

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 379

5 By: Senators Miller, Argue, Bookout, Critcher, Crumbly, Horn, B. Johnson, Malone
6 By: Representative Rosenbaum
7
8

For An Act To Be Entitled

9
10 AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT
11 GENERAL OMNIBUS BILL; TO UPDATE AND MAKE
12 TECHNICAL CORRECTIONS TO THE ARKANSAS INSURANCE
13 CODE; TO CONFORM THE EXAMINATION OF INSURERS,
14 REINSURANCE REGULATION, CUSTODIED SECURITIES, AND
15 BROKER'S CAPITAL REQUIREMENTS TO CURRENT
16 INSURANCE PRACTICES; TO PROVIDE FOR EMPLOYER
17 STOP-LOSS COVERAGE, WRITTEN MANAGEMENT AND
18 SERVICE AGREEMENTS, AND LOCAL GOVERNMENT
19 CHARITABLE ANNUITY PROGRAMS; AND FOR OTHER
20 PURPOSES.
21

Subtitle

22
23 TO UPDATE AND MAKE TECHNICAL CORRECTIONS
24 TO THE ARKANSAS INSURANCE CODE, TO
25 CONFORM THE EXAMINATION OF INSURERS AND
26 OTHER MATTERS TO CURRENT INSURANCE
27 PRACTICES, AND TO ADDRESS VARIOUS OTHER
28 INSURANCE ISSUES.
29
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
32

33 SECTION 1. Arkansas Code § 23-61-201(a), concerning the Insurance
34 Commissioner's routine audits of insurers, is amended to read as follows:

35 (a)(1) The Insurance Commissioner shall examine the affairs,
36 transactions, accounts, records, market conduct activity, and assets of each



1 authorized insurer as often as in the commissioner's sole discretion he or
2 she deems advisable.

3 (2) The commissioner shall so examine each authorized insurer
4 not less frequently than every five (5) years.

5 (3) Examination of an alien insurer shall be limited to its
6 insurance transactions and affairs in the United States.

7 (4) In scheduling and determining the nature, scope, and
8 frequency of the examinations, the commissioner shall consider such matters
9 as the results of financial statement analyses and ratios, changes in
10 management or ownership, actuarial opinions, reports of independent certified
11 public accountants, and other criteria as set forth in the most current
12 edition of the applicable Examiners' Handbook and other standards adopted by
13 the National Association of Insurance Commissioners and in effect when the
14 commissioner exercises discretion to conduct an examination under subdivision
15 (a)(1) of this section.

16

17 SECTION 2. Arkansas Code § 23-61-203(a), concerning examiners
18 performing insurer audits, is amended to read as follows:

19 (a) Upon determining that an examination should be conducted, the
20 Insurance Commissioner shall issue an examination certificate of authority
21 appointing one (1) or more examiners to perform the examination and
22 instructing them as to the scope of the examination. In conducting the
23 examination, the examiner shall observe those guidelines and procedures set
24 forth in the most current edition of the applicable Examiners' Handbook
25 adopted by the National Association of Insurance Commissioners. The
26 commissioner may also employ such other guidelines or procedures as the
27 commissioner may deem appropriate.

28

29 SECTION 3. Arkansas Code § 23-61-206(a), concerning the cost of
30 insurer audits, is amended to read as follows:

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

1 presentation of a detailed account of the charges and expenses.

2
 3 SECTION 4. Arkansas Code Title 23, Chapter 62, Subchapter 1 is amended
 4 to add an additional section to read as follows:

5 23-62-111. Employee benefit stop-loss insurance.

6 (a) As used in the Arkansas Insurance Code, "employee benefit stop-
 7 loss insurance" or "employee benefit excess loss insurance" means coverage
 8 that insures an employer against the risk that any one (1) claim will exceed
 9 a specific dollar amount or that the entire loss of a self-insurance plan
 10 will exceed a specific dollar amount.

11 (b) An insurer authorized to transact accident and health insurance
 12 business in this state may issue employee benefit stop-loss insurance in this
 13 state.

14 (c) The Insurance Commissioner may promulgate rules to require
 15 disclosures to policyholders by an insurance carrier providing employee
 16 benefit stop-loss insurance.

17
 18 SECTION 5. Arkansas Code § 23-62-301 is amended to read as follows:
 19 23-62-301. Title - Applicability.

