

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 339

By: Senator Rapert
By: Representative Wren

For An Act To Be Entitled

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S GENERAL OMNIBUS BILL; TO REVISE THE REQUIREMENTS OF THE INSURANCE COMMISSIONER'S ANNUAL REPORT; TO AMEND THE PROCEDURE FOR EXAMINATION EXPENSES; TO CLARIFY THE PROCEDURE FOR ISSUANCE OF A CHARITABLE ANNUITY PERMIT; TO ALLOW THE TREASURER OF AN INSURER TO VERIFY AN ANNUAL STATEMENT; TO CLARIFY REQUIREMENTS FOR A MARKET CONDUCT ANNUAL STATEMENT; TO AMEND DEFINITIONS IN THE INSURANCE HOLDING COMPANY REGULATORY ACT; TO CLARIFY WHO CAN VOID AN INSURANCE CONTRACT MADE BY A NONADMITTED INSURER; TO AMEND REQUIREMENTS FOR FOREIGN AND ALIEN SURPLUS LINES INSURERS; TO AMEND THE DEFINITION OF A FRAUDULENT INSURANCE ACT; TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO REPORT APPOINTMENT TERMINATIONS; TO REVISE THE APPLICABILITY OF CERTAIN LAWS TO TITLE INSURANCE; TO REVISE THE REQUIREMENTS FOR A LIFE SETTLEMENT LICENSE; TO MAKE A TECHNICAL CORRECTION TO A SECTION HEADING; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE STATE INSURANCE DEPARTMENT'S
GENERAL OMNIBUS BILL.

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



SECTION 1. Arkansas Code § 23-61-112 is amended to read as follows:
 23-61-112. Annual report.

As early in the calendar year as reasonably possible, the Insurance Commissioner annually shall prepare and deliver a report to the Governor showing, with respect to the preceding calendar year:

(1) Names of the authorized insurers transacting insurance in this state, with ~~such a~~ a summary of their financial statements ~~as that~~ that the commissioner ~~deems~~ considers proper;

(2) Names of admitted insurers ~~whose businesses were that~~ closed during the year or entered liquidation, ~~the cause thereof,~~ a concise statement concerning the cause for each proceeding, and the amount of assets and liabilities as ascertainable;

~~(3) Names of insurers against which delinquency or similar proceedings were instituted and a concise statement of the facts with respect to each proceeding;~~

~~(4)~~ The total receipts and expenses of the State Insurance Department for the year;

~~(5) Recommendations of the commissioner as to amendments or supplementation of laws affecting insurance and as to matters affecting the department; and~~

~~(6)~~ (4) ~~Such other~~ Other pertinent information and matters ~~as~~ the commissioner ~~deems~~ considers proper; and

(b) If the information required under subsection (a) of this section is contained on the state or the department's website under § 25-19-108 or the Arkansas Financial Transparency Act, § 25-1-401 et seq., the report may refer to the web address where the information is located.

SECTION 2. Arkansas Code § 23-61-206(a), concerning payment of examination expenses, is amended to read as follows:

(a)(1) Each person ~~se~~ examined shall pay to the State Insurance Department the actual travel expenses, reasonable living expense allowance, and compensation for examiners and other persons assisting in the examination ~~on a basis not to exceed the total of the Geographical Expense Reimbursement Plan set forth in~~ according to the examination guidance section in the most current edition of the ~~applicable~~ Examiners' Handbook adopted by the National Association of Insurance Commissioners, ~~upon presentation of a detailed~~

~~account of the charges and expenses.~~

(2) Except as provided in subdivision (a)(1) of this section, the cost of independent professionals used as examiners to assist in an examination under subsection (b) of this section is paid directly by the person examined.

SECTION 3. Arkansas Code § 23-63-201(d)(1)(B), concerning a charitable annuity permit, is amended to read as follows:

(B) The permit ~~shall authorize~~ authorizes the corporation or association to receive gifts of money or other assets of monetary value that the commissioner may authorize for ~~conditioned upon, or in return for,~~ its agreement to pay an annuity to the donor or ~~his or her~~ the donor's nominee and to ~~make and~~ carry out the annuity agreement.

SECTION 4. Arkansas Code § 23-63-216(a)(8)(A), concerning the verification of annual statements, is amended to read as follows:

(8)(A) The National Association of Insurance Commissioners' annual statement convention blank shall be verified by the oath of the insurer's president or vice president and secretary, treasurer, or actuary, as applicable or, if a reciprocal insurer, by ~~the oath of~~ its attorney in fact or if a corporation, its like officers ~~if a corporation.~~

SECTION 5. Arkansas Code § 23-63-216(b), concerning market conduct annual statements, is amended to read as follows:

(b)(1) In addition to the information required by subsection (a) of this section, a market conduct annual statement shall be filed, when applicable, with the commissioner~~+, if:~~

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

(B) A life and annuity insurers reporting insurer reports seven million dollars (\$7,000,000) or more in individual life insurance premiums or ~~group life or individual~~ annuity gross premiums. ~~shall submit the following information by the date prescribed by the commissioner:~~

- ~~(1) Policies and procedures regarding the handling of claims;~~
- ~~(2) Any complaints received during the covered period and the~~

~~nature and disposition of those complaints; and~~

~~(3)(2) Any other market conduct functions the commissioner considers relevant~~ After review of the market conduct annual statement, the commissioner may require additional filing of other market conduct functions information considered relevant.

