

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 726 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/18/09

A Bill

SENATE BILL 806

5 By: Senators T. Smith, Altes, G. Baker, Bledsoe, Bookout, Horn, B. Johnson, P. Malone, Teague, H.
6 Wilkins

7 By: Representatives Hawkins, Hoyt, Abernathy, Dunn, Glidewell, Hardy, Hyde, Ingram, W. Lewellen,
8 Maxwell, Rainey
9

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For An Act To Be Entitled

12

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT

13

GENERAL OMNIBUS BILL; TO UPDATE AND MAKE

14

TECHNICAL CORRECTIONS TO THE ARKANSAS INSURANCE

15

LAWS; TO REPEAL SECTION 1 OF ACT 901 OF 1993,

16

CONCERNING THE PAYMENT OF INSURANCE AGENT FEES;

17

TO AMEND THE CAPITAL REQUIREMENTS FOR DOING

18

BUSINESS UNDER THE SERVICE CONTRACTS ACT, § 4-

19

114-101 ET SEQ.; TO AMEND ARKANSAS CODE § 11-9-

20

801(a) TO AUTHORIZE THE PAYMENT OF WORKERS'

21

COMPENSATION BENEFITS BY ELECTRONIC FUNDS

22

TRANSFER; TO AMEND THE GENERAL PENALTY SECTION OF

23

THE INSURANCE CODE; TO AMEND ARKANSAS CODE § 23-

24

61-103(d) CONCERNING THE RELEASE OF ACTIVE

25

EXAMINATION OR INVESTIGATORY FILES; TO AMEND

26

ARKANSAS CODE § 23-61-207 TO PROVIDE

27

CONFIDENTIALITY PROTECTION FOR ANICILLARY

28

FINANCIAL AND INSURANCE INFORMATION REQUESTED BY

29

THE INSURANCE COMMISSIONER; TO PERMIT THE

30

BIENNIAL COLLECTION OF LICENSE FEES AND ESTABLISH

31

EQUAL NONRESIDENT INSURANCE AGENT LICENSE FEES BY

32

INSURANCE COMMISSIONER RULE; TO AMEND ARKANSAS

33

CODE § 23-61-703 TO REVISE THE DUE DATE OF AN

34

INSURER'S ADMINISTRATIVE AND FINANCIAL REGULATION

35

FEE; TO AMEND ARKANSAS CODE § 23-62-111 TO ADD



1 EMPLOYER-SPONSORED HEALTH PLANS AS AN INSURED
2 UNDER EMPLOYEE BENEFIT STOP-LOSS INSURANCE; TO
3 AMEND ARKANSAS CODE § 23-63-111 TO REQUIRE AN
4 INSURANCE PRODUCER TO MAIL OR DELIVER CLAIM LOSS
5 INFORMATION TO THE POLICYHOLDER AFTER THE CLAIM
6 LOSS INFORMATION HAS BEEN RECEIVED BY THE
7 INSURANCE PRODUCER; TO MODERNIZE THE LAWS
8 PERTAINING TO CHARITABLE GIFT ANNUITIES; TO
9 REGULATE THE SUSPENSION OF AN INSURANCE COMPANY'S
10 CERTIFICATE OF AUTHORITY; TO AMEND ARKANSAS CODE
11 § 23-63-216(b)(5) TO REPEAL THE REQUIREMENT FOR
12 FILING HARD COPIES OF FINANCIAL STATEMENTS WITH
13 THE NATIONAL ASSOCIATION OF INSURANCE
14 COMMISSIONERS; TO REPEAL § 23-63-701(g)
15 CONCERNING THE LIMIT OF RISK OF A MUTUAL INSURER;
16 TO AMEND ARKANSAS CODE § 23-63-818 CONCERNING A
17 DOMESTIC INSURER'S INVESTMENTS IN ITS
18 SUBSIDIARIES; TO AMEND ARKANSAS CODE § 23-63-841
19 TO CORRECT AN INTERNAL REFERENCE; TO MAKE A
20 TECHNICAL CORRECTION TO ARKANSAS CODE § 23-63-
21 1105(b) CONCERNING CONTROLLED INSURERS; TO AMEND
22 ARKANSAS CODE § 23-63-1607(b)(3)(A) TO CORRECT
23 THE ARKANSAS CODE CITATION FOR AN ASSOCIATION
24 CAPTIVE INSURANCE COMPANY'S ANNUAL REPORT; TO
25 ADOPT THE NATIONAL ASSOCIATION OF INSURANCE
26 COMMISSIONERS PROPERTY AND CASUALTY ACTUARIAL
27 OPINION MODEL LAW; TO AMEND ARKANSAS CODE § 23-
28 64-209 TO IMPLEMENT A CONTINUING EDUCATION
29 REQUIREMENT AND A NOTICE REQUIREMENT FOR
30 INSURANCE ADJUSTERS; TO PROVIDE A BIENNIAL CYCLE
31 TO CONTINUE A LICENSE OF AN INSURANCE ADJUSTER OR
32 INSURANCE CONSULTANT; TO CLARIFY THE RECORD
33 RETENTION REQUIREMENTS OF INSURANCE AGENTS AND
34 BROKERS; TO REVISE THE CONTINUING EDUCATION
35 REQUIREMENTS FOR INSURANCE PRODUCERS; TO AMEND
36 ARKANSAS CODE § 23-64-405(g)(2) TO CORRECT AN

1 INTERNAL REFERENCE; TO AMEND ARKANSAS CODE § 23-
2 65-311 TO REQUIRE SURPLUS LINES BROKERS TO
3 PROVIDE CLAIM LOSS INFORMATION TO THE
4 POLICYHOLDER; TO AMEND ARKANSAS CODE § 23-69-113
5 TO ELIMINATE THE USE OF CORPORATE SURETY BONDS AS
6 ACCEPTABLE SECURITIES FOR DOMESTIC MUTUAL
7 INSURERS; TO CLARIFY THE DEPOSIT REQUIREMENTS OF
8 FARMERS' MUTUAL AID ASSOCIATIONS; TO AMEND
9 ARKANSAS CODE § 23-75-106 TO REQUIRE A HOSPITAL
10 MEDICAL SERVICE CORPORATION TO NOTIFY THE
11 INSURANCE COMMISSIONER IF IT CHANGES OR AMENDS
12 ITS ARTICLES OF INCORPORATION OR BYLAWS; TO AMEND
13 ARKANSAS CODE § 23-79-109(a)(1)(B) TO EXEMPT
14 SURPLUS LINES INSURERS FROM FILING POLICY AND
15 CONTRACT FORMS FOR APPROVAL; TO AMEND ARKANSAS
16 CODE § 23-79-138 TO INCLUDE INFORMATION TO
17 ACCOMPANY TITLE INSURANCE POLICIES; TO REMOVE THE
18 EXEMPTION FOR MEDICAL MALPRACTICE INSURANCE FROM
19 THE MINIMUM POLICY REQUIREMENTS OF § 23-79-301 ET
20 SEQ.; TO AUTHORIZE THE ARKANSAS COMPREHENSIVE
21 HEALTH INSURANCE POOL TO INCREASE MAXIMUM
22 LIFETIME BENEFITS FOR POOL POLICYHOLDERS,
23 STRENGTHEN PROTECTION AGAINST FRAUDULENT
24 INSURANCE ACTS, AND UPDATE BENEFIT EXCLUSION
25 PROVISIONS IN POOL PLANS; TO REVISE THE
26 DEFINITION OF A SMALL EMPLOYER FOR SMALL GROUP
27 HEALTH INSURANCE COVERAGE; TO PROVIDE SIXTY DAYS'
28 NOTICE OF THE RENEWAL OR NONRENEWAL OF A
29 COMMERCIAL AUTOMOBILE INSURANCE POLICY; TO AMEND
30 ARKANSAS CODE § 23-93-103 TO REVISE THE
31 DEFINITION OF "CONTINUING CARE" UNDER THE
32 CONTINUING CARE PROVIDER REGULATION ACT; TO
33 DECLARE AN EMERGENCY FOR SECTION 20 OF THIS ACT;
34 AND FOR OTHER PURPOSES.

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Subtitle

TO ENACT THE STATE INSURANCE DEPARTMENT
GENERAL OMNIBUS BILL TO UPDATE AND MAKE
TECHNICAL CORRECTIONS TO THE ARKANSAS
INSURANCE LAWS AND TO DECLARE AN
EMERGENCY FOR SECTION 20 OF THIS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Uncodified Section 1 of Act 901 of 1993, concerning the payment of insurance agent fees, is repealed:

~~SECTION 1. The administrative and regulatory fee assessed insurance agents at a maximum of fifty dollars (\$50) under The State Insurance Department Trust Fund Act of 1993 as it is popularly known, with such fee as referenced therein to be addressed in the Insurance Commissioner's companion rule and regulation to that legislation upon its passage and approval, shall be borne as a regulatory fee by insurance agents, and shall not be considered to be, or borne or paid as an obligation by sponsoring insurance companies, notwithstanding contrary language, if any, of The State Insurance Department Trust Fund Act of 1993.~~

SECTION 2. Arkansas Code § 4-114-104(d), concerning the capital requirements for doing business under the Service Contracts Act, is amended to read as follows:

(d) In order to assure the faithful performance of a provider's obligations to its contract holders, each provider that is contractually obligated to provide service under a service contract shall:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or authorized to transact insurance in this state or a surplus lines insurer that is authorized under § 23-65-310 and maintains statutory capital and surplus of at least fifteen million dollars (\$15,000,000) at all times while the reimbursement insurance policy is in force;

(2) Do both of the following:

1 (A)(i) Maintain a funded reserve account for its
2 obligations under its contracts issued and outstanding in this state.

