

As Engrossed: 4/6/93

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative M. Wilson**

A Bill

HOUSE BILL 1327

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF
9 MANAGING GENERAL AGENTS; AND FOR OTHER PURPOSES."

Subtitle

12 "TO PROVIDE FOR THE LICENSING AND REGULATION OF MANAGING
13 GENERAL AGENTS."

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

17 SECTION 1. Chapter 64 of Title 23 of the Arkansas Code is hereby
18 amended by inserting an additional subchapter to read as follows:

19 "23-64-401. Short Title.

20 This Subchapter may be cited as The Managing General Agents Act.

22 23-64-402. Definitions.

23 (a) Actuary means a person who is a member in good standing of the
24 American Academy of Actuaries.

25 (b) Insurer means any person, firm, association or corporation duly
26 licensed in this state as an insurance company.

27 (c) (1) Managing General Agent (MGA) means any person, firm,
28 association or corporation who manages all or part of the insurance business
29 of an insurer (including the management of a separate division, department or
30 underwriting office) and acts as an agent for such insurer whether known as a
31 Managing General Agent, manager or other similar term, who, with or without
32 the authority, either separately or together with affiliates, produces,
33 directly or indirectly, and underwrites an amount of gross direct written
34 premium equal to or more than five percent (5%) of the policyholder surplus as
35 reported in the last annual statement of the insurer in any one quarter or

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1 year together with one or more of the following *activities related to the*
2 *business produced*: (i) adjusts or pays claims in excess of an amount
3 determined by the Commissioner, or (ii) negotiates reinsurance on behalf of
4 the insurer.

5 (2) Notwithstanding the above, the following persons shall not be
6 considered as MGAs for the purposes of this Subchapter:

7 (A) An employee of the insurer;

8 (B) A U.S. Manager of the United States branch of an alien
9 insurer;

10 (C) An underwriting manager which, pursuant to contract, manages
11 all or part of the insurance operations of the insurer, is under common
12 control with the insurer, subject to The Insurance Holding Company Regulatory
13 Act (§§ 23-63-501, et seq.), and whose compensation is not based on the
14 volume of premiums written;

15 (D) The attorney-in-fact authorized by and acting for the
16 subscribers of a reciprocal insurer or inter-insurance exchange under powers
17 of attorney.

18 (d) Underwrite means the authority to accept or reject risk on behalf
19 of the insurer.

20

21 23-64-403. Licensure.

22 (a) No person, firm, association or corporation shall act in the
23 capacity of an MGA with respect to risks located in this state for an insurer
24 licensed in this state unless such person is a licensed MGA in this state.

25 (b) No person, firm, association or corporation shall act in the
26 capacity of an MGA representing an insurer domiciled in this state with
27 respect to risks located outside this state unless such person is licensed as
28 a MGA in this state (such license may be a nonresident license) pursuant to
29 the provisions of this Subchapter.

30 (c) The Commissioner may require the MGA to post a bond in an amount
31 acceptable to him for the protection of the insurer.

32 (d) The Commissioner may require the MGA to maintain an errors and
33 omissions policy.

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35 23-64-404. Required Contract Provisions.

1 No person, firm, association or corporation acting in the capacity of an
2 MGA shall place business with an insurer unless there is in force a written
3 contract between the parties which sets forth the responsibilities of each
4 party and where both parties share responsibility for a particular function,
5 specifies the division of such responsibilities, and which contains the
6 following minimum provisions:

7 (a) The insurer may terminate the contract for cause upon written
8 notice to the MGA. The insurer may suspend the underwriting authority of the
9 MGA during the pendency of any dispute regarding the cause for termination.

10 (b) The MGA will render accounts to the insurer detailing all
11 transactions and remit all funds due under the contract to the insurer on not
12 less than a monthly basis.

13 (c) All funds collected for the account of an insurer will be held by
14 the MGA in a fiduciary capacity in a bank which is a member of the Federal
15 Reserve System. This account shall be used for all payments on behalf of the
16 insurer. The MGA may retain no more than three months estimated claims
17 payments and allocated loss adjustment expenses.