20 (a) This subchapter may be cited as ~~"The Model Act for the Regulation~~
 21 ~~of Reserves Ceded to Nonadmitted Reinsurers"~~, the "Arkansas Credit for
 22 Reinsurance Law".

23 (b) All reserves ceded to a nonadmitted reinsurer on ~~life insurance~~
 24 ~~and accident and health~~ insurance written in this state shall be subject to
 25 the provisions of this subchapter.

26
 27 SECTION 6. Arkansas Code § 23-62-302(a), concerning reinsurance for
 28 insurance companies, is amended to read as follows:

29 (a) Reinsurance of ~~life and accident and health~~ insurance risks by
 30 domestic and foreign insurance companies is also regulated under the
 31 provisions of §§ 23-62-201, 23-62-202, 23-62-204, and 23-62-205.

32
 33 SECTION 7. Arkansas Code Title 23, Chapter 63, Subchapter 1 is amended
 34 to add an additional section to read as follows:

35 23-63-114. Written management and service agreements.

36 No domestic insurance carrier, health maintenance organization,

1 farmers' mutual aid association, hospital and medical service corporation,
2 stipulated premium insurer, or fraternal benefit society shall enter into a
3 management or service agreement unless the agreement is in writing.
4

5 SECTION 8. Arkansas Code § 23-63-201, concerning certificates of
6 authority to transact the business of insurance in this state, is amended to
7 add an additional subsection to read as follows:

8 (e)(1) The commissioner shall promulgate rules to allow a city, town,
9 municipality, or county of this state acting independently or in any
10 combination pursuant to an Interlocal Cooperation Agreement under the
11 Interlocal Cooperation Act, § 25-20-101 et seq., to obtain a charitable
12 annuity permit for the purpose of establishing a charitable annuity program.

13 (2)(A) The charitable annuity program shall permit any person or
14 an entity to make voluntary and charitable donations to benefit the bona fide
15 charitable, educational, and philanthropic programs, including without
16 limitation libraries, museums, and governmentally owned hospitals, of a city,
17 town, municipality, or county acting alone or pursuant to an Interlocal
18 Cooperation Agreement under the Interlocal Cooperation Act, § 25-20-101 et
19 seq.

20 (B) The charitable donation may be made to assist the
21 establishment or maintenance of streets, parks, children's playgrounds,
22 libraries, museums, beautification projects, or any other charitable,
23 educational, or philanthropic purpose of a city, town, municipality, or
24 county.

25 (3) The charitable annuity permit shall authorize the city,
26 town, municipality, or county acting alone or pursuant to an Interlocal
27 Cooperation Agreement under the Interlocal Cooperation Act, § 25-20-101 et
28 seq., to receive unconditional gifts of money and property and to receive
29 gifts of money and property conditioned upon paying an annuity to the donor
30 or the donor's nominee.

31 (4) The rules of the commissioner to implement this subsection
32 (e) shall provide without limitation:

33 (A) That the city, town, municipality, or county acting
34 alone or pursuant to an Interlocal Cooperation Agreement under the Interlocal
35 Cooperation Act, § 25-20-101 et. Seq., has been actively involved in the
36 operation of the public charitable, educational, or philanthropic activity

1 for at least five (5) years prior to the issuance of the permit;

2 (B) For the investment of the assets and maintenance of
3 the liabilities and surplus of the charitable annuity program appropriate to
4 funding the annuities;

5 (C) That separate accounts be maintained solely for the
6 benefit of annuity contract owners;

7 (D) The prior approval of annuity contract forms and
8 annuity rates by the commissioner; and

9 (E) Annual financial reporting of a charitable annuity
10 program of a city, town, municipality, or county acting alone or pursuant to
11 an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, §
12 25-20-101 et. seq., that has been granted a charitable annuity permit under
13 this subsection (e).

14
15 SECTION 9. Arkansas Code § 23-63-832(b), concerning title insurer
16 investments, is amended to read as follows:

17 (b) Investments authorized by this section shall not be credited
18 against the insurer's required unearned premium or guaranty fund reserve
19 provided for under ~~§ 23-63-610.~~ § 23-63-614.