3 ~~(B)(ii)~~ The reserves shall not be less than forty
4 percent (40%) of gross consideration received less claims paid on the sale of
5 all unexpired service contracts.

6 ~~(C)(iii)~~ The reserve account shall be subject to
7 examination and review by the commissioner; and

8 ~~(3)(B)~~ Place in trust with the commissioner a financial
9 security deposit having a value of not less than five percent (5%) of the
10 gross consideration received less claims paid on the sale of all unexpired
11 service contracts, but not less than twenty-five thousand dollars (\$25,000),
12 consisting of a surety bond issued by an authorized surety; or

13 ~~(4)(A)(3)(A)~~ Maintain a net worth of one hundred million dollars
14 (\$100,000,000) on its own or together with its parent company if the parent
15 company executes a parental guarantee in a form acceptable to the
16 commissioner.

17 (B) Upon request, the provider shall provide the
18 commissioner with a copy of the provider's financial statements or, if the
19 provider's financial statements are consolidated with those of its parent
20 company, the provider's parent company's most recent Form 10-K or Form 20-F
21 filed with the Securities and Exchange Commission within the last calendar
22 year, or if the company does not file with the Securities and Exchange
23 Commission, a copy of the company's audited financial statements, which shows
24 an independent net worth of the provider or its parent company of at least
25 one hundred million dollars (\$100,000,000).

26 (C) If the provider's parent company's Form 10-K, Form 20-
27 F, or audited financial statements are filed to meet the provider's financial
28 stability requirement, then the parent company shall agree to guarantee the
29 obligations of the obligor relating to service contracts sold by the provider
30 in this state.

31
32 SECTION 3. Arkansas Code § 11-9-801(a), concerning the methods for
33 paying workers' compensation benefits, is amended to read as follows:

34 (a) Compensation shall be paid by check, by electronic funds transfer,
35 or by state warrant.

36

1 SECTION 4. Arkansas Code § 23-60-108 is amended to read as follows:
2 23-60-108. Penalty generally.

3 ~~Each violation of the Arkansas Insurance Code for which a greater~~
4 ~~penalty is not provided by other applicable laws of this state, in addition~~
5 ~~to any applicable refusal, suspension, or revocation of a license or~~
6 ~~certificate of authority, and upon conviction in a court of this state, shall~~
7 ~~be punishable by a fine of not less than fifty dollars (\$50.00) nor more than~~
8 ~~one thousand dollars (\$1,000).~~ Unless a greater penalty is provided by
9 another law of this state, a violation of a statute or regulation enforceable
10 by the Insurance Commissioner is punishable:

11 (1) By the refusal, suspension, revocation, or nonrenewal of a
12 license or certificate of authority; and

13 (2) A fine no greater than one thousand dollars (\$1,000) per
14 violation, not to exceed fifty thousand dollars (\$50,000) in any six-month
15 period.

16
17 SECTION 5. Arkansas Code § 23-61-103(d)(6), concerning the release of
18 active examination or investigatory files, is amended to read as follows:

19 (6) Release of active investigatory or examination files ~~as~~
20 ~~provided in~~ under subdivision ~~(d)(4)~~ (d)(5) of this section does not abrogate
21 or modify the confidential nature of investigatory or examination files ~~as~~
22 ~~provided in~~ under subdivision (d)(2) of this section.

23
24 SECTION 6. Arkansas code § 23-61-207 is amended to read as follows:
25 23-61-207. Confidentiality of ancillary information.

26 All working papers, recorded information, documents, and copies
27 produced by, obtained by, or disclosed to the Insurance Commissioner or any
28 other person in the course of an examination made under this subchapter must
29 be given confidential treatment and are not subject to subpoena and may not
30 be made public by the commissioner or any other person, except to the extent
31 provided in § 23-61-205. In addition, all workpapers, financial statement
32 analyses, ratio calculations, and any other materials produced by State
33 Insurance Department financial examiners or analysts, or documents submitted
34 or disclosed to the department by an insurer in response to a request from
35 the commissioner or a department financial examiner or analyst during the
36 course of reviewing or investigating the financial solvency, condition, or

1 affairs of an insurer, shall be confidential and not subject to subpoena,
2 except to the extent as provided in § 23-61-205. Access may also be granted
3 to the National Association of Insurance Commissioners. The parties must
4 agree in writing prior to receiving the information to provide to it the same
5 confidential treatment as required by this section, unless the prior written
6 consent of the company to which it pertains has been obtained.

7
8 SECTION 7. The introductory language to Arkansas Code § 23-61-401,
9 concerning fees, licenses, and charges collected by the Insurance
10 Commissioner, is amended to read as follows:

11 The Insurance Commissioner shall collect ~~in advance, and persons so~~
12 ~~served shall~~ annually or biennially as prescribed by rule of the commissioner
13 and pay to the Treasurer of State through the commissioner, the following
14 fees, licenses, and miscellaneous charges ~~as follows:~~

15
16 SECTION 8. Arkansas Code § 23-61-401(8), concerning nonresident agent
17 license fees, is amended to read as follows:

18 (8) Nonresident agent license fees: As established by rule of
19 the commissioner

- 20 ~~(A) Original license, individual..... 30.00~~
- 21 ~~(B) Annual continuation of license, individual, 30.00~~
- 22 ~~(C) Original license, nonresident firms and corporations~~
- 23 ~~plus one (1) qualifying individual..... 100.00~~
- 24 ~~(D) Each additional individual 30.00~~
- 25 ~~(E) Annual continuation of nonresident firms and corporation~~
- 26 ~~license 100.00~~
- 27 ~~(F) Annual continuation of each additional individual~~
- 28 ~~....., 30.00~~

29
30 SECTION 9. Effective January 1, 2010, Arkansas Code § 23-61-703(a),
31 concerning a licensed insurer's administrative and financial regulation fee,
32 is amended to read as follows:

33 (a) Notwithstanding ~~the provisions of~~ § 26-57-602 and other provisions
34 of Arkansas law, all licensed insurers, including, ~~but not limited to,~~
35 without limitation all licensed stock and mutual insurance companies, health
36 maintenance organizations, fraternal benefit societies, hospital and medical

1 service corporations, stipulated premium insurers, reinsurers, and farmers'
 2 mutual aid associations ~~shall annually on or before June 30 at the time and~~
 3 in the manner ~~as prescribed by the Insurance Commissioner shall prescribe or~~
 4 ~~at times alternate from June 30 annually as the commissioner shall prescribe,~~
 5 shall pay to the State Insurance Department Trust Fund a nonrefundable
 6 administrative and financial regulation fee, no later than:

7 (1) June 1; or

8 (2) A date or dates established by rule of the commissioner.

9
 10 SECTION 10. Arkansas Code § 23-62-111(a), concerning employee benefit
 11 stop-loss insurance, is amended to read as follows:

12 (a) As used in the Arkansas Insurance Code, "employee benefit stop-
 13 loss insurance" or "employee benefit excess loss insurance" means coverage
 14 that insures an employer or an employer-sponsored health plan against the
 15 risk that:

16 (1) any ~~Any~~ one (1) claim will exceed a specific dollar amount;

17 or

18 (2) that the ~~The~~ entire loss of a self-insurance plan will
 19 exceed a specific dollar amount.

20
 21 SECTION 11. Arkansas Code § 23-63-111(a)(1), concerning the delivery
 22 of claim loss information to the policyholder, is amended to read as follows:

23 (a)(1)(A) Upon written request, each licensed property and casualty
 24 insurer shall mail or deliver the policyholder's claim loss information to
 25 the policyholder or his or her authorized producer within thirty (30) days
 26 from the date of receipt of the request ~~by~~ from the policyholder.

27 (B) If the requested claim loss information is not
 28 provided directly to the policyholder, the authorized producer shall mail or
 29 deliver the requested claim loss information to the policyholder within seven
 30 (7) days from the date of receipt of the claim loss information from the
 31 licensed property and casualty insurer.

