

Act 891 of the 1989 Regular Session.

Act 891

HB1919

By: Representative D. Roberts

"AN ACT TO AMEND ARKANSAS CODE SECTIONS 23-94-103, AND FOLLOWING, AS TO RISK RETENTION AND PURCHASING GROUPS; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (b) of Arkansas Code 23-94-103 is hereby amended to read as follows:

"(b) Agents or brokers who act on behalf of risk retention or purchasing groups and who violate any provision of this chapter shall be subject to fines and penalties applicable to licensed resident and nonresident agents or brokers generally, including revocation of the resident or nonresident agent's or broker's license."

SECTION 2. Arkansas Code 23-94-103 is hereby amended by adding a new subsection (c) as follows:

"(c) A purchasing group which violates any provisions of this chapter may be subject to fines of up to five thousand dollars (\$5,000) and/or other appropriate penalties, including revocation of its certificate of registration."

SECTION 3. Arkansas Code 23-94-104 is hereby amended to read as follows:

"23-94-104. License requirement.

(a) Risk Retention Group Agents. Any person acting, or offering to act, as an agent or broker for a registered risk retention group which solicits members, sells insurance coverage, or otherwise does business in this State shall, before commencing any such activity, obtain a resident or nonresident risk retention group agent license from the Commissioner upon completion of the licensing provisions as to resident and nonresident agents or brokers under 23-64-101 et seq. and 23-64-201 et seq., except as they conflict with the provisions of the Federal Liability Risk Retention Act of 1986.

(b) Purchasing Group Brokers.

(1) Any person acting, or offering to act, as an agent or broker for a registered purchasing group which solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State shall, before commencing any such activity, obtain a resident or nonresident purchasing group broker license from the Commissioner upon completion of the licensing provisions as to resident and nonresident agents or brokers under 23-64-101 et seq. and 23-64-201 et seq., except as they conflict with the provisions of the Federal Liability Risk Retention Act of 1986, before securing the purchasing group's coverage with an authorized insurer or a registered risk retention group. This requirement shall not be applicable to property and casualty agents or brokers duly licensed by this State as to the authorized insurer or risk retention group issuing the purchasing group's coverage, so long as these licenses comply with other provisions of this chapter.

(2) Any person acting, or offering to act, as an agent or broker for a purchasing group registered in Arkansas and procuring insurance from an approved non-admitted surplus line insurer shall either:

(A) first obtain a property and casualty agent or broker's license or purchasing group broker's license from this State, prior to placing the group's coverage through a surplus line broker duly licensed by the State of Arkansas; or

(B) first obtain a resident Arkansas surplus line broker's license, or a non-resident Arkansas surplus line broker's license restricted to registered purchasing groups only, prior to placing the group's coverage with the surplus line insurer.

(3) The provisions of this subsection shall be in conformity with the provisions of this chapter, Arkansas Code 23-64-101 et seq., Arkansas Code 23-64-201 et seq., and the surplus line laws of this State, Arkansas Code

23-65-301 et seq., except as they conflict with the provisions of the Federal Liability Risk Retention Act of 1986."

SECTION 4. Arkansas Code Section 23-94-105 is hereby amended to read as follows:

"23-94-105. License fees. The provisions as to fees for obtaining and continuing licenses for insurers, agents, and brokers under 23-61-401 shall be applicable to risk retention groups, purchasing groups, risk retention group agents and purchasing group brokers, resident surplus line brokers, and nonresident surplus line purchasing group brokers under the provisions of this chapter and 23-65-301 et seq., except as they conflict with the provisions of the Federal Liability Risk Retention Act of 1986."

SECTION 5. Subsection (a) of Arkansas Code 23-94-202 is hereby amended to read as follows:

"(a) Risk retention groups organized and formed under the laws of states other than this State and seeking to do business as a risk retention group in this State must obtain a certificate of registration from the Insurance Commissioner of this State. Each such applicant for a certificate of registration must submit to the Commissioner before offering insurance in this State:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a casualty insurance company, date of chartering, its principal place of business, and such other information, including information on its membership as the Commissioner of this State may require to verify that the risk retention group is eligible for a certificate of registration in this State; and

(2) A copy of its plan of operations and revisions of that plan submitted to its state of domicile, containing the information as required under Arkansas Code 23-94-201 (c)(1). However, the provision relating to the submission of a plan of operation shall not apply with respect to any line or classification of liability insurance which:

(A) Was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(B) Was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years before that date;

(3) An appointment of the Commissioner and his successors in office, on a form furnished by the Commissioner, as its agent to receive service of legal process issued against it in this State. The appointment shall be irrevocable, shall bind the risk retention group and any successor in interest, and shall remain in effect as long as there is outstanding in Arkansas any obligation or liability of the risk retention group resulting from its transactions therein. The risk retention group shall also file designation of the name and address of the person to whom process against it

served upon the Commissioner is to be forwarded and any subsequent amendments to that name and address with the Commissioner; and

(4) Any other document or information which the Commissioner may reasonably request."

SECTION 6. Arkansas Code 23-94-205 is hereby amended to read as follows:

"23-94-205. Determination of financial condition. Any risk retention group must submit to an examination by the Insurance Commissioner to determine its financial condition if the Commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the Insurance Commissioner of this State. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' (NAIC's) Examiner Handbook. Each risk retention group being examined shall pay the reasonable cost of the examination to the Commissioner, not to exceed the amounts for compensation and expenses of examiners as adopted by the National Association of Insurance Commissioners or its successor organization."

SECTION 7. Subsection (a) of Arkansas Code 23-94-302 is hereby amended to read as follows:

"(a) A purchasing group which intends to do business in this State must obtain a certificate of registration from the Insurance Commissioner, and shall file application with the Insurance Commissioner which shall:

- (1) Identify the state in which the group is domiciled;
- (2) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (3) Identify the insurance company from which the group intends to purchase its insurance and the domicile of that company;
- (4) Identify the principal place of business of the group; and
- (5) Provide such other information as may be required by the Commissioner to verify that the purchasing group is eligible for a certificate of registration."

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. It is hereby determined by the General Assembly that current provisions of Arkansas law as to Risk Retention and Purchasing Groups are inadequate. Therefore, an emergency is hereby declared to exist, and this act being necessary to preserve the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 22, 1989
