

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S2/27/19
A Bill

SENATE BILL 310

By: Senator Rapert

For An Act To Be Entitled

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S GENERAL OMNIBUS; TO AMEND THE ARKANSAS PREPAID FUNERAL BENEFITS LAW; TO REPEAL THE ANNUAL REPORT OF MALPRACTICE RATES; TO AMEND THE REQUIREMENTS FOR AN INSURER'S ANNUAL STATEMENT; CONCERNING THE LICENSING AND REGULATION OF CAPTIVE INSURERS; TO ESTABLISH THE CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT; TO REVISE THE PROCEDURE FOR THE APPOINTMENT OF AN INSURANCE AGENT; TO MODIFY THE PROCEDURE OF REMITTANCE OF PREMIUM TAXES BY A SURPLUS LINES BROKER; TO MODIFY THE REQUIREMENTS FOR A DOMESTIC STOCK INSURER TO OBTAIN REINSURANCE BY AN ASSUMPTION AGREEMENT; CONCERNING THE APPLICABILITY OF THE ARKANSAS INSURANCE CODE TO FARMERS' MUTUAL AID COMPANIES AND ASSOCIATIONS; TO MODIFY EXCEPTED BENEFITS; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE STATE INSURANCE DEPARTMENT'S
GENERAL OMNIBUS.

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

SECTION 1. Arkansas Code § 23-40-103 is amended to read as follows:
23-40-103. Definitions.

As used in this chapter, ~~unless the context otherwise requires:~~

- (1) "Annuity funding" means contract proceeds that are used by a



seller to purchase an annuity contract that names the seller as the beneficiary of the annuity contract, the proceeds of which shall be used to pay for the funeral benefits specified in a prepaid contract, or the purchaser may elect to purchase an annuity contract directly from an insurance carrier and either name the seller as the policy beneficiary or assign the death benefits to the seller to fund the prepaid funeral benefits contract;

(2) "Cash accommodation items" means flowers, honorariums, death certificates, sales taxes, grave opening and closing, cemetery charges, and other items incidental to the funeral and disposition of the beneficiary which are to be furnished or provided by a third party at the time of death;

~~(2)~~(3) "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be performed, provided, or delivered;

(4)(A) "Contract funding methods" means contract proceeds.

(B) "Contract funding methods" includes:

(i) Annuity funding;

(ii) Insurance funding; and

(iii) Trust funding;

~~(3)~~(5) "Contract price" means the aggregate moneys to be paid and the aggregate stated value of all other direct or indirect consideration to be assigned by purchasers of prepaid funeral benefits as provided in the contract, exclusive of any finance charge;

~~(4)~~(6) "Contract proceeds" means the portion of the contract price collected by the seller from a contract for the sale of prepaid funeral benefits;

(7) "Insurance funding" means contract proceeds that are used by a seller to purchase a life insurance policy or certificate on the life of a contract beneficiary that names the seller as the beneficiary of the life insurance policy or certificate, the indemnity from which shall be used to pay for the funeral benefits specified in the prepaid contract, or the purchaser may elect to purchase a life insurance policy or certificate directly from an insurance carrier, and then either name the seller as the life insurance policy beneficiary or assign the death benefits to the seller to fund the prepaid funeral benefits contract;

~~(5)~~(8) “Licensee” or “permittee” means a person holding a valid permit or license issued pursuant to this chapter;

~~(6)~~(9) “Liquid investments” means investments which can be sold at cost or greater, liquidated without penalty, and collected within five (5) banking days;

~~(7)~~(10) “Net investment income” means:

(A) All revenue and earnings of the trust fund, including, but not limited to, interest, dividends, and capital gains; minus

(B) Investment expenses, trustee’s fees, capital losses, and all revenue and earnings on cash accommodation funds;

~~(8)~~(11) “Net worth” means the difference between the applicant’s total assets and total liabilities as reflected in a balance sheet prepared ~~in accordance with~~ according to accounting principles and procedures approved by the Insurance Commissioner;

~~(9)~~(12) “Nonguaranteed prepaid contract” means a prepaid contract for the selection of merchandise or services that does not guarantee the price of the merchandise or services at the time of need;

~~(10)~~(13) “Nonspecified prepaid contract” means a prepaid contract that:

(A) Does not select specific funeral merchandise or funeral services when the contract is executed;

(B) Permits the selection of funeral merchandise or funeral services at the time of need; and

(C) Applies contract funds to the cost of funeral merchandise or funeral services selected at the time of need;

~~(11)~~~~(A)~~(14)(A) “Prearrangement” means an arrangement whereby a person, for himself or herself or on behalf of some other person, makes arrangement for funeral and burial services prior to the death of the person, without consideration and without an agreement or itemization specifying any particular service or merchandise, or the cost thereof, through the assignment or transfer, including the conditions that the assignor or transferor may choose to impose, of ownership to a licensee of an insurance policy or annuity contract, or proceeds thereof, or by the designation of a licensee as beneficiary of any such insurance policy or annuity contract.

(B) An assignment of an insurance policy or annuity or the proceeds thereof to a funeral home or the designation of a funeral home as

beneficiary as described in subdivision ~~(11)(A)~~(14)(A) of this section is not a prepaid funeral benefits contract;

~~(12)(A)~~(15)(A) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of funeral services or funeral merchandise, including without limitation caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed-upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary.

(B) "Prepaid funeral benefits contract" or "prepaid contract" includes a nonguaranteed prepaid contract and a nonspecified prepaid contract.