32
 33 SECTION 12. Arkansas Code § 23-63-201(d)(2), concerning gift
 34 annuities, is amended to read as follows:

35 (2) ~~Each~~ Upon entering an annuity agreement, a domestic
 36 corporation or association ~~shall maintain reserves with respect to the~~

1 annuity or income stream that it has agreed to pay to a charitable donor by
 2 shall establish and maintain liabilities with respect to the annuity by one
 3 (1) of the following methods, using an amount:

4 (A) ~~Calculation of the reserves:~~

5 ~~(i) Upon the obligation of the permittee to the~~
 6 ~~donor annuitant in the manner set forth in the Standard Valuation Law for~~
 7 ~~Life Insurance and Annuities, § 23-84-101 et seq., concerning the standard~~
 8 ~~valuation law for life insurance and annuities; or~~

9 ~~(ii) As the present value of all future benefits to~~
 10 ~~be paid to the donor annuitant based upon the most recent mortality table~~
 11 ~~published by the Internal Revenue Service; or~~

12 ~~(B) Maintaining account reserves in an amount equal to the~~
 13 ~~aggregate values determined at the dates of contribution of all assets~~
 14 ~~received from donors with respect to annuities for annuitants who are then~~
 15 ~~living. Not less than the present value of future benefits payable to the~~
 16 ~~donor as determined by the most recent method established by the Internal~~
 17 ~~Revenue Service;~~

18 ~~(B) Determined by applying the method established for~~
 19 ~~annuities under the Standard Valuation Law for Life Insurance and Annuities,~~
 20 ~~§ 23-84-101 et seq.; or~~

21 ~~(C) Equal to the aggregate values determined at the dates~~
 22 ~~of contribution of all assets received from donors with respect to annuities~~
 23 ~~for annuitants who are then living.~~

24
 25 SECTION 13. Arkansas Code § 23-63-201(d)(5), concerning the
 26 requirement to maintain net admitted assets, is amended to read as follows:

27 (5) Each domestic corporation or association maintaining
 28 reserves in the manner described in subdivision ~~(d)(2)(B)~~ (d)(2)(C) of this
 29 section shall maintain net admitted assets at least equal to the amount of
 30 the reserves plus all other outstanding liabilities.

31
 32 SECTION 14. Arkansas Code § 23-63-201(d)(7), concerning gift
 33 annuities, is amended to read as follows:

34 ~~(7)(A)~~ The required admitted assets shall be invested:

35 ~~(i)(A)~~ Only in securities permitted by ~~the provisions of~~
 36 §§ 23-63-801 - 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

1 ~~(ii)(B)~~ In accordance with ~~the provisions of~~ the prudent
2 investor rule stated in §§ 24-2-610 – 24-2-619.

3 ~~(B) The investments shall be held by a custodian in~~
4 ~~accordance with § 23-69-134(b)(4).~~

5
6 SECTION 15. Arkansas Code § 23-63-201(d)(9)(C)(i), concerning gift
7 annuities, is amended to read as follows:

8 (C)(i) All corporations or associations operating under
9 this subsection shall ~~be required to~~ file an annual financial statement of
10 their operations and accounts and schedule of outstanding annuities with
11 applicable reserves within ~~ninety (90)~~ one hundred eighty (180) days of the
12 end of their fiscal year.

13
14 SECTION 16. Arkansas Code § 23-63-201, concerning the requirement that
15 an insurer obtain a certificate of authority and exceptions to that
16 requirement, is amended to add an additional subsection to read as follows:

17 (f) The commissioner may punish a person that fails to meet the
18 requirements of subsection (d) or subsection (e) of this section by:

19 (1) Imposing a penalty of up to ten thousand dollars (\$10,000);
20 or

21 (2) Suspending or revoking the charitable annuity permit and
22 authority to operate under subsection (d) or subsection (e) of this section.

23
24 SECTION 17. Arkansas Code § 23-63-215 is amended to read as follows:
25 23-63-215. Certificate of authority – Period of suspension –
26 Reinstatement.

27 (a) ~~Beginning January 1, 2006, The~~ suspension of an insurer's
28 certificate of authority ~~shall be for~~ is indefinite unless: the

29 (1) A specific period is fixed by the Insurance Commissioner in
30 the order of suspension; or

31 (2) ~~unless the~~ The commissioner shortens or rescinds the
32 suspension.

33 (b)(1) ~~During~~ Unless in the order of suspension the commissioner
34 waives payment of any fees, licenses, and taxes during the period of
35 suspension, the insurer shall file its annual statement and pay fees,
36 licenses, and taxes during the suspension as required under the Arkansas

1 Insurance Code as if the certificate of authority had continued in full
2 force.

3 (2) Upon reinstatement of a suspended insurer's certificate of
4 authority, all fees, licenses, and taxes accumulated during the suspension
5 are immediately due and payable.

6 (c)(1) Upon expiration of the suspension period, if If a suspension
7 ends within the period ~~the~~ a certificate of authority has not otherwise
8 terminated, the ~~insurer's~~ certificate of authority shall automatically
9 reinstate unless the commissioner finds that:

10 (A) the The causes of the suspension have not been
11 removed; or

12 (B) that the The insurer is ~~otherwise~~ not in compliance
13 with the ~~requirements of the~~ Arkansas Insurance Code.

14 (2) If the commissioner finds that the certificate of authority
15 does not automatically reinstate, and of which the commissioner shall provide
16 written notice and give the insurer notice not less than thirty (30) days ~~in~~
17 ~~advance of the expiration of the suspension period~~ to remove the cause for
18 suspension or otherwise comply with the Arkansas Insurance Code.

19 (3) If the certificate of authority is not ~~so~~ automatically
20 reinstated, the certificate of authority shall be deemed to have expired ~~as~~
21 ~~of the end of the suspension period or~~ upon the earliest of:

22 (A) Thirty (30) days after the commissioner gives notice
23 under subdivision (c)(2) of this section; or

24 (B) The failure of the insurer to continue the certificate
25 of authority during the suspension period, ~~whichever event first occurs.~~

26 (d) Upon reinstatement of the insurer's certificate of authority:

27 (1), the The authority of ~~its~~ the insurer's agents in this state
28 to represent the insurer ~~shall likewise reinstate,~~ is reinstated; and

29 (2) The commissioner shall promptly notify the insurer and its
30 agents in this state of the reinstatement.

31

32 SECTION 18. Arkansas Code § 23-63-216(b)(5), concerning the filing of
33 information with the National Association of Insurance Commissioners, is
34 amended to read as follows:

35 (b)(5) Each authorized insurer shall submit its annual and quarterly
36 statement and supplemental information to the National Association of

1 Insurance Commissioners in ~~hardcopy and~~ electronic format as specified by the
2 National Association of Insurance Commissioners.

3
4 SECTION 19. Arkansas Code § 23-63-701(g), concerning the limit of risk
5 of a mutual insurer, is repealed.

6 ~~(g) Limit of risk as to newly organized domestic mutual insurers shall~~
7 ~~be as provided in § 23-69-112.~~

8
9 SECTION 20. Arkansas Code § 23-63-818 is amended to read as follows:
10 23-63-818. Stocks of subsidiaries.

11 (a) With the Insurance Commissioner's ~~consent, an~~ written approval, a
12 domestic insurer may invest in the stock of its wholly owned subsidiary
13 insurance corporation or in the stock of its wholly owned subsidiary business
14 corporation formed or acquired for, and necessary and incidental to,:

15 (1) ~~the~~ The convenient operation of the domestic insurer's
16 insurance business; or

17 (2) ~~the~~ The administration of any of ~~its~~ the domestic insurer's
18 lawful investments.

19 (b) ~~All~~ Unless a greater investment has been approved in writing by
20 the commissioner:

21 (1) All of the domestic insurer's investments under this
22 section, together with its investments in insurance stocks under § 23-63-
23 817(b), shall not at any time exceed:

24 (A) ~~the~~ The amount of the investing domestic insurer's
25 surplus if a life insurer; or

26 (B) ~~its~~ The domestic insurer's surplus to policyholders
27 policyholders' surplus if other than a life insurer; and

28 ~~(c)(1)(2)(A) Unless a greater investment has been approved in~~
29 ~~writing by the commissioner, a~~ A domestic insurer subject to this subchapter
30 shall limit its investments in common stock, preferred stock, debt
31 obligations, and other securities of its noninsurance subsidiaries to the
32 lesser of:

33 ~~(A)(i)~~ (i) Ten percent (10%) of the domestic insurer's
34 assets; or

35 ~~(B)(ii)~~ (ii) Fifty percent (50%) of the domestic
36 insurer's surplus.

1 ~~(2)(B)~~ This ~~subsection~~ subdivision (b)(2) does not apply
2 to the amount of an investment held on July 31, 2007, by a domestic insurer
3 licensed in Arkansas.

4 (c) With the prior written approval of the commissioner, a domestic
5 insurer may invest any amount in the securities of one (1) or more of the
6 domestic insurer's subsidiaries if after the investment the domestic
7 insurer's policyholders' surplus is:

8 (1) Reasonable in relation to the domestic insurer's outstanding
9 liabilities; and

10 (2) Adequate for the domestic insurer's financial needs.

11 (d) An investment that exceeds the scope of an approval granted under
12 this section requires the additional prior written approval of the
13 commissioner.

