

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

State of Arkansas
93rd General Assembly
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As Engrossed: H2/25/21
A Bill

HOUSE BILL 1238

By: Representative Lowery

By: Senators M. Pitsch, J. Hendren

For An Act To Be Entitled

AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT'S GENERAL OMNIBUS; TO MODIFY THE SELF-INSURED FIDELITY BOND PROGRAM; TO REPEAL THE FEES PAYABLE BY AN INACTIVE AGENT; TO MODIFY THE ACCEPTABLE METHODS BY WHICH AN INSURER MAY MAKE A PAYMENT; TO MODIFY THE LICENSING AND REGULATION OF CAPTIVE INSURERS; TO MODIFY THE INTENT OF THE CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT; TO MODIFY THE EXCEPTIONS TO THE SURPLUS LINES INSURANCE LAW; TO MODIFY THE FILING REQUIREMENTS FOR AN AGREEMENT OF MERGER OR CONSOLIDATION OR PLAN OF EXCHANGE OF SHARES OF A CORPORATION UNDER THE ARKANSAS INSURANCE CODE; TO CLARIFY THE APPLICATION OF THE ARKANSAS INSURANCE CODE TO A STIPULATED PREMIUM PLAN INSURER; TO CLARIFY THE APPLICATION OF THE ARKANSAS INSURANCE CODE TO A MUTUAL ASSESSMENT LIFE AND DISABILITY INSURER; TO CLARIFY THE APPLICATION OF THE ARKANSAS INSURANCE CODE TO A FARMERS' MUTUAL AID COMPANY OR ASSOCIATION; TO CLARIFY THE APPLICATION OF THE ARKANSAS INSURANCE CODE TO FRATERNAL BENEFIT SOCIETIES; TO CLARIFY THE APPLICATION OF THE ARKANSAS INSURANCE CODE TO HOSPITAL SERVICE CORPORATIONS AND MEDICAL SERVICE CORPORATIONS; TO REPEAL THE PROTECTION AGAINST INSOLVENCY OF A HEALTH MAINTENANCE ORGANIZATION; TO MODIFY THE METHOD OF SETTLING CLAIMS UNDER THE MODEL ACT FOR THE REGULATION OF CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE; TO MODIFY THE REGISTRATION OR LICENSURE REQUIREMENTS FOR A MULTIPLE



EMPLOYER TRUST OR MULTIPLE EMPLOYER WELFARE
ARRANGEMENT; 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 § 21-2-701 is amended to read as follows:
21-2-701. Purpose.

It is found and determined that:

(1) The State of Arkansas and the counties, municipalities, and school districts of the State of Arkansas are expending large sums of money each year for premiums on blanket bonds for officers and employees;

(2) Considerable savings might be effected by the establishment of a self-insured fidelity bond program for any fraudulent or dishonest act committed by any state officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees;

(3) This subchapter is designed to establish a governmental bonding board to develop a self-insured fidelity bond program for ~~those officials and employees~~ participating government entities; and

(4) This subchapter is designed to provide that self-insured fidelity bonds would be in lieu of the various fidelity blanket bonds ~~which~~ that are presently required under this chapter for various officials and employees and to thereby effectuate substantial savings in the cost of fidelity blanket bonds for those officials and employees.

SECTION 2. Arkansas Code § 21-2-702 is amended to read as follows:
21-2-702. Definitions.

As used in this subchapter:

(1) "Audit" or "audit report" means an audit or other statutorily allowed financial examination of the books and records;

(2) "Commissioner" means the Insurance Commissioner;

(3) "County" means the county or counties of the State of Arkansas;

(4) "County public official" or "county public employee" means any elected officer of the counties and the employees or deputies of any elected officer, members of the quorum court, and the members of the various county boards and commissions, excluding officials and employees of county hospitals, county nursing homes, and conservation and improvement districts;

(5)(A) "Fidelity bond" means coverage for actual loss of value sustained as defined in subdivisions (6), (10), and (13) of this section, that is incurred as a result of any fraudulent or dishonest act, whether or not the result of a single act or series of acts committed against a participating government entity by officials or employees.

