

## HOUSE AMENDMENT 1 TO hb1861.

deleting line 2 on page 2 and substituting the following:

"\_BOARD\_ THEREIN; TO AMEND THE STATE INCOME TAX CODE SECTIONS 26-51-423 AND 26-51-436 IN ORDER TO RECONCILE ARKANSAS INCOME TAX TREATMENT OF MEDICAL & DENTAL EXPENSES & MEDICAL SAVINGS ACCOUNTS WITH THE INTERNAL REVENUE CODE; TO EXEMPT THE STATE COMPREHENSIVE HEALTH INSURANCE POOL ACT & THE ARKANSAS PROPERTY & CASUALTY GUARANTY FUND & ARKANSAS LIFE & DISABILITY INSURANCE GUARANTY ASSOCIATION LAWS FROM THE STATE CASH FUND LAWS IN §§19-4-801, ET SEQ.; TO CONFORM THE STATE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY & PREMIUM RATING LAW UNDER §§23-86-201, ET SEQ., TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 OF THE U.S. CONGRESS, EFFECTIVE ON & AFTER JULY 1, 1997; TO AMEND SECTION 3 (m) OF UNCODIFIED ACT 292 OF 1997 IN ORDER TO EXCLUDE LONG TERM CARE & DISABILITY INCOME POLICIES FROM THE DEFINITION OF `HEALTH INSURANCE' THEREIN SO AS TO EXEMPT THEM FROM INCLUSION IN THE STATE COMPREHENSIVE HEALTH INSURANCE POOL ACT; TO AMEND SECTION 13 OF UNCODIFIED ACT 292 OF 1997 TO DELETE SUBSECTION (b) AND REFORM SUBSECTION (a) ACCORDINGLY, IN ORDER TO APPLY THE UNFAIR TRADE PRACTICE REFERRAL LAW IN THE STATE COMPREHENSIVE HEALTH INSURANCE POOL ACT TO APPLICANT GROUPS OF FEWER THAN FIFTEEN MEMBERS; TO ADD A NEW SECTION OR REINSURER'S LIABILITY TO THE UNIFORM INSURERS' LIQUIDATION ACT IN §§23-68-101, ET SEQ., FOR CONFORMITY TO THE MODEL ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; AND FOR OTHER PURPOSES."

and

by striking Sections 15 through 18 and substituting the following:

"SECTION 15. Subdivision (2) of subsection (a) of Arkansas Code 26-51-423 is hereby amended to read as follows:

`(2) MEDICAL AND DENTAL EXPENSES. Section 213 of the Internal Revenue Code of 1986, in effect on January 1, ~~1995~~, 1997 is adopted in computing the medical and dental expense deduction under the state income tax law;'

SECTION 16. Arkansas Code 26-51-436 is hereby amended by adding new subsection (5), commencing immediately following current subsection (4), to read as follows:

'(5) Section 220 of the Internal Revenue Code of 1986, as in effect on January 1, 1997, regarding the deductibility from income of contributions made to a Medical Savings Account (MSA) by the taxpayer or the taxpayer's employer, is hereby adopted for the purpose of computing Arkansas income tax liability.'

SECTION 17. Arkansas Code 19-4-803 is hereby amended by adding new subsection (d) to commence immediately following current subsection (c), to read as follows:

'(d) The State Comprehensive Health Insurance Pool, created under Uncodified Act 292 of 1997, and its Board of Directors, and The Arkansas Property and Casualty Guaranty Fund

and its Advisory Association, referenced under Arkansas Code 23-90-101, et seq., and The Arkansas Life and Disability Insurance Guaranty Association and its Board of Directors, referenced under Arkansas Code 23-96-101, et seq., are hereby exempt from the provisions of this subchapter.'

SECTION 18 . Arkansas Code 23-86-201 is hereby amended to read as follows:

§23-86-201. Purpose.

The intent of this subchapter is to promote the availability of health insurance coverage to small employers, to prevent abusive rating practices, ~~to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals,~~ and to improve the efficiency and fairness of the small group health insurance marketplace.'

SECTION 19. Subsection (1) of Arkansas Code 23-86-202 is hereby amended to read as follows:

§23-86-202. Definitions.