18 (d) Separate records of business written by the MGA will be maintained.
19 The insurer shall have access and right to copy all accounts and records
20 related to its business in a form usable by the insurer, and the Commissioner
21 shall have access to all books, bank accounts and records of the MGA in a form
22 usable to the Commissioner. Such records shall be retained according to §
23 23-64-222 (c).

24 (e) The contract may not be assigned in whole or part by the MGA.

25 (f) Appropriate underwriting guidelines including:

- 26 (1) The maximum annual premium volume;
- 27 (2) The basis of the rates to be charged;
- 28 (3) The types of risks which may be written;
- 29 (4) Maximum limits of liability;
- 30 (5) Applicable exclusions;
- 31 (6) Territorial limitations;
- 32 (7) Policy cancellation provisions; and
- 33 (8) The maximum policy period.

34 The insurer shall have the right to cancel or non-renew any policy of
35 insurance subject to the applicable laws and regulations of this state

1 concerning the cancellation and non-renewal of insurance policies.

2 (g) If the contract permits the MGA to settle claims on behalf of the
3 insurer:

4 (1) All claims must be reported to the company in a timely manner.

5 (2) A copy of the claim file will be sent to the insurer at its
6 request or as soon as it becomes known that the claim:

7 (A) Has the potential to exceed an amount determined by the
8 Commissioner or exceeds the limit set by the company; whichever is less;

9 (B) Involves a coverage dispute;

10 (C) May exceed the MGA's claims settlement authority;

11 (D) Is open for more than six months; or

12 (E) Is closed by payment of an amount set by the Commissioner or
13 an amount set by the company, whichever is less.

14 (3) All claim files will be the joint property of the insurer and
15 MGA. However, upon an order of liquidation of the insurer such files shall
16 become the sole property of the insurer or its estate; the MGA shall have
17 reasonable access to and the right to copy the files on a timely basis.

18 (4) Any settlement authority granted to the MGA may be terminated
19 for cause upon the insurer's written notice to the MGA or upon the termination
20 of the contract. The insurer may suspend the settlement authority during the
21 pendency of any dispute regarding the cause for termination.

22 (h) Where electronic claims files are in existence, the contract must
23 address the timely transmission of the data.

24 (i) If the contract provides for a sharing of interim profits by the
25 MGA, and the MGA has the authority to determine the amount of the interim
26 profits by establishing loss reserves or controlling claim payments, or in any
27 other manner, interim profits will not be paid to the MGA until one year after
28 they are earned for property insurance business and five years after they are
29 earned on casualty business and not until the profits have been verified
30 pursuant to § 23-64-405.

31 (j) The MGA shall not:

32 (1) Bind reinsurance or retrocessions on behalf of the insurer,
33 except that the MGA may bind facultative reinsurance contracts pursuant to
34 obligatory facultative agreements if the contract with the insurer contains
35 reinsurance underwriting guidelines including, for both reinsurance assumed

1 and ceded, a list of reinsurers with which such automatic agreements are in
2 effect, the coverages and amounts or percentages that may be reinsured and
3 commission schedules;

4 (2) Commit the insurer to participate in insurance or reinsurance
5 syndicates;

6 (3) Appoint any agent without assuring that the agent is lawfully
7 licensed to transact the type of insurance for which appointed;

8 (4) Without prior approval of the insurer, pay or commit the insurer
9 to pay a claim over a specified amount, net of reinsurance, which shall not
10 exceed one percent (1%) of the insurer's policyholder's surplus as of December
11 31 of the last completed calendar year;

12 (5) Collect any payment from a reinsurer or commit the insurer to
13 any claim settlement with a reinsurer; without prior approval of the insurer.
14 If prior approval is given, a report must be promptly forwarded to the
15 insurer;

16 (6) Permit its subagent to serve on the insurer's board of
17 directors;

18 (7) Jointly employ an individual who is employed with the insurer;
19 or

20 (8) Appoint a sub-MGA.

