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2 89th General Assembly
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4

As Engrossed: S3/20/13 S4/3/13

A Bill

SENATE BILL 1071

5 By: Senators Files, *Bledsoe*
6 By: Representatives Vines, Wren, S. Malone, Biviano, Branscum, Broadaway, Cozart, Lea, Shepherd,
7 Wright

For An Act To Be Entitled

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

Subtitle

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

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

23 *SECTION 1.* Arkansas Code § 23-79-109, concerning filing and approval
24 of forms, is amended to add an additional subsection to read as follows:

25 (i)(1) If the commissioner disapproves a rate, the insurer may request
26 that the commissioner provide the insurer with the filing an actuarial
27 analysis, interpretation of statistical data, and other methodology that was
28 reviewed by the commissioner or his or her staff.

29 (2) The information required under subdivision
30 (i)(1) of this section shall be provided within five (5) working days after
31 the receipt of the request.

33 *SECTION 2.* Arkansas Code § 23-79-110 is amended to read as follows:
34 23-79-110. Forms and premium rates – Grounds for disapproval.

35 (a) The Insurance Commissioner shall disapprove ~~any~~ a form filed under
36 § 23-79-109, or withdraw ~~any~~ a previous approval, only if the form:



1 (1) Is in ~~any respect in~~ violation of or does not comply with
2 this code;

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

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

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

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

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

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

36 ~~(iii) A guarantee that the actual Arkansas, or~~

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

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

15 (b) The refund must be made to all Arkansas
16 policyholders who are insured under the applicable policy form as of the last
17 day of the experience period and whose refund would equal ten dollars
18 (\$10.00) or more.

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

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

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

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

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

1 ~~Successive experience periods shall be similarly determined beginning on the~~
2 ~~first day following the end of the preceding experience period.~~

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

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

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

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

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

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

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

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

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

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

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

1 accuracy.

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

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

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

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

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

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

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

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

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

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

35 (G) The payment of the refund shall be made during the
36 third quarter of the year following the experience period for which a refund

1 is determined to be due; and

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

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

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

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

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

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

21 (7) As used in this section:

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

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

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

35 (8)(A) An insurer whose rates on a policy form are approved
36 according to a loss ratio guarantee shall provide a notice to an affected

1 policyholder that advises that rates may be increased more than one (1) time
2 a year.

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

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

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