

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 625 OF 1995
HOUSE BILL 1725

4 **By: Representatives Cunningham, Maddox, Miller, Capps, Newman, M. Wilson, Beatty,**
5 **Purdom, Allen, and Young**

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For An Act To Be Entitled

9 "AN ACT TO ADOPT THE DISCLOSURE OF MATERIAL TRANSACTIONS
10 LAW SO THAT THE ARKANSAS INSURANCE COMMISSIONER CAN BETTER
11 REGULATE THE FINANCIAL SOLVENCY OF INSURANCE COMPANIES;
12 AND FOR OTHER PURPOSES."

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Subtitle

15 "DISCLOSURE OF MATERIAL TRANSACTIONS"

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

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

22 "23-63-1401. Short Title.

23 This subchapter may be cited as 'The Disclosure of Material Transactions Act'.

24 23-63-1402. Report.

25 A. Every insurer domiciled in this state shall file a report with
26 the commissioner disclosing material acquisitions and dispositions of assets
27 or material nonrenewals, cancellations or revisions of ceded reinsurance
28 agreements unless the acquisitions and dispositions of assets or material
29 nonrenewals, cancellations or revisions of ceded reinsurance agreements have
30 been submitted to the commissioner for review, approval or information
31 purposes pursuant to other provisions of the insurance code, laws,
32 regulations, or other requirements.

33 B. The report required in Subsection A is due within fifteen (15)
34 days after the end of the calendar month in which any of the foregoing
35 transactions occur.

36 C. One complete copy of the report, including any exhibits or other

1 attachments, shall be filed with:

2 (1) The insurance department of the insurer's state of domicile;
3 and

4 (2) The National Association of Insurance Commissioners.

5 D. All reports obtained by or disclosed to the commissioner pursuant
6 to this Act, shall be given confidential treatment and shall not be subject
7 to subpoena and shall not be made public by the commissioner, the National
8 Association of Insurance Commissioners, or any other person, except to
9 insurance departments of other states, without the prior written consent of
10 the insurer to which it pertains unless the commissioner, after giving the
11 insurer who would be affected notice and an opportunity to be heard,
12 determines that the interest of policyholders, shareholders or the public will
13 be served by publication, in which event the commissioner may publish all or
14 any part in the manner the commissioner may deem appropriate.

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16 23-63-1403. Acquisitions and Dispositions of Assets.

17 A. Materiality.

18 No acquisitions or dispositions of assets need be reported pursuant to
19 §23-63-1402 if the acquisitions or dispositions are not material. For
20 purposes of this subchapter, a material acquisition or the aggregate of any
21 series of related acquisitions during any thirty-day period, or disposition,
22 or the aggregate of any series of related dispositions during any thirty-day
23 period, is one that is non-recurring and not in the ordinary course of
24 business and involves more than five percent (5%) of the reporting insurer's
25 total admitted assets as reported in its most recent statutory statement
26 filed with the insurance department of the insurer's state of domicile.

27 B. Scope.

28 (1) Asset acquisitions subject to this subchapter include every
29 purchase, lease, exchange, merger, consolidation, succession or other
30 acquisition other than the construction or development of real property by or
31 for the reporting insurer or the acquisition of materials for such purpose.

32 (2) Asset dispositions subject to this subchapter include every
33 sale, lease, exchange, merger, consolidation, mortgage, hypothecation,
34 assignment, whether for the benefit of creditors or otherwise, abandonment,
35 destruction or other disposition.

1 C. Information to be Reported.

2 (1) The following information is required to be disclosed in any
3 report of a material acquisition or disposition of assets:

4 (a) Date of the transaction;

5 (b) Manner of acquisition or disposition;

6 (c) Description of the assets involved;

7 (d) Nature and amount of the consideration given or received;

8 (e) Purpose of, or reason for, the transaction;

9 (f) Manner by which the amount of consideration was determined;

10 (g) Gain or loss recognized or realized as a result of the
11 transaction; and

12 (h) Name(s) of the person(s) from whom the assets were acquired
13 or to whom they were disposed.

14 (2) Insurers are required to report material acquisitions and
15 dispositions on a non-consolidated basis unless the insurer is part of a
16 consolidated group of insurers which utilizes a pooling arrangement or one
17 hundred percent (100%) reinsurance agreement that affects the solvency and
18 integrity of the insurer's reserves and the insurer ceded substantially all of
19 its direct and assumed business to the pool. An insurer is deemed to have
20 ceded substantially all of its direct and assumed business to a pool if the
21 insurer has less than \$1,000,000 total direct plus assumed written premiums
22 during a calendar year that are not subject to a pooling arrangement and the
23 net income of the business not subject to the pooling arrangement represents
24 less than five percent (5%) of the insurer's capital and surplus.

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26 23-63-1404.Nonrenewals, Cancellations or Revisions of Ceded Reinsurance
27 Agreements.

