

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Bookout**

A Bill

SENATE BILL 534

For An Act To Be Entitled

8 "AN ACT AS TO PREMIUM RATES AND RENEWABILITY OF COVERAGE
9 FOR HEALTH INSURANCE SOLD TO SMALL GROUPS; AND FOR OTHER
10 PURPOSES."

11
12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. Purpose.

15 The intent of this Act is to promote the availability of health
16 insurance coverage to small employers, to prevent abusive rating practices, to
17 require disclosure of rating practices to purchasers, to establish rules for
18 continuity of coverage for employers and covered individuals, and to improve
19 the efficiency and fairness of the small group health insurance marketplace.

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21 SECTION 2. Definitions.

22 (A) "Small employer" means any person, firm, corporation, partnership
23 or association actively engaged in business who, on at least fifty percent
24 (50%) of its working days during the preceding year, employed no more than
25 twenty-five (25) eligible employees. In determining the number of eligible
26 employees, companies which are affiliated companies or which are eligible to
27 file a combined tax return for purposes of state taxation shall be considered
28 one employer.

29 (B) "Carrier" means any person who provides health insurance in this
30 state. For the purposes of this Act, carrier includes a licensed insurance
31 company, a prepaid hospital or medical service plan, a health maintenance
32 organization, a multiple employer welfare arrangement or any other person
33 providing a plan of health insurance subject to state insurance regulation.

34 (C) "Health benefit plan" or "Plan" means any hospital or medical

1 expense incurred policy or certificate, hospital or medical service plan
2 contract, or health maintenance organization subscriber contract. Health
3 benefit plan does not include accident-only, credit, dental or disability
4 income insurance; coverage issued as a supplement to liability insurance;
5 worker's compensation or similar insurance; or automobile medical-payment
6 insurance.

7 (D) "Small employer carrier" means any carrier which offers health
8 benefit plans covering the employees of a small employer.

9 (E) "Case characteristics" means demographic or other relevant
10 characteristics of a small employer, as determined by a small employer
11 carrier, which are considered by the carrier in the determination of premium
12 rates for the small employer. Claim experience, health status and duration of
13 coverage since issue are not case characteristics for the purposes of this
14 Act.

15 (F) "Commissioner" means the commissioner of insurance.

16 (G) "Department" means the Department of Insurance.

17 (H) "Base premium rate" means, for each class of business as to a
18 rating period, the lowest premium rate charged or which could have been
19 charged under a rating system for that class of business, by the small
20 employer carrier to small employers with similar case characteristics for
21 health benefit plans with the same or similar coverage.

22 (I) "New business premium rate" means for each class of business as to
23 a rating period, the premium rate charged or offered by the small employer
24 carrier to small employers with similar case characteristics for newly issued
25 health benefit plans with the same or similar coverage.

26 (J) "Index rate" means, for each class of business for small employers
27 with similar case characteristics the arithmetic average of the applicable
28 base premium rate and the corresponding highest premium rate.

29 (K) "Class of business" means all or a distinct grouping of small
30 employers as shown on the records of the small employer carrier.

31 (1) A distinct grouping may only be established by the small employer
32 carrier on the basis that the applicable health benefit plans:

33 (a) Are marketed and sold through individuals and organizations which
34 are not participating in the marketing or sale of other distinct groupings of
35 small employers for such small employer carrier;

1 (b) Have been acquired from another small employer carrier as a
2 distinct grouping of plans;

3 (c) Are provided through an association with membership of not less
4 than two (2) or more small employers which has been formed for purposes other
5 than obtaining insurance; or

6 (d) Are in a class of business that meets the requirements for
7 exception to the restrictions related to premium rates provided in
8 subparagraph (A) (1) (a) of section 4 of this Act.

9 (2) A small employer carrier may establish no more than two (2)
10 additional groupings under each of the subparagraphs in subdivision (1) of
11 this subsection on the basis of underwriting criteria which are expected to
12 produce substantial variation in the health care costs.

13 (3) The commissioner may approve the establishment of additional
14 distinct groupings upon application to the commissioner and a finding by the
15 commissioner that such action would enhance the efficiency and fairness of the
16 small employer insurance marketplace.

17 (L) "Actuarial certification" means a written statement by a member of
18 the American Academy of Actuaries or other individuals acceptable to the
19 commissioner that a small employer carrier is in compliance with the
20 provisions of section 4 of this Act based upon the person's examination,
21 including a review of the appropriate records and of the actuarial assumptions
22 and methods utilized by the carrier in establishing premium rates for
23 applicable health benefit plans.