(C) "Prepaid funeral benefits contract" or "prepaid contract" does not include a prearrangement;

~~(13)~~(16) "Seller" means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits pursuant to this chapter;

~~(14)~~(17) "Surplus" means the funds or other property in excess of the undistributed net investment income and aggregate contract proceeds held in the trust fund; ~~and~~

(18) "Trust funding" means the depositing of contract proceeds into a trust account by a seller until such time as the funds are needed to pay for benefits specified in the prepaid funeral benefits contract; and

~~(15)~~(19) "Trustee" means a state or national bank or savings and loan association in this state, or, in the reasonable discretion of the commissioner upon the terms and conditions that he or she may require, a securities brokerage firm licensed and in good standing with appropriate state and federal regulatory authorities.

SECTION 2. Arkansas Code § 23-40-122, concerning the cancellation or transfer of a prepaid contract under the Arkansas Prepaid Funeral Benefits Law, is amended to add an additional subsection to read as follows:

(c)(1)(A) In the case of cancellations, reassignments, or transfers, a seller is entitled to retain any accrued interest income on a cash-funded prepaid funeral benefits contract that is being transferred to a substitute provider.

(B) On an insurance-funded or annuity-funded prepaid funeral benefits contract that is being transferred to a substitute provider, a seller shall be entitled to retain any accrued interest income on the policy used to fund the insurance-funded or annuity-funded prepaid funeral benefits contract from the policy inception date up to the reassignment or transfer date.

(2) A substitute provider shall be entitled to retain any accrued interest income on the funding mechanism from the completion date of the reassignment or transfer.

SECTION 3. Arkansas Code § 23-61-114 is repealed.

~~23-61-114. Annual report regarding malpractice rates.~~

~~(a) The Insurance Commissioner shall conduct an annual study of malpractice insurance rates in Arkansas and report the findings to the Legislative Council and the chairs of both the House Committee on Insurance and Commerce and the Senate Committee on Insurance and Commerce.~~

~~(b) The study shall include:~~

~~(1) Any findings regarding any changes in medical malpractice rates;~~

~~(2) Any other finding that is relevant to malpractice insurance rates; and~~

~~(3) Any recommendations in respect to any law relating to medical malpractice insurance.~~

~~(c) The report shall be submitted no later than August 1 subsequent to the year studied.~~

SECTION 4. Arkansas Code § 23-63-216(b), concerning the requirements for an insured's annual statement, is amended to read as follows:

~~(b)(1)(A) 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: an authorized insurer reporting fifty thousand dollars (\$50,000) or more in annual gross premiums shall file for each line of business written in this state a market conduct annual statement, or successor product, in the general form and context, in the time frame required by, and according to instructions provided by the National

Association of Insurance Commissioners.

(B) If a particular line of business does not have an approved market conduct annual statement form, the authorized insurer is not required to file a report for that line of business until such time as the National Association of Insurance Commissioners adopts a market conduct annual statement form for that line of business.

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

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

~~(C) An insurer reports 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 The commissioner may, for good cause, require additional filing of other market conduct functions information considered relevant grant an extension of time for filing a market conduct annual statement, if a written application for an extension of time is received at least five (5) business days before the filing due date.~~

SECTION 5. Arkansas Code § 23-63-1601 is amended to read as follows:
23-63-1601. Definitions.

As used in this subchapter:

(1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;

(2) "Alien captive insurance company" means an insurance company

formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in the alien jurisdiction;

(3) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year:

(A) The member organizations of which collectively, or which does itself:

(i) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(ii) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(B) The member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer;

(4) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies;

(5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state;

(6)(A) "Branch captive insurance company" means an alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(B) A branch captive insurance company shall be a pure captive insurance company with respect to operations in this state unless permitted by the commissioner;

(7) "Branch operations" means any business operations of a branch captive insurance company in this state;

(8) "Captive insurance company" means a producer reinsurance captive insurance company, pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this subchapter;

(9) "Commissioner" means the Insurance Commissioner;

(10) "Controlled unaffiliated business" or "controlled unaffiliated entity" means a company:

(A) That is not in the corporate system of a parent and affiliated companies;

(B) That has an existing contractual relationship with a parent or affiliated company; and

(C) Whose risks are managed by a pure captive insurance company or participant in a sponsored captive insurance company;

(11) "Department" means the State Insurance Department;

(12) "General account" means all assets and liabilities of the sponsored captive insurance company not attributable to a protected cell;

(13) "Incorporated protected cell" means a protected cell that is established as a corporation or other legal entity separate from the sponsored captive insurance company or producer reinsurance captive insurance company of which it is a part;

~~(13)(A)~~(14)(A) "Industrial insured" means an insured:

(i) That procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant;

(ii) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and

(iii) That has at least twenty-five (25) full-time employees.

(B) "Industrial insured" does not mean "industrial life insurance" as used in § 23-82-101 et seq.;

~~(14)(A)~~(15)(A) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that compose the industrial insured group and their affiliated companies.

(B) "Industrial insured captive insurance company" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;

~~(15)(A)~~(16)(A) "Industrial insured group" means a group that meets either of the following criteria:

(i) A group of industrial insureds that collectively:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(ii) A group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., or as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the Arkansas Insurance Code.

(B) "Industrial insured group" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;

~~(16)~~(17) "Member organization" means an individual, corporation, partnership, or association that belongs to an association;

~~(17)~~(18) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;

~~(18)~~(19) "Participant" means an entity as defined in § 23-63-1621 and any affiliates of that entity that are insured by a sponsored captive insurance company when the losses of the participant are limited through a participant contract to the assets of a protected cell;

~~(19)~~(20) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;

~~(20)~~(21) "Producer reinsurance captive insurance company" means a company that is wholly owned by a resident licensed insurance producer and that acts only as a reinsurer for risks written by or placed through its parent or an affiliate of its parent;

~~(21)~~(22) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one (1) participant or by a producer reinsurance captive insurance company and includes an incorporated protected cell;

~~(22)~~(23) "Pure captive insurance company" means a company that

insures risks of its parent and affiliated companies or controlled unaffiliated business;

~~(23)~~(24) “Special purpose captive insurance company” means a captive insurance company that is formed or licensed under this ~~chapter~~ subchapter and does not meet the definition of any other type of captive insurance company defined in this section;

~~(24)~~(25) “Sponsor” means an entity that meets the requirements of § 23-63-1620 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company; and

~~(25)~~(26) “Sponsored captive insurance company” means a captive insurance company:

(A) In which the minimum capital and surplus required is provided by one (1) or more sponsors;

(B) That is formed or licensed under this subchapter;

(C) That insures the risks of separate participants through the contract; and

(D) That segregates each participant’s liability through one (1) or more protected cells.