28 A. Materiality and Scope.

29 1. No nonrenewals, cancellations or revisions of ceded reinsurer
30 agreements need be reported pursuant to §23-63-1402 if the nonrenewals,
31 cancellations or revisions are not material. For purposes of this subchapter,
32 a material nonrenewal, cancellation or revision is one that affects:

33 (a) As respects property and casualty business, including
34 disability business written by a property and casualty insurer:

35 (i) More than fifty percent (50%) of the insurer's total

1 ceded written premium; or

2 (ii) More than fifty percent (50%) of the insurer's total
3 ceded indemnity and loss adjustment reserves.

4 (b) As respects life, annuity, and disability business: more
5 than fifty percent (50%) of the total reserve credit taken for business ceded,
6 on an annualized basis, as indicated in the insurer's most recent annual
7 statement.

8 (c) As respects either property and casualty or life, annuity,
9 and disability business, either of the following events shall constitute a
10 material revision which must be reported:

11 (i) An authorized reinsurer representing more than ten
12 percent (10%) of a total cession is replaced by one or more unauthorized
13 reinsurer; or

14 (ii) Previously established collateral requirements have
15 been reduced or waived as respects one or more unauthorized reinsurers
16 representing collectively more than ten percent (10%) of a total cession.

17 2. However, no filing shall be required if:

18 (i) As respects property and casualty business, including
19 disability business written by a property and casualty insurer: the insurer's
20 total ceded written premium represents, on an annualized basis, less than ten
21 percent (10%) of its total written premium for direct and assumed business, or

22 (ii) As respects life, annuity, and disability insurance:
23 the total reserve taken for business ceded represents, on an annualized basis,
24 less than ten percent (10%) of the statutory reserve requirement prior to any
25 cession.

26 B. Information to be reported.

27 (1) The following information is required to be disclosed in any
28 report of a material nonrenewal, cancellation or revision of ceded
29 reinsurance agreements:

30 (a) Effective date of the nonrenewal, cancellation or revision;

31 (b) The description of the transaction with an identification of
32 the initiator thereof;

33 (c) Purpose of, or reason for, the transaction; and

34 (d) If applicable, the identity of the replacement reinsurers.

35 (2) Insurers are required to report all material nonrenewals,

1 cancellations or revisions of ceded reinsurance agreements on a
2 non-consolidated basis unless the insurer is part of a consolidated group of
3 insurers which utilizes a pooling arrangement or one hundred percent (100%)
4 reinsurance agreement that affects the solvency and integrity of the
5 insurer's reserves and the insurer ceded substantially all of its direct and
6 assumed business to the pool. An insurer is deemed to have ceded
7 substantially all of its direct and assumed business to a pool if the insurer
8 has less than \$1,000,000 total direct plus assumed written premiums during a
9 calendar year that are not subject to a pooling arrangement and the net income
10 of the business not subject to the pooling arrangement represents less than
11 five percent (5%) of the insurer's capital and surplus.

12 23-63-1405. Rules and Regulations.

13 The commissioner may adopt reasonable rules and regulations for the
14 implementation and administration of the provisions of this subchapter.

15 23-63-1406. Penalties and Liabilities.

16 (a) If the commissioner finds after a hearing conducted in accordance
17 with §§23-61-301, et seq. that any insurer or person has violated any
18 provision(s) of this subchapter, the commissioner may order:

19 (1) For each separate violation, a penalty in an amount of one
20 thousand dollars (\$1,000.00) or, if the commissioner has found willful
21 misconduct or willful violation, five thousand dollars (\$5,000.00); and

22 (2) Revocation or suspension of the insurer's or person's
23 license.

24 (b) The decision, determination or order of the commissioner pursuant
25 to subsection (a) of this section shall be subject to judicial review pursuant
26 to §23-61-307.

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

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31 SECTION 2. All provisions of this Act of a general and permanent nature
32 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
33 Revision Commission shall incorporate the same in the Code.

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35 SECTION 3. If any provision of this Act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or application of the Act which can be given effect without
3 the invalid provision or application, and to this end the provisions of the
4 Act are declared to be severable.

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6 SECTION 4. All laws and parts of laws in conflict with this Act are
7 hereby repealed.

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9 SECTION 5. EMERGENCY. It is hereby found and determined by the General
10 Assembly of the State of Arkansas that the present insurance laws are not
11 sufficient to protect the Arkansas insurance buying public. It is determined
12 that it is in the best interests of the State of Arkansas that the laws in
13 this Act be adopted immediately so that the Arkansas Insurance Department can
14 better regulate the insurance industry. Therefore, an emergency is hereby
15 declared to exist and this Act being necessary for the immediate preservation
16 of the public peace, health and safety shall be in full force and effect from
17 and after its passage and approval.

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APPROVED: 3-14-95

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