § 23-63-216(b), concerning a market conduct
 14 annual statement filed with the Insurance Commissioner, is amended to read as
 15 follows:

16 (b)(1) ~~In~~ Except as provided under subdivision (b)(2) of this section,
 17 in addition to the information required by subsection (a) of this section, a
 18 market conduct annual statement shall be filed, when applicable, with the
 19 commissioner if:

20 (A) A property and casualty insurer reports ~~seven million~~
 21 ~~dollars (\$7,000,000)~~ fifty thousand dollars (\$50,000) or more in homeowner or
 22 private passenger automobile gross premiums;

23 (B) A life and annuity insurer reports ~~seven million~~
 24 ~~dollars (\$7,000,000)~~ fifty thousand dollars (\$50,000) or more in individual
 25 life insurance premiums or annuity gross premiums; or

26 (C) An insurer reports ~~seven million dollars (\$7,000,000)~~
 27 fifty thousand dollars (\$50,000) or more in premiums for:

28 (i) Long-term care policies;

29 (ii) Lifelong-term care hybrid policies; or

30 (iii) Annuity long-term care hybrid products.

31 (2) An insurer is not required to file a market conduct annual
 32 statement under subdivision (b)(1) of this section if the insurer:

33 (A) Sells prepaid funeral or prepaid legal products only;
 34 or

35 (B) Is licensed only in this state.

36 (3) After review of the market conduct annual statement, the

1 commissioner may require additional filing of other market conduct functions
2 information considered relevant.

3
4 SECTION 9. Arkansas Code § 23-63-1602(a), concerning the application
5 for licensure of a captive insurer, is amended to read as follows:

6 (a) When permitted by its articles of incorporation or charter, a
7 captive insurance company may apply to the Insurance Commissioner for a
8 license to do all insurance, including workers' compensation insurance,
9 authorized by the Arkansas Insurance Code. However:

10 (1) A pure captive insurance company ~~may~~ shall not insure any
11 risks other than those of its parent and affiliated companies or controlled
12 unaffiliated business;

13 (2) An association captive insurance company ~~may~~ shall not
14 insure any risks other than those of the member organizations of its
15 association and their affiliated companies;

16 (3) An industrial insured captive insurance company ~~may~~ shall
17 not insure any risks other than those of the industrial insureds that compose
18 the industrial insured group and their affiliated companies;

19 (4) A captive insurance company ~~may~~ shall not provide personal
20 motor vehicle or homeowner's insurance coverage or any component of these
21 coverages;

22 (5) A captive insurance company ~~may~~ shall not accept or cede
23 reinsurance except as authorized by § 23-63-1611;

24 (6) A producer reinsurance captive insurance company ~~may~~ shall
25 not reinsure any risks other than those written by or placed through its
26 parent or an affiliate of its parent and written by authorized insurers; and

27 (7) The following statement must appear on the front of every
28 policy or certificate of insurance issued by a captive insurance company:

29 "THIS CONTRACT IS REGISTERED AND DELIVERED AS A POLICY UNDER ARKANSAS CODE §§
30 23-63-1601 ~~THROUGH 23-63-1623~~ ET SEQ. THIS POLICY MAY BE DIFFERENT FROM
31 POLICIES ISSUED IN THE OPEN MARKET. IT MAY BE MORE OR LESS FAVORABLE TO AN
32 INSURED THAN A CONTRACT ISSUED BY AN ~~ADMITTED CARRIER~~ INSURER NOT SUBJECT TO
33 ARKANSAS CODE § 23-63-1601 ET SEQ. THE PROTECTION OF THE ARKANSAS PROPERTY
34 AND CASUALTY INSURANCE GUARANTY ACT, ARKANSAS CODE §§ 23-90-101 ~~THROUGH 23-~~
35 ~~90-123~~ ET SEQ., DOES NOT APPLY TO THIS CONTRACT."

36

1 SECTION 10. Arkansas Code § 23-64-209(d), concerning adjusting
2 procedures in response to a catastrophe, is amended to read as follows:

3 (d)(1)(A) An adjuster who is sent into this state on behalf of an
4 insurer for the purpose of investigating or making adjustment of a loss
5 resulting from a catastrophe under an insurance policy is not required to be
6 qualified or licensed under this section if within ten (10) business days of
7 entering the state the adjuster notifies the commissioner in writing of the
8 adjuster's activities on behalf of the insurer.