(1) 'Small employer' means any person, firm, corporation, partnership, or association actively engaged in business who, on at least fifty percent (50%) of its working days during the preceding year, employed no more than twenty-five (25) eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation shall be considered one (1) employer;

(2) 'Carrier' means health insurance issuer, i.e. an insurance company, insurance service, or insurance organization including a health maintenance organization which is licensed to engage in the business of insurance in a State and which is subject to Arkansas law which regulates insurance, but such term does not include a group health plan; ~~any person who provides health insurance in this state. For the purposes of this subchapter, carrier includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to state insurance regulation;~~

(3) (A) 'Health benefit plan' or 'plan' means health insurance coverage, i.e. benefits consisting of medical care, provided directly, through insurance or reimbursement or otherwise and including items and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer; ~~any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract.~~

(B) 'Health benefit plan' does not include accident-only, credit, dental, or disability income insurance; coverage issued as a supplement to liability insurance; worker's compensation or similar insurance; or automobile medical-payment insurance;

(4) 'Small employer carrier' means health insurance issuer as defined in Subsection

~~(2) of this section; any carrier which offers health benefit plans covering the employees of a small employer;~~

(5) `Case characteristics' means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purposes of this subchapter;

(6) `Commissioner' means the State Insurance Commissioner;

(7) `Department' means the State Insurance Department;

(8) `Base premium rate' means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage;

(9) `New business premium rate' means, for each class of business as to a rating period, the premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage;

(10) `Index rate' means, for each class of business for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;

(11) `Class of business' means all or a distinct grouping of small employers as shown on the records of the small employer carrier;

(A) A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:

(i) Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

(ii) Have been acquired from another small employer carrier as a distinct grouping of plans;

(iii) Are provided through an association with membership of not less than two (2) or more small employers which has been formed for purposes other than obtaining insurance; or

(iv) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in subparagraph (A) (1) (a) of §23-86-204 of this subchapter;

(B) A small employer carrier may establish no more than two (2) additional groupings under each of the subparagraphs in subdivision (11) (A) of this subsection on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs;

(C) The commissioner may approve the establishment of additional distinct

groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace;

(12) 'Actuarial certification' means a written statement by a member of the American Academy of Actuaries or other individuals acceptable to the commissioner that a small employer carrier is in compliance with the provisions of §23-86-204 of this subchapter based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans;

(13) 'Rating period' means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.'

SECTION 20. Arkansas Code 23-86-205 is hereby repealed.

~~23-86-205. Provisions on renewability of coverage.~~

~~(a) Except as provided in subsection (b) of this section, a health benefit plan subject to this subchapter shall be renewable to all eligible employees and dependents at the option of the small employer, except for the following reasons:~~

~~(1) Nonpayment of required premiums;~~

~~(2) Fraud or misrepresentation of the small employer, or, with respect to coverage of an insured individual, fraud or misrepresentation by the insured individual or such individual's representative;~~

~~(3) Noncompliance with plan provisions;~~

~~(4) The number of individuals covered under the plan is less than the number or percentage of eligible individuals required by percentage requirements under the plan; or~~

~~(5) The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.~~

~~(b) A small employer carrier may cease to renew all plans under a class of business. The carrier shall provide notice to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside at least ninety (90) days prior to termination of coverage. Any carrier which exercises its right to cease to renew all plans in a class of business shall not:~~

~~(1) Establish a new class of business for a period of five (5) years after the nonrenewal of the plans without prior approval of the commissioner; or~~

~~(2) Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees and dependents without regard to case characteristics, claim experience, health status, or duration of coverage.'~~

SECTION 21. Arkansas Code 23-86-206 is hereby repealed.

~~23-86-206. Disclosure of rating practices and renewability~~

provisions.