24 (M) "Rating period" means the calendar period for which premium rates
25 established by a small employer carrier are assumed to be in effect, as
26 determined by the small employer carrier.

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28 SECTION 3. Health Insurance Plans Subject to this Act.

29 (A) Except as provided in subsection (B) of this section, the
30 provisions of this Act apply to any health benefit plan which provided
31 coverage to one or more employees of a small employer.

32 (B) The provisions of this Act shall not apply to individual health
33 insurance policies which are subject to policy form and premium rate approval
34 as provided in Ark. Code Ann. §23-79-109 and §§23-85-101, et seq.

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1 SECTION 4. Restrictions Relating to Premium Rates.

2 (A) Premium rates for health benefit plans subject to this Act shall be
3 subject to the following provisions:

4 (1) The index rate for a rating period for any class of business shall
5 not exceed the index rate for any other class of business by more than twenty
6 percent (20%). This subdivision shall not apply to a class of business if all
7 of the following apply:

8 (a) The class of business is one for which the carrier does not reject,
9 and never has rejected, small employers included within the definition of
10 employers eligible for the class of business or otherwise eligible employees
11 and dependents who enroll on a timely basis, based upon their claim experience
12 or health status;

13 (b) The carrier does not involuntarily transfer, and never has
14 involuntarily transferred, a health benefit plan into or out of the class of
15 business; and

16 (c) The class of business is currently available for purchase.

17 (2) For a class of business, the premium rates charged during a rating
18 period to small employers with similar case characteristics for the same or
19 similar coverage, or the rates which could be charged to such employers under
20 the rating system for that class of business, shall not vary for the index
21 rate by more than twenty-five percent (25%) of the index rate.

22 (3) The percentage increase in the premium rate charged to a small
23 employer for a new rating period may not exceed the sum of the following:

24 (a) The percentage change in the new business premium rate measured
25 from the first day of the prior rating period to the first day of the new
26 rating period. In the case of a class of business for which the small
27 employer carrier is not issuing new policies, the carrier shall use the
28 percentage change in the base premium rate; and

29 (b) An adjustment, not to exceed fifteen percent (15%) annually and
30 adjusted pro rata for rating periods of less than one year, due to the claim
31 experience, health status or duration of coverage of the employees or
32 dependents of the small employer as determined from the carrier's rate manual
33 for the class of business; and

34 (c) Any adjustment due to change in coverage or change in the case
35 characteristics of the small employer as determined from the carrier's rate

1 manual for the class of business.

2 (4) In the case of health benefit plans issued prior to the effective
3 date of this Act, a premium rate for a rating period may exceed the ranges
4 described in subsection (A) (1) or (2) of this section for a period of five (5)
5 years following the effective date of this Act. In such case, the percentage
6 increase in the premium rate charged to a small employer in such a class of
7 business for a new rating period may not exceed the sum of the following:

8 (a) The percentage change in the new business premium rate measured
9 from the first day of the prior rating period to the first day of the new
10 rating period. In the case of a class of business for which the small
11 employer carrier is not issuing new policies, the carrier shall use the
12 percentage change in the base premium rate; and

13 (b) Any adjustment due to change in coverage or change in the case
14 characteristics of the small employer as determined from the carrier's rate
15 manual for the class of business.

16 (B) Nothing in this section is intended to affect the use by a small
17 employer carrier of legitimate rating factors other than claim experience,
18 health status or duration of coverage in the determination of premium rates.
19 Small employer carriers shall apply rating factors, including case
20 characteristics, consistently with respect to all small employers in a class
21 of business.

22 (C) A small employer carrier shall not involuntarily transfer a small
23 employer into or out of a class of business. A small employer carrier shall
24 not offer to transfer a small employer into or out of a class of business
25 unless such offer is made to transfer all small employers in the class of
26 business without regard to case characteristics, claim experience, health
27 status or duration since issue.

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29 SECTION 5. Provisions on Renewability of Coverage.

30 (A) Except as provided in subsection (B) of this section, a health
31 benefit plan subject to this Act shall be renewable to all eligible employees
32 and dependents at the option of the small employer, except for the following
33 reasons:

34 (1) Nonpayment of required premiums;

35 (2) Fraud or misrepresentation of the small employer; or with respect

1 to coverage of an insured individual, fraud or misrepresentation by the
2 insured individual or such individual's representative;

3 (3) Noncompliance with plan provisions;

4 (4) The number of individuals covered under the plan is less than the
5 number or percentage of eligible individuals required by percentage
6 requirements under the plan; or

7 (5) The small employer is no longer actively engaged in the business in
8 which it was engaged on the effective date of the plan.

