

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1787

4
5 By: Representative Teague
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For An Act To Be Entitled

9 "AN ACT TO AMEND THE AGENT PROVISIONS OF ARKANSAS
10 INSURANCE CODE; TO ADD NEW SUBSECTION TO ARKANSAS CODE
11 23-64-102 TO DEFINE 'AGENT' AND 'BROKER' TO INCLUDE
12 'PRODUCER' TO EXPEDITE NONRESIDENT LICENSURE FOR
13 ARKANSAS RESIDENT AGENTS; TO AMEND ARKANSAS CODE 23-
14 64-103 TO CLARIFY LICENSE EXEMPTION FOR CLERICAL STAFF
15 OF AGENTS; TO AMEND ARKANSAS CODE 23-64-205 AND 23-64-
16 209 TO REDUCE WAITING PERIODS TO FOUR WEEKS AFTER
17 THREE (3) FAILED ATTEMPTS FOR AGENT AND BROKER AND
18 ADJUSTER APPLICANTS FOR FIRST-TIME LICENSES; TO AMEND
19 ARKANSAS CODE 23-64-209 TO EXEMPT NONRESIDENT
20 ADJUSTERS FROM HAVING IN-STATE OFFICE; TO AMEND
21 ARKANSAS CODE 23-64-211 TO STREAMLINE RE-APPLICATIONS
22 FOR LICENSES FOR NONRESIDENT AGENTS MOVING TO
23 ARKANSAS; TO AMEND ARKANSAS CODE 23-64-215 TO EXPAND
24 TIME FOR TARDY PAYMENT OF AGENT ANNUAL FEES; TO AMEND
25 ARKANSAS CODE 23-64-302 TO EXEMPT COMPLIANCE FOR
26 CONTINUING EDUCATION LAWS FOR CONSULTANTS AND EXEMPT
27 CONTINUING EDUCATION HOURS DURING THE FIRST YEAR AFTER
28 NONRESIDENT AGENT OR BROKER MOVES TO ARKANSAS; TO
29 AMEND ARKANSAS CODE 23-64-305 TO ALLOW 2 HOURS
30 CONTINUING EDUCATION CREDIT FOR AGENT OR BROKER
31 PROFESSIONAL ORGANIZATION MEMBERSHIPS; TO AMEND
32 ARKANSAS CODE 23-65-308 TO REDUCE TO 3 YEARS PRE-
33 LICENSE REQUIREMENT OF SURPLUS LINE BROKER APPLICANTS;
34 AND FOR OTHER PURPOSES. "

Subtitle

"AGENT OMNIBUS ACT."

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

SECTION 1. Arkansas Code 23-64-102 is amended by adding a new section as follows:

"(6) For purposes of the commissioner's reciprocal arrangements or agreements with the insurance supervisory officials of other states for licensure of non-resident insurance applicants as permitted in Arkansas Code §§ 23-64-203 and 23-64-211 or other applicable laws, the term 'producer' means 'agent' and/or 'broker' as applicable, as defined in this section."

SECTION 2. Arkansas Code 23-64-103 is amended to read as follows:

"23-64-103. Exceptions to definitions.

The definitions contained in § 23-64-102 shall not be deemed to include:

(1) Individuals employed by agents, brokers, consultants, adjusters, or insurers solely for the performance of clerical, stenographic, secretarial and similar office duties.

(2) Individuals who work in the office of an agent, agency or insurer under the direction and supervision of a licensed agent or broker and within the scope of the insurance license, and who devote full time to clerical, stenographic, secretarial and similar office duties, with the incidental taking of information from customers and quoting and receiving premiums in the office of the agent, broker, agency or insurer, if his or her compensation does not include in whole or in part any commissions, fees or other sums on such business.

~~(2)~~(3) The attorney in fact of a reciprocal insurer."

SECTION 3. Arkansas Code 23-64-205(e) is amended to read as follows:

"(e) The commissioner may give, conduct, and grade all examinations, or he may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner, and without unfair discrimination as between individuals examined. Any written examination may be substituted by an oral examination of the applicant if so deemed necessary under any applicable statute including but not limited to the

1 Americans with Disabilities Act. The commissioner shall require a waiting
 2 period of ~~eight (8)~~ four (4) weeks before reexamination of an applicant who
 3 ~~twice~~ thrice failed to pass previous similar examinations. This waiting
 4 period applies after every third unsuccessful attempt."

5
 6 SECTION 4. Arkansas Code 23-64-209(b)(5) is amended to read as follows:

7 "(5) Must have and maintain in this state an office accessible to
 8 the public and keep therein the usual and customary records pertaining to
 9 transactions under the license. This provision shall not be deemed to prohibit
 10 maintenance of an office in the home of the licensee; A licensed, non-
 11 resident adjuster shall not be required to maintain an office in this state;"

12
 13 SECTION 5. Arkansas Code 23-64-209(b)(6)(A)(ii) is amended to read as
 14 follows:

15 "(ii) The commissioner may require a waiting period of
 16 ~~eight (8)~~ four (4) weeks before reexamination of an applicant who ~~twice~~ thrice
 17 failed to pass previous similar examinations. This waiting period applies
 18 after every third unsuccessful attempt."