14
15 SECTION 21. Arkansas Code § 23-63-841(f), concerning the Insurance
16 Commissioner's approval of derivative transactions, is amended to read as
17 follows:

18 (f) The commissioner may approve additional transactions involving the
19 use of derivative instruments in excess of the limits of subsection ~~(b)(c)~~ of
20 this section or for other risk management purposes, but replication
21 transactions ~~shall~~ are not be permitted for other risk management purposes.

22
23 SECTION 22. The introductory paragraph of Arkansas Code § 23-63-
24 1105(b), concerning transactions between a controlled insurer and a
25 controlling insurance producer, is amended to read as follows:

26 (b) A controlled insurer shall not accept business from a controlling
27 producer and a controlling producer shall not place business with a
28 ~~controlling~~ controlled insurer unless there is a written contract between the
29 controlling producer and the controlled insurer specifying the
30 responsibilities of each party, ~~which~~ and the contract has been approved by
31 the board of directors of the controlled insurer and contains the following
32 minimum provisions:

33
34 SECTION 23. Arkansas Code § 23-63-1607(b)(3)(A), concerning the annual
35 report of an association captive insurance company, is amended to read as
36 follows:

1 (b)(3)(A) Unless provided otherwise,;

2 (i) ~~an~~ An association captive insurance company shall

3 file its report in the form required by § 23-63-216(a); and

4 (ii) ~~an~~ An industrial insured group shall;

5 (a) ~~file~~ File its report in the form required

6 by § 23-63-216(a); and

7 (b) ~~each industrial insured group shall comply~~

8 Comply with the requirements set forth in § 23-63-216(h) § 23-63-216(b)(1).

9

10 SECTION 24. Effective January 1, 2010, Arkansas Code Title 23, Chapter

11 63 is amended to add an additional subchapter to read as follows:

12 23-63-1901. Title.

13 This subchapter shall be known and may be cited as the "Property and

14 Casualty Actuarial Opinion Law".

15

16 23-63-1902. Definitions.

17 As used in this subchapter:

18 (1) "Actuarial opinion summary" means a summary of the

19 information supporting a statement of actuarial opinion;

20 (2) "Appointed actuary" means the actuary appointed by a

21 property and casualty insurance company to prepare a statement of actuarial

22 opinion and an actuarial opinion summary; and

23 (3) "Statement of actuarial opinion" means the actuarial opinion

24 of an appointed actuary prepared in accordance with the appropriate National

25 Association of Insurance Commissioners Property and Casualty Annual Statement

26 Instructions.

27

28 23-63-1903. Annual statement of actuarial opinion, actuarial opinion

29 summary, and supporting documentation required.

30 (a)(1) Unless exempted by the Insurance Commissioner, a property and

31 casualty insurance company doing business in this state shall annually file

32 with the commissioner a statement of actuarial opinion and an actuarial

33 opinion summary.

34 (2) A property and casualty insurance company licensed but not

35 domiciled in this state shall provide the actuarial opinion summary upon

36 request.

1 (b)(1) An actuarial report and underlying work papers as required by
2 the appropriate National Association of Insurance Commissioners Property and
3 Casualty Annual Statement Instructions shall be prepared to support each
4 statement of actuarial opinion.

5 (2) If a property and casualty insurance company fails to
6 provide a supporting actuarial report or underlying work papers at the
7 request of the commissioner or the commissioner determines that the
8 supporting actuarial report or work papers provided by the insurance company
9 are not acceptable to the commissioner, the commissioner may engage a
10 qualified actuary at the expense of the property and casualty insurance
11 company to:

12 (A) Review the statement of actuarial opinion and the
13 basis for the statement of actuarial opinion; and

14 (B) Prepare the supporting actuarial report or work
15 papers.

16
17 23-63-1904. Liability of appointed actuary.

18 An appointed actuary is not liable for damages to any person other than
19 the property and casualty insurance company or the Insurance Commissioner, or
20 both the property and casualty insurance company and the commissioner, for
21 any act, error, omission, decision, or conduct with respect to the actuary's
22 statement of actuarial opinion, except in cases of fraud or willful
23 misconduct on the part of the appointed actuary.

24
25 23-63-1905. Confidentiality.

26 (a) The statement of actuarial opinion shall be filed with the annual
27 statement required by § 23-63-216 and treated as a public record under the
28 Freedom of Information Act of 1967, § 25-19-101 et seq.

29 (b)(1) Documents, materials or other information in the possession or
30 control of the State Insurance Department that are considered an actuarial
31 report, work papers, or an actuarial opinion summary provided in support of
32 the statement of actuarial opinion, and any other material provided by the
33 property and casualty insurance company to the commissioner in connection
34 with the actuarial report, work papers, or actuarial opinion summary, are:

35 (A) Confidential by law;

36 (B) Privileged;

1 (C) Conclusively presumed to be records that would give
2 advantage to competitors under § 25-19-105(b)(9)(A);

3 (D) Not subject to subpoena; and

4 (E) Not discoverable or admissible as evidence in a
5 private civil action.

6 (2) This subsection (b) does not limit the Insurance
7 Commissioner's authority to:

8 (A) Release the documents, materials, or other information
9 to the Actuarial Board for Counseling and Discipline if:

10 (i) The documents, materials, or other information
11 is required for professional disciplinary proceedings; and

12 (ii) The board establishes procedures satisfactory
13 to the commissioner for preserving the confidentiality of the documents,
14 materials, or other information; or

15 (B) Use the documents, materials, or other information in
16 furtherance of any regulatory or legal action brought as part of the
17 commissioner's official duties.

18 (c) The commissioner or any person who received documents, materials,
19 or other information while acting under the authority of the commissioner
20 shall not testify in a private civil action concerning any confidential
21 documents, materials, or information described in subsection (b) of this
22 section.

23 (d) To assist the performance of the commissioner's duties, the
24 commissioner may:

25 (1) Share with the following entities the documents, materials,
26 or other information described in subsection (b) of this section if the
27 respective entity agrees to maintain the confidentiality and privileged
28 status of documents, materials, or other information and has the legal
29 authority to maintain confidentiality:

30 (A) Other state, federal, and international regulatory
31 agencies;

32 (B) The National Association of Insurance Commissioners
33 and its affiliates and subsidiaries; and

34 (C) State, federal, and international law enforcement
35 authorities;

36 (2)(A) Receive documents, materials, or information, including

1 otherwise confidential and privileged documents, materials, or information
2 from:

3 (i) The National Association of Insurance
4 Commissioners and its affiliates and subsidiaries; and

5 (ii) Regulatory and law enforcement officials of
6 other foreign or domestic jurisdictions.

7 (B) The commissioner shall maintain as confidential or
8 privileged any document, material, or information received with notice or the
9 understanding that it is confidential or privileged under the laws of the
10 jurisdiction that is the source of the document, material, or information;
11 and

12 (3) Enter into agreements governing the sharing and use of
13 information consistent with this subsection and subsections (b) and (c) of
14 this section.

15 (e) A waiver of any applicable privilege or claim of confidentiality
16 in the documents, materials, or information described in subsection (b) of
17 this section shall not occur as a result of disclosure to the commissioner
18 under this section or as a result of sharing a document, material, or other
19 information under subsection (d) of this section.

20
21 SECTION 25. Arkansas Code § 23-64-209(d), concerning adjusting
22 procedures in response to a catastrophe, is amended to read as follows:

23 ~~(d) However, no adjuster's license or qualifications shall be required~~
24 ~~as to any~~ An adjuster who is sent into this state on behalf of an insurer for
25 the purpose of investigating or making adjustment of a ~~particular~~ loss
26 resulting from a catastrophe under an insurance policy, ~~or for the adjustment~~
27 ~~of a series of losses resulting from a catastrophe common to all the losses~~
28 is not required to be qualified or licensed under this section if within ten
29 (10) business days of entering the state the adjuster notifies the
30 commissioner in writing of the adjuster's activities on behalf of the
31 insurer.

32
33 SECTION 26. Arkansas Code § 23-64-209, concerning the qualifications
34 for holding an insurance adjuster's license, is amended to add an additional
35 subsection to read as follows:

36 (e)(1)(A) Unless exempt under subdivision (e)(2) of this section, a

1 licensed adjuster shall successfully complete and report a minimum of twenty-
 2 four (24) hours of continuing education courses approved by the commissioner
 3 within the time established by rule of the commissioner.

4 (B) At least three (3) hours of continuing education
 5 required by this subsection (e) shall be in an ethics course approved by the
 6 commissioner.

7 (2) This subsection (e) does not apply to an adjuster licensed
 8 in:

9 (A) This state for less than one (1) year; or

10 (B) Another state if the adjuster has satisfied the
 11 continuing education requirements of the licensing state.

12
 13 SECTION 27. Arkansas Code § 23-64-209(b)(6)(A)(v), concerning the
 14 effective date for insurance adjuster examinations, is repealed.

15 ~~(v) This examination requirement shall be effective~~
 16 ~~only as to all resident applicants for license as an adjuster hereunder~~
 17 ~~beginning January 1, 1986.~~

18
 19 SECTION 28. Arkansas Code § 23-64-215 is amended to read as follows:
 20 23-64-215. Continuance of license.