9 (B) A small employer carrier may cease to renew all plans under a class
10 of business. The carrier shall provide notice to all affected health benefit
11 plans and to the commissioner in each state in which an affected insured
12 individual is known to reside at least ninety (90) days prior to termination
13 of coverage. Any carrier which exercises its right to cease to renew all
14 plans in a class of business shall not:

15 (1) Establish a new class of business for a period of five (5) years
16 after the nonrenewal of the plans without prior approval of the commissioner;
17 or

18 (2) Transfer or otherwise provide coverage to any of the employers from
19 the nonrenewed class of business unless the carrier offers to transfer or
20 provide coverage to all affected employers and eligible employees and
21 dependents without regard to case characteristics, claim experience, health
22 status or duration of coverage.

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24 SECTION 6. Disclosure of Rating Practices and Renewability Provisions.

25 Each small employer carrier shall make reasonable disclosure in solicitation
26 and sales materials provided to small employers of the following:

27 (A) The extent to which premium rates for specific small employers are
28 established or adjusted due to the claim experience, health status or duration
29 of coverage of the small employer's employees or their dependents;

30 (B) The provisions concerning the carrier's right to change premium
31 rates and the factors, including case characteristics, which affect changes in
32 premium rates;

33 (C) A description of the class of business in which the small employer
34 is or will be included, including the applicable grouping of plans; and

35 (D) The provisions relating to renewability of coverage.

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SECTION 7. Maintenance of Records.

(A) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(B) Each small employer carrier shall file each March 1 with the commissioner an actuarial certification that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. A copy of such certification shall be retained by the carrier at its principal place of business.

(C) A small employer carrier shall make the information and documentation described in subsection (A) of this section available to the commissioner upon request. The information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside of the department except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

SECTION 8. Discretion of the Commissioner. The commissioner may suspend all or any part of section 4 of this Act as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

SECTION 9. Effective Date. The provisions of this Act shall apply to each health benefit plan for a small employer that is delivered, issued for delivery, renewed, or continued in this State after the effective date of this Act. For purposes of this section, the date a plan is continued is the first rating period which commences after January 1, 1992.

SECTION 10. Chapter 92 of Title 23 of the Arkansas Code of 1987;

1 Annotated; is hereby amended to add a new subchapter 3 to read as follows:

2 "23-92-301. Short Title. This subchapter shall be known and may be
3 cited as the 'Arkansas Employee Leasing Act.'

4 23-92-302. Definitions. As used in this subchapter, unless the context
5 otherwise requires:

6 (1) 'Commissioner' means the Insurance Commissioner of the State of
7 Arkansas;

8 (2) 'Employee leasing arrangement' means an arrangement, under contract
9 or otherwise, whereby one person (the 'employee leasing firm') assigns
10 employees to perform services for another person (the 'recipient') whereby:

11 (a) the arrangement is intended to be, or is, on-going rather
12 than temporary in nature,
13 and

14 (b) employer responsibilities, including the right of direction
15 and control of the employees, are shared by the employee leasing firm and
16 the recipient.

17 The term 'employee leasing arrangement' shall not include services performed
18 by 'temporary employees' or by persons determined to be independent
19 contractors with respect to the recipient.

20 (3) 'Employee leasing firm' means any person engaged in providing the
21 services of employees pursuant to one or more employee leasing arrangements;

22 (4) 'Temporary employee' means a person employed either through another
23 person or directly by an employer to support or supplement the existing work
24 force in special situations such as employee absences, temporary skill
25 shortages, seasonal workloads, and special assignments and projects with the
26 expectation that the worker's position will be terminated upon the completion
27 of the task or function.

28 23-92-303. Commissioner - Powers and duties.

29 The Commissioner shall have authority to prescribe such rules and
30 regulations for the conduct of the business of employee leasing firms as may
31 be deemed necessary to carry out the provisions of this subchapter. These
32 rules shall have the force and effect of law and shall be enforced by the
33 commissioner in the same manner as the provisions of this subchapter.

34 Adoption of rules and regulations pursuant to this subsection shall be carried
35 out in compliance with the Arkansas Administrative Procedures Act, §§25-15-

1 201, et seq.

2 23-92-304. Exemptions. The provisions of this subchapter do not apply
3 to:

4 (a) A labor organization; or

5 (b) Any political subdivision of this state or the United States, and
6 any program or agency thereof.

7 23-92-305. License - Penalties.

8 (a) (1) No person shall engage in the business of or act as any class
9 of employee leasing firm unless he first obtains a license from the
10 commissioner.

