

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative M. Wilson**

A Bill

ACT 526 OF 1993
HOUSE BILL 1326

For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 63 OF TITLE 23 OF THE ARKANSAS
9 INSURANCE CODE, BY ADDING NEW SUBCHAPTER 11 ENTITLED _THE
10 BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
11 PROPERTY/CASUALTY INSURER ACT_; AND FOR OTHER PURPOSES."

Subtitle

14 "_THE BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
15 PROPERTY/CASUALTY INSURER ACT_."

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

19 SECTION 1. Title 23, Chapter 63 of the Arkansas Code is hereby amended,
20 by adding new Subchapter 11, to read as follows:

21 "23-63-1101. Short title.

22 This Act may be cited as _The Business Transacted with Producer
23 Controlled Property/Casualty Insurer Act._

25 23-63-1102. Definitions.

26 As used in this subchapter:

27 (a) _Accredited State_ means a state in which the insurance department
28 or regulatory agency has qualified as meeting the minimum financial regulatory
29 standards promulgated and established from time to time by the National
30 Association of Insurance Commissioners (NAIC).

31 (b) _Control_ or _Controlled_ has the meaning set out in §23-63-503(2).

32 (c) _Controlled Insurer_ means a licensed insurer which is controlled,
33 directly or indirectly, by a producer.

34 (d) _Controlling Producer_ means a producer who, directly or
35 indirectly, controls an insurer.

36 (e) _Licensed Insurer_ or _Insurer_ means any person, firm, association

1 or corporation duly licensed to transact a property/casualty insurance
2 business in this state. The following, inter alia, are not licensed insurers
3 for the purposes of this subchapter:

4 (1) All risk retention groups as defined in the Superfund Amendments
5 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the
6 Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and
7 Ark. Code Ann. §23-94-101 - §23-94-303;

8 (2) All residual market pools and joint underwriting authorities or
9 associations; and

10 (3) All captive insurers (i.e., insurance companies owned by another
11 organization whose exclusive purpose is to insure risks of the parent
12 organization and affiliated companies or, in the case of groups and
13 associations, insurance organizations owned by the insureds whose exclusive
14 purpose is to insure risks of member organizations and/or group members and
15 their affiliates).

16 (f) Producer means an insurance broker or brokers or any other
17 person, firm, association or corporation, when, for any compensation,
18 commission or other thing of value, such person, firm, association or
19 corporation act or aids in any manner in soliciting, negotiating or procuring
20 the making of any insurance contract on behalf of an insured other than the
21 person, firm, association or corporation.

22

23 23-63-1103. Applicability.

24 This subchapter shall apply to licensed insurers as defined in
25 §23-63-1102(e) either domiciled in this state or domiciled in a state that is
26 not an accredited state having in effect a substantially similar law. All
27 provisions of §§ 23-63-501, et seq., to the extent they are not superseded by
28 the provisions of this subchapter, shall continue to apply to all parties
29 within holding company systems subject to the provisions of this subchapter.

30

31 23-63-1104. Minimum standards.

32 (a) (1) The provisions of this section shall apply if, in any calendar
33 year, the aggregate amount of gross premium on business placed with a
34 controlled insurer by a controlling producer is equal to or greater than five
35 percent (5%) of the admitted assets of the controlled insurer, as reported in

1 the controlled insurer's quarterly statement filed as of September 30 of the
2 prior year.

3 (2) Notwithstanding subdivision (1) of this subsection, the
4 provisions of this section shall not apply if:

5 (A) The controlling producer:

6 (i) Places insurance only with the controlled insurer, or
7 only with the controlled insurer and a member or members of the controlled
8 insurer's holding company system, or the controlled insurer's parent,
9 affiliate or subsidiary and receives no compensation based upon the amount of
10 premiums written in connection with such insurance; and

11 (ii) Accepts insurance placements only from non-affiliated
12 subproducers, and not directly from insureds; and

13 (B) The controlled insurer, except for insurance business
14 written through a residual market facility, accepts insurance business only
15 from a controlling producer, a producer controlled by the controlled insurer,
16 or a producer that is a subsidiary of the controlled insurer.

17 (b) A controlled insurer shall not accept business from a controlling
18 producer and a controlling producer shall not place business with a
19 controlling insurer unless there is a written contract between the controlling
20 producer and the insurer specifying the responsibilities of each party, which
21 contract has been approved by the board of directors of the insurer and
22 contains the following minimum provisions:

23 (1) The controlled insurer may terminate the contract for cause,
24 upon written notice to the controlling producer. The controlled insurer shall
25 suspend the authority of the controlling producer to write business during the
26 pendency of any dispute regarding the cause for the termination;

27 (2) The controlling producer shall render accounts to the controlled
28 insurer detailing all material transactions, including information necessary
29 to support all commissions, charges and other fees received by, or owing to,
30 the controlling producer;

31 (3) The controlling producer shall remit all funds due under the
32 terms of the contract to the controlled insurer on at least a monthly basis.
33 The due date shall be fixed so that premiums or installments thereof collected
34 shall be remitted no later than ninety (90) days after the effective date of
35 any policy placed with the controlled insurer under the contract;

1 (4) All funds collected for the controlled insurer's account shall
2 be held by the controlling producer in a fiduciary capacity, in one or more
3 appropriately identified bank accounts in banks that are members of the
4 Federal Reserve System. However, funds of a controlled producer not required
5 to be licensed in this state shall be maintained in compliance with the
6 requirements of the controlling producer's domicile;