SECTION 6. Arkansas Code § 23-63-1604(a), concerning unimpaired paid-in capital requirements, is amended to read as follows:

(a)(1) The Insurance Commissioner ~~may not~~ shall not issue a license to a producer reinsurance captive insurance company, pure captive insurance company, sponsored captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer unless the company possesses and maintains unimpaired paid-in capital of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred thousand dollars (\$100,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than four hundred thousand dollars (\$400,000);

(D) In the case of an industrial insured captive insurance

company incorporated as a stock insurer, not less than two hundred thousand dollars (\$200,000);

(E) In the case of a sponsored captive insurance company, not less than ~~five hundred thousand dollars (\$500,000)~~ two hundred fifty thousand dollars (\$250,000); or

(F) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

SECTION 7. Arkansas Code § 23-63-1605(a), concerning the unimpaired surplus requirements for a captive insurance company license, is amended to read as follows:

(a)(1) The Insurance Commissioner ~~may not~~ shall not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars (\$150,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than three hundred fifty thousand dollars (\$350,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than three hundred thousand dollars (\$300,000);

(E) In the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars (\$750,000);

(F) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than five hundred thousand dollars (\$500,000);

(G) In the case of a sponsored captive insurance company, not less than ~~five hundred thousand dollars (\$500,000)~~ two hundred fifty thousand dollars (\$250,000); and

(H) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The surplus may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

SECTION 8. Arkansas Code § 23-63-1606(f), concerning the privileges and regulation of captive insurers, is amended to read as follows:

(f)(1) A captive insurance company formed under this subchapter has the privileges of and is subject to the business organization law of this state and is subject to this subchapter.

(2) If a conflict occurs between business organization law and this subchapter, the latter controls.

(3)(A) The Arkansas Insurance Code concerning mergers, consolidations, ~~conversions~~, mutualizations, and redomestications applies in determining the procedures to be followed by a captive insurance company in carrying out any of those transactions.

(B) The commissioner may, upon request of an insurer that is a party to a merger authorized under subdivision (f)(3)(A) of this section, waive certain applicable requirements to the merger transaction.

(C) A conversion may be accomplished under a reasonable plan and procedure as may be approved by the commissioner and according to rules that the commissioner may promulgate.

(D) The commissioner may waive or modify the requirements

for public notice and hearing ~~in accordance with rules that the commissioner may promulgate addressing categories of transactions.~~

~~(C)~~(E) If a notice of public hearing is required but no one requests a hearing, the commissioner may cancel the hearing.

(F) An alien insurer may be a party to a merger authorized under subdivision (f)(3)(A) of this section if the requirements for a merger between a captive insurance company and a foreign insurer under this chapter apply to the merger transaction.

SECTION 9. Arkansas Code § 23-63-1607(b), concerning the reporting requirements for captive insurers, is amended to read as follows:

(b)(1) Before March 1 of each year, or within an extension of time if, upon good cause shown, has been granted by the commissioner, a captive insurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a captive insurance company shall report using generally accepted accounting principles unless the commissioner approves the use of statutory accounting principles.

(B) The commissioner may require, approve, or accept appropriate modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, supplemented by additional information.

(3)(A) Unless provided otherwise, an association captive insurance company and an industrial insured group shall file their reports in the form required by § 23-63-216(a).

(B) The commissioner shall prescribe by regulation the forms in which producer reinsurance captive insurance companies, pure captive insurance companies, and industrial insured captive insurance companies shall report.

SECTION 10. Arkansas Code § 23-63-1610, concerning investments of captive insurance companies, is amended to add additional subsections to read as follows:

(d) Notwithstanding the provisions of § 23-63-1620, the assets of two (2) or more protected cells may be combined for purposes of investment, and the combination does not defeat the segregation of such assets for accounting

or other purposes.

(e)(1) Sponsored captive insurance companies shall comply with the investment requirements contained in § 23-63-801 et seq., as applicable.

(2) However, compliance with the investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed under § 23-63-1611 or to the extent otherwise deemed reasonable and appropriate by the commissioner.

(f) Unless the commissioner requires or finds another method of valuation that is not inconsistent with the valuation method promulgated by the National Association of Insurance Commissioners and is reasonable under the circumstances, the valuation procedures established by the National Association of Insurance Commissioners shall apply to sponsored captive insurance companies except to the extent the valuation procedures are inconsistent with approved accounting standards in use by the company.

(g) Notwithstanding any other provision of this subchapter, the commissioner may approve the use of alternative reliable methods of valuation and rating.

SECTION 11. Arkansas Code § 23-63-1615(b)(1), concerning the promulgation of regulations to establish standards for captive insurance companies, is amended to read as follows:

(b)(1) The commissioner may promulgate ~~regulations~~ rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company or participant in a sponsored captive insurance company.

