

Stricken language would be deleted from and underlined language would be added to present law.
Act 283 of the Regular Session

State of Arkansas
91st General Assembly
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As Engrossed: H2/13/17
A Bill

SENATE BILL 247

By: Senator Rapert
By: Representatives Collins, Warren

For An Act To Be Entitled

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT
GENERAL OMNIBUS BILL; CONCERNING THE ARKANSAS PREPAID
FUNERAL BENEFITS LAW; CONCERNING DISCLOSURE OF
NONPUBLIC PERSONAL INFORMATION BY THE INSURANCE
COMMISSIONER; CONCERNING THE POLICYHOLDER'S BILL OF
RIGHTS; CONCERNING THE DISCLOSURE OF AN EXAMINATION
REPORT BY THE INSURANCE COMMISSIONER; CONCERNING
IMMUNITY FROM PROSECUTION IN PROCEEDINGS OF THE STATE
INSURANCE DEPARTMENT; CONCERNING ANNUAL STATEMENTS
FILED WITH THE INSURANCE COMMISSIONER; CONCERNING THE
APPLICATION AND LICENSING REQUIREMENTS OF CAPTIVE
INSURERS; TO REVISE THE QUALIFICATIONS FOR HOLDING AN
INSURANCE ADJUSTER'S LICENSE; CONCERNING LICENSURE
UNDER THE ARKANSAS HEALTH INSURANCE MARKETPLACE
NAVIGATOR, GUIDE, AND CERTIFIED APPLICATION
COUNSELORS ACT; CONCERNING IMMUNITY FROM PROSECUTION
IN PROCEEDINGS OF THE STATE INSURANCE DEPARTMENT; TO
CLARIFY THE PROCEDURE FOR MANDATORY REPORTING OF
FRAUDULENT INSURANCE ACTS; TO REPEAL THE COMPILATION
OF COMPARISON DATA FOR PRIVATE PASSENGER AUTOMOBILE,
HOMEOWNERS MULTI-PERIL, AND DWELLING FIRE INSURANCE
POLICIES; TO REPEAL THE ANNUAL REPORT REGARDING
PERSONAL INSURANCE; CONCERNING THE APPLICABILITY OF
THE ARKANSAS INSURANCE CODE TO HEALTH MAINTENANCE
ORGANIZATIONS; TO REVISE THE DEFINITION OF "COVERED
CLAIM" UNDER THE ARKANSAS PROPERTY AND CASUALTY
INSURANCE GUARANTY ACT; CONCERNING THE RISK RETENTION
AND PURCHASING GROUPS ACT; TO CLARIFY THE ANNUAL



PAYMENT DATE FOR AN INSURER'S ANTIFRAUD ASSESSMENT;
AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE STATE INSURANCE DEPARTMENT
GENERAL OMNIBUS BILL.

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

SECTION 1. Arkansas Code § 23-40-106(a), concerning violations of the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(a)(1) ~~Any~~ An officer, director, agent, or employee of ~~any~~ an organization subject to ~~the terms of~~ this chapter who makes, or attempts to make, ~~any~~ a contract in violation of this chapter, or refuses to allow an inspection of the organization's records shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for ~~not fewer than~~ at least six (6) months and not more than twelve (12) months, or by both fine and imprisonment.

(2)(A) ~~Any~~ An officer, director, agent, or employee of ~~any~~ an organization is guilty of a Class D felony if the officer, director, agent, or employee:

(i) who ~~collects~~ Collects contract proceeds on cash-funded prepaid funeral contracts and fails to deposit ~~such funds~~ the proceeds with a trustee as required under § 23-40-114; or

(ii) Collects proceeds on insurance-funded or annuity-funded contracts, or both, and fails to forward the proceeds to the insurance company or the third-party administrator within twenty (20) business days shall be guilty of a Class D felony.

(B) A person convicted of a violation of § 23-40-114 shall be ordered to pay restitution to persons aggrieved by the violation.

(C) Restitution shall be ordered in addition to a fine or imprisonment.

SECTION 2. Arkansas Code § 23-40-115(b), concerning investment of trust funds under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(b) The trustee shall maintain the trust fund in a manner consistent with the following investment policies:

(1) ~~{Repealed.}~~

~~(2)~~ The trust fund shall contain at all times liquid investments having a cost basis not less than thirty percent (30%) of the total contract proceeds disbursed from the trust fund as described in § 23-40-116(1)-(3) during the preceding calendar year;

~~(3)(2)(A)~~ ~~No~~ An investment shall not be sold, exchanged, or liquidated at less than its cost if it would result in the aggregate cost basis of the trust fund minus undistributed net investment income being less than the aggregate amount of contract proceeds held in the trust fund.

