

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

A Bill

HOUSE BILL 1725

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

6
7

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."

13

Subtitle

14 "DISCLOSURE OF MATERIAL TRANSACTIONS"
15

16

17

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

19

20 SECTION 1. Title 23, Chapter 63 of the Arkansas Code is hereby
21 amended, 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
24 Act'.

25 23-63-1402. Report.

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

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

1 transactions occur.

2 C. One complete copy of the report, including any exhibits or other
3 attachments, shall be filed with:

4 (1) The insurance department of the insurer's state of domicile;
5 and

6 (2) The National Association of Insurance Commissioners.

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

17

18 23-63-1403. Acquisitions and Dispositions of Assets.

19 A. Materiality.

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

29 B. Scope.

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

34 (2) Asset dispositions subject to this subchapter include every
35 sale, lease, exchange, merger, consolidation, mortgage, hypothecation,

1 assignment, whether for the benefit of creditors or otherwise, abandonment,
2 destruction or other disposition.

3 C. Information to be Reported.

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

6 (a) Date of the transaction;

7 (b) Manner of acquisition or disposition;

8 (c) Description of the assets involved;

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

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

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

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

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

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

27

28 23-63-1404. Nonrenewals, Cancellations or Revisions of Ceded Reinsurance
29 Agreements.

30 A. Materiality and Scope.

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

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

3 (i) More than fifty percent (50%) of the insurer's total
4 ceded written premium; or

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

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

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

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

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

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

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

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

30 B. Information to be reported.

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

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

35 (b) The description of the transaction with an identification of

1 the initiator thereof;

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

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

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

16 23-63-1405. Rules and Regulations.

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

19 23-63-1406. Penalties and Liabilities.

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

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

26 (2) Revocation or suspension of the insurer's or person's
27 license.

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

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

34

35 SECTION 2. All provisions of this Act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

3

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

9

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

12

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

22

23

24

25

26

27

28

29

30

31

32

33

34

35

1
2
3
4
5
6
7
8
9