

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013

# A Bill

SENATE BILL 1071

4  
5 By: Senator Files  
6

## For An Act To Be Entitled

8 AN ACT TO CLARIFY THE INSURANCE PREMIUM RATE APPROVAL  
9 PROCESS; TO ALLOW INSURERS TO COLLECT RATE INCREASES  
10 UNDER BOND; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO CLARIFY THE INSURANCE PREMIUM RATE  
14 APPROVAL PROCESS; AND TO ALLOW INSURERS  
15 TO COLLECT RATE INCREASES UNDER BOND.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 23-67-208(a), concerning insurance rate  
22 standards, is amended to read as follows:

23 (a)(1) Rates shall be actuarially sound and not be excessive,  
24 inadequate, or unfairly discriminatory.

25 (2) A rate is actuarially sound if it is supported by an  
26 actuarial analysis made by a member of the American Academy of Actuaries and  
27 based upon generally accepted actuarial principles and methodologies that  
28 show the rate to be reasonable.

29 (3) An insurer's submission of an actuarially sound rate does  
30 not prevent the Insurance Commissioner from relying on the contrary opinion  
31 of a member of the American Academy of Actuaries who utilized generally  
32 accepted actuarial principles and methodologies to contest the rate filed by  
33 the insurer.  
34

35 SECTION 2. Arkansas Code § 23-67-213(b), concerning disapproval  
36 procedures for insurance rates, is amended to add an additional subdivision



to read as follows:

(3) If the commissioner disapproves a rate under subdivision (b)(1) of this section or withdraws approval under subdivision (b)(2) of this section, the commissioner, on request and within five (5) working days after the receipt of the request, shall provide to the filer of the disapproved rate an actuarial analysis, interpretation of statistical data, and other methodology reviewed by the commissioner or his or her staff.

SECTION 3. Arkansas Code § 23-67-213, concerning disapproval procedures for insurance rates, is amended to add additional subsections to read as follows:

(d) Collection of Rates During Hearing and Judicial Review Procedures.

(1)(A) If the commissioner disapproves a rate, the insurer may request a hearing under subdivision (b)(1) of this section.

(B) The insurer may put the disapproved rate into effect immediately if, after requesting a hearing, the insurer files a bond that:

(i) Is payable to this state;

(ii) Is approved by the commissioner;

(iii) Is in an amount and has sufficient security to ensure payment of a refund to affected policyholders if the rate is determined to be excessive; and

(iv) Includes interest, if any, at an interest rate established by the commissioner not to exceed five percent (5%) a year above the primary credit rate of the Federal Reserve System at the time the bond is filed.

(C) The disapproved rate is effective during a rehearing and a judicial review under subdivision (b)(1) of this section and §§ 23-61-303(b)(1) and § 23-61-307.

(2) The bond may be substituted if the commissioner approves other arrangements to protect the interested parties.

(e) Refunds of Excessive Rate Collection Under Bond. If an insurer has implemented a rate under bond or other arrangements that exceeds that allowed by a final order of the commissioner or a court decision on judicial review, the commissioner shall order the immediate refund of the excessive bonded rate collections.

SECTION 4. Arkansas Code § 23-79-109, concerning filing and approval of forms, is amended to add an additional subsection to read as follows:

(i)(1) If the commissioner disapproves a rate, the insurer may:

(A)(i) Request that the commissioner provide with the filing an actuarial analysis, interpretation of statistical data, and other methodology that was reviewed by the commissioner or his or her staff.

(ii) The information required under subdivision (i)(1)(A)(i) of this section shall be provided within five (5) working days after the receipt of the request;

(B)(i) Implement the disapproved rate immediately upon the filing of a bond that:

(a) Is payable to this state;

(b) Is approved by the commissioner;

(c) Is in an amount and has sufficient security to ensure payment of a refund to affected policyholders if the rate is determined to be excessive; and

(d) Includes interest, if any, at an interest rate established by the commissioner not to exceed five (5%) percent a year above the primary credit rate of the Federal Reserve System at the time the bond is filed.