(B) However, this prohibition shall not apply if the seller contemporaneously deposits with the trustee a sum of money or other property in an amount equal to the loss realized upon the sale, exchange, or liquidation of ~~such~~ the investment; ~~and~~

~~(4)(3)(A)~~ The For cash-funded trust contracts, the portion of the contract proceeds collected for cash accommodation items pursuant to the terms of a contract shall be deposited into a separate account which shall be clearly identified as "cash accommodation funds" and shall ~~set forth~~ state the name of the contract buyer.

(B) All income earned on the cash accommodation funds shall become a part of the principal of the respective accounts; and

(4) For insurance-funded or annuity-funded contracts, if nonguaranteed cash accommodation items are included in the contract total, the entire amount may be included in the purchase premium of the insurance or annuity policy used to fund the contract if a proration calculation is used to identify the portion of the accrued interest income that is associated with the nonguaranteed portion of the contract.

SECTION 3. Arkansas Code § 23-40-119(e)(1), concerning the penalty for failure to timely file an annual report under the Arkansas Prepaid Funeral Benefits Law, is amended to read as follows:

(e)(1) Absent the commissioner's approval of an extension for good

cause shown, licensees failing to timely report and pay any administrative and financial regulations fees to the State Insurance Department Prepaid Trust Fund may be subject to a penalty of up to one hundred dollars (\$100) per day for each day of delinquency, payable to the ~~fund~~ State Insurance Department Prepaid Trust Fund.

SECTION 4. Arkansas Code § 23-61-113 is amended to read as follows:
23-61-113. Disclosure of nonpublic personal information.

(a) ~~No~~ A person shall not disclose any nonpublic personal information contrary to the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

(b)(1) The Insurance Commissioner shall adopt rules ~~and regulations~~ governing the treatment of consumer financial and protected health information by the Arkansas Comprehensive Health Insurance Pool and by all licensed insurers, health maintenance organizations, or other insuring health entities regulated by the commissioner, producers, and other persons licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered by the commissioner.

(2)(A) An entity or person described in subdivision (b)(1) of this section or a legal entity engaged in the business of insurance, including without limitation an individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, agent, broker, and adjuster, shall:

(i) Provide notification of a data breach to the commissioner in the same time and manner as required under § 4-110-105; and

(ii) Comply with all requirements for disclosure and notification of a data breach as required under § 4-110-105.

(B)(i) This section does not affect the right of the commissioner to impose other penalties provided for in the insurance laws of this state.

(ii) The commissioner may promulgate rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code.

(c)(1) The commissioner shall waive any provision of this section that creates ~~any~~ a conflict with similar federal laws or regulations, or which, due to the enactment of any ~~such~~ similar federal laws or regulations, creates an undue burden or increased financial or operational demands upon ~~any~~ a

person or entity ~~referenced in subsection (b)~~ described in subdivision (b)(1) of this section in order to comply with this section, the ~~regulations~~ rules to be promulgated by the commissioner, and similar federal laws and regulations.

(2) ~~Any~~ A person or entity ~~referenced in subsection (b)~~ described in subdivision (b)(1) of this section may request a hearing before the commissioner to seek the waiver referenced in subdivision (c)(1) of this section.

(3)(A) Under § 23-61-307, ~~any~~ a person or entity ~~referenced in subsection (b)~~ described in subdivision (b)(1) of this section is entitled to appeal the commissioner's decision to deny a waiver.

(B) In ~~any~~ an appeal ~~pursuant to~~ under this section, the commissioner shall be named as defendant.

(C) In any such action, the commissioner may ~~but shall not be obligated to~~ defend the action, in his or her discretion.

SECTION 5. Arkansas Code § 23-61-115(b), concerning the rights of a policyholder, is amended to read as follows:

(b) Policyholders ~~shall~~ have the right to:

(1) Competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies;

(2) Insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy;

(3) An insurer that is financially stable;

(4) Be serviced by a competent, honest insurance producer;

(5) A readable policy;

(6) An insurer that provides an economic delivery of coverage and that tries to prevent losses; ~~and~~

(7) Balanced and positive regulation by the State Insurance Department; and

(8) A reasonable expectation that the policyholder's nonpublic personal information is securely maintained.