SECTION 12. Arkansas Code § 23-63-1616, concerning the limitation of the applicability of the Arkansas Insurance Code on captive insurers, is amended to add additional subsections to read as follows:

(c) In addition to this subchapter, the following provisions of the Arkansas Insurance Code and applicable rules apply to a risk retention group formed under the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., and subject to this subchapter:

(1) Section 23-61-201 et seq., and the Arkansas Credit for Reinsurance Law, § 23-62-301 et seq., referring to the commissioner;

- (2) The Reinsurance Intermediary Act, § 23-62-401 et seq.;
- (3) Section 23-63-212 and § 23-63-213, referring to certificates of authority;
- (4) Section 23-63-216(e) and the Property and Casualty Actuarial Opinion Law, § 23-63-1901 et seq., referring to actuarial opinions;
- (5) The Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and § 23-69-129, referring to dividends to stockholders;
- (6) Section 23-63-601 et seq., referring to financial reporting standards;
- (7) Section 23-63-701, referring to limits of risk;
- (8) Section 23-63-801 et seq., referring to investments;
- (9) The Business Transacted with Producer Controlled Property and Casualty Insurer Act, § 23-63-1101 et seq., referring to producer controlled business;
- (10) With the exception of § 23-63-1304(f) and § 23-63-1311, the Risk-Based Capital Act, § 23-63-1301 et seq., referring to risk-based capital;
- (11) Section § 23-64-201 et seq., and the Producer Licensing Model Act, § 23-64-501 et seq., referring to licensure;
- (12) The Managing General Agents Act, § 23-64-401 et seq., referring to managing general agents; and
- (13) Section 23-68-101 et seq., and § 23-69-138, referring to impairment of capital or assets.
- (d) If subsection (c) of this section is in conflict with this subchapter, subsection (c) of this section controls.
- (e) Except as provided in this subchapter, the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., applies to a risk retention group formed as a captive insurer.
- (f) In determining whether to take regulatory action under § 23-63-1304 – 1307, the commissioner may consider the adequacy of documentation evidencing the sound financial condition of the risk retention group’s members or sponsoring organizations and intent to financially support the risk retention group, including:
- (1)(A) A minimum of three (3) years of audited financial statements of the member or sponsor and one (1) year of projected financial information.

(B) The projected financial information required in subdivision (f)(1)(A) of this section shall include:

(i) An investment grade rating from a nationally recognized statistical rating organization or A.M. Best rating of A- or better;

(ii) Equity equal to or greater than one hundred million dollars (\$100,000,000); and

(iii) Equity equal to or greater than ten (10) times the risk retention group's largest net retained per occurrence limit; and

(2)(A) Policyholder qualification as an industrial insured in this state or the policyholder's home state, depending upon which state has the more stringent requirements.

(B) If the home state of the policyholder does not have an industrial insured exemption or its equivalent, the policyholder shall qualify under the industrial requirement of this state.

SECTION 13. Arkansas Code § 23-63-1619 is repealed.

~~23-63-1619. Conversions and mergers.~~

~~(a) A captive insurance company may be converted to or merged with and into another captive insurance company according to a plan and this section.~~

~~(b) A plan for conversion or merger:~~

~~(1) Must be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and~~

~~(2) Shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder or a dissenting policyholder under § 4-26-1011.~~

~~(c) In the case of a conversion authorized under subsection (a) of this section:~~

~~(1) The conversion must be accomplished under a reasonable plan and procedure as may be approved by the Insurance Commissioner;~~

~~(2) The commissioner may not approve the plan of conversion, unless the plan:~~

~~(A) Satisfies subsection (b) of this section;~~

~~(B)(i) Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.~~

~~(ii)(a) The commissioner may waive or modify the requirements for the hearing.~~

~~(b) If a notice of hearing is required but no hearing is requested, the commissioner may cancel the hearing.~~

~~(C) Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests in the stock or mutual insurer; and~~

~~(D) Is approved:~~

~~(i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or~~

~~(ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;~~

~~(3) The commissioner shall approve the plan of conversion, if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards stated in § 23-63-1606(d);~~

~~(4) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney in fact;~~

~~(5) Upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and~~

~~(6) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease.~~

~~(d) A merger authorized under subsection (a) of this section must be accomplished substantially in accordance with the Arkansas Insurance Code. For purposes of the merger:~~

~~(1) The plan or merger shall satisfy subsection (b) of this section;~~

~~(2) The subscribers' advisory committee of a reciprocal insurer~~

~~must be equivalent to the board of directors of a stock or mutual insurance company;~~

~~(3) The subscribers of a reciprocal insurer must be the equivalent to the policyholders of a mutual insurance company;~~

~~(4) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are deemed to be the president and secretary of the committee;~~

~~(5)(A) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards stated in § 23-63-1606(d).~~

~~(B) If the commissioner approves the articles of merger, the commissioner shall endorse the articles;~~

~~(6)(A) Notwithstanding § 23-63-1604, the commissioner may permit the formation without surplus of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section.~~

~~(B) There may be no more than one (1) authorized insurance company surviving the merger; and~~

~~(7)(A) An alien insurer may be a party to a merger authorized under subsection (a) of this section, if the requirements for the merger between a domestic and a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., apply to a merger between a domestic and an alien insurer under this subsection.~~

~~(B) The alien insurer must be treated as a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and other jurisdictions must be the equivalent of a state for purposes of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.~~

~~(e) A conversion or merger under this section has all the effects of a conversion or merger under the Arkansas Insurance Code, to the extent these effects are not inconsistent with this subchapter.~~

SECTION 14. Arkansas Code § 23-63-1620 is amended to read as follows:

23-63-1620. ~~Sponsorship requirements~~ Sponsored captive insurance company - Requirements.

(a) One (1) or more sponsors may form a sponsored captive insurance

company under this subchapter.

(b)(1) A sponsor of a sponsored captive insurance company ~~must be~~ may be any person approved by the Insurance Commissioner, in his or her discretion, based on a determination that the approval of the person as a sponsor is consistent with the purposes of this section.