20
21 SECTION 10. Arkansas Code § 23-69-134(b)(4), concerning the
22 maintenance of custodied securities and bank custodians, is amended to read
23 as follows:

24 (4) In the discretion of the Insurance Commissioner, custodied
25 securities may be held or managed inside or outside the state by a bank
26 custodian as defined by and subject to the requirements imposed on bank
27 custodians by rules of the State Insurance Department governing the
28 holding and transferring of securities through ~~Federal Reserve book~~
29 ~~entry~~ a clearing corporation. In addition, custodied securities may be
30 held or managed inside or outside the state by a securities brokerage
31 firm meeting the following qualifications:

32
33 SECTION 11. Arkansas Code § 23-69-134(b)(4)(A), concerning the
34 statutory capital requirements placed on security broker custodians, is
35 amended to read as follows:

36 (A) The securities broker-dealer firm must be

1 registered with and subject to jurisdiction of the Securities and Exchange
 2 Commission, maintain membership in the Securities Investor Protection
 3 Corporation, and demonstrate by its most recent audited financial statement
 4 and regulatory filings:

5 (i) Tangible net worth ~~equal to or greater~~
 6 ~~than one hundred million dollars (\$100,000,000)~~ that satisfies the capital
 7 and financial requirements of a custodian as defined by rules promulgated by
 8 the department and regulatory net capital in an amount determined by the
 9 commissioner; or

10 (ii) Tangible net worth ~~equal to or greater~~
 11 ~~than fifty million dollars (\$50,000,000)~~, that satisfies the capital and
 12 financial requirements of a custodian as defined by rules promulgated by the
 13 department along with:

14 (a) Regulatory net capital in an amount
 15 determined by the commissioner; and

16 (b) Securities Investor Protection
 17 Corporation excess insurance coverage equal to or greater than the market
 18 value of the insurers' securities held by the custodian and in the form
 19 approved by the commissioner;

20
 21 SECTION 12. Arkansas Code § 23-79-101 is amended to read as follows:
 22 23-79-101. Definitions.

23 As used in this section and §§ 23-79-102 – ~~23-79-107, 23-79-109~~ – 23-
 24 79-128, 23-79-131 – 23-79-134, and 23-79-202 – 23-79-210:

25 (1) "Policy" means the written contract of or written agreement
 26 for or effecting insurance, by whatever name called, and includes all
 27 clauses, riders, endorsements, and papers made a part thereof; and

28 (2) "Premium" is the consideration for insurance, by whatever
 29 name called. Any assessment, or any membership, policy, survey, inspection,
 30 service, or similar fee or charge in consideration for a policy is deemed
 31 part of the premium.

32
 33 SECTION 13. Arkansas Code § 23-83-123(a), concerning group health
 34 insurance, is amended to read as follows:

35 (a) All group life, annuity, and ~~disability~~ accident and health
 36 insurance placed by an employer on employees who are residents of this state

1 shall be placed by the employer with an insurer authorized to transact
 2 insurance in this state.

3
 4 SECTION 14. Arkansas Code § 23-83-124(a), concerning group health
 5 insurance withholdings, is amended to read as follows:

6 (a) Any employer in this state withholding or collecting any money
 7 from employees who are residents of this state for any group life, annuity,
 8 or ~~disability~~ accident and health insurance placed with an unauthorized
 9 insurer in violation of § 23-83-123 shall be deemed to be the agent of the
 10 insurer for the purpose of service of process in any action brought by any
 11 employee on the insurance contract.

12
 13 SECTION 15. Arkansas Code § 23-86-119 is amended to read as follows:
 14 23-86-119. Disclosure to policyholders.

15 (a) Upon request from a policyholder with more than twenty-five (25)
 16 insured employees under a comprehensive health insurance policy, Any any
 17 insurer issuing or delivering group accident and health insurance policies in
 18 this state ~~must~~ shall provide to a the policyholder ~~with more than ninety-~~
 19 ~~nine (99) insured employees under a comprehensive health insurance policy~~ the
 20 following information for the most recent twelve-month period or for the
 21 entire period of coverage, whichever is shorter:

- 22 (1) Claims incurred by month;
- 23 (2) Premiums paid by month;
- 24 (3) Number of insureds to include dependents by month; and
- 25 (4) Claims exceeding ten thousand dollars (\$10,000) on any
 26 individual with diagnosis during the same period.

27 (b) This section does not require the insurer to disclose any
 28 information that is required by law to be confidential.