SECTION 6. Arkansas Code § 23-61-205(c), concerning the period of time an examination report is held as private and confidential by the Insurance

Commissioner, is amended to read as follows:

(c)(1) Upon the adoption of the examination report under subdivision (a)(3)(A) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for ~~a period of thirty (30) days from the date the company received by United States mail or by electronic mail the order issued by the commissioner to adopt the examination report, except to the extent~~ as provided in subdivision (a)(2) of this section.

~~(2) Thereafter, After the expiration of thirty (30) days, the commissioner may open the report for public inspection so long as no~~ if a court of competent jurisdiction has not stayed its publication.

SECTION 7. Arkansas Code § 23-61-302 is amended to read as follows:

23-61-302. Examination, investigation, or hearing – Testimony compelled ~~—Immunity from prosecution.~~

~~(a)(1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, correspondence, or other documents at or in connection with any examination, hearing, or investigation being conducted by the Insurance Commissioner or his or her examiner on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject him or her to a penalty or forfeiture and shall, notwithstanding, be directed to give the testimony or produce the evidence, the person must nonetheless comply with the direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence pursuant thereto.~~

~~(2) No testimony so given or evidence produced shall be received against him or her upon any criminal action, investigation, or proceeding, except that no individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her while testifying and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning the perjury; nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the Arkansas Insurance Code.~~

~~(b)(1)(a)(1)~~ Any such An individual may execute, acknowledge, and file

in the State Insurance Department a statement expressly waiving immunity or privilege ~~in respect to~~ for any transaction, matter, or thing specified in the statement, ~~and, thereupon,~~

(2) the If a statement is filed under subdivision (a)(1) of this section, the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise.

~~(2)(b)~~ If ~~se~~ testimony or evidence is received or produced under subdivision (a)(2) of this section, the individual ~~shall not be~~ is not entitled to any immunity or privilege on account of any testimony he or she may ~~se~~ give or evidence ~~se~~ produced.

SECTION 8. Arkansas Code § 23-63-216(b), concerning a market conduct annual statement filed with the Insurance Commissioner, is amended to read as follows:

(b)(1) ~~In~~ Except as provided under subdivision (b)(2) of this section, in addition to the information required by subsection (a) of this section, a market conduct annual statement shall be filed, when applicable, with the commissioner if:

(A) A property and casualty insurer reports ~~seven million dollars (\$7,000,000)~~ fifty thousand dollars (\$50,000) or more in homeowner or private passenger automobile gross premiums;

(B) A life and annuity insurer reports ~~seven million dollars (\$7,000,000)~~ fifty thousand dollars (\$50,000) or more in individual life insurance premiums or annuity gross premiums; or

(C) An insurer reports ~~seven million dollars (\$7,000,000)~~ fifty thousand dollars (\$50,000) or more in premiums for:

- (i) Long-term care policies;
- (ii) Lifelong-term care hybrid policies; or
- (iii) Annuity long-term care hybrid products.

(2) An insurer is not required to file a market conduct annual statement under subdivision (b)(1) of this section if the insurer:

(A) Sells prepaid funeral or prepaid legal products only;
or

(B) Is licensed only in this state.

(3) After review of the market conduct annual statement, the

commissioner may require additional filing of other market conduct functions information considered relevant.

SECTION 9. Arkansas Code § 23-63-1602(a), concerning the application for licensure of a captive insurer, is amended to read as follows:

(a) When permitted by its articles of incorporation or charter, a captive insurance company may apply to the Insurance Commissioner for a license to do all insurance, including workers' compensation insurance, authorized by the Arkansas Insurance Code. However:

(1) A pure captive insurance company ~~may~~ shall not insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) An association captive insurance company ~~may~~ shall not insure any risks other than those of the member organizations of its association and their affiliated companies;

(3) An industrial insured captive insurance company ~~may~~ shall not insure any risks other than those of the industrial insureds that compose the industrial insured group and their affiliated companies;

(4) A captive insurance company ~~may~~ shall not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages;

(5) A captive insurance company ~~may~~ shall not accept or cede reinsurance except as authorized by § 23-63-1611;

(6) A producer reinsurance captive insurance company ~~may~~ shall not reinsure any risks other than those written by or placed through its parent or an affiliate of its parent and written by authorized insurers; and