~~(1)(2) An insurer licensed under the laws of any state In evaluating the qualifications of a proposed sponsor, the commissioner shall consider:~~

(A) The type and structure of the proposed sponsor entity;

(B) The experience in financial operations of the proposed sponsor entity;

(C) The financial stability and strength of the proposed sponsor entity;

(D) The business reputation of the proposed sponsor entity; and

(E) Other facts the commissioner deems relevant.

~~(2) A reinsurer authorized or approved under the laws of any state;~~

~~(3) A captive insurance company formed or licensed under this subchapter; or~~

~~(4) Any other corporation, if approved by the Insurance Commissioner, in a manner to be prescribed by regulation.~~

(c) In addition to the information required by § 23-63-1602, each applicant-sponsored captive insurance company shall file with the commissioner the following:

(1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report the experience to the commissioner;

(2) A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or his or her designee;

(3) All contracts or sample contracts between the sponsored captive insurance company and any participants; and

(4) Evidence that expenses shall be allocated to each protected

cell in a fair and equitable manner.

(d) In his or her discretion, the commissioner may require that the business written by a sponsored captive insurance company, with respect to each protected cell, be ~~fronted by an insurance company licensed under the laws of any state.~~

(1) Fronted by an insurance company licensed under the laws of any state;

(2) Reinsured by a reinsurer authorized or approved by the commissioner; or

(3)(A) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner.

(B) The commissioner may require the sponsored captive insurance company to increase the funding of any security arrangement established under subdivision (d)(3)(A) of this section.

(C) If the form of security is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the commissioner.

(D) A trust maintained under subdivision (d)(3)(A) of this section shall be established in a form and upon the terms approved by the commissioner.

~~(d)~~(e) A risk retention group may not shall not be either a sponsor or a participant of a sponsored captive insurance company.

~~(e)~~(f) A sponsored captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;

(2) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors provided for in the participant contract or required by the commissioner;

(3) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive

insurance company may conduct;

(4) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

(5)(A) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval.

(B) In no event may the commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(6)(A) All attributions of assets and liabilities to the protected cells and the general account shall be according to the plan of operation approved by the commissioner.

(B) Other attribution of assets or liabilities shall not be made by a sponsored captive insurance company between its general account and a protected cell or between protected cells.

(C) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to the protected cell.

(D) The performance under the reinsurance contract and any tax benefits, losses, refunds, or credits allocated under a tax allocation agreement to which the sponsored captive insurance company is a party, including any payments made by or due to be made to the sponsored captive insurance company under the terms of the agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to the protected cell;

(7) A sponsored captive insurance company shall file annually all the financial reports the commissioner requires, which shall include, ~~but are not limited to,~~ without limitation accounting statements detailing the financial experience of each protected cell;

~~(7)~~(8) A sponsored captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations; and

~~(8)(A)~~(9)(A) No participant contract shall take effect without the commissioner's prior written approval.

(B) The addition of each new protected cell and the withdrawal of any participant of any existing protected cell constitute a change in the business plan requiring the commissioner's prior written approval.

~~(f)~~(g) A protected cell of a sponsored captive insurance company may be formed as an incorporated protected cell subject to subsection ~~(e)~~(f) of this section and the following conditions:

(1)(A) Subject to the prior written approval of the sponsored captive insurance company and of the commissioner, an incorporated protected cell may enter into contracts and undertake obligations in its own name and for its own account.

(B) In the case of a contract or obligation to which the sponsored captive insurance company is not a party, either in its own name and for its own account or on behalf of a protected cell, the counterparty to the contract or obligation does not have a right or recourse against the sponsored captive insurance company and its assets other than against assets properly attributable to the incorporated protected cell that is a party to the contract or obligation;

(2)(A) The articles of incorporation or articles of organization of an incorporated protected cell shall refer to the sponsored captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the sponsored captive insurance company's license.

(B) A copy of the prior written approval of the commissioner to add the incorporated protected cell shall be attached to and filed with the articles of incorporation or the articles of organization; and

(3) An incorporated protected cell shall have its own distinct name or designation, which shall include the words "Incorporated Cell".

~~(g)~~~~(1)~~(h)(1) A protected cell of a sponsored captive insurance company may be converted into an incorporated protected cell subject to the following conditions:

(A) Subject to the prior written approval of the commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, a sponsored captive insurance company may convert a protected cell into an incorporated protected cell without

affecting the protected cell's assets, rights, benefits, obligations, and liabilities; and

(B) ~~Any such~~ The conversion shall be deemed:

(i) For all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as an incorporated protected cell of the sponsored captive insurance company; and

(ii) To occur without any transfer or assignment of ~~any such~~ assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, ~~any such~~ assets, rights, benefits, obligations, and liabilities.

(i) A protected cell of a sponsored captive insurance company may be sold, transferred, or assigned subject to the following conditions:

(1) Subject to the prior written approval of the commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell, or as otherwise permitted under a participation agreement, or with the consent of the affected incorporated protected cell, a sponsored captive insurance company may sell, transfer, assign, and otherwise convey a protected cell or incorporated protected cell together with all of the protected cell's assets, rights, benefits, obligations, and liabilities to a new or existing sponsored captive insurance company, under a plan of operation that is approved by the commissioner;

(2) The sale, transfer, assignment, or conveyance is a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as a protected cell of the transferee; and

(3) The sale, transfer, assignment, or conveyance shall not be construed to limit any rights or protections applicable to the transferred protected cell or incorporated protected cell and the transferor sponsored captive insurance company that existed immediately before the sale, transfer, assignment, or conveyance.