9 (B) An adjuster shall cease and desist adjusting activity
10 in this state within ninety (90) days of the notification described in
11 subdivision (d)(1)(A) of this section or obtain an adjuster's license under
12 this subchapter if otherwise required by the insurance laws of this state.

13 (2)(A) An adjuster operating in this state under subdivision
14 (d)(1)(A) of this section may request an additional ninety (90) days to
15 obtain an adjuster's license in this state upon application for an extension
16 to the commissioner.

17 (B) The commissioner has the discretion to approve a
18 request for an extension described in subdivision (d)(2)(A) of this section.

19
20 SECTION 11. Arkansas Code § 23-64-607(d), concerning the expiration of
21 a license issued under the Arkansas Health Insurance Marketplace Navigator,
22 Guide, and Certified Application Counselors Act, is amended to read as
23 follows:

24 (d) Each license or certification issued by the commissioner under
25 this subchapter expires ~~at the close of business on September 30 of the~~
26 ~~calendar year~~ two (2) years after the date the license or certification is
27 issued unless otherwise renewed, surrendered, or revoked.

28
29 SECTION 12. Arkansas Code § 23-65-101(h)(2), concerning hearings,
30 orders, and penalties levied by the Insurance Commissioner for unauthorized
31 insurance transactions, is amended to read as follows:

32 (2) ~~The provisions of §§ Section 23-61-302 and 23-66-214, as to~~
33 ~~immunity from prosecution;~~

34
35 SECTION 13. Arkansas Code § 23-66-214 is repealed.

36 ~~23-66-214. Immunity from prosecution.~~

1 ~~(a) If any person shall ask to be excused from attending and~~
2 ~~testifying or from producing any books, papers, records, correspondence, or~~
3 ~~other documents at any hearing on the ground that the testimony or evidence~~
4 ~~required of the person may tend to incriminate him or her or subject him or~~
5 ~~her to a penalty or forfeiture, and shall, notwithstanding, be directed to~~
6 ~~give the testimony or produce the evidence, then he or she must nonetheless~~
7 ~~comply with the direction, but he or she shall not thereafter be prosecuted~~
8 ~~or subjected to any penalty or forfeiture for or on account of any~~
9 ~~transaction, matter, or thing concerning which he or she may testify or~~
10 ~~produce evidence pursuant thereto and no testimony so given or evidence~~
11 ~~produced shall be received against him or her upon any criminal action,~~
12 ~~investigation, or proceeding.~~

13 ~~(b) However, no individual so testifying shall be exempt from~~
14 ~~prosecution or punishment for any perjury committed by him or her while so~~
15 ~~testifying. The testimony or evidence so given or produced shall be~~
16 ~~admissible against him or her upon any criminal action, investigation, or~~
17 ~~proceeding concerning the perjury. Further, he or she shall not be exempt~~
18 ~~from the refusal, revocation, or suspension of any license, permission, or~~
19 ~~authority conferred, or to be conferred, pursuant to the insurance law of~~
20 ~~this state.~~

21 ~~(c) The individual may execute, acknowledge, and file in the office of~~
22 ~~the Insurance Commissioner a statement expressly waiving the immunity or~~
23 ~~privilege in respect to any transaction, matter, or thing specified in the~~
24 ~~statement. Thereupon, the testimony of the person or the evidence in~~
25 ~~relation to the transaction, matter, or thing may be received or produced~~
26 ~~before any judge or justice, court, tribunal, grand jury, or otherwise, and~~
27 ~~if so received or produced, the individual shall not be entitled to any~~
28 ~~immunity or privilege on account of any testimony he or she may so give or~~
29 ~~evidence so produced.~~

30
31 SECTION 14. Arkansas Code § 23-66-505(d), concerning the requirements
32 for mandatory reporting of fraudulent insurance acts, is amended to read as
33 follows:

34 (d)(1) Upon the request of the commissioner or the commissioner's
35 employees, examiners, investigators, agents, or representatives, a person
36 engaged in the business of insurance shall provide to the commissioner all

1 information the commissioner deems relevant pertaining to any investigation
2 of a fraudulent act or related criminal violation.

3 (2) The refusal of ~~any~~ a person to fully comply with the
4 commissioner's request for information ~~shall be~~ is grounds for the
5 suspension, revocation, denial, or nonrenewal of any license or authority
6 held by the person to engage in an insurance or other business subject to the
7 commissioner's jurisdiction.