7 (5) The controlling producer shall maintain separately identifiable
8 records of business written for the controlled insurer;

9 (6) The contract shall not be assigned in whole or in part by the
10 controlling producer;

11 (7) The controlled insurer shall provide the controlling producer
12 with its underwriting standards, rules and procedures, manuals setting forth
13 the rates to be charged, and the conditions for the acceptance or rejection of
14 risks. The controlling producer shall adhere to the standards, rules,
15 procedures, rates and conditions. The standards, rules, procedures, rates and
16 conditions shall be the same as those applicable to comparable business placed
17 with the controlled insurer by a producer other than a controlling producer;

18 (8) The rates and terms of the controlling producer's commissions,
19 charges or other fees and the purposes for those charges or fees. The rates
20 of the commissions, charges and other fees shall be no greater than those
21 applicable to comparable business place with the controlled insurer by
22 producers other than controlling producers. For purposes of this subdivision
23 and subdivision (7) of this subsection, examples of `comparable business'
24 includes the same lines of insurance, same kinds of insurance, same kinds of
25 risks, similar policy limits, and similar quality of business;

26 (9) If the contract provides that the controlling producer, on
27 insurance business placed with the insurer, is to be compensated contingent
28 upon the insurer's profits on that business, then such commission shall not be
29 determined and paid until at least five (5) years after the premiums on
30 liability insurance are earned and at least one (1) year after the premiums
31 are earned on any other insurance. In no event shall the commissions be paid
32 until the adequacy of the controlled insurer's reserves on remaining claims
33 has been independently verified pursuant to subsection (c) of this section;

34 (10) A limit on the controlling producer's writings in relation to
35 the controlled insurer's surplus and total writings. The insurer may

1 establish a different limit for each line or sub-line of business. The
2 controlled insurer shall notify the controlling producer when the applicable
3 limit is approached and shall not accept business from the controlling
4 producer if the limit is reached. The controlling producer shall not place
5 business with the controlled insurer if it has been notified by the controlled
6 insurer that the limit has been reached; and

7 (11) The controlling producer may negotiate but shall not bind
8 reinsurance on behalf of the controlled insurer on business the controlling
9 producer places with the controlled insurer, except that the controlling
10 producer may bind facultative agreements if the contract with the controlled
11 insurer contains underwriting guidelines including, for both reinsurance
12 assumed and ceded, a list of reinsurers with which such automatic agreements
13 are in effect, the coverages and amounts or percentages that may be reinsured
14 and commission schedules.

15 (c) Every controlled insurer shall have an Audit Committee of the Board
16 of Directors composed of independent directors. The Audit Committee shall
17 annually meet with management, the insurer's independent certified public
18 accountants, and an independent casualty actuary or other independent loss
19 reserve specialist acceptable to the commissioner to review the adequacy of
20 the insurer's loss reserves.

21 (d) (1) In addition to any other required loss certification, the
22 controlled insurer shall annually, on April 1 of each year, file with the
23 commissioner an opinion of an independent casualty actuary (or such other
24 independent loss reserve specialist acceptable to the commissioner) reporting
25 loss ratios for each line of business written and attesting to the adequacy of
26 loss reserves established for losses incurred and outstanding as of year-end
27 (including incurred but not reported) on business placed by the producer; and

28 (2) The controlled insurer shall annually report to the commissioner
29 the amount of commissions paid to the producer, the percentage such amount
30 represents of the net premiums written and comparable amounts and percentage
31 paid to noncontrolling producers for placements of the same kinds of
32 insurance.

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34 23-63-1105. Disclosure.

35 The producer, prior to the effective date of the policy, shall deliver

1 written notice to the prospective insured disclosing the relationship between
2 the producer and the controlled insurer; except that, if the business is
3 placed through a subproducer who is not a controlling producer, the
4 controlling producer shall retain in his records a signed commitment from the
5 subproducer that the subproducer is aware of the relationship between the
6 insurer and the producer and that the subproducer has or will notify the
7 insured.

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9 23-63-1106. Penalties.

10 (a) (1) If the commissioner believes that the controlling producer or
11 any other person has not materially complied with this subchapter, after
12 notice and hearing, the commissioner may order the controlling producer to
13 cease placing business with the controlled insurer; and

14 (2) If it was found that because of such material non-compliance
15 that the controlled insurer or any policyholder thereof has suffered any loss
16 or damage, the commissioner may maintain a civil action or intervene in an
17 action brought by or on behalf of the insurer or policyholder for recovery of
18 compensatory damages for the benefit of the insurer or policyholder or other
19 appropriate relief.

20 (b) If an order for liquidation or rehabilitation of the controlled
21 insurer has been entered pursuant to §§ 23-68-101, et seq., and the receiver
22 appointed under that order believes that the controlling producer or any other
23 person has not materially complied with this subchapter, and the insurer
24 suffered any loss or damage therefrom, the receiver may maintain a civil
25 action for recovery of damages or other appropriate sanctions for the benefit
26 of the insurer.

27 (c) Nothing contained in this section shall affect the right of the
28 commissioner to impose any other penalties provided for in this code.

29 (d) Nothing contained in this section is intended to or shall in any
30 manner alter or affect the rights of policyholders, claimants, creditors or
31 other third parties."

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33 SECTION 2. Effective Date. Compliance with this Act shall be required
34 on and after January 1, 1994.

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