State of Arkansas *As Engrossed: S3/7/13*
89th General Assembly
A Bill
Regular Session, 2013 SENATE BILL 789

By: Senator Rapert
By: Representative Collins

For An Act To Be Entitled

AN ACT CONCERNING THE REGULATION OF CAPTIVE INSURANCE COMPANIES; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE REGULATION OF CAPTIVE INSURANCE COMPANIES.

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

SECTION 1. Arkansas Code § 23-63-1611(b), concerning reinsurance provided by a captive insurance company, is amended to read as follows:

(b)~~(1)~~ A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers that are:

(1) ~~complying~~ Complying with ~~the Arkansas Insurance Code.~~ § 23-62-305(a)-(f); or

(2) Not complying with § 23-62-305(a)-(f) upon approval of the captive insurance company's business plan by the Insurance Commissioner.

~~(2) A captive insurer may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with the Arkansas Insurance Code.~~

SECTION 2. Arkansas Code § 23-63-1614 is amended to read as follows:

23-63-1614. Premium tax.

(a) Except as provided in this section, a captive insurance company shall pay to the Insurance Commissioner by March 1 of each year, a tax at the rate of:

(1) ~~Four-tenths of one percent (0.4%)~~ Two hundred fifty thousandths of one percent (0.250%) on the first twenty million dollars ($20,000,000);

(2) ~~Three-tenths of one percent (0.3%)~~ One hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars ($20,000,000); and

(3) ~~Two-tenths of one percent (0.2%)~~ Fifty thousandths of one percent (0.050%) ~~on the next twenty million dollars ($20,000,000);and~~

~~(4) Seventy-five thousandths of one percent (.075%)~~ on each dollar thereafter,

on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b)(1) Except as provided in this section, a captive insurance company shall pay to the commissioner by March 1 of each year, a tax at the rate of:

(A) Two hundred twenty-five thousandths of one percent (.225%) on the first twenty million dollars ($20,000,000) of assumed reinsurance premium;

(B) One hundred fifty thousandths of one percent (.150%) on the next twenty million dollars ($20,000,000);

(C) Fifty thousandths of one percent (.050%) on the next twenty million dollars ($20,000,000); and

(D) Twenty-five thousandths of one percent (.025%) of each dollar thereafter.

(2) No reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (a) of this section.

(3) A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control, if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(c) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (a) and (b) of this section amount to less than five thousand dollars ($5,000) in any year, the captive insurance company shall pay a tax of five thousand dollars ($5,000) for that year.

(d) The total tax paid by a captive insurance company shall not exceed one hundred thousand dollars ($100,000) in any year.

~~(d)~~(e) A captive insurance company failing to make returns or to pay all taxes required by this section is subject to relevant sanctions under the Arkansas Insurance Code.

~~(e)~~(f) Two (2) or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

~~(f)~~(g) As used in this section, “common ownership and control” means:

(1) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and

(2) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.

~~(g)~~(h) In the case of a branch captive insurance company, the tax under this section applies only to the branch business of the company.

~~(h)~~(i)(1) The tax under this section constitutes all taxes collectible under the laws of this state from a captive insurance company.

(2) No other tax may be levied or collected from a captive insurance company by this state or a county, city, or municipality of this state, except ad valorem taxes on real and personal property used in the production of income.

~~(i)~~(j) This section shall not apply to any producer reinsurance captive insurance company that invests and continuously maintains not less than fifty percent (50%) of its assets in certificates of deposit of any bank organized under the laws of the United States with a banking facility in the State of Arkansas or any federally insured bank or savings institution organized under the laws of the State of Arkansas, or in bonds, notes, warrants, or other securities, not in default, that are direct obligations of:

(1) This state;

(2) Any county, incorporated city or town, or duly organized school district or other taxing district of this state:

(A) If no default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment; or

(3) Any local improvement district in this state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the local improvement district, and:

(A) No default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other *public obligation of the obligor within five (5) years of the investment.*

SECTION 3. *<u>EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that Arkansas does not have a needed, competitive presence in the field of captive insurance companies and that this act will attract new captive insurance companies to the state; that a delay in permitting applications for new captive insurance companies will hurt the state's economy and cause an unnecessary burden on the Insurance Commissioner. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:</u>*

<u>(1) The date of its approval by the Governor;</u>

<u>(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or</u>

<u>(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.</u>

/s/Rapert