8 (3) ~~Any~~ A proceeding for the suspension, revocation, denial, or
9 nonrenewal of any license or authority shall be conducted pursuant to §§ 23-
10 63-213 and 23-64-512.

11

12 SECTION 15. Arkansas Code § 23-67-223 is repealed.

13 ~~23-67-223. Comparison data for private passenger automobile,~~
14 ~~homeowners multi-peril, and dwelling fire insurance policies.~~

15 ~~(a) The Insurance Commissioner shall compile computerized comparisons~~
16 ~~of premiums charged and coverage available, broken down by geographic area~~
17 ~~and by varying deductible levels, for private passenger automobile,~~
18 ~~homeowners multi-peril, and dwelling fire insurance policies for typical~~
19 ~~individuals and families.~~

20 ~~(b) The commissioner shall make the information compiled under~~
21 ~~subsection (a) of this section available to consumers upon request.~~

22 ~~(c) The commissioner shall engage in a public information campaign to~~
23 ~~make available to consumers information useful in choosing and maintaining~~
24 ~~private passenger automobile, homeowners multi-peril, and dwelling fire~~
25 ~~insurance coverage, including, but not limited to, information about certain~~
26 ~~policy definitions and provisions of which consumers should be particularly~~
27 ~~aware.~~

28

29 SECTION 16. Arkansas Code § 23-67-415 is repealed.

30 ~~23-67-415. Annual report regarding personal insurance.~~

31 ~~(a) No later than March 31 of each year, each insurance company~~
32 ~~writing any personal insurance that uses credit scoring information shall~~
33 ~~report to the Insurance Commissioner for each personal insurance type listed~~
34 ~~in § 23-67-404(9) the number of:~~

35 ~~(1) Policies written during the preceding year;~~

36 ~~(2) Policies that received a premium increase due to credit~~

1 ~~scoring during the preceding year; and~~

2 ~~(3) Policies that received a premium decrease due to credit~~
3 ~~scoring during the preceding year.~~

4 ~~(b) Information filed with the commissioner under this section by an~~
5 ~~insurance company shall be treated as proprietary information and is exempt~~
6 ~~from public disclosure.~~

7
8 SECTION 17. Arkansas Code § 23-76-104(a)(7), concerning sections of
9 the Arkansas Insurance Code that are applicable to health maintenance
10 organizations, is amended to read as follows:

11 ~~(7) Section 23-66-201 et seq., §§ 23-66-301—23-66-306, and 23-~~
12 ~~66-308—23-66-314 The Trade Practices Act, § 23-66-201 et seq.; §§ 23-66-301~~
13 ~~—23-66-306 and 23-66-308 — 23-66-314; and § 23-66-501 et seq., referring to~~
14 ~~trade practices and frauds;~~

15
16 SECTION 18. Arkansas Code § 23-90-103(2)(A)(iii), concerning a
17 limitation for individual covered claims under the Arkansas Property and
18 Casualty Insurance Guaranty Act, is amended to read as follows:

19 (iii) Individual covered claims, excluding workers'
20 compensation claims, shall be limited to three hundred thousand dollars
21 (\$300,000) and shall not include any amount in excess of three hundred
22 thousand dollars (\$300,000).

23
24 SECTION 19. Arkansas Code § 23-94-204, concerning domestic risk
25 retention groups, is amended to add additional subsections to read as
26 follows:

27 (d)(1) Beginning July 1, 2018, an existing risk retention group shall
28 comply with the governance standards in subsections (e)-(j) of this section.

29 (2) A risk retention group applying for initial licensure in
30 this state shall comply with the governance standards in this section at the
31 time of licensure.

32 (e) As used in this section:

33 (1) "Board of directors" means a governing body of a risk
34 retention group that is elected by the shareholders or members of the risk
35 retention group to:

36 (A) Establish policy;

1 (B) Elect or appoint officers and committees; and
2 (C) Make other governing decisions for the risk retention
3 group; and

4 (2) "Director" means an individual designated in the articles of
5 the risk retention group, or designated, elected, or appointed by any other
6 manner, name, or title to act as a director.

7 (f)(1)(A) The board of directors of a risk retention group shall have
8 a majority of independent directors.