21

22 23-64-405. Duties of Insurers.

23 (a) The insurer shall have on file an independent financial
24 examination, in a form acceptable to the Commissioner, of each MGA with which
25 it has done business.

26 (b) If an MGA establishes loss reserves, the insurer shall annually
27 obtain the opinion of an actuary attesting to the adequacy of loss reserves
28 established for losses incurred and outstanding on business produced by the
29 MGA. This is in addition to any other required loss reserve certification.

30 (c) The insurer shall periodically, and not less often than
31 semi-annually, conduct an on-site review of the underwriting and claims
32 processing operations of the MGA.

33 (d) Binding authority for all reinsurance contracts or participation in
34 insurance or reinsurance syndicates shall rest with an officer of the insurer,
35 who shall not be affiliated with the MGA.

1 (e) Within thirty (30) days of entering into or termination of a
2 contract with an MGA, the insurer shall provide written notification of such
3 appointment or termination to the Commissioner. Notices of appointment of an
4 MGA shall include a statement of duties which the applicant is expected to
5 perform on behalf of the insurer, the lines of insurance for which the
6 applicant is to be authorized to act, and any other information the
7 Commissioner may request.

8 (f) An insurer shall review its books and records each quarter to
9 determine if any agent has become, by operation of § 23-64-402 (c), a MGA as
10 defined in that subsection. If the insurer determines that an agent has
11 become a MGA pursuant to the above, the insurer shall promptly notify the
12 agent and the Commissioner of such determination and the insurer and agent
13 must fully comply with the provisions of this Subchapter within thirty (30)
14 days.

15 (g) An insurer shall not appoint to its board of directors an officer,
16 director, employee, subagent or controlling shareholder of its MGAs. This
17 subsection shall not apply to relationships governed by §§ 23-63-601, et seq.

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19 23-64-406. Examination Authority.

20 The acts of the MGA are considered to be the acts of the insurer on
21 whose behalf it is acting. An MGA may be examined as if it were the insurer.

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23 23-64-407. Penalties and Liabilities.

24 (a) If the Commissioner finds after a hearing conducted in accordance
25 with §§ 23-61-301, et seq. that any person has violated any provision(s) of
26 this Subchapter, the Commissioner may order:

27 (1) For each separate violation, a penalty in an amount of one
28 thousand dollars (\$1,000) or, if the Commissioner has found willful misconduct
29 or willful violation, five thousand dollars (\$5,000).

30 (2) Revocation or suspension of the MGA's license; and

31 (3) The MGA to reimburse the insurer, the rehabilitator or
32 liquidator of the insurer for any losses incurred by the insurer caused by a
33 violation of this Subchapter committed by the MGA.

34 (b) The decision, determination or order of the Commissioner pursuant
35 to subsection (a) of this section shall be subject to judicial review pursuant

1 to §23-61-307.

2 (c) Nothing contained in this section shall affect the right of the
3 Commissioner to impose any other penalties provided for in the insurance law.

4 (d) Nothing contained in this Subchapter is intended to or shall in any
5 manner limit or restrict the rights of policyholders, claimants and auditors.

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7 23-64-408. Rules and Regulations.

8 The Commissioner may adopt reasonable rules and regulations for the
9 implementation and administration of the provisions of this Subchapter."

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

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15 SECTION 3. If any provision of this Act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the Act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 Act are declared to be severable.

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

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24 SECTION 5. Emergency. It is hereby found and determined by the General
25 Assembly of the State of Arkansas that the laws of this State concerning the
26 insurance matters covered in the subject of this Act are inadequate for the
27 protection of the public and the immediate passage of this Act is necessary in
28 order to provide for the adequate protection of the public. Therefore, an
29 emergency is hereby declared to exist, and this Act being immediately
30 necessary for the preservation of the public peace, health and safety shall be
31 in full force and effect from and after its passage and approval.

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/s/Mike Wilson