19
 20 SECTION 6. Arkansas Code 23-64-211(b)(1) is amended to read as follows:

21 "(b)(1)(A) Upon the licensed nonresident broker's or nonresident
 22 agent's change of domicile to the State of Arkansas, each such licensee shall
 23 apply for and obtain a resident agent's or broker's license within ninety (90)
 24 days of such change of domicile to this state. The nonresident broker or
 25 nonresident agent license of such person shall cease to be valid ninety (90)
 26 days after such change of domicile to this state.

27 (B) Such nonresidents shall apply on forms prescribed by the
 28 commissioner. Such nonresidents shall not be required to secure pre-licensing
 29 education or pass an Arkansas examination to qualify for a resident license
 30 after a change of domicile to Arkansas, if the former home state will grant
 31 similar waivers to Arkansas resident agents. For nonresidents from states
 32 which will not reciprocate on waivers for Arkansas agents, the nonresident
 33 licensed in the former state for less than one (1) year shall complete
 34 Arkansas pre-licensing education and pass the appropriate examination under
 35 the provisions of §§ 23-64-201 through 23-64-230. Nonresidents licensed in
 36 the non-waiver home state for one (1) or more years shall pass the Arkansas

1 examination, but may apply for a waiver of pre-licensing education."

2
3 SECTION 7. Arkansas Code 23-64-215 is amended to read as follows;

4 "23-64-215. Continuance of license.

5 (a)~~(1)~~ All agent, broker, consultant, or adjuster licenses, shall
6 continue in force unless nonrenewed, expired, suspended, revoked, or
7 terminated, but subject at all times to annual payment to the commissioner of
8 the applicable continuation fee as stated in § 23-61-401, accompanied by a
9 written request for the continuation, on or before the licensee's birthday if
10 an individual or the annual period from the date of issue if a firm, limited
11 liability company or corporation,~~accompanied by a written request for the~~
12 ~~continuation.~~ Failure to pay the annual continuation fee on or before the date
13 required shall ~~automatically terminate the license as of the following~~
14 ~~business day after the due date. Reinstatement of a terminated license within~~
15 ~~thirty (30) days from the due date shall require payment of double the annual~~
16 ~~continuation fee. Up to sixty (60) days from the licensee's due date, license~~
17 ~~reinstatement shall require payment of triple the annual continuation fee.~~
18 ~~After sixty (60) days from the licensee's due date, reinstatement shall not be~~
19 ~~available, the licensee must again proceed to become licensed as if never~~
20 ~~having held a license, should a license be desired.~~ result in the following
21 actions: If more than thirty (30) days have elapsed since the due date,
22 payment shall be double the annual continuation fee. If more than sixty (60)
23 days have elapsed since the due date, payment shall be triple the annual
24 continuation fee. If more than ninety (90) days have elapsed since the due
25 date, the agent's license may be summarily suspended with all appointing
26 companies being notified. Reinstatement of the license shall require payment
27 in an amount triple the annual continuation fee. If more than ninety (90)
28 days have elapsed since the date of the suspension, the commissioner may
29 automatically cancel or revoke the license, without further hearing or notice.

30 ~~(2) For purposes of implementation of subsection (a)(1) of this~~
31 ~~section on the effective date of July 1, 1997, if the licensee has already~~
32 ~~paid the applicable continuation fee within the previous one hundred eighty~~
33 ~~(180) days on the date it was due, such fee shall not be due again until the~~
34 ~~next annual due date.~~

35 (b)(1) During the period that an agent has no company appointments, the
36 licensee shall not transact the business of insurance in this state.

1 (2) An agent who has no active appointments may continue, subject
 2 to the terms of the insurer's contract with the licensee, to receive
 3 commissions or other compensation relative to business written while actively
 4 appointed by such licensee.

5 (3) Any licensed resident agent who has no insurance company
 6 appointments must continue to comply with § 23-64-301 as to continuing
 7 education, pay all applicable license fees, and shall at all times be subject
 8 to the provisions and sanctions of the Arkansas Insurance Code."

9
 10 SECTION 8. Arkansas Code 23-64-302 is amended to read as follows:

11 "23-64-302. Requirements for licensees - Exceptions.