(ii) The disapproved rate is effective throughout the review process of the commissioner and a judicial review under § 23-61-301 et seq.; and

(C) Request other arrangements in lieu of a bond if approved by the commissioner.

(2) If an insurer implements a disapproved rate under subdivision (i)(1)(B)(i) of this section and the commissioner or court order approves a lower rate after review, the insurer shall refund to an affected policyholder the amount paid in excess of the approved rate payment within thirty (30) days after the date of a final order.

SECTION 5. Arkansas Code § 23-79-110 is amended to read as follows:

23-79-110. Forms and premium rates – Grounds for disapproval.

(a) The Insurance Commissioner shall disapprove ~~any~~ a form filed under § 23-79-109, or withdraw ~~any~~ a previous approval, only if the form:

(1) Is in ~~any respect in~~ violation of or does not comply with

1 this code;

2 (2) Contains or incorporates by reference, when the  
3 incorporation is otherwise permissible, ~~any~~ an inconsistent, ambiguous, or  
4 misleading ~~clauses, or exceptions and conditions~~ clause, or an exception and  
5 a condition that deceptively affect the risk purported to be assumed in the  
6 general coverage of the contract;

7 (3) Has ~~any~~ a title, heading, or other indication of its  
8 provisions that is misleading; and

9 (4) Is printed or otherwise reproduced in ~~such manner as to~~  
10 ~~render any~~ that makes a provision of the form substantially illegible or not  
11 easily legible to persons of normal vision~~;~~.

12 ~~(5)(A) Is an individual accident and health contract~~  
13 ~~in which the benefits are unreasonable in relation to the premium charge.~~  
14 ~~Rates on a particular policy form will be deemed approved upon filing with~~  
15 ~~the commissioner if the insurer has filed a loss ratio guarantee with the~~  
16 ~~commissioner and complied with the terms of the loss ratio guarantee.~~  
17 ~~Benefits will continue to be deemed reasonable in relation to the premium so~~  
18 ~~long as the insurer complies with the terms of the loss ratio guarantee. This~~  
19 ~~loss ratio guarantee must be in writing, signed by an officer of the insurer,~~  
20 ~~and must contain at least the following:~~

21 ~~(i) A recitation of the anticipated target loss~~  
22 ~~ratio standards contained in the original actuarial memorandum filed with the~~  
23 ~~policy form when it was originally approved;~~

24 ~~(ii) A guarantee that the actual Arkansas loss~~  
25 ~~ratios for the experience period in which the new rates take effect, and for~~  
26 ~~each experience period thereafter until new rates are filed, will meet or~~  
27 ~~exceed the loss ratio standards referred to in subdivision (a)(5)(A)(i) of~~  
28 ~~this section. If the annual earned premium volume in Arkansas under the~~  
29 ~~particular policy form is less than one million dollars (\$1,000,000) and~~  
30 ~~therefore not actuarially credible, the loss ratio guarantee will be based on~~  
31 ~~the actual nationwide loss ratio for the policy form. If the aggregate earned~~  
32 ~~premium for all states is less than one million dollars (\$1,000,000), the~~  
33 ~~experience period will be extended until the end of the calendar year in~~  
34 ~~which one million dollars (\$1,000,000) of earned premium is attained;~~

35 ~~(iii) A guarantee that the actual Arkansas, or~~  
36 ~~national, if applicable, loss ratio results for the year at issue will be~~

1 independently audited at the insurer's expense. This audit must be done in  
2 the second quarter of the year following the end of the experience period and  
3 the audited results must be reported to the commissioner not later than the  
4 date for filing the applicable accident and health policy experience exhibit;

5 (iv)(a) A guarantee that affected Arkansas  
6 policyholders will be issued a proportional refund, based on premium earned  
7 of the amount necessary to bring the actual aggregate loss ratio up to the  
8 loss ratio standards referred to in subdivision (a)(5)(A)(i) of this section.  
9 If nationwide loss ratios are used, then the total amount refunded in  
10 Arkansas will equal the dollar amount necessary to achieve the loss ratio  
11 standards multiplied by the total premium earned in Arkansas on the policy  
12 form and divided by the total premium earned in all states on the policy  
13 form.