21 ~~(a) All insurance consultants or adjuster licenses shall continue in~~
 22 ~~force unless nonrenewed, expired, suspended, revoked, or terminated, but~~
 23 ~~shall be subject at all times to annual payment to the Insurance Commissioner~~
 24 ~~of the applicable continuation fee as stated in § 23-61-401, accompanied by a~~
 25 ~~written request for the continuation.~~

26 ~~(1) On or before the licensee's birthday if an individual; or~~

27 ~~(2) The annual period from the date of issue if a firm, limited~~
 28 ~~liability company, or corporation~~ Unless the license of an insurance adjuster
 29 or an insurance consultant is not renewed, expires, is suspended, is revoked,
 30 or is terminated, the licensee may continue the license by:

31 (1) Paying annually or biennially the continuation of license
 32 fee prescribed by rule of the Insurance Commissioner; and

33 (2) Complying with all other rules of the commissioner for
 34 continuing the license.

35 (b)(1) A licensee who allows his or her license to lapse may reinstate
 36 the ~~same~~ license within twelve (12) months after the due date of the ~~renewal~~

1 continuation of license fee without the necessity of passing a written
2 examination.

3 (2) However, a penalty in the amount of double the unpaid
4 ~~renewal~~ continuation of license fee shall be required for any ~~renewal~~
5 continuation of license fee received after the due date.

6
7 SECTION 29. Arkansas Code § 23-64-220(c), concerning the record
8 retention requirements for insurance agents and brokers, is amended to read
9 as follows:

10 (c)(1)(A) The agent or broker shall keep at his or her place of
11 business the usual and customary records pertaining to transactions under his
12 or her license for at least:

13 (i) Five (5) years from the date the record was
14 created; or

15 (ii) One (1) year following the final settlement or
16 final adjudication of a criminal proceeding, civil litigation, or an
17 administrative proceeding:

18 (a) Commenced within five (5) years from the
19 date the record was created; and

20 (b) Involving records pertaining to a
21 transaction conducted by the agent or broker under his or her license.

22 (B) A record required to be kept by this subsection (c)
23 may be maintained in its original form, electronically, or as a hard copy.

24 (2) As used in this subsection (c), "usual and customary
25 records" means:

26 (A) Applications;

27 (B) Memoranda;

28 (C) Notations of telephone conversations or other
29 communications;

30 (D) Billing information;

31 (E) Correspondence;

32 (F) Policy information;

33 (G) Claims files; and

34 (H) Any other records detailing insurer information or
35 insurance policies or contracts bound through the agent or broker.

36

1 SECTION 30. Arkansas Code § 23-64-301 is amended to read as follows:
2 23-64-301. Continuing education required.

3 (a) Beginning July 1, 2003, each insurance producer licensed in this
4 state shall successfully complete courses of instruction as required by this
5 section unless exempt under § 23-64-302.

6 (b)(1) Beginning July 1, 2003, during each annual period of the
7 duration of his or her license, ~~any person~~ an individual licensed to act as
8 an insurance producer shall satisfactorily complete courses or programs of
9 instruction equivalent to:

10 (A) A minimum of eight (8) hours of related instruction
11 for a life license or an accident and health license, or both;

12 (B) A minimum of eight (8) hours of instruction for a
13 property and casualty license; or

14 (C) A minimum number of hours of instruction for a title
15 insurance license as established by rule of the Insurance Commissioner.

16 (2) ~~Persons~~ An individual holding dual licenses for life and
17 accident and health or life or accident and health and property and casualty
18 shall also be required to complete courses of instruction for a total of ten
19 (10) hours.

20 (3)(A) Beginning July 1, 2003, as part of the continuing
21 education described in subdivisions (b)(1) and (2) of this section, during
22 each annual period of the duration of the insurance producer's license, ~~any~~
23 ~~person~~ an individual licensed to act as an insurance producer shall
24 satisfactorily complete at least one (1) hour of training in an ethics course
25 that is related to the business of insurance and that has been approved by
26 the ~~Insurance Commissioner~~ commissioner.

27 (B) The ethics training under subdivision (b)(3)(A) of
28 this section shall count toward the producer's eight (8) hours of continuing
29 education required under subdivision (b)(1) of this section.

30 (4)(A) As of July 1, 2003, ~~all insurance producers~~ an insurance
31 producer holding an active license shall meet the requirements under this
32 section unless exempt under § 23-64-302.

33 (B) ~~All insurance producers~~ An insurance producer licensed
34 after July 1, 2003, shall also meet the requirements of this section, and as
35 of July 1, 2003, the exemptions contained in § 23-64-302(3) and (4) shall no
36 longer ~~be applicable~~ apply to those insurance producers.

1 (c) An individual who holds a title insurance license shall complete
2 the minimum number of hours of continuing education courses established by
3 rule of the commissioner.

4 (d) ~~The commissioner may arrange for the administration of this~~
5 ~~subchapter, or any part thereof, hire an independent contractor to administer~~
6 all or part of this subchapter in a fair and impartial manner ~~by an~~
7 ~~independent contractor as specified by contract and without unfair~~
8 ~~discrimination as between individuals subject to this subchapter.~~

9
10 SECTION 31. Effective January 1, 2010, Arkansas Code § 23-64-301(a)
11 and (b), concerning continuing education requirements for insurance
12 producers, are amended to read as follows:

13 (a)(1) ~~Beginning July 1, 2003, each~~ Unless exempt under § 23-64-302, an
14 insurance producer licensed in this state shall successfully complete and
15 report the courses of instruction ~~as~~ required by this section ~~unless exempt~~
16 ~~under § 23-64-302~~ within the biennial period prescribed by rule of the
17 Insurance Commissioner for the insurance producer to satisfy the continuing
18 education requirements necessary to continue the insurance producer's
19 license.

20 (2) The exemptions in § 23-64-302(3) and (4) do not apply to an
21 insurance producer licensed after July 1, 2003.

22 (b)(1) ~~Beginning July 1, 2003, during each annual period of the~~
23 ~~duration of his or her license, any person licensed to act as an insurance~~
24 ~~producer shall satisfactorily complete courses or programs of instruction~~
25 ~~equivalent to:~~

26 (A) ~~A minimum of eight (8) hours of related instruction~~
27 ~~for a life license or an accident and health license, or both;~~

28 (B) ~~A minimum of eight (8) hours of instruction for a~~
29 ~~property and casualty license; or~~

30 (C) ~~A minimum number of hours of instruction for a title~~
31 ~~insurance license as established by rule of the Insurance Commissioner.~~

32 (2) ~~Persons holding dual licenses for life and accident and~~
33 ~~health or life or accident and health and property and casualty shall also be~~
34 ~~required to complete courses of instruction for a total of ten (10) hours.~~

35 (3)(A) ~~Beginning July 1, 2003, as part of the continuing~~
36 ~~education described in subdivisions (b)(1) and (2) of this section, during~~

1 ~~each annual period of the duration of the insurance producer's license, any~~
 2 ~~person licensed to act as an insurance producer shall satisfactorily complete~~
 3 ~~at least one (1) hour~~ An individual shall satisfactorily complete a minimum
 4 of twenty-four (24) hours of continuing education courses each biennial
 5 period for continuing education if the individual is licensed to sell:

6 (A) Life insurance;

7 (B) Accident and health or sickness insurance;

8 (C) Property insurance;

9 (D) Casualty insurance;

10 (E) Variable products insurance; or

11 (F) Personal lines insurance.

12 (2) At least three (3) hours of training continuing education
 13 required by this subsection shall be in an ethics course that is related to
 14 the business of insurance ~~and that has been~~ approved by the Insurance
 15 Commissioner.

16 ~~(B) The ethics training under subdivision (b)(3)(A) of~~
 17 ~~this section shall count toward the producer's eight (8) hours of continuing~~
 18 ~~education required under subdivision (b)(1) of this section.~~

19 ~~(4)(A) As of July 1, 2003, all insurance producers holding an~~
 20 ~~active license shall meet the requirements under this section unless exempt~~
 21 ~~under § 23-64-302.~~

22 ~~(B) All insurance producers licensed after July 1, 2003,~~
 23 ~~shall also meet the requirements of this section, and as of July 1, 2003, the~~
 24 ~~exemptions contained in § 23-64-302(3) and (4) shall no longer be applicable~~
 25 ~~to those insurance producers.~~

26
 27 SECTION 32. Arkansas Code § 23-64-405(g)(2), concerning reporting
 28 requirements, is amended to read as follows:

29 (g)(2) This subsection ~~shall~~ does not apply to relationships governed
 30 by ~~§ 23-63-601~~ the Insurance Holding Company Regulatory Act, § 23-63-501 et
 31 seq.

32
 33 SECTION 33. Arkansas Code § 23-65-311(e), concerning the delivery of
 34 claim loss information to a policyholder, is amended to read as follows:

35 (e)(1)(A) Upon written request, each approved but nonadmitted surplus
 36 lines insurer shall mail or deliver the policyholder's claim loss information

1 to the policyholder or his or her surplus lines broker within thirty (30)
2 days from the date of receipt of the request ~~by~~ from the policyholder.