(j) A protected cell of a sponsored captive insurance company may be converted to a new entity subject to the following conditions:

(1) Subject to the prior written approval of the commissioner, on application of the sponsor and with the prior consent of each participant in the affected protected cells or as otherwise permitted under a

participation agreement and the consent of each affected incorporated protected cell, a sponsored captive insurance company may convert one (1) or more protected cells or incorporated protected cells into a:

- (A) Single protected cell or incorporated protected cell;
- (B) New sponsored captive insurance company;
- (C) New pure captive insurance company;
- (D) New risk retention group;
- (E) New industrial insured captive insurance company; or
- (F) New association captive insurance company;

(2)(A) The conversion shall be subject to this section as well as to a plan of operation approved by the commissioner, without affecting any protected cell's or incorporated protected cell's assets, rights, benefits, obligations, and liabilities.

(B) The conversion is a continuation of each protected cell's or incorporated protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as a new protected cell or incorporated protected cell, a licensed sponsored captive insurance company, a pure captive insurance company, a risk retention group, an industrial insured captive insurance company, or an association captive insurance company, as applicable.

(C) The conversion shall occur without any transfer or assignment of assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, assets, rights, benefits, obligations, and liabilities; and

(3) The conversion shall not be construed to limit any rights or protections applicable to any converted protected cell or incorporated protected cell and the sponsored captive insurance company, as applicable, that existed immediately before the date of the conversion.

(k)(1) Upon an order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company under this subsection.

(2) In connection with the conservation, rehabilitation, or liquidation of a sponsored captive insurance company, the assets and liabilities of a protected cell shall at all times be kept separate from, and shall not be commingled with, those of other protected cells and the

sponsored captive insurance company.

(3) The assets of a protected cell shall not be used to pay any expenses or claims other than those attributable to the protected cell.

(4)(A) Unless the sponsor consents and the commissioner has granted prior written approval, the assets of the sponsored captive insurance company's general account shall not be used to pay any expenses or claims attributable solely to a protected cell of the sponsored captive insurance company.

(B) If the assets of the sponsored captive insurance company's general account are used to pay expenses or claims attributable solely to a protected cell of the sponsored captive insurance company, the sponsor is not required to contribute additional capital and surplus to the sponsored captive insurance company's general account, notwithstanding the provisions of §§ 23-63-1604 and 23-63-1605.

(5) A sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

(6) In the event of the insolvency of a sponsored captive insurance company in which the commissioner determines that one (1) or more protected cells remain solvent, the commissioner may separate the cells from the sponsored captive insurance company and, on application of the sponsor, may allow for the conversion of the protected cells into one (1) or more new or existing sponsored captive insurance companies, or one (1) or more other captive insurance companies, under a plan of operation approved by the commissioner.

(1)(1)(A) A creditor of a sponsored captive insurance company shall have recourse against the assets attributable to a protected cell only if it is a creditor of the protected cell.

(B) A creditor of a protected cell shall not be entitled to recourse against the assets attributable to another protected cell or to the assets in the sponsored captive insurance company's general account.

(2) When a sponsored captive insurance company has an obligation to a creditor arising from a transaction or otherwise imposed with respect to a protected cell, the obligation shall:

(A) Extend only to the assets attributable to that protected cell, and the creditor shall be entitled to recourse only against

the assets attributable to that protected cell; and

(B) Not extend to the assets of another protected cell or to the assets in the sponsored captive insurance company's general account, and the creditor shall not be entitled to recourse against the assets attributable to another protected cell or to the assets of the sponsored captive insurance company's general account.

(3) When an obligation of a sponsored captive insurance company relates solely to its general account, a creditor shall have recourse only against the assets in the general account.

(4) The establishment of one (1) or more protected cells alone, and without more, shall not constitute or be deemed to be a fraudulent conveyance, an intent by the sponsored captive insurance company to defraud creditors, or the carrying out of business by the sponsored captive insurance company for any other fraudulent purpose.

~~(2)(A)(m)~~ It is the intent of the General Assembly under this section to provide sponsored captive insurance companies with the option to establish one (1) or more protected cells as a separate legal entity.

~~(B)(n)~~ This section does not limit any rights or protections applicable to protected cells that are not established as separate legal entities.

SECTION 15. Arkansas Code § 23-63-1621(d), concerning a participant in a sponsored captive insurance company, is amended to read as follows:

(d) A participant shall not insure ~~only its own~~ any risks ~~through a sponsored captive insurance company~~ other than its own, its affiliated entities, or of controlled unaffiliated entities.

SECTION 16. Arkansas Code Title 23, Chapter 63, is amended to add an additional subchapter to read as follows:

Subchapter 20 – Corporate Governance Annual Disclosure Act

23-63-2001. Title.

This subchapter shall be known and may be cited as the “Corporate Governance Annual Disclosure Act”.

23-63-2002. Purpose – Intent.

(a) The purpose of this subchapter is to:

(1) Provide the Insurance Commissioner a summary of the corporate governance structure, policies, and practices of an insurer or insurance group to allow the commissioner an opportunity to gain and maintain a better understanding of the corporate governance framework of an insurer operating in this state;

(2) Outline the requirements for completing a corporate governance annual disclosure; and

(3) Provide assurance for the confidential treatment of the corporate governance annual disclosure and related information due to the confidential and sensitive information it will reveal as it relates to the internal operations and proprietary and trade secret information of an insurer or insurance group which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(b) It is the intent of the General Assembly that this subchapter:

(1) Shall not be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law;

(2) Shall not be construed to limit the commissioner's authority or the rights or obligations under § 23-61-201 et seq.; and

(3) Applies to an insurer domiciled in this state.

23-63-2003. Definitions.

As used in this subchapter:

(1) "Corporate governance annual disclosure" means a confidential report filed by an insurer or insurance group made according to this subchapter;

(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;

(3)(A) "Insurer" means a person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(B) "Insurer" does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; and

(4) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and every legal entity.

23-63-2004. Submission of corporate governance annual disclosure to Insurance Commissioner required.

