

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 339

5 By: Senator Rapert
6 By: Representative Wren
7

For An Act To Be Entitled

9 AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S
10 GENERAL OMNIBUS BILL; TO REVISE THE REQUIREMENTS OF
11 THE INSURANCE COMMISSIONER'S ANNUAL REPORT; TO AMEND
12 THE PROCEDURE FOR EXAMINATION EXPENSES; TO CLARIFY
13 THE PROCEDURE FOR ISSUANCE OF A CHARITABLE ANNUITY
14 PERMIT; TO ALLOW THE TREASURER OF AN INSURER TO
15 VERIFY AN ANNUAL STATEMENT; TO CLARIFY REQUIREMENTS
16 FOR A MARKET CONDUCT ANNUAL STATEMENT; TO AMEND
17 DEFINITIONS IN THE INSURANCE HOLDING COMPANY
18 REGULATORY ACT; TO CLARIFY WHO CAN VOID AN INSURANCE
19 CONTRACT MADE BY A NONADMITTED INSURER; TO AMEND
20 REQUIREMENTS FOR FOREIGN AND ALIEN SURPLUS LINES
21 INSURERS; TO AMEND THE DEFINITION OF A FRAUDULENT
22 INSURANCE ACT; TO REQUIRE HEALTH MAINTENANCE
23 ORGANIZATIONS TO REPORT APPOINTMENT TERMINATIONS; TO
24 REVISE THE APPLICABILITY OF CERTAIN LAWS TO TITLE
25 INSURANCE; TO REVISE THE REQUIREMENTS FOR A LIFE
26 SETTLEMENT LICENSE; TO MAKE A TECHNICAL CORRECTION TO
27 A SECTION HEADING; AND FOR OTHER PURPOSES.

Subtitle

28
29
30
31 TO ENACT THE STATE INSURANCE DEPARTMENT'S
32 GENERAL OMNIBUS BILL.
33

34
35 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
36



SECTION 1. Arkansas Code § 23-61-112 is amended to read as follows:
 23-61-112. Annual report.

As early in the calendar year as reasonably possible, the Insurance Commissioner annually shall prepare and deliver a report to the Governor showing, with respect to the preceding calendar year:

(1) Names of the authorized insurers transacting insurance in this state, with ~~such a~~ summary of their financial statements ~~as that~~ the commissioner ~~deems~~ considers proper;

(2) Names of admitted insurers ~~whose businesses were that~~ closed during the year or entered liquidation, ~~the cause thereof, a concise statement concerning the cause for each proceeding~~, and the amount of assets and liabilities as ascertainable;

~~(3) Names of insurers against which delinquency or similar proceedings were instituted and a concise statement of the facts with respect to each proceeding;~~

~~(4)~~ The total receipts and expenses of the State Insurance Department for the year;

~~(5) Recommendations of the commissioner as to amendments or supplementation of laws affecting insurance and as to matters affecting the department; and~~

~~(6)~~ (4) ~~Such other~~ Other pertinent information and matters ~~as~~ the commissioner ~~deems~~ considers proper; and

(b) If the information required under subsection (a) of this section is contained on the state or the department's website under § 25-19-108 or the Arkansas Financial Transparency Act, § 25-1-401 et seq., the report may refer to the web address where the information is located.

SECTION 2. Arkansas Code § 23-61-206(a), concerning payment of examination expenses, is amended to read as follows:

(a)(1) Each person ~~so~~ examined shall pay to the State Insurance Department the actual travel expenses, reasonable living expense allowance, and compensation for examiners and other persons assisting in the examination ~~on a basis not to exceed the total of the Geographical Expense Reimbursement Plan set forth in~~ according to the examination guidance section in the most current edition of the ~~applicable~~ Examiners' Handbook adopted by the National Association of Insurance Commissioners, ~~upon presentation of a detailed~~

1 ~~account of the charges and expenses.~~

2 (2) Except as provided in subdivision (a)(1) of this section,
 3 the cost of independent professionals used as examiners to assist in an
 4 examination under subsection (b) of this section is paid directly by the
 5 person examined.

6
 7 SECTION 3. Arkansas Code § 23-63-201(d)(1)(B), concerning a charitable
 8 annuity permit, is amended to read as follows:

9 (B) The permit ~~shall authorize~~ authorizes the corporation
 10 or association to receive gifts of money or other assets of monetary value
 11 that the commissioner may authorize for ~~conditioned upon, or in return for,~~
 12 its agreement to pay an annuity to the donor or ~~his or her~~ the donor's
 13 nominee and to ~~make and~~ carry out the annuity agreement.