11 (2) Two or more, but not more than five, employee leasing firms that are
12 corporations which are majority owned by the same ultimate parent, entity or
13 persons may be licensed as an employee leasing firm group. An employee
14 leasing firm group may satisfy the reporting and financial assurance
15 requirements of this act on a consolidated basis. As a condition of licensing
16 as an employee leasing firm group, each company that is a member of the group
17 shall guarantee payment of all financial obligations with respect to wages,
18 employment taxes and employee benefits of each other member of the group. For
19 the purposes of this Act, unless otherwise stated, the term 'employee leasing
20 firm' shall also mean and refer to an 'employee leasing firm group'.

21 (b) (1) Any person who shall engage in the business of or act as an
22 employee leasing firm without first procuring a license or otherwise violates
23 the provisions of this subchapter or any rules or regulations promulgated by
24 the commissioner pursuant to this subchapter shall be liable for a civil
25 penalty for each such offense of not less than two hundred and fifty dollars
26 (\$250) nor more than five thousand dollars (\$5,000).

27 (2) In addition to the penalties described in subdivision (b) (1) of
28 this section, the commissioner shall have the statutory power to enjoin or
29 restrain any person who engages in the business of or acts as an employee
30 leasing firm without having first procured a license for so engaging or
31 acting.

32 23-92-306. License - Application.

33 Every applicant for an initial employee leasing firm license and every
34 applicant for a renewal license shall file with the commissioner a completed
35 application on a form prescribed and furnished by the commissioner.

1 23-92-307. *Employee leasing firm license - Financial Assurances required.*

2 (a) *Every application for issuance or renewal of a license as a class or*
3 *classes of employee leasing firm pursuant to the provisions of this subchapter*
4 *shall be accompanied by a surety bond issued by a corporate surety in the*
5 *amount of fifty thousand dollars (\$50,000).*

6 (1) *The terms and conditions of the bond shall be approved by the*
7 *commissioner.*

8 (2) *The bond shall be conditioned that the licensee and each member,*
9 *employee, shareholder, commissioner, or officer of a person, firm,*
10 *partnership, corporation or association operating as agent of the licensee*
11 *will not violate the provisions of this subchapter or violate rules,*
12 *regulations, or orders lawfully promulgated by the commissioner pursuant to*
13 *this subchapter or fail to pay any wages due under any contract made by the*
14 *licensee in the conduct of its business subject to this subchapter.*

15 (3) *The bond shall secure the performance of a employee leasing firm's*
16 *responsibilities to its leased employees for payment of wages.*

17 (4) *The bond required by this Section shall be a surety bond issued by a*
18 *corporate surety authorized to do business in the State of Arkansas. In lieu*
19 *of the surety bond, the employee leasing firm may deposit in a depository*
20 *designated by the commissioner securities with marketable value equivalent to*
21 *the amount required for a surety bond. The securities so deposited shall*
22 *include authorization to the commissioner to sell any such securities in an*
23 *amount sufficient to pay any amounts secured by the bond or securities.*

24 (b) (1) *If any person shall be aggrieved by the misconduct of any*
25 *licensee, that person may maintain an action in his own name upon the bond of*
26 *the employee leasing firm in any court of competent jurisdiction or in the*
27 *Circuit Court of Pulaski County.*

28 (2) *All claims shall be assignable, and the assignee shall be entitled to*
29 *the same remedies upon the bond of the licensee as the person aggrieved would*
30 *have been entitled to if the claim had not been assigned.*

31 (3) *Any claim so assigned may be enforced in the name of the assignee.*
32 *Any remedies given by this section shall not be exclusive of any other remedy*
33 *which would otherwise exist.*

34 (c) *Action on the bond required by this section may be maintained by the*
35 *commissioner in the name of the state in any court of competent jurisdiction,*

1 or in the Circuit Court of Pulaski County, for the benefit of any person or
2 persons aggrieved by the misconduct of the licensee.

3 (d) If any licensee fails to file a new bond with the commissioner
4 within thirty (30) days after notice of cancellation by the surety of the bond
5 required by this section, the license issued to the principal under the bond
6 is suspended until such time as a new surety bond is filed with and approved
7 by the commissioner. A person whose license is suspended pursuant to this
8 section shall not carry on the business of an employee leasing firm during the
9 period of the suspension.

10 (e) In lieu of the bond requirement otherwise set forth in Section 6(a)
11 above, an employee leasing firm may provide a financial statement prepared by
12 an independent certified public accountant in accordance with generally
13 accepted accounting principles as of a date within the six (6) months prior to
14 the date of application or renewal, which statement shows a minimum net worth
15 of at least one hundred thousand dollars (\$100,000);

16 (f) In addition to the bond requirement otherwise set forth in Arkansas
17 Code §23-92-307(a)(1), or alternatively, the financial assurance requirement
18 set forth in Arkansas Code §23-92-307(e) above, an employee leasing firm shall
19 submit to the commissioner within sixty (60) days at the end of each calendar
20 quarter, the last day of which the employee leasing firm was subject to the
21 provisions of this act, a certification by an independent certified public
22 accountant to the effect that for such quarter all applicable wages and
23 payroll taxes otherwise due have been paid on a timely basis.