(a)(1) On or before June 1 of each calendar year, an insurer, or the insurance group of which the insurer is a member, shall submit a corporate governance annual disclosure to the Insurance Commissioner.

(2) The corporate governance annual disclosure required under subdivision (a)(1) of this section shall contain the information described in § 23-63-2005.

(3) Notwithstanding any request from the commissioner made under subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall submit according to the laws of the lead state the corporate governance annual disclosure required under this section to the commissioner or regulator of the lead state for the insurance group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) A corporate governance annual disclosure shall include the signature of the chief executive officer or corporate secretary of the insurer or insurance group attesting that to the best of that individual's belief and knowledge the insurer has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the insurer's board of directors or the appropriate committee.

(c) An insurer that is not required to submit a corporate governance annual disclosure under this section shall do so upon the request of the commissioner.

(d)(1) For purposes of completing the corporate governance annual disclosure, an insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

(2) The insurer or insurance group is encouraged to make the corporate governance annual disclosure filing at the level that:

(A) The insurer's or insurance group's risk appetite is determined;

(B) The earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively, and at which the supervision of those factors is coordinated and exercised; or

(C) Legal liability for failure of general corporate governance duties would be placed.

(3) When the insurer or insurance group determines the level of reporting based on the criteria described under subdivision (d)(2) of this section, the insurer or insurance group shall indicate which of the three (3) criteria described under subdivision (d)(2) of this section was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(e) The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(f) An insurer that provides information substantially similar to the information required by this subchapter in other documents that are submitted to the commissioner, including without limitation proxy statements filed in conjunction with Form B requirements or other state or federal filings that are provided to the State Insurance Department, shall not be required to duplicate that information in the corporate governance annual disclosure but is required to document and cross reference the document that the relevant information is included with the corporate governance annual disclosure.

23-63-2005. Corporate governance annual disclosure.

(a)(1) The insurer or insurance group shall have discretion over the responses to the corporate governance annual disclosure inquiries or questions if the corporate governance annual disclosure contains the material information necessary to permit the Insurance Commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices.

(2) The commissioner may request additional information that he

or she deems material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system, or controls implementing those policies.

(b) Notwithstanding subsection (a) of this section, the corporate governance annual disclosure shall be prepared consistent with any rule promulgated under § 23-63-2010.

(c) Documentation and supporting information shall be maintained and made available upon examination or upon request of the commissioner.

23-63-2006. Confidentiality.

(a) Documents, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the State Insurance Department and obtained by, created by, or disclosed to the Insurance Commissioner or any other person under this subchapter, is recognized by this state as being proprietary and containing trade secrets.

(b)(1) The information required under subsection (a) of this section:

(A) Is confidential by law and privileged and is not subject to:

(i) Public disclosure;

(ii) Subpoena; and

(iii) Discovery; and

(B) Is not admissible in evidence in any private civil action.

(2) The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(3) The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(c) This section does not require written consent of the insurer before the commissioner may share or receive confidential documents, materials, or other corporate governance annual disclosure-related information under subsection (e) of this section to assist in the performance of the commissioner's regular duties.

(d) The commissioner or any person who receives documents, materials, or other corporate governance annual disclosure-related information, through

examination or otherwise, while acting under the authority of the commissioner, or with whom such documents, materials, or other information is shared under this subchapter shall not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (b)(2) of this section.

(e) In order to assist in the performance of the commissioner's regulatory duties, the commissioner may:

(1)(A) Upon request, share documents, materials, or other corporate governance annual disclosure-related information including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials, with:

(i) Other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in § 23-63-531;

(ii) The National Association of Insurance Commissioners; and

(iii) Third party consultants under § 23-63-2007.

(B) In order to obtain information under subdivision (e)(1)(A) of this section, the recipient agrees in writing to maintain the confidentiality and privileged status of the corporate governance annual disclosure-related documents, material, or other information and has verified in writing the legal authority to maintain confidentiality; and

(2)(A) Receive documents, materials, or other corporate governance annual disclosure-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from:

(i) Regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in § 23-63-531; and

(ii) The National Association of Insurance Commissioners.

(B) In order to obtain information under subdivision (e)(2)(A) of this section, the commissioner shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the

jurisdiction that is the source of the document, material, or information.

(f) The sharing of information and documents by the commissioner under this subchapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this subchapter.

(g) A waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other corporate governance annual disclosure-related information shall not occur as a result of disclosure of any corporate governance annual disclosure-related information or documents to the commissioner under this section or as a result of sharing as authorized under this subchapter.

23-63-2007. Third-party consultants.

(a) The Insurance Commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff, as may be reasonably necessary to assist the commissioner in reviewing the corporate governance annual disclosure and related information or the insurer's compliance with this subchapter.

(b) A person retained under subsection (a) of this section shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(c) The National Association of Insurance Commissioners and third-party consultants shall be subject to the same confidentiality standards and requirements as the commissioner.

(d) As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that it:

(1) Is free of a conflict of interest;

(2) Has internal procedures in place to monitor compliance with a conflict of interest; and

(3) Shall comply with the confidentiality standards and requirements of this subchapter.

(e) A written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided under this subchapter shall contain the following provisions and require the written consent of the insurer before making

public any information provided under this subchapter:

(1) Specific procedures and protocols for maintaining the confidentiality and security of corporate governance annual disclosure-related information shared with the National Association of Insurance Commissioners or the third-party consultant under this subchapter;

(2)(A) Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers.