14
 15 SECTION 4. Arkansas Code § 23-63-216(a)(8)(A), concerning the
 16 verification of annual statements, is amended to read as follows:

17 (8)(A) The National Association of Insurance Commissioners'
 18 annual statement convention blank shall be verified by the oath of the
 19 insurer's president or vice president and secretary, treasurer, or actuary,
 20 as applicable or, if a reciprocal insurer, by ~~the oath of~~ its attorney in
 21 fact or if a corporation, its like officers ~~if a corporation.~~

22
 23 SECTION 5. Arkansas Code § 23-63-216(b), concerning market conduct
 24 annual statements, is amended to read as follows:

25 (b)(1) In addition to the information required by subsection (a) of
 26 this section, a market conduct annual statement shall be filed, when
 27 applicable, with the commissioner~~+, if:~~

28 (A) Property A property and casualty ~~insurers reporting~~
 29 insurer reports seven million dollars (\$7,000,000) or more in homeowner or
 30 private passenger automobile gross premiums; ~~and~~

31 (B) A life and annuity insurers reporting insurer reports
 32 seven million dollars (\$7,000,000) or more in individual life insurance
 33 premiums or ~~group life or individual~~ annuity gross premiums, ~~shall submit the~~
 34 ~~following information by the date prescribed by the commissioner:~~

- 35 ~~(1) Policies and procedures regarding the handling of claims;~~
- 36 ~~(2) Any complaints received during the covered period and the~~

1 ~~nature and disposition of those complaints; and~~
 2 ~~(3)(2) Any other market conduct functions the commissioner~~
 3 ~~considers relevant~~ After review of the market conduct annual statement, the
 4 commissioner may require additional filing of other market conduct functions
 5 information considered relevant.

6
 7 SECTION 6. Arkansas Code § 23-63-503(1) and (2), concerning definitions
 8 in the Insurance Holding Company Regulatory Act, are amended to read as
 9 follows:

10 (1) "Affiliate" of, or person "affiliated" with a specific
 11 person, means a person that directly or indirectly through one (1) or more
 12 intermediaries, controls, is controlled by, or is under common control with
 13 the person specified;+

- 14 ~~(A) Controls the person named;~~
- 15 ~~(B) Is controlled by the person named; or~~
- 16 ~~(C) Is under common control with the person named;~~

17 (2)(A) "Control" or "controlling" means ~~to have~~ the direct or
 18 indirect possession of the power to direct or cause the direction of the
 19 management and policies of a person, unless the power is due to an official
 20 position or corporate office:

- 21 (i) Through the ownership of voting securities;
- 22 (ii) By contract other than a commercial contract for
- 23 goods or nonmanagement services; or
- 24 (iii) Otherwise.

25 (B)(i) Control is presumed to exist if a person directly
 26 or indirectly owns, controls, holds with the power to vote, or holds proxies
 27 representing ten percent (10%) or more of the voting securities of another
 28 person.

29 (ii) This presumption may be rebutted by a showing
 30 that control does not exist in fact.

31 (C) After furnishing notice to the persons and the
 32 opportunity to be heard, the Insurance Commissioner may determine that
 33 control exists in fact, notwithstanding the absence of a presumption to that
 34 effect;

35
 36 SECTION 7. Arkansas Code § 23-65-303(b), concerning nonadmitted

1 insurers, is amended to read as follows:

2 (b) A contract of insurance carried out by an unauthorized insurer in
 3 violation of this subchapter is voidable at the instance of the ~~insurer~~
 4 insured.

5
 6 SECTION 8. Arkansas Code § 23-65-310(b)(2)(F), concerning foreign and
 7 alien surplus lines insurers, is amended to read as follows:

8 (F)(i) An insurer that does not maintain on deposit
 9 ~~pursuant to~~ under § 23-63-901 et seq. eligible securities having a market
 10 value at all times of ~~not less than~~ at least one hundred thousand dollars
 11 (\$100,000) conditioned on the payment of creditors or obligees of the insurer
 12 in this state and the prompt payment of all claims arising and accruing to
 13 any persons during the term of the securities under a policy issued by the
 14 insurer.

15 (ii) This subdivision (b)(2)(F) does not apply to
 16 foreign and alien surplus lines insurers as of July 21, 2011, if the
 17 requirements of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L.
 18 No. 111-203, as it existed on January 1, 2013, are met.

19
 20 SECTION 9. Arkansas Code § 23-65-310(c), concerning surplus lines
 21 insurers, is amended to read as follows:

22 ~~(c)(1)(A) Annually on or before March 1 or within any extension of time~~
 23 ~~that the commissioner for good cause may have granted, each foreign and alien~~
 24 ~~surplus lines insurer on the approved list maintained by the commissioner~~
 25 ~~shall file with the commissioner a full and true statement of its financial~~
 26 ~~condition, transactions, and affairs as of the December 31 preceding.~~

27 ~~(B) The statement shall be in a general form and context,~~
 28 ~~as required or not disapproved by the commissioner and as supplemented as~~
 29 ~~required by the commissioner.~~

30 ~~(C)(i) The statement shall be verified with an oath by the~~
 31 ~~president or vice president of the insurer.~~

32 ~~(ii) The statement of an alien insurer shall be~~
 33 ~~verified by the United States manager or other officer of the alien insurer~~
 34 ~~authorized to make an oath and shall relate only to its transactions and~~
 35 ~~affairs in the United States unless the commissioner requires otherwise. If~~
 36 ~~the commissioner requires a statement as to the alien insurer's affairs~~

1 throughout the world, the insurer shall file the statement with the
2 commissioner as soon as reasonably possible.