(7) The following statement must appear on the front of every policy or certificate of insurance issued by a captive insurance company:

"THIS CONTRACT IS REGISTERED AND DELIVERED AS A POLICY UNDER ARKANSAS CODE §§ 23-63-1601 ~~THROUGH 23-63-1623~~ ET SEQ. THIS POLICY MAY BE DIFFERENT FROM POLICIES ISSUED IN THE OPEN MARKET. IT MAY BE MORE OR LESS FAVORABLE TO AN INSURED THAN A CONTRACT ISSUED BY AN ~~ADMITTED CARRIER~~ INSURER NOT SUBJECT TO ARKANSAS CODE § 23-63-1601 ET SEQ. THE PROTECTION OF THE ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT, ARKANSAS CODE §§ 23-90-101 ~~THROUGH 23-90-123~~ ET SEQ., DOES NOT APPLY TO THIS CONTRACT."

SECTION 10. Arkansas Code § 23-64-209(d), concerning adjusting procedures in response to a catastrophe, is amended to read as follows:

(d)(1)(A) An adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a loss resulting from a catastrophe under an insurance policy is not required to be qualified or licensed under this section if within ten (10) business days of entering the state the adjuster notifies the commissioner in writing of the adjuster's activities on behalf of the insurer.

(B) An adjuster shall cease and desist adjusting activity in this state within ninety (90) days of the notification described in subdivision (d)(1)(A) of this section or obtain an adjuster's license under this subchapter if otherwise required by the insurance laws of this state.

(2)(A) An adjuster operating in this state under subdivision (d)(1)(A) of this section may request an additional ninety (90) days to obtain an adjuster's license in this state upon application for an extension to the commissioner.

(B) The commissioner has the discretion to approve a request for an extension described in subdivision (d)(2)(A) of this section.

SECTION 11. Arkansas Code § 23-64-607(d), concerning the expiration of a license issued under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, is amended to read as follows:

(d) Each license or certification issued by the commissioner under this subchapter expires ~~at the close of business on September 30 of the calendar year~~ two (2) years after the date the license or certification is issued unless otherwise renewed, surrendered, or revoked.

SECTION 12. Arkansas Code § 23-65-101(h)(2), concerning hearings, orders, and penalties levied by the Insurance Commissioner for unauthorized insurance transactions, is amended to read as follows:

~~(2) The provisions of §§ Section 23-61-302 and 23-66-214, as to immunity from prosecution;~~

SECTION 13. Arkansas Code § 23-66-214 is repealed.

~~23-66-214. Immunity from prosecution.~~

~~(a) If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and shall, notwithstanding, be directed to give the testimony or produce the evidence, then he or she must nonetheless comply with the direction, but he or she shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence pursuant thereto and no testimony so given or evidence produced shall be received against him or her upon any criminal action, investigation, or proceeding.~~

~~(b) However, no individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her while so testifying. The testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning the perjury. Further, he or she shall not be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law of this state.~~

~~(c) The individual may execute, acknowledge, and file in the office of the Insurance Commissioner a statement expressly waiving the immunity or privilege in respect to any transaction, matter, or thing specified in the statement. Thereupon, the testimony of the person or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so received or produced, the individual shall not be entitled to any immunity or privilege on account of any testimony he or she may so give or evidence so produced.~~

SECTION 14. Arkansas Code § 23-66-505(d), concerning the requirements for mandatory reporting of fraudulent insurance acts, is amended to read as follows:

(d)(1) Upon the request of the commissioner or the commissioner's employees, examiners, investigators, agents, or representatives, a person engaged in the business of insurance shall provide to the commissioner all

information the commissioner deems relevant pertaining to any investigation of a fraudulent act or related criminal violation.

(2) The refusal of ~~any~~ a person to fully comply with the commissioner's request for information ~~shall be~~ is grounds for the suspension, revocation, denial, or nonrenewal of any license or authority held by the person to engage in an insurance or other business subject to the commissioner's jurisdiction.

(3) ~~Any~~ A proceeding for the suspension, revocation, denial, or nonrenewal of any license or authority shall be conducted pursuant to §§ 23-63-213 and 23-64-512.

SECTION 15. Arkansas Code § 23-67-223 is repealed.