9 (B)(i) If the risk retention group is a reciprocal risk
10 retention group, then an appointed attorney-in-fact of the reciprocal risk
11 retention group is required to adhere to the same standards described in this
12 section regarding independence of operation and governance as imposed on the
13 board of directors or on the subscribers' advisory committee of the risk
14 retention group.

15 (ii) To the extent permissible under state law, a
16 service provider of a reciprocal risk retention group shall contract with the
17 risk retention group and not the attorney-in-fact.

18 (2)(A) A director shall not qualify as independent unless the
19 board of directors affirmatively determines that the director does not have a
20 material relationship with the risk retention group.

21 (B) A risk retention group shall annually disclose to the
22 commissioner of the domiciliary state of the risk retention group the
23 determinations made by the board of directors under subdivision (f)(2)(A) of
24 this section.

25 (3)(A) A director who is a direct or indirect owner of or
26 subscriber in the risk retention group is independent for purposes of
27 subdivision (f)(1)(A) of this section.

28 (B) Subdivision (f)(3)(A) of this section includes an
29 officer, director, or employee of a direct or indirect owner of or subscriber
30 in the risk retention group, unless a different position of the officer,
31 director, or employee constitutes a material relationship, as contemplated by
32 section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act, 15 U.S.C. §
33 3901 et seq., as it existed on January 1, 2017.

34 (4) A person has a material relationship with a risk retention
35 group if the person, a member of the person's immediate family, or any
36 business with which the person is affiliated, has received from the risk

1 retention group or a consultant or service provider to the risk retention
2 group in the previous twelve-month period, any compensation, payment, or any
3 other item of value, that is greater than or equal to five percent (5%) of
4 the risk retention group's gross written premium for the same twelve (12)
5 month period or two percent (2%) of its surplus, whichever is greater, as
6 measured at the end of any fiscal quarter falling in the twelve-month.

7 (5) To determine whether or not a person is independent for
8 purposes of this section:

9 (A) A person or an immediate family member of the person
10 under subdivision (f)(4) of this section shall not be independent until at
11 least one (1) year after receipt of any compensation from the risk retention
12 group that falls below the threshold;

13 (B) A director or an immediate family member of a director
14 who is affiliated with or employed in a professional capacity by a present or
15 former internal or external auditor of the risk retention group shall not be
16 independent until one (1) year after the end of the affiliation, employment,
17 or auditing relationship; or

18 (C) A director or immediate family member of a director
19 who is employed as an executive officer of another company where any of the
20 risk retention group's present executives serve on that other company's board
21 of directors shall not be independent until one (1) year after the end of the
22 service or the employment relationship.

23 (g)(1) The term of any material service provider contract with the
24 risk retention group shall not exceed five (5) years.

25 (2) A material service provider contract, or its renewal,
26 requires the approval of the majority of the risk retention group's
27 independent directors.

28 (3) The board of directors may terminate any service provider,
29 audit, or actuarial contracts at any time for cause after providing adequate
30 notice as defined in the contract.

31 (4) The service provider contract is deemed material if the
32 amount to be paid for a contract is greater than or equal to five percent
33 (5%) of the risk retention group's annual gross written premium or two
34 percent (2%) of its surplus, whichever is greater.

35 (5) A service provider contract that qualifies as a material
36 relationship described in subdivision (f)(4) of this section shall not be

1 entered into unless the risk retention group has notified the commissioner in
2 writing of its intention to enter into a transaction at least thirty (30)
3 days before the transaction and the commissioner has not disapproved it
4 within that period.

5 (6)(A) As used in this subsection, "service provider" includes a
6 captive manager, auditor, accountant, actuary, investment advisor, lawyer,
7 managing general underwriter, or other party responsible for underwriting,
8 determining rates, collecting premiums, adjusting and settling claims, or
9 preparing financial statements.

10 (B) "Service provider" does not include a lawyer who is
11 retained as defense counsel by the risk retention group to defend claims
12 unless the amount of fees paid to a lawyer qualifies as a material
13 relationship described in subdivision (f)(4) of this section.

14 (h)(1) The board of directors shall adopt a written policy in the plan
15 of operation as approved by the board of directors.