(B) The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the corporate governance annual disclosure-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(3) A provision specifying that ownership of the corporate governance annual disclosure-related information shared with the National Association of Insurance Commissioners or the third-party consultant remains with the State Insurance Department and that the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner;

(4) A provision that prohibits the National Association of Insurance Commissioners or the third-party consultant from storing the information shared under this subchapter in a permanent database after the underlying analysis is complete;

(5) A provision requiring the National Association of Insurance Commissioners or the third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's corporate governance annual disclosure-related information; and

(6) A requirement that the National Association of Insurance Commissioners or the third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or the third-party consultant may be required to disclose confidential information about the insurer that has been shared with the National Association of Insurance Commissioners or the third-party consultant under this subchapter.

23-63-2008. Penalties.

(a) An insurer failing, without just cause, to timely file the corporate governance annual disclosure as required under this subchapter shall be required, after notice and hearing, to pay a penalty of one hundred dollars (\$100) for each day's delay, payable to the Insurance Commissioner, and the penalty recovered shall be paid into the General Revenue Fund Account of the State Apportionment Fund.

(b) The maximum penalty under subsection (a) of this section is ten thousand dollars (\$10,000).

(c) The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

23-63-2009. Nonseverability clause.

(a) Except for § 23-63-2007 or the application of § 23-63-2007 to any person or circumstance, if any provision of this subchapter is held invalid, the determination shall not affect the provisions of this subchapter that can be given effect without the invalid provision or application.

(b) With the exception of § 23-63-2007, this subchapter is severable.

23-63-2010. Rules.

(a)(1) The Insurance Commissioner shall promulgate rules necessary to implement this subchapter.

(2)(A) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The commissioner shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

SECTION 17. Arkansas Code § 23-64-219(a), concerning the procedure to appoint an agent by an insurer, is amended to read as follows:

(a)(1)(A) Each insurer appointing an agent in this state shall file with the Insurance Commissioner the initial agent appointment ~~setting out the kinds of insurance to be transacted by the agent~~ and pay the fee.

(B) The appointment means the notification filed with the commissioner that an insurer has established an agency relationship with a producer.

(2) The appointing insurer's appointment of an agent shall be an indication to the commissioner that the insurer has reviewed the agent's *background and fitness to be an agent.*

*SECTION 18. Arkansas Code § 23-65-306 is amended to read as follows:
23-65-306. Brokers' affidavits reports.*

(a) At the time of the procuring of surplus lines insurance in this state, when this state is considered the home state of the insured, the surplus lines broker shall file a report with the Insurance Commissioner within sixty (60) days following the end of the calendar quarter stating the facts referenced in §§ 23-65-313 and 23-65-314 and any additional information the commissioner shall require.

~~*(1) Execute an affidavit on a form prescribed by the Insurance Commissioner;*~~

~~*(2) Provide any information that the commissioner shall require;*~~

~~*(3) State facts referred to in §§ 23-65-313 and 23-65-314; and*~~

~~*(4) File the affidavit with the commissioner within sixty (60) days following the end of the month in which the insurance was procured.*~~

(b) ~~Affidavits or reports~~ Reports filed under this section are not subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires otherwise.

SECTION 19. Arkansas Code § 23-65-315(a), regarding the timing of remittance of premium taxes by a surplus lines broker, is amended as follows:

(a) No later than sixty (60) days following the end of the ~~month~~ calendar quarter in which surplus lines insurance was procured, the surplus lines broker shall remit to the Treasurer of State through the Insurance Commissioner a tax of four percent (4%) on the direct premiums written, less return premiums and exclusive of sums collected to cover state or federal taxes, on surplus lines insurance subject to tax transacted by the surplus

lines broker during the preceding ~~months as shown by his or her affidavit filed with the commissioner~~ calendar quarter for the privilege of transacting business as a surplus lines broker in this state.

SECTION 20. Arkansas Code § 23-69-149(a), concerning assumption reinsurance agreements by stock insurers, is amended to read as follows:

(a)(1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of assumption reinsurance.

(2) However, ~~no~~ an agreement shall not become effective unless filed with the Insurance Commissioner and approved by him or her in writing ~~after a hearing thereon.~~

(3) With regard to proposed transactions between a domestic stock insurer which is a subsidiary or affiliate of a depository institution, and another insurer, the ~~hearing shall be concluded and the order determination of the commissioner shall be~~ issued within the period required by federal law, ~~and the order shall be final upon entry.~~

SECTION 21. Arkansas Code § 23-73-104, regarding the Insurance Code provisions applicable to farmers' mutual aid companies and associations, is amended as follows:

(15) Section 23-63-201 et seq., authority to do business.

SECTION 22. Arkansas Code § 23-79-101 is amended to read as follows:
23-79-101. Definitions.

As used in this ~~section and §§ 23-79-102—23-79-128, 23-79-131—23-79-134, and 23-79-202—23-79-210~~ chapter:

(1) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

(A) Benefits not subject to requirements, including without limitation:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general

liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance; and

(vii) Other similar insurance coverage, specified in

regulations, under which benefits for medical care are secondary or

incidental to other insurance benefits;

(B) Limited-scope dental or vision benefits;

(C) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(D) Coverage only for a specified disease or illness;

(E) Hospital indemnity or other fixed indemnity insurance;

and

(F) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act, 42 U.S.C. § 1395ss(g)(1), coverage supplemental to the coverage provided under 10 U.S.C. § 1071 et seq., and similar supplemental coverage;

(2) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers made a part thereof; and

~~(2)~~(3)(A) "Premium" is the consideration for insurance, by whatever name called.

(B) Any assessment, or any membership, policy, survey, inspection, service, or similar fee or charge in consideration for a policy is deemed part of the premium.

SECTION 23. Arkansas Code Title 23, Chapter 79, Subchapter 1, is amended to add an additional section to read as follows:

23-79-162. Excepted benefits.

Excepted benefits are not subject to the requirements of this subchapter regarding coverage of a specific person, provider, treatment, service, condition, or disease unless that coverage is required by law.

/s/Rapert

APPROVED: 3/20/19