12 The provisions of this subchapter shall not apply to:

13 (1) Those natural persons holding licenses for any kind or kinds of
 14 insurance for which an examination is not required by the laws of this state;

15 (2) Any limited or restricted license the commissioner may exempt;

16 (3) Any natural person who is at least sixty (60) years of age;

17 (4) Any natural person who has held an active license as an agent,
 18 solicitor, consultant, or broker for a period of at least fifteen (15)
 19 consecutive years;

20 (5) The licensee as a firm, limited liability company or corporation,
 21 but this exception does not apply to any individual or natural person unless
 22 already exempted;

23 (6) Nonresident agents or brokers;

24 (7) Licensed insurance consultants for life, disability, property, or
 25 casualty insurance, or for other lines of insurance; and

26 (8) Nonresident agents and brokers in the first full year of resident
 27 licensing following the year after a change in state of domicile or residency
 28 to the State of Arkansas; but thereafter annually or otherwise in accordance
 29 with insurance continuing education laws, and rules and regulations of the
 30 commissioner."

31
 32 SECTION 9. Arkansas Code 23-64-305 is amended by adding a new section
 33 as follows:

34 "(c) Subject to approval by the commissioner, the active annual
 35 membership of the licensed agent or broker in local, regional, state or
 36 national professional insurance organizations or associations may be approved

1 for up to two (2) annual hours of instruction. These hours shall be credited
 2 upon timely filing with the commissioner or his designee appropriate written
 3 evidence acceptable to the commissioner of such active membership in the
 4 organization or association."

5
 6 SECTION 10. Arkansas Code 23-65-308 is amended to read as follows:

7 "23-65-308. Licensing of surplus lines broker.

8 Any person, while licensed as a resident agent or broker of this state
 9 as to property, casualty, surety, and marine ~~insurances~~ insurance, and who has
 10 held the license in this or another state, or both, for ~~seven (7)~~ three (3)
 11 years prior to application for a surplus lines broker's license and who is
 12 deemed by the commissioner to be competent and trustworthy, may be licensed as
 13 a surplus lines broker as follows:

14 (1) Application to the commissioner for the license shall be made
 15 on forms furnished by the commissioner;

16 (2) The license fee shall be in the amount stated in § 23-61-
 17 401(10) for each license year during any part of which the license is in force
 18 and shall be paid to the commissioner. The license year shall be from the date
 19 of issuance of the license to January 1 next after its issue;

20 (3) Prior to issuance of the license, the applicant shall file
 21 with the commissioner, and thereafter for as long as the license remains in
 22 effect, he shall keep in force and unimpaired a bond or other securities in
 23 favor of the State of Arkansas in the penal sum of fifty thousand dollars
 24 (\$50,000), aggregate liability, with unaffiliated entities approved by the
 25 commissioner. The securities shall be conditioned that the broker will conduct
 26 business under the license in accordance with the provisions of the surplus
 27 lines insurance law and that he will promptly remit the taxes provided by the
 28 law. No securities shall be terminated unless not less than sixty (60) days'
 29 prior written notice thereof is filed with the commissioner.

30 (4) Prior to issuance of the license, the applicant must pass a
 31 written examination as to his competence to act as a surplus lines broker
 32 which shall be required by the commissioner.

33 (A) The commissioner shall give, conduct, and grade all
 34 examinations or he may arrange to have examinations administered and graded by
 35 an independent testing service as specified by contract in a fair and
 36 impartial manner and without unfair discrimination between individuals

1 examined.

2 (B) The commissioner may require a reasonable waiting
 3 period before reexamination of an applicant who failed to pass a previous
 4 similar examination.

5 (C) The examination fee shall be the same as that charged
 6 an applicant for license as an agent, broker, or solicitor under § 23-61-401.”
 7

8 SECTION 11. All provisions of this act of a general and permanent
 9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 10 Code Revision Commission shall incorporate the same in the Code.
 11

12 SECTION 12. If any provision of this act or the application thereof to
 13 any person or circumstance is held invalid, such invalidity shall not affect
 14 other provisions or applications of the act which can be given effect without
 15 the invalid provision or application, and to this end the provisions of this
 16 act are declared to be severable.
 17

18 SECTION 13. All laws and parts of laws in conflict with this act are
 19 hereby repealed.
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21 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined by the
 22 Eighty-second General Assembly that the present laws to license insurance
 23 representatives, laws on office facilities of non-resident adjusters, and laws
 24 to license surplus lines brokers, are possibly too costly, burdensome, or
 25 time-consuming; and need immediate attention to alleviate the burdens on
 26 commerce of the insurance business in Arkansas. This Act is designed to
 27 relieve those hardships and to ease the financial burdens for individuals
 28 doing insurance business in Arkansas; that in turn is designed to provide more
 29 efficient insurance services to the insurance buying public. Therefore, an
 30 emergency is declared to exist and this act being immediately necessary for
 31 the preservation of the public peace, health and safety shall become effective
 32 on the date of its approval by the Governor. If the bill is neither approved
 33 nor vetoed by the Governor, it shall become effective on the expiration of the
 34 period of time during which the Governor may veto the bill. If the bill is
 35 vetoed by the Governor and the veto is overridden, it shall become effective
 36 on the date the last house overrides the veto.