14 (b) The refund must be made to all Arkansas  
15 policyholders who are insured under the applicable policy form as of the last  
16 day of the experience period and whose refund would equal ten dollars  
17 (\$10.00) or more.

18 (c) The refund will include statutory interest  
19 from the end of the experience period until the date of payment.

20 (d) Payment must be made during the third  
21 quarter of the year following the experience period for which a refund is  
22 determined to be due; and

23 (v) A guarantee that refunds of less than ten  
24 dollars (\$10.00) will be aggregated by the insurer and paid to the State  
25 Insurance Department.

26 (B) As used in this section, the term "loss ratio" means  
27 the ratio of incurred claims to earned premium by number of years of policy  
28 duration, for all combined durations.

29 (C) As used in this section, the term "experience period"  
30 means, for any given rate filing for which a loss ratio guarantee is made,  
31 the period beginning on the first day of the calendar year during which the  
32 rates first take effect and ending on the last day of the calendar year  
33 during which the insurer earns one million dollars (\$1,000,000) in premium on  
34 the form in question in Arkansas or, if the annual premium earned on the form  
35 in Arkansas is less than one million dollars (\$1,000,000) nationally.  
36 Successive experience periods shall be similarly determined beginning on the

1 ~~first day following the end of the preceding experience period.~~

2 ~~(D)(i) An insurer whose rates on a policy form are~~  
 3 ~~approved pursuant to a loss ratio guarantee shall provide affected~~  
 4 ~~policyholders with a notice that advises that rates may be increased more~~  
 5 ~~than one (1) time a year. For new policyholders with policies subject to the~~  
 6 ~~loss ratio guarantee, the notice must be delivered no later than delivery of~~  
 7 ~~the policy.~~

8 ~~(ii) Nothing in this section shall be deemed to~~  
 9 ~~require an insurer to provide the notice required by this subdivision on more~~  
 10 ~~than one (1) occasion to any given policyholder while insured under the~~  
 11 ~~guaranteed form.~~

12 (b)(1) The commissioner shall disapprove a premium rate filed with an  
 13 individual accident and health contract if the commissioner finds that the  
 14 rate is not actuarially sound, is excessive, is inadequate, or is unfairly  
 15 discriminatory.

16 (2) A rate is actuarially sound if it is:

17 (A) Supported by an actuarial analysis made by a member of  
 18 the American Academy of Actuaries; and

19 (B) Based on generally accepted actuarial principles and  
 20 methodologies that show the rate to be reasonable.

21 (3) An insurer's submission of an actuarially sound rate shall  
 22 not foreclose the commissioner from relying upon a contrary opinion made by a  
 23 member of the American Academy of Actuaries who utilized generally accepted  
 24 actuarial principles and methodologies to contest the rate filed by the  
 25 insurer.

26 (4) A rate is excessive if it is likely to produce a profit that  
 27 is unreasonably high in relation to past and prospective loss experience for  
 28 the form which the filing affects or if expenses are unreasonably high in  
 29 relation to services given.

30 (5) A rate is not unfairly discriminatory if:

31 (A) It shows equitably the differences in expected losses  
 32 and expenses; or

33 (B) Different premiums result for policyholders with like  
 34 loss exposures but different expense factors or with like expense factors but  
 35 different loss exposures, if the rates show the differences with reasonable  
 36 accuracy.

1           (6) A rate is inadequate if the investment income attributable  
2 to the rate fails to satisfy projected losses and expenses for the form which  
3 the filing affects.

4           (c)(1) A rate on a particular policy form is approved when filed with  
5 the commissioner if the insurer has filed a loss ratio guarantee with the  
6 commissioner and complied with the terms of the loss ratio guarantee.