~~23-67-223. Comparison data for private passenger automobile, homeowners multi-peril, and dwelling fire insurance policies.~~

~~(a) The Insurance Commissioner shall compile computerized comparisons of premiums charged and coverage available, broken down by geographic area and by varying deductible levels, for private passenger automobile, homeowners multi-peril, and dwelling fire insurance policies for typical individuals and families.~~

~~(b) The commissioner shall make the information compiled under subsection (a) of this section available to consumers upon request.~~

~~(c) The commissioner shall engage in a public information campaign to make available to consumers information useful in choosing and maintaining private passenger automobile, homeowners multi-peril, and dwelling fire insurance coverage, including, but not limited to, information about certain policy definitions and provisions of which consumers should be particularly aware.~~

SECTION 16. Arkansas Code § 23-67-415 is repealed.

~~23-67-415. Annual report regarding personal insurance.~~

~~(a) No later than March 31 of each year, each insurance company writing any personal insurance that uses credit scoring information shall report to the Insurance Commissioner for each personal insurance type listed in § 23-67-404(9) the number of:~~

~~(1) Policies written during the preceding year;~~

~~(2) Policies that received a premium increase due to credit~~

~~scoring during the preceding year; and~~

~~(3) Policies that received a premium decrease due to credit scoring during the preceding year.~~

~~(b) Information filed with the commissioner under this section by an insurance company shall be treated as proprietary information and is exempt from public disclosure.~~

SECTION 17. Arkansas Code § 23-76-104(a)(7), concerning sections of the Arkansas Insurance Code that are applicable to health maintenance organizations, is amended to read as follows:

~~(7) Section 23-66-201 et seq., §§ 23-66-301 – 23-66-306, and 23-66-308 – 23-66-314~~ The Trade Practices Act, § 23-66-201 et seq.; §§ 23-66-301 – 23-66-306 and 23-66-308 – 23-66-314; and § 23-66-501 et seq., referring to trade practices and frauds;

SECTION 18. Arkansas Code § 23-90-103(2)(A)(iii), concerning a limitation for individual covered claims under the Arkansas Property and Casualty Insurance Guaranty Act, is amended to read as follows:

(iii) Individual covered claims, excluding workers' compensation claims, shall be limited to three hundred thousand dollars (\$300,000) and shall not include any amount in excess of three hundred thousand dollars (\$300,000).

SECTION 19. Arkansas Code § 23-94-204, concerning domestic risk retention groups, is amended to add additional subsections to read as follows:

(d)(1) Beginning July 1, 2018, an existing risk retention group shall comply with the governance standards in subsections (e)-(j) of this section.

(2) A risk retention group applying for initial licensure in this state shall comply with the governance standards in this section at the time of licensure.

(e) As used in this section:

(1) "Board of directors" means a governing body of a risk retention group that is elected by the shareholders or members of the risk retention group to:

(A) Establish policy;

(B) Elect or appoint officers and committees; and
(C) Make other governing decisions for the risk retention group; and

(2) "Director" means an individual designated in the articles of the risk retention group, or designated, elected, or appointed by any other manner, name, or title to act as a director.

(f)(1)(A) The board of directors of a risk retention group shall have a majority of independent directors.

(B)(i) If the risk retention group is a reciprocal risk retention group, then an appointed attorney-in-fact of the reciprocal risk retention group is required to adhere to the same standards described in this section regarding independence of operation and governance as imposed on the board of directors or on the subscribers' advisory committee of the risk retention group.

(ii) To the extent permissible under state law, a service provider of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.

(2)(A) A director shall not qualify as independent unless the board of directors affirmatively determines that the director does not have a material relationship with the risk retention group.

(B) A risk retention group shall annually disclose to the commissioner of the domiciliary state of the risk retention group the determinations made by the board of directors under subdivision (f)(2)(A) of this section.

(3)(A) A director who is a direct or indirect owner of or subscriber in the risk retention group is independent for purposes of subdivision (f)(1)(A) of this section.

(B) Subdivision (f)(3)(A) of this section includes an officer, director, or employee of a direct or indirect owner of or subscriber in the risk retention group, unless a different position of the officer, director, or employee constitutes a material relationship, as contemplated by section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act, 15 U.S.C. § 3901 et seq., as it existed on January 1, 2017.

(4) A person has a material relationship with a risk retention group if the person, a member of the person's immediate family, or any business with which the person is affiliated, has received from the risk

retention group or a consultant or service provider to the risk retention group in the previous twelve-month period, any compensation, payment, or any other item of value, that is greater than or equal to five percent (5%) of the risk retention group's gross written premium for the same twelve (12) month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in the twelve-month.