~~Each small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of the following:~~

~~(1) The extent to which premium rates for specific small employers are established or adjusted due to the claim experience, health status, or duration of coverage of the small employer's employees or their dependents;~~

~~(2) The provisions concerning the carrier's right to change premium rates and the factors, including case characteristics, which affect changes in premium rates;~~

~~(3) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans; and~~

~~(4) The provisions relating to renewability of coverage.'~~

SECTION 22. Arkansas Code 23-86-208 is hereby amended to read as follows:

~~(a) The commissioner may suspend all or any part of §23-86-204 as to the premium rates applicable to one (1) or more small employers for one (1) or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.~~

~~(b) The commissioner may suspend all or any part of §23-86-205 as to renewability of coverage upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.'~~

SECTION 23. Arkansas Code 23-86-209 is hereby amended to read as follows:

~~23-86-209. Effective date.~~

~~(a) The provisions of this subchapter shall apply to each health benefit plan for a small employer that is delivered, issued for delivery, renewed, or continued in this state after July 1, 1997. ~~January 1, 1992.~~~~

~~(b) For purposes of this section, the date a plan is continued is the first rating period which commences after July 1, 1997. ~~January 1, 1992.~~~~

SECTION 24. Subsection (m) of Section 3 of Uncodified Act 292 of 1997 is hereby amended to read as follows:

~~(m) 'Health insurance' means any hospital and medical expense incurred policy, certificate, or contract, provided by an insurer, hospital or medical service corporation, health maintenance organization, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise. The term does not include long term care, disability income, short term, accident, dental-only, vision-only, fixed indemnity, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of workers' compensation or similar law, automobile medical-payment insurance, or insurance under~~

which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;'

SECTION 25. Section 13 of Uncodified Act 292 of 1997 is hereby amended to read as follows:

`Unfair Referral to Plan.

~~— (a) Except as provided in Subsection (b), It shall constitute an unfair trade practice for the purposes of A.C.A. § 23-66-201, et seq., for an insurer, agent, broker or third-party administrator to refer an individual to the pool, or arrange for an individual to apply to the pool, for the purpose of separating that individual from group health insurance coverage provided in connection with any group health insurance coverage.~~

~~— (b) The provisions of Subsection (a) shall not apply with respect to group health insurance coverage provided to groups with fewer than fifteen (15) members.'~~

SECTION 26. Subchapter 1 of Chapter 68 is hereby amended by adding a new section at the end of the existing subchapter to read as follows:

`REINSURER'S LIABILITY.

(a) The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement.

(b) All reinsurance contracts to which an insurer domiciled in this state is a party that do not contain the provisions required with respect to the obligation of reinsurers in the event of insolvency of the reinsured in order to obtain credit for reinsurance or other applicable statutes, shall be construed to contain the following provisions:

(1) In the event of insolvency and the appointment of a receiver, the reinsurance obligation shall be payable to the receiver upon demand, with reasonable provision for verification, on the basis of claims allowed pursuant to this subchapter, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of any claims. Payments by the reinsurer as set forth above shall be made directly to the ceding insurer or to its receiver; and

(2) The receiver of a reinsured company shall give written notice of the pendency of a claim against the reinsured company indicating the policy or bond reinsured, within a reasonable time after the claim is filed. The receiver of a reinsured company may arrange for the giving of notice of the pendency of claims on reinsured policies by guaranty funds or by other persons responsible for the adjustment and settlement of the reinsured company's claims. Failure to give notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby. The reinsurer may interpose, at its own expense, in the proceeding where the claim is to be adjudicated, any defense or defenses which it may deem available to the reinsured company or its receiver.

(c) Payments by the reinsurer as set forth shall be made directly to the ceding insurer or its receiver, except where the contract of insurance or reinsurance

specifically provides for another payee in the event of insolvency of the ceding insurer in accordance with any applicable requirements of statutes, rules or orders of the domiciliary state of the ceding insurer. The receiver shall be entitled to recover from any person, who unsuccessfully makes a claim directly against the reinsurer, the receiver's attorneys' fees and expenses incurred in preventing any collection by such person.

(d) This section shall become effective on and after January 1, 1998 and shall apply to all contracts entered into, renewed, extended or amended on or after that date, and to obligations arising from any business written or transaction occurring covered by reinsurance after that effective date pursuant to any contract including those in existence prior to the effective date.'

SECTION 27. 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 28. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

SECTION 29. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 30. EMERGENCY. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."