SECTION 6. Arkansas Code § 23-63-503(1) and (2), concerning definitions in the Insurance Holding Company Regulatory Act, are amended to read as follows:

(1) “Affiliate” of, or person “affiliated” with a specific person, means a person that directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person specified;

- ~~(A) Controls the person named;~~
- ~~(B) Is controlled by the person named; or~~
- ~~(C) Is under common control with the person named;~~

(2)(A) “Control” or “controlling” means ~~to have~~ the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, unless the power is due to an official position or corporate office:

- (i) Through the ownership of voting securities;
- (ii) By contract other than a commercial contract for goods or nonmanagement services; or
- (iii) Otherwise.

(B)(i) Control is presumed to exist if a person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person.

(ii) This presumption may be rebutted by a showing that control does not exist in fact.

(C) After furnishing notice to the persons and the opportunity to be heard, the Insurance Commissioner may determine that control exists in fact, notwithstanding the absence of a presumption to that effect;

SECTION 7. Arkansas Code § 23-65-303(b), concerning nonadmitted

insurers, is amended to read as follows:

(b) A contract of insurance carried out by an unauthorized insurer in violation of this subchapter is voidable at the instance of the ~~insurer~~ insured.

SECTION 8. Arkansas Code § 23-65-310(b)(2)(F), concerning foreign and alien surplus lines insurers, is amended to read as follows:

(F)(i) An insurer that does not maintain on deposit ~~pursuant to~~ under § 23-63-901 et seq. eligible securities having a market value at all times of ~~not less than~~ at least one hundred thousand dollars (\$100,000) conditioned on the payment of creditors or obligees of the insurer in this state and the prompt payment of all claims arising and accruing to any persons during the term of the securities under a policy issued by the insurer.

(ii) This subdivision (b)(2)(F) does not apply to foreign and alien surplus lines insurers as of July 21, 2011, if the requirements of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203, as it existed on January 1, 2013, are met.

SECTION 9. Arkansas Code § 23-65-310(c), concerning surplus lines insurers, is amended to read as follows:

~~(c)(1)(A) Annually on or before March 1 or within any extension of time that the commissioner for good cause may have granted, each foreign and alien surplus lines insurer on the approved list maintained by the commissioner shall file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.~~

~~(B) The statement shall be in a general form and context, as required or not disapproved by the commissioner and as supplemented as required by the commissioner.~~

~~(C)(i) The statement shall be verified with an oath by the president or vice president of the insurer.~~

~~(ii) The statement of an alien insurer shall be verified by the United States manager or other officer of the alien insurer authorized to make an oath and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to the alien insurer's affairs~~

~~throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.~~

~~(2) The commissioner may waive the requirement under this subsection for verification under oath.~~

~~(3)(A) The insurer shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency.~~

~~(B) If the insurer fails to file its report on or before the due date, the penalty shall be collected by the commissioner, if necessary, by a civil suit brought by the commissioner in the Pulaski County Circuit Court. The commissioner may waive the penalty upon a showing by the insurer of good cause for its failure to file its report on or before the date due.~~

~~(4) At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.~~

~~(5) Upon receipt of a written request received from the commissioner, an insurer shall promptly furnish to the commissioner information with respect to concerning its transactions or affairs.~~

SECTION 10. Arkansas Code § 23-66-501(4), concerning the definition of a "fraudulent insurance act", is amended to add an additional subdivision to read as follows:

(J) Falsely holds himself, herself, or itself out as a representative of an insurance company or assists another in furtherance of that misrepresentation to receive a benefit under an insurance claim, contract, or policy.

SECTION 11. Arkansas Code § 23-76-104(a), concerning laws applicable to health maintenance organizations, is amended to add an additional subdivision to read as follows:

(16) Section 23-64-515, referring to notice of termination of appointment.

SECTION 12. Arkansas Code § 23-79-102 is amended to read as follows:
23-79-102. Scope.

~~This section and §§ Sections~~ 23-79-101, 23-79-103 – 23-79-107, 23-79-109 – 23-79-128, 23-79-131 – 23-79-134, and 23-79-202 – 23-79-210 ~~shall do~~

not apply as to:

(1) Reinsurance;

(2)(A) Policies or contracts not issued for delivery in this state nor delivered in this state, except:

~~(i) upon~~ On subjects of insurance, other than life or accident and health insurance, located or to be performed in this state; and

~~(ii) except as provided in Pursuant to § 23-79-109(e), approval of forms for delivery in jurisdictions where local approval not provided for.~~

(B) Subdivision (2)(A) of this section ~~shall~~ does not apply to group insurance certificates issued under group insurance policies ~~effectuated~~ carried out and delivered outside this state but covering ~~persons~~ a person that is a resident in this state;

(3) Wet marine and foreign trade insurance; and

(4) Title insurance, except that the following ~~provisions shall~~ apply to this line: Sections 23-79-101(1), 23-79-109, 23-79-110, 23-79-111, 23-79-113, 23-79-116, 23-79-118, 23-79-119, ~~23-79-202, and 23-79-205~~ and 23-79-202 – 23-79-205.

SECTION 13. Arkansas Code § 23-81-804(b), concerning life settlement agreements, is amended to read as follows:

~~(b)(1) Before the commissioner denies a license application or suspends, revokes, or refuses to renew the license of any licensee under this subchapter, the commissioner shall conduct a hearing in accordance with this state's laws governing administrative hearings under § 23-61-301 et seq. and the Arkansas Administrative Procedure Act, § 25-15-201 et seq. The~~ commissioner may deny a license application or suspend, revoke, or refuse to renew a license of a licensee for the licensee's failure to comply with this subchapter.

(2) A proceeding under this subsection is subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 14. Arkansas Code § 23-81-811(g)(2), concerning the general rules for life settlements, is repealed.

~~(2) The notice shall be accompanied by the documents required by § 23-81-810(a)(2).~~

SECTION 15. The catchline for Arkansas Code § 23-89-213 is amended to read as follows:

23-89-213. ~~Premium delinquencies~~ Proof of insurance.