(5) To determine whether or not a person is independent for purposes of this section:

(A) A person or an immediate family member of the person under subdivision (f)(4) of this section shall not be independent until at least one (1) year after receipt of any compensation from the risk retention group that falls below the threshold;

(B) A director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group shall not be independent until one (1) year after the end of the affiliation, employment, or auditing relationship; or

(C) A director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors shall not be independent until one (1) year after the end of the service or the employment relationship.

(g)(1) The term of any material service provider contract with the risk retention group shall not exceed five (5) years.

(2) A material service provider contract, or its renewal, requires the approval of the majority of the risk retention group's independent directors.

(3) The board of directors may terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract.

(4) The service provider contract is deemed material if the amount to be paid for a contract is greater than or equal to five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus, whichever is greater.

(5) A service provider contract that qualifies as a material relationship described in subdivision (f)(4) of this section shall not be

entered into unless the risk retention group has notified the commissioner in writing of its intention to enter into a transaction at least thirty (30) days before the transaction and the commissioner has not disapproved it within that period.

(6)(A) As used in this subsection, "service provider" includes a captive manager, auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting and settling claims, or preparing financial statements.

(B) "Service provider" does not include a lawyer who is retained as defense counsel by the risk retention group to defend claims unless the amount of fees paid to a lawyer qualifies as a material relationship described in subdivision (f)(4) of this section.

(h)(1) The board of directors shall adopt a written policy in the plan of operation as approved by the board of directors.

(2) The written policy described in subdivision (h)(1) of this section shall require the board of directors to:

(A) Assure that an owner/insured of the risk retention group receives evidence of ownership interest;

(B) Develop a set of governance standards applicable to the risk retention group;

(C) Oversee the evaluation of the risk retention group's management, including without limitation the performance of the captive manager, managing general underwriter, or other party responsible for underwriting, determining rates, collecting premiums, adjusting or settling claims, or preparing financial statements;

(D) Review and approve the amount to be paid for all material service providers; and

(E) Annually review and approve:

(i) Goals and objectives of the risk retention group relevant to the compensation of officers and service providers;

(ii) The performance of officers and service providers in light of the goals and objectives described in subdivision (h)(2)(E)(i) of this section; and

(iii) The continued engagement of the officers and material service providers.

(i)(1)(A) A risk retention group shall have an audit committee composed of at least three (3) independent members of the board of directors as defined in subdivision (f)(1) of this section.

(B)(i) A member of the board of directors who is not independent shall not be a member of an audit committee of a risk retention group.

(ii) A member of the board of directors who is not independent may participate in the activities of the audit committee if invited by members of the audit committee.

(2) The audit committee shall have a written charter that defines the purpose of the audit committee, as follows:

(A) Assist in the board of directors in oversight of:

(i) The integrity of the financial statements of the risk retention group;

(ii) Compliance with legal and regulatory requirements; and

(iii) The qualifications, independence, and performance of the independent auditor and actuary of the risk retention group;

(B) Discuss the annual audited financial statements and quarterly financial statements with the group's management;

(C) Discuss with the independent auditor of the risk retention group:

(i) The annual audited financial statements of the risk retention group; and

(ii) If advisable, the quarterly financial statements;

(D) Discuss policies with respect to risk assessment and risk management;

(E) Have meetings with the group's management and the independent auditor separately and periodically, either directly or through a designated representative of the audit committee;

(F) Review any audit problems or difficulties and the response by the group's management with the independent auditor;

(G) Set clear hiring policies of the risk retention group as to the hiring of an employee or former employee of the independent

auditor;

(H) Require the external auditor to rotate the lead or coordinating audit partner that has primary responsibility for the audit of the risk retention group and the audit partner that is responsible for reviewing the audit of the risk retention group so that neither individual performs the audit services for more than five (5) consecutive fiscal years; and

(I) Report regularly to the board of directors.

(3) The commissioner of the domiciliary state of the risk retention group may waive the requirement to establish an audit committee required in subdivision (i)(1)(A) of this section if the risk retention group is able to demonstrate to the commissioner of the domiciliary state of the risk retention group that:

(A) It is impracticable to do so; and

(B) The board of directors is able to accomplish the purposes of an audit committee as described in subdivision (i)(2) of this section.

