

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

A Bill

SENATE BILL 439

4
5 By: Senator Horn
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For An Act To Be Entitled

8
9 AN ACT TO PERMIT WAIVERS OF THE THREE-YEARS'
10 PRIOR SUCCESSFUL OPERATIONS IN THE DOMICILE STATE
11 OR PORT OF ENTRY ("SEASONING") ADMISSION
12 REQUIREMENT FOR FOREIGN INSURERS SEEKING TO DO
13 BUSINESS IN ARKANSAS; TO APPLY THE CHANGE OF
14 DOMICILE STATUTE TO HEALTH MAINTENANCE
15 ORGANIZATIONS; TO ALLOW HEALTH MAINTENANCE
16 ORGANIZATIONS DOMICILED IN THIS STATE TO ELECT TO
17 BE COVERED BY THE INSURANCE HOLDING COMPANY
18 REGULATORY ACT; AND FOR OTHER PURPOSES.
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Subtitle

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21 TO PERMIT WAIVERS OF CERTAIN ADMISSION
22 REQUIREMENTS OF FOREIGN INSURERS AND TO
23 ALLOW HEALTH MAINTENANCE ORGANIZATIONS
24 TO ELECT TO BE COVERED BY THE INSURANCE
25 HOLDING COMPANY REGULATORY ACT.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 23-63-202(1)(A), concerning the authority
31 of a foreign insurer to do business in Arkansas, is amended to read as
32 follows:

33 (A) ~~Has~~ Unless waived by the Insurance Commissioner, has
34 not furnished the ~~Insurance Commissioner~~ commissioner with evidence that it
35 has been organized and actively engaged in the insurance business in the
36 state of its incorporation for a period of three (3) years prior to the date



1 of its application to be admitted and authorized to do business in the State
 2 of Arkansas. However, this subdivision (1)(A) shall not apply to a foreign
 3 insurance company which is:

4 (i) The wholly owned subsidiary of an insurance
 5 company admitted and authorized to do business in the State of Arkansas; or

6 (ii) The continuing corporation resulting from a
 7 merger or consolidation of insurance companies, at least one (1) of which has
 8 been organized and actively engaged in the insurance business in the state of
 9 its organization for at least three (3) years prior to the date of the
 10 application of the corporation to be admitted and authorized to do business
 11 in the State of Arkansas; and

12
 13 SECTION 2. Arkansas Code § 23-76-104 is amended to read as follows:

14 23-76-104. Arkansas Insurance Code sections applicable to health
 15 maintenance organizations.

16 (a) Except to the extent that the Insurance Commissioner determines
 17 that the nature of health maintenance organizations, health care plans, and
 18 evidences of coverage render such sections clearly inappropriate, the
 19 following sections are applicable to health maintenance organizations:

20 (1) Section 23-60-101 - 23-60-108 and 23-60-110, referring to
 21 scope of the Arkansas Insurance Code;

22 (2) Sections 23-61-101 et seq., § 23-61-201 et seq., and § 23-
 23 61-301 et seq., referring to the Insurance Commissioner;

24 (3) Sections 23-63-102 - 23-63-104, ~~23-63-201 - 23-63-216~~ § 23-
 25 63-201 et seq., general provisions, and § 23-63-301 et seq., referring to
 26 service of process, a registered agent as process agent, serving legal
 27 process, and time to plead;

28 (4) Section 23-63-601 et seq., referring to assets and
 29 liabilities, and ~~§§ 23-63-901 - 23-63-912~~ et seq., referring to
 30 administration of deposits;

31 (5) Section 23-63-1501 et seq., referring to risk-based capital
 32 requirements;

33 (6) Section 23-64-101 et seq. and § 23-64-201 et seq., referring
 34 to agents, brokers, solicitors, and adjusters;

35 (7) Section 23-66-201 et seq., §§ 23-66-301 - 23-66-306, and §§
 36 23-66-308 - 23-66-314, referring to trade practices and frauds;

(8) Section 23-68-101 et seq., referring to rehabilitation and liquidation;

(9) Section 23-69-134, referring to home office and records and the penalty for unlawful removal of records;

(10) Section 23-69-156, referring to extinguishing unused corporate charters;