3 ~~(2) The commissioner may waive the requirement under this~~
4 ~~subsection for verification under oath.~~

5 ~~(3)(A) The insurer shall be subject to a penalty of one hundred~~
6 ~~dollars (\$100) for each day of delinquency.~~

7 ~~(B) If the insurer fails to file its report on or before~~
8 ~~the due date, the penalty shall be collected by the commissioner, if~~
9 ~~necessary, by a civil suit brought by the commissioner in the Pulaski County~~
10 ~~Circuit Court. The commissioner may waive the penalty upon a showing by the~~
11 ~~insurer of good cause for its failure to file its report on or before the~~
12 ~~date due.~~

13 ~~(4) At the time of filing, the insurer shall pay the fee for~~
14 ~~filing its annual statement as prescribed by § 23-61-401.~~

15 ~~(5) Upon receipt of a written request received from the commissioner,~~
16 ~~an insurer shall promptly furnish to the commissioner information with~~
17 ~~respect to concerning its transactions or affairs.~~

18
19 SECTION 10. Arkansas Code § 23-66-501(4), concerning the definition of
20 a "fraudulent insurance act", is amended to add an additional subdivision to
21 read as follows:

22 (J) Falsely holds himself, herself, or itself out as a
23 representative of an insurance company or assists another in furtherance of
24 that misrepresentation to receive a benefit under an insurance claim,
25 contract, or policy.

26
27 SECTION 11. Arkansas Code § 23-76-104(a), concerning laws applicable
28 to health maintenance organizations, is amended to add an additional
29 subdivision to read as follows:

30 (16) Section 23-64-515, referring to notice of termination of
31 appointment.

32
33 SECTION 12. Arkansas Code § 23-79-102 is amended to read as follows:
34 23-79-102. Scope.

35 ~~This section and §§ Sections~~ 23-79-101, 23-79-103 – 23-79-107, 23-79-
36 109 – 23-79-128, 23-79-131 – 23-79-134, and 23-79-202 – 23-79-210 shall do

1 not apply as to:

2 (1) Reinsurance;

3 (2)(A) Policies or contracts not issued for delivery in this
4 state nor delivered in this state, except:

5 (i) ~~upon~~ On subjects of insurance, other than life or
6 accident and health insurance, located or to be performed in this state; and

7 (ii) ~~except as provided in Pursuant to § 23-79-~~
8 ~~109(e), approval of forms for delivery in jurisdictions where local approval~~
9 ~~not provided for.~~

10 (B) Subdivision (2)(A) of this section ~~shall~~ does not apply
11 to group insurance certificates issued under group insurance policies
12 ~~effectuated~~ carried out and delivered outside this state but covering ~~persons~~
13 a person that is a resident in this state;

14 (3) Wet marine and foreign trade insurance; and

15 (4) Title insurance, except that the following ~~provisions shall~~
16 apply to this line: Sections 23-79-101(1), 23-79-109, 23-79-110, 23-79-111,
17 23-79-113, 23-79-116, 23-79-118, 23-79-119, ~~23-79-202, and 23-79-205~~ and 23-
18 79-202 – 23-79-205.

19
20 SECTION 13. Arkansas Code § 23-81-804(b), concerning life settlement
21 agreements, is amended to read as follows:

22 (b) ~~(1) Before the commissioner denies a license application or~~
23 ~~suspends, revokes, or refuses to renew the license of any licensee under this~~
24 ~~subchapter, the commissioner shall conduct a hearing in accordance with this~~
25 ~~state's laws governing administrative hearings under § 23-61-301 et seq. and~~
26 ~~the Arkansas Administrative Procedure Act, § 25-15-201 et seq. The~~
27 commissioner may deny a license application or suspend, revoke, or refuse to
28 renew a license of a licensee for the licensee's failure to comply with this
29 subchapter.

30 (2) A proceeding under this subsection is subject to the
31 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

32
33 SECTION 14. Arkansas Code § 23-81-811(g)(2), concerning the general
34 rules for life settlements, is repealed.

35 (2) ~~The notice shall be accompanied by the documents required by~~
36 ~~§ 23-81-810(a)(2).~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 15. The catchline for Arkansas Code § 23-89-213 is amended to read as follows:

23-89-213. ~~Premium delinquencies~~ Proof of insurance.