16 (2) The written policy described in subdivision (h)(1) of this
17 section shall require the board of directors to:

18 (A) Assure that an owner/insured of the risk retention
19 group receives evidence of ownership interest;

20 (B) Develop a set of governance standards applicable to
21 the risk retention group;

22 (C) Oversee the evaluation of the risk retention group's
23 management, including without limitation the performance of the captive
24 manager, managing general underwriter, or other party responsible for
25 underwriting, determining rates, collecting premiums, adjusting or settling
26 claims, or preparing financial statements;

27 (D) Review and approve the amount to be paid for all
28 material service providers; and

29 (E) Annually review and approve:

30 (i) Goals and objectives of the risk retention group
31 relevant to the compensation of officers and service providers;

32 (ii) The performance of officers and service
33 providers in light of the goals and objectives described in subdivision
34 (h)(2)(E)(i) of this section; and

35 (iii) The continued engagement of the officers and
36 material service providers.

1 (i)(1)(A) A risk retention group shall have an audit committee
2 composed of at least three (3) independent members of the board of directors
3 as defined in subdivision (f)(1) of this section.

4 (B)(i) A member of the board of directors who is not
5 independent shall not be a member of an audit committee of a risk retention
6 group.

7 (ii) A member of the board of directors who is not
8 independent may participate in the activities of the audit committee if
9 invited by members of the audit committee.

10 (2) The audit committee shall have a written charter that
11 defines the purpose of the audit committee, as follows:

12 (A) Assist in the board of directors in oversight of:

13 (i) The integrity of the financial statements of the
14 risk retention group;

15 (ii) Compliance with legal and regulatory
16 requirements; and

17 (iii) The qualifications, independence, and
18 performance of the independent auditor and actuary of the risk retention
19 group;

20 (B) Discuss the annual audited financial statements and
21 quarterly financial statements with the group's management;

22 (C) Discuss with the independent auditor of the risk
23 retention group:

24 (i) The annual audited financial statements of the
25 risk retention group; and

26 (ii) If advisable, the quarterly financial
27 statements;

28 (D) Discuss policies with respect to risk assessment and
29 risk management;

30 (E) Have meetings with the group's management and the
31 independent auditor separately and periodically, either directly or through a
32 designated representative of the audit committee;

33 (F) Review any audit problems or difficulties and the
34 response by the group's management with the independent auditor;

35 (G) Set clear hiring policies of the risk retention group
36 as to the hiring of an employee or former employee of the independent

1 auditor;

2 (H) Require the external auditor to rotate the lead or
3 coordinating audit partner that has primary responsibility for the audit of
4 the risk retention group and the audit partner that is responsible for
5 reviewing the audit of the risk retention group so that neither individual
6 performs the audit services for more than five (5) consecutive fiscal years;
7 and

8 (I) Report regularly to the board of directors.

9 (3) The commissioner of the domiciliary state of the risk
10 retention group may waive the requirement to establish an audit committee
11 required in subdivision (i)(1)(A) of this section if the risk retention group
12 is able to demonstrate to the commissioner of the domiciliary state of the
13 risk retention group that:

14 (A) It is impracticable to do so; and

15 (B) The board of directors is able to accomplish the
16 purposes of an audit committee as described in subdivision (i)(2) of this
17 section.

18 (j)(1)(A) The board of directors shall adopt and disclose its
19 governance standards by making the information available through electronic
20 methods, including without limitation by posting the information on the
21 public website of the risk retention group or by other means and providing
22 the information to members or insureds upon request.

23 (B) The information under subdivision (j)(1)(A) of this
24 section shall include:

25 (i) A process by which the directors are elected by
26 the owners/insureds;

27 (ii) Director qualification standards;

28 (iii) Director responsibilities;

29 (iv) Director access to the group's management and,
30 as necessary and appropriate, to independent advisors;

31 (v) Director compensation;

32 (vi) Director orientation and continuing education;

33 (vii) The policies and procedures that are followed
34 for management succession; and

35 (viii) The policies and procedures that are followed
36 for annual performance evaluation of the board of directors.

1 (2)(A)(i) The board of directors shall adopt and disclose a code
2 of business conduct and ethics for directors, officers, and employees.

3 (ii) The code of business conduct and ethics for
4 directors, officers, and employees shall include the following topics:

5 (a) Conflicts of interest;

6 (b) Matters covered under the corporate
7 opportunities doctrine under the state of domicile;

8 (c) Confidentiality;

9 (d) Fair dealing;

10 (e) Protection and proper use of risk
11 retention group assets;

12 (f) Compliance with all applicable laws and
13 rules; and

14 (g) Requiring the reporting of any illegal or
15 unethical behavior that affects the operation of the risk retention group.