3 (B) If the claim loss information is provided to the
4 surplus lines broker, the surplus lines broker shall deliver the claim loss
5 information to the policyholder within seven (7) days from the date of
6 receipt of the claim loss information from the surplus lines insurer.

7 (C) If the surplus lines broker generates the claim loss
8 information for the surplus lines insurer, the claim loss information shall
9 be provided to the policyholder within thirty (30) days from the date of
10 receipt of the request from the policyholder.

11 (2)(A) "Claim loss information" as used in this subsection means
12 the:

- 13 (i) Date of loss;
- 14 (ii) Property insured; and
- 15 (iii) Amount paid.

16 (B) "Claim loss information" as used in this subsection
17 does not include supporting claim file documentation, including, ~~but not~~
18 ~~limited to,~~ without limitation copies of claim files, investigation reports,
19 evaluation statements, insured's statements, and documents protected by a
20 common law or statutory privilege.

21 (3) The surplus lines insurer or the surplus lines broker may
22 charge a reasonable fee for providing the claim loss information as part of
23 the expense of underwriting the policy.

24 (4) The surplus lines insurer and the surplus lines broker ~~shall~~
25 are not be required to maintain claim loss information for more than five (5)
26 years following the termination of coverage.

27
28 SECTION 34. Arkansas Code § 23-69-113 is amended to read as follows:

29 23-69-113. Formation of nonlife mutual insurer - ~~Bond~~ Deposit
30 required.

31 (a) Before soliciting any applications for insurance as required under
32 § 23-69-112 as a qualification for the certificate of authority, the
33 incorporator or incorporators of the proposed insurer shall ~~file~~ deposit with
34 the Insurance Commissioner ~~a corporate surety bond or other~~ acceptable
35 securities in the penal sum of one hundred thousand dollars (\$100,000) in
36 favor of the state and for the use and benefit of the state and of applicant

1 members and creditors of the corporation. The ~~bond~~ deposit shall be
2 conditioned as follows:

3 (1) For the prompt return to applicant members of all premiums
4 collected in advance;

5 (2) For payment of all indebtedness of the corporation; and

6 (3) For payment of costs incurred by the state in the event of
7 any legal proceedings for liquidation or dissolution of the corporation, all
8 in the event the corporation fails to complete its organization and secure a
9 certificate of authority within one (1) year from and after the date of its
10 certificate of incorporation.

11 ~~(b) In lieu of a bond, the incorporator or incorporators may deposit~~
12 ~~with the commissioner one hundred thousand dollars (\$100,000) in acceptable~~
13 ~~securities or United States Government bonds, negotiable and payable to the~~
14 ~~bearer, with a market value at all times of not less than one hundred~~
15 ~~thousand dollars (\$100,000) to be held in trust upon the same conditions as~~
16 ~~required for the bond or other securities.~~

17 ~~(e) (b) Any bond filed or deposit or~~ The remaining portion thereof of
18 a deposit held under this section shall be released and discharged upon
19 settlement and termination of all liabilities against ~~it~~ the deposit.

20 ~~(d) (c) This section shall~~ does not apply to mutual insurers licensed
21 on or before August 13, 2001.

22
23 SECTION 35. Arkansas Code § 23-73-105(g), concerning farmers' mutual
24 aid associations, is amended to read as follows:

25 (g)(1) Before ~~any an~~ an association ~~or company shall be authorized to may~~
26 write coverages:

27 (A) The policy form shall have prior approval of the
28 commissioner, in accordance with § 23-79-109; and

29 (B) ~~The~~ An association that writes any of the coverages
30 listed in subsection (f) of this section shall ~~have and thereafter~~ maintain a
31 minimum ~~surplus~~ of fifty thousand dollars (\$50,000) to be deposited with the
32 commissioner in the form of securities eligible for deposit under § 23-63-
33 903, ~~and.~~

34 ~~(C) The association shall have and thereafter maintain~~
35 ~~with the commissioner a statutory deposit of not less than fifty thousand~~
36 ~~dollars (\$50,000) in the form of securities eligible under § 23-63-903.~~

1 (2)(A) Each association ~~or company~~ shall maintain an unimpaired
2 minimum surplus of five hundred thousand dollars (\$500,000).

3 (B)(i) If compliance with this section would cause the
4 association ~~or company~~ to become impaired or insolvent, the commissioner may
5 allow ~~that domestic~~ the association ~~or company~~ to augment incrementally its
6 unimpaired minimum surplus in order for the association ~~or company~~ to achieve
7 compliance no later than December 31, 2010.

8 (ii) For good cause shown in writing by an
9 association ~~or company~~, the commissioner may grant a one-time extension of
10 the deadline set for compliance in subdivision (g)(2)(B)(i) of this section
11 for a period not to exceed two (2) years.

12 (3) However, if the association reinsures its obligations under
13 the coverages listed in this section to the extent of one hundred percent
14 (100%), the commissioner, in his or her discretion, may waive the deposit
15 requirement under this section.

16 (4) The deposit ~~shall be~~ is subject to:

17 (A) conditioned for the The payment of creditors and the
18 prompt payment of all claims arising and accruing to any person in this
19 state; and

20 (B) The deposit shall be further subject to the The
21 conditions specified in § 23-63-909.

22
23 SECTION 36. Arkansas Code § 23-75-106 is amended to read as follows:
24 23-75-106. Incorporation - Amendments to articles or bylaws.

25 (a) Any corporation shall hereafter be organized under the laws of
26 this state relating to private corporations not for pecuniary profit, insofar
27 as the laws are not inconsistent with ~~any of the provisions of~~ this chapter.

28 (b)(1) Upon adoption of an amendment to its articles of incorporation
29 or bylaws, the corporation shall make in duplicate under its corporate seal a
30 certificate setting forth the amendment and the date and manner of its
31 adoption.

32 (2) The certificate shall be:

33 (A) Executed by the corporation's president or vice
34 president and secretary or assistant secretary; and

35 (B) Acknowledged before an officer authorized by law to
36 take acknowledgments of deeds.

1 (3) The corporation shall deliver to the Insurance Commissioner:

2 (A) A duplicate original of the certificate; and

3 (B)(i) The filing fee that is:

4 (a) Specified in § 23-61-401; or

5 (b) Established by rule of the commissioner.

6 (ii) The filing fee is not refundable.

7 (4) If the commissioner finds that the certificate and the
8 amendment comply with the law, the commissioner shall:

9 (A) Endorse his or her approval upon each of the duplicate
10 originals;

11 (B) Place one (1) set on file in his or her office; and

12 (C) Return the remaining set to the corporation for its
13 corporate records.

14 (5) The amendment shall be effective when the commissioner has
15 endorsed his or her approval on the certificate.

16 (6) If the commissioner finds that the proposed amendment or
17 certificate does not comply with the law, the commissioner shall:

18 (A) Not approve the certificate;

19 (B) Return the duplicate certificate to the corporation
20 with his or her written statement of reasons for not approving the
21 certificate; and

22 (C) Retain the filing fee.

23
24 SECTION 37. Arkansas Code § 23-79-109(a)(1)(B), concerning the
25 exemptions to the filing requirements for insurance policy and contract
26 forms, is amended to add an additional subdivision to read as follows:

27 (xvii) Policies, contracts, riders, endorsements,
28 and certificates issued by surplus lines insurers.

29
30 SECTION 38. Arkansas Code § 23-79-138 is amended to read as follows:
31 23-79-138. Information to accompany policies.

32 (a) ~~Every~~ The following information shall accompany every policy of
33 life insurance, accident and health insurance, property insurance, ~~or~~
34 casualty insurance, or title insurance issued ~~after January 1, 1988,~~ and
35 covering risks located, resident, or to be performed in the State of Arkansas
36 ~~shall be accompanied by the following information:~~

1 (1) The complete address and telephone number, ~~800 number if~~
 2 ~~possible~~ including a toll-free number if available, of the policyholder's
 3 service office of the company issuing the policy;

4 (2) The name, address, and telephone number of the ~~agent~~
 5 producer or agency soliciting the policy, if applicable; and

6 (3) The address and telephone number, ~~800 number if available~~
 7 including a toll-free number if available, of the State Insurance Department.

8 (b) ~~Any A~~ person who fails to comply with ~~the provisions of this~~
 9 section ~~shall be~~ is subject to the penalties provided in § 23-60-108.

10 (c) The Insurance Commissioner ~~is authorized to~~ may adopt appropriate
 11 rules ~~and regulations~~ to enforce and carry out the intent and purposes of
 12 this section.

13
 14 SECTION 39. Arkansas Code § 23-79-303, concerning exceptions to the
 15 minimum standards for property and casualty insurance policies, is amended to
 16 read as follows:

17 23-79-303. Applicability – Exceptions.