(j)(1)(A) The board of directors shall adopt and disclose its governance standards by making the information available through electronic methods, including without limitation by posting the information on the public website of the risk retention group or by other means and providing the information to members or insureds upon request.

(B) The information under subdivision (j)(1)(A) of this section shall include:

(i) A process by which the directors are elected by the owners/insureds;

(ii) Director qualification standards;

(iii) Director responsibilities;

(iv) Director access to the group's management and, as necessary and appropriate, to independent advisors;

(v) Director compensation;

(vi) Director orientation and continuing education;

(vii) The policies and procedures that are followed for management succession; and

(viii) The policies and procedures that are followed for annual performance evaluation of the board of directors.

(2)(A)(i) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees.

(ii) The code of business conduct and ethics for directors, officers, and employees shall include the following topics:

(a) Conflicts of interest;

(b) Matters covered under the corporate opportunities doctrine under the state of domicile;

(c) Confidentiality;

(d) Fair dealing;

(e) Protection and proper use of risk retention group assets;

(f) Compliance with all applicable laws and rules; and

(g) Requiring the reporting of any illegal or unethical behavior that affects the operation of the risk retention group.

(iii) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the commissioner of the domiciliary state of the risk retention group in writing if he or she becomes aware of any material noncompliance with any of the governance standards in this section.

(B) Any waivers of the code of business conduct and ethics for directors or executive officers shall promptly be disclosed to the board of directors.

SECTION 20. Arkansas Code § 23-94-205(3), concerning agent and broker records of foreign risk retention groups, is amended to read as follows:

(3)(A) Agent and Broker Records. To the extent that insurance agents or brokers are utilized pursuant to under § 23-94-213, such the insurance agent or broker shall report to the commissioner the premiums for direct business written for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group that is not chartered in this state.

(B) Agents and brokers utilized under § 23-94-213 shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the commissioner.

(C) These records shall, for each policy and each kind of insurance provided thereunder, include the following:

- ~~(A)~~(i) The limit of liability;
- ~~(B)~~(ii) The time period covered;
- ~~(C)~~(iii) The effective date;
- ~~(D)~~(iv) The name of the risk retention group which issued the policy;
- ~~(E)~~(v) The gross premium charged; and
- ~~(F)~~(vi) The amount of return premiums, if any.

SECTION 21. Arkansas Code § 23-94-208(a), concerning a certificate of registration for a purchasing group, is amended to read as follows:

(a)(1) A purchasing group ~~which~~ that intends to do business in this state ~~must~~ shall obtain a certificate of registration from the ~~commissioner~~ Insurance Commissioner.

(2) The commissioner shall issue a certificate of registration to a purchasing group organized and formed under the laws of any state ~~when~~ if the commissioner is satisfied that the applicant ~~group~~ has ~~fully~~ complied with ~~the provisions of~~ this subchapter.

(3)(A) ~~Each~~ Before doing business in this state, a purchasing group ~~which intends to do business in this state shall, prior to doing business,~~ shall furnish notice to the commissioner ~~which shall,~~ on forms prescribed by the National Association of Insurance Commissioners+.

(B) The notice required under subdivision (a)(3)(A) of this section shall:

- ~~(1)~~(i) Identify the state in which the purchasing group is domiciled;
- ~~(2)~~(ii) Identify all other states in which the purchasing group intends to do business;
- ~~(3)~~(iii) Specify the lines and classifications of ~~casualty~~ liability insurance ~~which that~~ the purchasing group intends to purchase;
- ~~(4)~~(iv) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile of ~~such~~ the company;
- ~~(5)~~(v) Specify the method by which, and the person

or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

~~(6)~~(vi) Identify the principal place of business of the purchasing group; and

~~(7)~~(vii) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified for a certificate of registration.

SECTION 22. Arkansas Code § 23-100-104(b), concerning the annual payment date for an insurer's antifraud assessment, is amended to read as follows:

(b)(1) The antifraud assessment required by this section shall be paid annually on or before ~~June 30~~ June 1 at the time and in the manner that the commissioner prescribes or at times alternate from ~~June 30~~ June 1 annually that the commissioner prescribes.

(2)(A) By rule the commissioner may set the amount of the antifraud assessment.

(B) The antifraud assessment shall not exceed one thousand dollars (\$1,000) per fiscal year.

(3) The antifraud assessment ~~shall be~~ is in addition to the premium taxes and fees ~~now~~ required under existing law.

/s/Rapert

APPROVED: 02/28/2017