(11) Sections 23-75-104 - 23-75-105, and 23-75-116, referring to hospital and medical service corporations;

(12) Sections 23-79-101 - 23-79-107, 23-79-109 - 23-79-128, 23-79-131 - 23-79-134, and 23-79-202 - 23-79-210, referring to insurance contracts;

(13) Sections 23-85-101 - 23-85-132, 23-85-134, and 23-85-136, referring to individual accident and health insurance;

(14) Sections 23-86-101 - 23-86-104, 23-86-106, 23-86-108 - 23-86-111, 23-86-113 - 23-86-117, 23-86-119, 23-86-120, § 23-86-201 et seq., § 23-86-301 et seq., and § 23-86-401 et seq., referring to blanket and group accident and health insurance; and

(15) ~~Sections~~ Section 23-99-201 et seq., § 23-99-301 et seq., § 23-99-401 et seq., § 23-99-501 et seq., § 23-99-601 et seq., and § 23-99-701 et seq., referring to health care providers.

(b)(1) A health maintenance organization domiciled or applying to be domiciled in this state may elect to be subject to the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., by:

(A) Written notice in its application at the time the health maintenance organization applies to be domiciled in Arkansas; or

(B) Providing thirty (30) days' prior written notice to the commissioner if the health maintenance organization was domiciled in Arkansas on the effective date of this act.

(2) An election under this subsection:

(A) Shall not be revoked; and

(B) Requires that if a modification is required to be reported or filed under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., the health maintenance organization shall comply with the provisions concerning notice of major modifications to the operation of the health maintenance organization under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., instead of the provisions concerning

1 notice of major modifications to the operation of the health maintenance
2 organization under § 23-76-107(d).

3
4 SECTION 3. Arkansas Code § 23-76-107(d), concerning notice by a health
5 maintenance organization of major modifications in its operations, is amended
6 to read as follows:

7 (d)(1)(A) A health maintenance organization shall file a notice
8 describing any major modification of the operation set out in the information
9 required by subsection (c) of this section unless otherwise provided for in
10 this chapter. The notice shall be filed with the commissioner prior to the
11 modification. If the commissioner does not disapprove within sixty (60) days
12 of filing, the modification shall be deemed approved.

13 (B) Subdivision (d)(1)(A) of this section does not apply
14 to a health maintenance organization domiciled or applying to be domiciled in
15 this state that has elected under § 23-76-104(b) to be subject to the
16 Insurance Holding Company Regulatory Act, § 23-63-501 et seq.

17 (2) The commissioner shall promulgate rules and regulations
18 exempting from the filing requirements of subdivision (c)(1) of this section
19 those items the commissioner deems unnecessary.

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21 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
22 General Assembly of the State of Arkansas that the failure of state law to
23 permit a waiver of admission requirements based upon evidence of a foreign
24 insurer's prior successful operations before licensure and failure to permit
25 health maintenance organizations to be governed by the Insurance Holding
26 Company Regulatory Act hampers the ability of the state to attract additional
27 health plans to base their operations in Arkansas, to promote economic
28 growth, and to enhance consumer choices for health care coverage; that many
29 states apply their insurance holding company laws to a foreign health
30 maintenance organization doing business in the state if the health
31 maintenance organization's state of domicile does not have substantially
32 similar laws, thus potentially subjecting a health maintenance organization
33 domiciled in Arkansas and licensed in other states to multiple holding
34 company filings and inconsistent approval processes; and that this act is
35 immediately necessary to attract insurers to the state by permitting the
36 waiver of admission requirements when appropriate and the allowance of health

1 maintenance organizations to elect to be subject to the Insurance Holding
2 Company Regulatory Act and thus avoid duplicative and potentially
3 inconsistent regulation in other states. Therefore, an emergency is declared
4 to exist and this act being immediately necessary for the preservation of the
5 public peace, health, and safety shall become effective on:

6 (1) The date of its approval by the Governor;

7 (2) If the bill is neither approved nor vetoed by the Governor,
8 the expiration of the period of time during which the Governor may veto the
9 bill; or

10 (3) If the bill is vetoed by the Governor and the veto is
11 overridden, the date the last house overrides the veto.