24 23-92-308. Investigation of applicant by commissioner.

25 An application for a license shall be rejected by the commissioner if it
26 is found that any person named in the license application is not of good moral
27 character, business integrity, or financial responsibility or there is a good
28 and sufficient reason within the meaning and purpose of this subchapter for
29 rejecting the application.

30 23-92-309. License Fees.

31 An applicant shall pay as an annual fee for a license a sum to be
32 established by the commissioner, but not to exceed five thousand dollars
33 (\$5,000) per year.

34 23-92-310. Restricted out of state Certificate and Reciprocity.

35 The commissioner by regulation may prescribe rules allowing employee

1 leasing firms domiciled in other states to obtain a restricted license for
2 limited operations within the state and to grant licenses by reciprocity.

3 23-92-311. Renewal of license.

4 Every license issued pursuant to this subchapter shall remain in force
5 for one (1) year from the date of issue, unless the license has been revoked
6 pursuant to the provisions of this subchapter. The commissioner shall
7 prescribe regulations setting forth the procedures for renewal of the license.

8 23-92-312. Issuance, refusal, suspension, or revocation of license -
9 Grounds.

10 (a) The commissioner shall issue a license as an employee leasing firm
11 to any person who qualifies for the license under the terms of this
12 subchapter.

13 (b) The commissioner may, in addition, refuse to issue a license to any
14 person or may suspend or revoke the license of any employee leasing firm or
15 impose administrative fines as provided for in §23-92-305, when the
16 commissioner finds that licensee or applicant has violated any of the
17 provisions of this subchapter, the rules and regulations or other orders
18 lawfully promulgated by the commissioner, the conditions of financial
19 assurances required by §23-92-307, has engaged in a fraudulent, deceptive, or
20 dishonest practice; or, for good and sufficient cause, finds the licensee or
21 applicant unfit to be an employee leasing firm within the meaning of this
22 subchapter or of any of the rules and regulations or orders lawfully
23 promulgated by the commissioner.

24 23-92-313. Refusal, suspension, or revocation of license - Notice and
25 hearing.

26 The commissioner may not refuse to issue a license or suspend or revoke a
27 license unless it furnishes the person, employee leasing firm with a written
28 statement of the charges against him and affords him an opportunity to be
29 heard on the charges.

30 23-92-314. Deceptive practices.

31 The commissioner may prescribe, by regulation, those acts or omissions
32 which shall be deemed to constitute deceptive practices under this Act.

33 23-92-315. Licensed Employee Leasing Firms. A licensed employee leasing
34 firm shall be deemed an employer of its leased employees and shall perform the
35 following employer responsibilities in conformity with all applicable federal

1 and state laws and regulations:

2 (a) Pay wages and collect, report and pay employment taxes from its own
3 accounts;

4 (b) Pay unemployment taxes as required by Title 11, Chapter 10 of the
5 Arkansas Code;

6 (c) Ensure that all of its employees are covered by worker's
7 compensation insurance provided in conformance with the laws of this state.
8 Such coverage may be provided through a policy or plan maintained by either
9 the employee leasing firm or the client;

10 (d) Be entitled and entitle the client, together as joint employers, to
11 the exclusivity of the remedy set forth in Arkansas Code §11-9-105, under both
12 the workers compensation and employers liability provisions of a workers
13 compensation policy or plan that either party has secured within the meaning
14 of Arkansas Code §11-9-105.;

15 (e) Not be vicariously liable for the liabilities of the client,
16 whether contractual or otherwise; provided that the client shall not be
17 vicariously liable for the liabilities of the employee leasing firm, whether
18 contractual or otherwise. Nothing herein shall limit any direct contractual
19 liability or any joint liability between the client and the employee leasing
20 firm.

21 (f) Sponsor and maintain employee benefit and welfare plans for its
22 leased employees, provided that such plans, if limited to the employees of the
23 employee leasing firm, shall not be deemed to be multiple employer plans or
24 trusts within the meaning of applicable law. Nothing herein shall require an
25 employee leasing firm to provide comparable benefits to employees located at
26 different worksites."

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28 SECTION 11. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

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32 SECTION 12. All laws and parts of laws in conflict with this Act are
33 hereby repealed.

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/s/Bookout

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