29
 30 SECTION 16. DO NOT CODIFY. The purpose of sections 17 and 18 of this
 31 act is to correct references to the Internal Revenue Code in the Long-Term
 32 Care Insurance Act of 2005, § 23-97-301 et seq., that may act to restrict the
 33 tax qualification determination of long-term care insurance contracts to the
 34 federal tax qualification of the contract under the Internal Revenue Code of
 35 1986, as it existed on January 1, 2004. It is not the intent of the General
 36 Assembly to limit the tax qualification determination of long-term care

1 insurance contracts to the federal tax qualification of the contract under
 2 the Internal Revenue Code of 1986, as it existed on January 1, 2004.

3
 4 SECTION 17. Arkansas Code § 23-97-304(5), concerning the definition of
 5 "federally tax-qualified long-term care insurance contract" under the Long-
 6 Term Care Insurance Act of 2005, is amended to read as follows:

7 (5) "Federally tax-qualified long-term care insurance contract"
 8 means:

9 (A) ~~an~~ An individual or group insurance contract that
 10 meets the following requirements of section 7702B(b) of the Internal Revenue
 11 Code of 1986, ~~as it existed on January 1, 2004:~~

12 ~~(A)(i)(a)~~ (i)(a) The only insurance protection provided
 13 under the contract is coverage of qualified long-term care services.

14 (b) A contract satisfies the requirements of
 15 this subdivision (5)(A)(i) even though payments are made on a per diem or
 16 other periodic basis without regard to the expenses incurred during the
 17 period to which the payments relate;

18 (ii)(a) The contract does not pay or reimburse
 19 expenses incurred for services or items to the extent that the expenses:

20 (1) Are reimbursable under Title XVIII
 21 of the Social Security Act, ~~as it existed on January 1, 2004;~~ or

22 (2) Would be reimbursable but for the
 23 application of a deductible or coinsurance amount.

24 (b) The requirements of this subdivision
 25 (5)(A)(ii) do not apply to expenses that are reimbursable under Title XVIII
 26 of the Social Security Act only as a secondary payor.

27 (c) A contract satisfies the requirements of
 28 this subdivision (5)(A)(ii) even though payments are made on a per diem or
 29 other periodic basis without regard to the expenses incurred during the
 30 period to which the payments relate;

31 (iii) The contract is guaranteed renewable under
 32 section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, ~~as it existed on~~
 33 ~~January 1, 2004;~~

34 (iv) The contract does not provide for a cash
 35 surrender value or other money that can be paid, assigned, pledged as
 36 collateral for a loan, or borrowed, except as provided in subdivision

1 (5)(A)(v) of this section;

2 (v) All refunds of premiums, policyholder dividends,
3 or similar amounts under the contract are to be applied as a reduction in
4 future premiums or to increase future benefits, except that a refund in the
5 event of the death of the insured or a complete surrender or cancellation of
6 the contract cannot exceed the aggregate premiums paid under the contract;
7 and

8 (vi) The contract meets the consumer protection
9 provisions set forth in section 7702B(g) of the Internal Revenue Code of
10 1986, ~~as it existed on January 1, 2004~~; or

11 (B) The portion of a life insurance contract that provides
12 long-term care insurance coverage by rider or as part of the contract and
13 that satisfies the requirements of ~~section~~ sections 7702B(b) and ~~section~~
14 7702B(e) of the Internal Revenue Code of 1986, ~~as it existed on January 1,~~
15 ~~2004~~;

16
17 SECTION 18. Arkansas Code § 23-97-312(b), concerning the outline of
18 coverage required to be delivered to a prospective long-term care insurance
19 applicant, is amended to read as follows:

20 (b) The outline of coverage shall include:

21 (1) A description of the principal benefits and coverage
22 provided in the policy;

23 (2) A statement of the principal exclusions, reductions, and
24 limitations contained in the policy;

25 (3)(A) A statement of the terms under which the policy or
26 certificate, or both, may be continued in force or discontinued, including
27 any reservation in the policy of a right to change premium.

28 (B) Continuation or conversion provisions of group
29 coverage shall be specifically described;

30 (4) A statement that the outline of coverage is a summary only,
31 not a contract of insurance, and that the policy or group master policy
32 contains governing contractual provisions;

33 (5) A description of the terms under which the policy or
34 certificate may be returned and premium refunded;

35 (6) A brief description of the relationship between cost of care
36 and benefits; and

1 (7) A statement that discloses to the policyholder or
2 certificate holder whether the policy is intended to be a federally tax-
3 qualified long-term care insurance contract under section 7702B(b) of the
4 Internal Revenue Code of 1986, ~~as it existed on January 1, 2004.~~

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