7           (2) A benefit is reasonable in relation to the premium so long  
8 as the insurer complies with the terms of the loss ratio guarantee.

9           (3) The loss ratio guarantee shall be in writing, signed by an  
10 officer of the insurer, and contain at least the following:

11           (A) A recitation of the anticipated target loss ratio  
12 standards contained in the original actuarial memorandum filed with the  
13 policy form when it was originally approved;

14           (B) A guarantee that if the new rate takes effect the loss  
15 ratios in this state for the experience period in which the new rate takes  
16 effect and for each experience period thereafter until a new rate is filed,  
17 shall meet or exceed the loss ratio standards referred to in subdivision  
18 (a)(4) of this section;

19           (C) A statement or guarantee that affected policyholders  
20 in this state shall be issued a proportional refund based on premium earned  
21 of the amount necessary to bring the total loss ratio up to the loss ratio  
22 standards referred to in subdivision (a)(4) of this section;

23           (D) If nationwide loss ratios are used, then the total  
24 amount refunded in this state shall equal the dollar amount necessary to  
25 achieve the loss ratio standards multiplied by the total premium earned in  
26 this state on the policy form and divided by the total premium earned in a  
27 state on the policy form;

28           (E) The refund shall be made to a policyholder in this  
29 state who is insured under the applicable policy form on the last day of the  
30 experience period and whose refund would equal ten dollars (\$10.00) or more;

31           (F) The refund in subdivision (c)(6)(C) of this section  
32 shall include interest from the end of the experience period until the date  
33 of payment;

34           (G) The payment of the refund shall be made during the  
35 third quarter of the year following the experience period for which a refund  
36 is determined to be due; and

1                   (F) Refunds of less than ten dollars (\$10.00) shall be  
2 aggregated by the insurer and paid to the State Insurance Department.

3                   (4)(A) If the annual earned premium volume in this state under a  
4 policy form is less than one million dollars (\$1,000,000) and therefore not  
5 actuarially credible, the loss ratio guarantee shall be based on the  
6 nationwide loss ratio for the policy form.

7                   (B) If the total earned premium in this state is less than  
8 one million dollars (\$1,000,000), the experience period shall be extended  
9 until the end of the calendar year in which one million dollars (\$1,000,000)  
10 of earned premium is attained.

11                   (5)(A) An insurer shall submit a guarantee that the loss ratio  
12 in this state or nationally, if applicable, for the year at issue shall be  
13 independently audited at the insurer's expense.

14                   (B) An audit shall be made in the second quarter of the  
15 year following the end of the experience period and the audited results  
16 reported to the commissioner at or before the date for filing the policy  
17 experience exhibit.

18                   (6) An insurer shall file with the commissioner the following  
19 with a loss ratio guarantee:

20                   (7) As used in this section:

21                   (A)(i) "Experience period" means the period for a given  
22 rate filing for which a loss ratio guarantee is made beginning on the first  
23 day of the calendar year during which the rate first takes effect and ending  
24 on the last day of the calendar year during which the insurer earns one  
25 million dollars (\$1,000,000) in premium on the form in this state or if the  
26 annual premium earned on the form in Arkansas is less than one million  
27 dollars (\$1,000,000) nationally.

28                   (ii) Successive experience periods shall be  
29 determined beginning on the first day following the end of the preceding  
30 experience period; and

31                   (B) "Loss ratio" means the ratio of incurred claims to  
32 earned premium by number of years of policy duration for the combined  
33 durations.

34                   (8)(A) An insurer whose rates on a policy form are approved  
35 according to a loss ratio guarantee shall provide a notice to an affected  
36 policyholder that advises that rates may be increased more than one (1) time



1 a year.

2 (B) The notice shall be delivered to a new policyholder  
3 with policies subject to the loss ratio guarantee at or before the time of  
4 delivery of the policy.

5 (d) This section does not require an insurer to provide the notice  
6 required by this section on more than one (1) occasion to a policyholder  
7 while the policyholder is insured under the guaranteed form.