

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.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 540 of 2003
HOUSE BILL 1748

5 By: Representative R. Smith
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 23-69-138,
10 REGARDING AN INSURER'S INSOLVENCY CURE NOTICE;
11 AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND ARKANSAS CODE § 23-69-
14 138, REGARDING AN INSURER'S INSOLVENCY
15 CURE NOTICE.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 23-69-138 is amended to read as follows:
22 23-69-138. Impairment of capital or assets.

23 (a)(1) If a stock or mutual insurer becomes impaired or insolvent, the
24 Insurance Commissioner shall at once determine the amount of deficiency and
25 serve notice upon the insurer to make good the deficiency within thirty (30)
26 days after service of the notice. The commissioner may, after a hearing,
27 suspend the insurer from soliciting or writing any new coverages in this
28 state until the deficiency is made good.

29 (2) For purposes of this section, "insolvent" or "impairment"
30 shall be defined as those terms are used in ~~§ 23-68-101 et seq.~~ the Uniform
31 Insurer's Liquidation Act.

32 (b) The deficiency may be made good in cash or in assets eligible
33 under provisions of ~~§ 23-63-801 et seq.~~ §§ 23-63-801 through 23-63-840, which
34 refers to investments, for the investment of the insurer's funds or if a
35 stock insurer, by reduction of the insurer's capital to an amount not below
36 the minimum required for the kinds of insurance thereafter to be transacted



1 or by amendment of its certificate of authority to cover only such kinds of
 2 insurance thereafter for which the insurer has sufficient capital, if a stock
 3 insurer, or surplus, if a mutual insurer, under the Arkansas Insurance Code.

4 (c) If the deficiency is not made good and proof thereof filed with
 5 the commissioner within the thirty-day period, the insurer shall be deemed
 6 insolvent, and the commissioner shall institute delinquency proceedings
 7 against it under ~~§ 23-68-101 et seq.~~ the Uniform Insurer's Liquidation Act.
 8 However, if the deficiency exists because of increased loss reserves required
 9 by the commissioner, or because of disallowance by the commissioner of
 10 certain assets or reduction of the value at which carried in the insurer's
 11 accounts, the commissioner may, in his or her discretion and upon application
 12 and good cause shown, extend for not more than an additional thirty (30) days
 13 the period within which the deficiency may be so made good and the proof
 14 thereof so filed. However, acquisitions or changes of control of an impaired
 15 or insolvent domestic insurer which is or which has applied to become an
 16 affiliate or subsidiary of a depository institution pursuant to federal law
 17 shall comply with the time periods set forth therein to restore capital or
 18 surplus.

19 (d) Beginning July 1, 2003, this section shall apply only to:

20 (1) Monoline mortgage guaranty insurers, financial guaranty
 21 insurers, and title insurers that are excluded by definition from compliance
 22 with risk-based capital laws under § 23-63-1302;

23 (2) Organizations licensed as either a life and health insurer
 24 or a property and casualty insurer, which are otherwise subject to either the
 25 life or property and casualty risk-based capital requirements and are
 26 excluded by definition from compliance with risk-based capital laws under §
 27 23-63-1501; and

28 (2) Domestic stock and mutual insurers that, at the
 29 commissioner's discretion, are exempted from compliance with risk-based
 30 capital laws under § 23-63-1310 or § 23-63-1509.

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 32 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 33 General Assembly of the State of Arkansas that current law requiring notice
 34 to cure the insolvency of domestic stock and mutual insurers conflicts with
 35 current risk-based capital laws; that risk-based capital laws contain
 36 sufficient methods for providing notice and allow time to resolve impairments

1 of domestic insurers or other domestic entities; that this act resolves the
2 conflict by narrowing the application and scope of the current insolvency
3 notice law; and that this act is necessary to adequately protect consumers
4 purchasing insurance from domestic insurers. Therefore, an emergency is
5 declared to exist, and this act being necessary for the preservation of the
6 public peace, health, and safety, shall become effective on July 1, 2003.

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9 **APPROVED: 3/18/2003**
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