16 (iii) The captive manager, president, or chief
17 executive officer of the risk retention group shall promptly notify the
18 commissioner of the domiciliary state of the risk retention group in writing
19 if he or she becomes aware of any material noncompliance with any of the
20 governance standards in this section.

21 (B) Any waivers of the code of business conduct and ethics
22 for directors or executive officers shall promptly be disclosed to the board
23 of directors.

24
25 SECTION 20. Arkansas Code § 23-94-205(3), concerning agent and broker
26 records of foreign risk retention groups, is amended to read as follows:

27 (3)(A) Agent and Broker Records. To the extent that insurance
28 agents or brokers are utilized pursuant to under § 23-94-213, such the
29 insurance agent or broker shall report to the commissioner the premiums for
30 direct business written for risks resident or located within this state that
31 the licensees have placed with or on behalf of a risk retention group that is
32 not chartered in this state.

33 (B) Agents and brokers utilized under § 23-94-213 shall
34 keep a complete and separate record of all policies procured from each such
35 risk retention group, which record shall be open to examination by the
36 commissioner.

1 (C) These records shall, for each policy and each kind of
2 insurance provided thereunder, include the following:

- 3 ~~(A)~~(i) The limit of liability;
4 ~~(B)~~(ii) The time period covered;
5 ~~(C)~~(iii) The effective date;
6 ~~(D)~~(iv) The name of the risk retention group which
7 issued the policy;
8 ~~(E)~~(v) The gross premium charged; and
9 ~~(F)~~(vi) The amount of return premiums, if any.

10
11 SECTION 21. Arkansas Code § 23-94-208(a), concerning a certificate of
12 registration for a purchasing group, is amended to read as follows:

13 (a)(1) A purchasing group ~~which~~ that intends to do business in this
14 state ~~must~~ shall obtain a certificate of registration from the ~~commissioner~~
15 Insurance Commissioner.

16 (2) The commissioner shall issue a certificate of registration
17 to a purchasing group organized and formed under the laws of any state ~~when~~
18 if the commissioner is satisfied that the applicant ~~group~~ has ~~fully~~ complied
19 with ~~the provisions of~~ this subchapter.

20 (3)(A) ~~Each~~ Before doing business in this state, a purchasing
21 group ~~which intends to do business in this state shall, prior to doing~~
22 business, shall furnish notice to the commissioner ~~which shall, on forms~~
23 prescribed by the National Association of Insurance Commissioners+.

24 (B) The notice required under subdivision (a)(3)(A) of
25 this section shall:

26 ~~(1)~~(i) Identify the state in which the purchasing
27 group is domiciled;

28 ~~(2)~~(ii) Identify all other states in which the
29 purchasing group intends to do business;

30 ~~(3)~~(iii) Specify the lines and classifications of
31 ~~casualty liability~~ liability insurance ~~which that~~ the purchasing group intends to
32 purchase;

33 ~~(4)~~(iv) Identify the insurance company or companies
34 from which the purchasing group intends to purchase its insurance and the
35 domicile of ~~such~~ the company;

36 ~~(5)~~(v) Specify the method by which, and the person

1 or persons, if any, through whom insurance will be offered to its members
2 whose risks are resident or located in this state;

3 ~~(6)~~(vi) Identify the principal place of business of
4 the purchasing group; and

5 ~~(7)~~(vii) Provide such other information as may be
6 required by the commissioner to verify that the purchasing group is qualified
7 for a certificate of registration.

8
9 SECTION 22. Arkansas Code § 23-100-104(b), concerning the annual
10 payment date for an insurer's antifraud assessment, is amended to read as
11 follows:

12 (b)(1) The antifraud assessment required by this section shall be paid
13 annually on or before ~~June 30~~ June 1 at the time and in the manner that the
14 commissioner prescribes or at times alternate from ~~June 30~~ June 1 annually
15 that the commissioner prescribes.

16 (2)(A) By rule the commissioner may set the amount of the
17 antifraud assessment.

18 (B) The antifraud assessment shall not exceed one thousand
19 dollars (\$1,000) per fiscal year.

20 (3) The antifraud assessment ~~shall be~~ is in addition to the
21 premium taxes and fees ~~now~~ required under existing law.

22
23 /s/Rapert

24
25
26 **APPROVED: 02/28/2017**