18 (a) This subchapter ~~shall apply~~ applies to property and casualty
 19 insurance on commercial risks in this state, except:

20 (1) Reinsurance;

21 (2) Insurance against loss of or damage to aircraft, or their
 22 hulls, accessories, and equipment or against liability arising out of the
 23 ownership, maintenance, or use of aircraft;

24 (3) Ocean marine or foreign trade insurance;

25 ~~(4) Medical malpractice insurance;~~

26 ~~(5)~~(4) Title insurance;

27 ~~(6)~~(5) Surety or fidelity insurance;

28 ~~(7)~~(6) Credit insurance;

29 ~~(8)~~(7) Workers' compensation or employers' liability insurance;

30 ~~or~~ and

31 ~~(9)~~(8) Large commercial risks.

32 (b) Sections 23-79-307(5)(A), 23-79-311, and 23-79-312 do not apply to
 33 medical malpractice insurance.

34
 35 SECTION 40. Arkansas Code § 23-79-506(a), concerning specific
 36 authority granted to the Arkansas Comprehensive Health Insurance Pool, is

1 amended to read as follows:

2 (a)(1) The Arkansas Comprehensive Health Insurance Pool shall have the
3 general powers and authority granted under the laws of the State of Arkansas
4 to health insurers and, in addition thereto, the specific authority to:

5 ~~(1)~~(A) Enter into contracts as are necessary or proper to
6 carry out the provisions and purposes of this subchapter;

7 ~~(2)~~(B) Sue or be sued, including taking any legal actions
8 necessary or proper;

9 ~~(3)~~(C) Take such legal action as necessary, including, ~~but~~
10 ~~not limited to~~ without limitation:

11 ~~(A)~~(i) Avoiding the payment of improper claims
12 against the pool or the coverage provided by or through the pool;

13 ~~(B)~~(ii) Recovering any amounts erroneously or
14 improperly paid by the pool;

15 ~~(C)~~(iii) Recovering any amounts paid by the pool as
16 a result of mistake of fact or law;

17 ~~(D)~~(iv) Recovering other amounts due the pool; or

18 ~~(E)~~(v) Coordinating legal action with the Insurance
19 Commissioner to enforce the provisions of this subchapter;

20 ~~(4)~~(A)(D)(i) Establish and modify from time to time as
21 appropriate, rates, rate schedules, rate adjustments, expense allowances,
22 agent referral fees, claim reserve formulas, deductibles, copayments,
23 coinsurance, and any other actuarial function appropriate to the operation of
24 the pool.

25 ~~(B)~~(ii) Rates and rate schedules may be adjusted for
26 appropriate factors such as age, sex, and geographical variation in claim
27 costs and shall take into consideration appropriate factors in accordance
28 with established actuarial and underwriting practices;

29 ~~(5)~~(E) Issue policies of insurance in accordance with the
30 requirements of this subchapter. All policy forms shall be subject to the
31 approval of the commissioner;

32 ~~(6)~~(F) Authorize the plan administrator to prepare and
33 distribute certificate of eligibility forms and enrollment instruction forms
34 to agents and to the general public;

35 ~~(7)~~(G) Provide ~~for~~ and employ cost-containment measures
36 and requirements, including, ~~but not limited to~~, without limitation

1 preadmission screening, second surgical opinion, concurrent utilization
2 review, and individual case management for the purposes of making the plan
3 more cost effective;

4 ~~(8)~~(H) Design, utilize, contract, or otherwise arrange for
5 the delivery of cost-effective health care services, including establishing
6 or contracting directly or through the plan administrator with preferred
7 provider organizations, health maintenance organizations, physician hospital
8 organizations, or other limited network provider arrangements;

9 ~~(9)~~(I) Borrow money to effect the purposes of the pool.
10 Any notes or other evidence of indebtedness of the pool not in default shall
11 be legal investments for insurers and may be carried as admitted assets;

12 ~~(10)~~(J) Pledge, assign, and grant a security interest in
13 any of the assessments authorized by this subchapter or other assets of the
14 pool in order to secure any notes or other evidences of indebtedness of the
15 pool;

16 ~~(11)~~(K) Provide for reinsurance of risks incurred by the
17 pool;

18 ~~(12)~~(L) Provide additional types of plans to provide
19 optional coverages, including Medicare supplement health insurance and health
20 savings accounts that comply with applicable federal law as in effect January
21 1, 2005;

22 ~~(13)~~(M) Enter into reciprocal agreements with other
23 comparable state plans in order to provide coverage for persons who move
24 between states and are covered by such other states' plans; and

25 ~~(14)~~(N) Establish lifetime maximum benefits under § 23-79-
26 510(a)(2)(W) for any person covered by a plan.

27 ~~(14)~~(2) In addition to the other powers granted by the Arkansas
28 Insurance Code, the commissioner may impose, after notice and hearing in
29 accordance with the provisions of the Arkansas Insurance Code, a monetary
30 penalty upon any insurer or suspend or revoke the certificate of authority to
31 transact insurance in the State of Arkansas of any insurer ~~who~~ that fails to
32 pay an assessment or otherwise file any report or furnish information
33 required to be filed with the Board of Directors of the Arkansas
34 Comprehensive Health Insurance Pool pursuant to the board's direction that
35 the board believes is necessary in order for the board to perform its duties
36 under this subchapter.

1
2 SECTION 41. Arkansas Code § 23-79-507(d), concerning assessments and
3 fees to fund the Arkansas Comprehensive Health Insurance Pool Program, is
4 amended to read as follows:

5 (d)(1)~~(A)~~ All assessments and fees shall be due and payable upon
6 receipt and shall be delinquent if not paid within thirty (30) days of the
7 receipt of the notice by the insurer.

8 ~~(B)~~(2) Failure to timely pay the assessment will automatically
9 subject the insurer to a ten percent (10%) penalty, which will be due and
10 payable within the next thirty-day period.

11 ~~(C)~~(3) The board and the commissioner shall have the authority
12 to enforce the collection of the assessment and penalty in accordance with
13 the provisions of this subchapter and the Arkansas Insurance Code.

14 ~~(D)~~(4) The board may waive the penalty authorized by this
15 subsection if it determines that compelling circumstances exist that justify
16 such a waiver.

17 ~~(2)(A)The board and the commissioner shall have the authority to~~
18 ~~enforce the collection of the assessment and penalty in accordance with the~~
19 ~~provisions of this subchapter and the Arkansas Insurance Code.~~

20 ~~(B)The board may waive the penalty authorized by this~~
21 ~~subsection if it determines that compelling circumstances exist that justify~~
22 ~~the waiver.~~

23
24 SECTION 42. Arkansas Code § 23-79-509(a)(2), concerning persons not
25 eligible for coverage under a plan offered by the Arkansas Comprehensive
26 Health Insurance Pool, is amended to read as follows:

27 (2) A person shall not be eligible for coverage under the plan
28 if:

29 (A) The person has or obtains health insurance coverage
30 substantially similar to or more comprehensive than a plan policy or would be
31 eligible to have coverage if the person elected to obtain it except that:

32 (i) A person may maintain other coverage for the
33 period of time the person is satisfying any waiting period for a preexisting
34 condition under a plan policy; and

35 (ii) A person may maintain plan coverage for the
36 period of time the person is satisfying a waiting period for a preexisting

1 condition under another health insurance policy intended to replace the plan
2 policy;

3 (B) The person is determined to be eligible for health
4 care benefits under Title XIX of the Social Security Act;

5 (C) The person has previously terminated plan coverage
6 unless twelve (12) months have elapsed since termination of coverage;

7 (D) The person fails to pay the required premium under the
8 covered person's terms of enrollment and participation, in which event the
9 liability of the plan shall be limited to benefits incurred under the plan
10 for the same period for which premiums had been paid and the covered person
11 remained eligible for plan coverage;

12 (E) The plan has paid ~~a total of one million dollars~~
13 ~~(\$1,000,000.00) in benefits~~ on behalf of the covered person the maximum
14 lifetime benefit established by the board in accordance with § 23-79-
15 510(a)(2)(W);

16 (F) The person is a resident of a public institution; ~~or~~

17 (G) The person's premium is paid for or reimbursed under
18 any government-sponsored program or by any government agency, foundation,
19 health care facility, or health care provider except for premiums paid on
20 behalf of:

21 (i) A trade adjustment assistance eligible person or
22 a qualified trade adjustment assistance eligible person in accordance with
23 section 35 of the Internal Revenue Code; or

24 (ii) An otherwise qualifying full-time employee or
25 dependent of such an employee of a government agency, foundation, health care
26 facility, or health care provider; or

27 (H) The person commits a fraudulent insurance act as
28 defined in § 23-66-501(4) against the Arkansas Comprehensive Health Insurance
29 Pool;

30
31 SECTION 43. Arkansas Code § 23-79-509(a)(5), concerning loss of
32 coverage when eligibility ends, is amended to read as follows:

33 (5) Except under the conditions set forth in subdivision (a)(4)
34 of this section, the coverage of any person who ceases to meet the
35 eligibility requirements of this section ~~shall be terminated~~ terminates at
36 the end of the ~~current policy period for which the necessary premiums have~~

1 ~~been paid~~ month that the person ceases to meet the eligibility requirements
2 of this section.

3
4 SECTION 44. Arkansas Code § 23-79-510(a)(2), concerning to exclusions
5 from coverage under pool plans, is amended to read as follows:

6 (2) EXCLUSIONS. ~~Subject to~~ Unless the contractual policy form
7 language adopted by the board provides otherwise, the following services,
8 supplies, drugs, or articles whether or not prescribed by a physician ~~or not~~
9 shall not be covered:

10 (A) Any charge for treatment for cosmetic purposes other
11 than surgery for the repair or treatment of an injury or a congenital bodily
12 defect to restore normal bodily functions;

13 (B) Care that is primarily for custodial or domiciliary
14 purposes;

15 (C) Any charge for confinement in a private room to the
16 extent it is in excess of the institution's charge for its most common
17 semiprivate room unless a private room is medically necessary;

18 (D) That part of any charge for services rendered or
19 articles prescribed by a physician, dentist, or other health care personnel
20 that exceeds the prevailing charge in the locality or for any charge not
21 medically necessary;

22 (E) Any charge for services or articles the provision of
23 ~~which~~ that is not within the scope of authorized practice of the institution
24 or individual providing the services or articles;

25 (F) Any expense incurred prior to the effective date of
26 coverage by the plan for the person on whose behalf the expense is incurred;

27 (G) Dental care except as provided in subdivision
28 (a)(1)(K) of this section;

29 (H) Eyeglasses and hearing aids;

30 (I) Illness or injury due to acts of war;

31 (J) Services of blood donors and any fee for failure to
32 replace the first three (3) pints of blood provided to a covered person each
33 policy year;

34 (K) Personal supplies or services provided by a hospital
35 or nursing home or any other nonmedical or nonprescribed supply or service;

36 ~~(L) Routine maternity charges for a pregnancy except when~~

1 ~~added as optional coverage with payment of additional premiums;~~

2 ~~(M)~~(L) Any expense or charge for services, articles,
3 drugs, or supplies that are not provided in accord with generally accepted
4 standards of current medical practice;

5 ~~(N)~~ Any expense or charge for routine physical
6 examinations or tests;

7 ~~(O)~~(M) Any expense for which a charge is not made in the
8 absence of insurance or for which there is no legal obligation on the part of
9 the patient to pay;

10 ~~(P)~~(N) Any expense incurred for benefits provided under
11 the laws of the United States and the State of Arkansas, including Medicare
12 and Medicaid and other medical assistance, military service-connected
13 disability payments, medical services provided for members of the armed
14 forces and their dependents or employees of the armed forces of the United
15 States, and medical services financed on behalf of all citizens by the United
16 States;

17 ~~(Q)~~ (O) Any expense or charge for in vitro fertilization,
18 artificial insemination, or any other artificial means used to cause
19 pregnancy;

20 ~~(R)~~(P) Any expense or charge for oral contraceptives used
21 for birth control or any other temporary birth control measures;

22 ~~(S)~~(Q) Any expense or charge for sterilization or
23 sterilization reversals;

24 ~~(T)~~(R) Any expense or charge for weight-loss programs,
25 exercise equipment, or treatment of obesity except when certified by a
26 physician as morbid obesity, i.e., at least two (2) times normal body weight;

27 ~~(U)~~(S) Any expense or charge for acupuncture treatment
28 unless used as an anesthetic agent for a covered surgery;

29 ~~(V)~~(T) Any expense or charge for organ or bone marrow
30 transplants other than those performed at a hospital with a board-approved
31 organ transplant program that has been designated by the board as a preferred
32 provider organization for that specific organ or bone marrow transplant;

33 ~~(W)~~(U) Any expense or charge for procedures, treatments,
34 equipment, or services that are provided in special settings for research
35 purposes or in a controlled environment, are being studied for safety,
36 efficiency, and effectiveness, and are awaiting endorsement by the

1 appropriate national medical specialty college for general use within the
2 medical community; ~~and~~

3 ~~(X)(V)~~ Such additional exclusions deemed appropriate by
4 the board in accordance with the provisions of subsection (b) of this
5 section; and

6 (W)(i) Any benefits that exceed the maximum lifetime
7 benefit for plan coverage established by the board under § 23-79-
8 506(a)(1)(N).

9 (ii) The maximum lifetime benefit shall not be less
10 than one million dollars (\$1,000,000) and shall not exceed three million
11 dollars (\$3,000,000).

12
13 SECTION 45. Arkansas Code § 23-86-202(12), concerning the definition
14 of a "small employer" for small group health insurance coverage, is amended
15 to read as follows:

16 (12)(A) "Small employer" means any person, firm, corporation,
17 partnership, or association actively engaged in business ~~who~~ that, on at
18 least fifty percent (50%) of its working days during the preceding year,
19 employed no fewer than two (2) nor more than twenty-five (25) eligible
20 employees, the majority of whom were employed within this state.

21 (B) In determining the number of eligible employees under
22 subdivision (12)(A) of this section, companies that are affiliated companies
23 or that are eligible to file a combined tax return for purposes of state
24 taxation shall be are considered to be one (1) employer; and

25
26 SECTION 46. Arkansas Code § 23-89-305 is amended to read as follows:

27 23-89-305. Notice required ~~prior to~~ before renewal or nonrenewal =
28 Inapplicability to commercial policies.

29 (a)(1) ~~The~~ Except as provided in subsection (e) of this section, the
30 insurer shall give either a written notice of nonrenewal or an offer of
31 renewal at least thirty (30) days ~~prior to~~ before the expiration of the
32 policy's existing term.

33 (2)(A) The insurer shall send the insured a written notice and
34 the insurance producer written or electronic notice of the offer of renewal
35 under subdivision (a)(1) of this section.

36 (B) The notice required under subdivision (a)(2)(A) of

1 this section shall:

2 (i) ~~indicating~~ State the new premium for the renewal
3 policy; and

4 (ii) ~~providing~~ Provide a description of any change
5 in deductible or policy provisions in the renewal policy.

6 (b)(1) This section ~~shall~~ does not apply in case of nonpayment of
7 premium.

8 (2) However, notwithstanding the failure of an insurer to comply
9 with this section, the policy shall terminate on the effective date of any
10 other insurance policy with respect to any automobile designated in both
11 policies.

12 (c) Unless a statement of the grounds for nonrenewal accompanies or is
13 included in the notice of nonrenewal, the notice of nonrenewal shall state or
14 be accompanied by a statement that, ~~upon written request of the named insured~~
15 ~~mailed or delivered to the insurer not less than fifteen (15) days prior to~~
16 ~~the effective date of the nonrenewal~~, the insurer shall specify the grounds
17 for the nonrenewal upon written request of the named insured if the request
18 is mailed or delivered to the insurer not less than fifteen (15) days before
19 the effective date of the nonrenewal.

20 (d) Renewal of a policy ~~shall~~ does not constitute a waiver or estoppel
21 with respect to grounds for cancellation that existed before the effective
22 date of the renewal.

23 (e) This section does not apply to the sixty-day notice requirement
24 for the renewal or nonrenewal of a commercial policy governed by § 23-79-
25 307(7).

26
27 SECTION 47. Arkansas Code § 23-93-103(2)(A) concerning the definition
28 of "continuing care" under the Continuing Care Provider Regulation Act, is
29 amended to read as follows:

30 (2)(A) "Continuing care" means the furnishing of independent
31 living units to individuals and ~~either~~:

32 (i) Furnishing nursing care or personal care
33 services ~~pursuant to~~ under an agreement, whether the nursing care or personal
34 care services are provided in the facility or in another setting designated
35 by the agreement for providing continuing care to individuals; ~~or~~ and

36 (ii) (a) Requiring the payment of an entrance fee by

1 an individual not related by consanguinity or affinity to the provider
2 furnishing the living unit.

3 (b) ~~Payments~~ Payment may be made by an
4 entrance fee alone, an entrance fee and periodic payments, or by payment of
5 less fees for service.

6
7 SECTION 48. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the state of the economy has
9 made it more important for insurance companies to find appropriate
10 investments; that in certain cases an investment in an insurance company's
11 subsidiary may be a prudent investment option for an insurance company, but
12 the opportunity for the investment is available only for a limited time as
13 economic circumstances permit; and that Section 20 of this act is immediately
14 necessary to permit the timely investment in an insurance company's
15 subsidiary when considered appropriate by the Insurance Commissioner.
16 Therefore, an emergency is declared to exist and Section 20 of this act being
17 immediately necessary for the preservation of the public peace, health, and
18 safety, Section 20 of this act shall become effective on:

19 (1) The date of this act's approval by the Governor;

20 (2) If the bill is neither approved nor vetoed by the Governor,
21 the expiration of the period of time during which the Governor may veto the
22 bill; or

23 (3) If the bill is vetoed by the Governor and the veto is
24 overridden, the date the last house overrides the veto.

25
26 /s/ T. Smith

27
28 **APPROVED: 3/31/2009**