(B) "Fidelity bond" includes a fidelity blanket bond;

(6) "Money" means currency, coins, and bank notes in current use and having a face value and travelers' checks, register checks, and money orders held for sale to the general public;

~~(6)~~(7) "Municipal" or "municipality" means the municipalities of the State of Arkansas;

~~(7)~~(8) "Municipal public official" or "municipal public employee" means any elected officer of the municipalities and the employees or deputies of any elected officer, specifically including salaried municipal employees of municipally owned utilities, members of the city council, including the mayor, and the members of the various municipal boards and commissions, but excluding officials and employees of municipal hospitals, nursing homes, and improvement districts;

~~(8)~~(9) "Participating governmental entity" means those organizations defined in ~~subdivisions (3), (6), (10), and (13)~~ subdivisions (3), (7), (11), and (14) of this section;

~~(9)~~(10) "Property other than money and securities" means any tangible property, other than money and securities, that has intrinsic value;

~~(10)~~(11) "School district" means the school districts and open-enrollment public charter schools of the State of Arkansas;

~~(11)~~(12) "School district public official" or "school district public employee" means all school district salaried officials and salaried school district employees, whether elected or appointed, and the members of

local school boards of directors;

~~(12)~~(13) “Securities” means negotiable and nonnegotiable instruments or contracts representing either money or other property and includes:

(A) Tokens, tickets, and revenue and other stamps in current use whether represented by actual stamps or unused value in a meter; and

(B) Evidences of debt, other than money, issued in connection with credit or charge cards;

~~(13)~~(14) “State” means the State of Arkansas;

~~(14)~~(15) “State officers and employees” means all elected and appointed salaried officials of the state and their salaried state employees, the salaried officials and salaried employees of all state boards and commissions, members of the General Assembly, and nonsalaried appointed members of the various state boards and commissions; and

~~(15)~~(16) “State public official” or “state public employee” means any elected or appointed salaried officer of the State of Arkansas and the salaried governmental employees of that elected or appointed officer, members of the General Assembly, and the nonsalaried members of the various state boards and commissions.

SECTION 3. Arkansas Code § 21-2-703 is amended to read as follows:

21-2-703. Coverage in lieu of statutory fidelity bonds.

(a)(1) The fidelity bond coverage provided under this subchapter shall be in lieu of all statutorily required fidelity bonds for any fraudulent or dishonest act committed by the various public officers, officials, and employees of a participating government entity participating in the Self-Insured Fidelity Bond Program.

(2) The various laws specifically requiring ~~surety~~ fidelity bonds or fidelity blanket bonds for the respective public officials, officers, and employees shall not be applicable so long as the fidelity bonds as provided in this subchapter are in effect covering the officials, officers, and employees.

(b) In the event coverage ~~shall cease~~ ceases to be provided for any ~~or~~ all of the fraudulent or dishonest acts committed by any public officials, officers, or employees pursuant to this subchapter, the laws currently in

effect providing for ~~surety~~ fidelity bonds or fidelity blanket bonds shall again become applicable to the public officials, officers, and employees.

SECTION 4. Arkansas Code § 21-2-704(a), concerning the establishment of the Self-Insured Fidelity Bond Program, is amended to read as follows:

(a) There is established a the Self-Insured Fidelity Bond Program for a fraudulent or dishonest act committed by any state officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees, to be administered by the Governmental Bonding Board.

SECTION 5. Arkansas Code § 21-2-706 is amended to read as follows:
21-2-706. Administration.

It ~~shall be~~ is the responsibility of the Governmental Bonding Board to develop and administer the Self-Insured Fidelity Bond Program ~~for state officers and employees, state public officials and public employees, and county, municipal, and school district public officials and public employees.~~

SECTION 6. Arkansas Code § 21-2-708(a), concerning notice and proof of loss under the Self-Insured Fidelity Bond Program, is amended to read as follows:

(a) The Legislative Auditor, with the approval of the Legislative Joint Auditing Committee, shall give notice and make proof of loss to the Governmental Bonding Board under the Self-Insured Fidelity Bond Program on behalf of a ~~public official, officer, or employee~~ participating governmental entity when the audit of the records of the ~~public official, officer, or employee~~ participating governmental entity reflects unauthorized disbursements or unaccounted-for funds or property for which the public official, officer, or employee may be liable.

SECTION 7. Arkansas Code § 21-2-709(b)(1), concerning the assignment of rights to the Self-Insured Fidelity Bond Program, is amended to read as follows:

(b)(1)(A) Before any loss payment is paid from the fund, the recipient of the loss payment shall sign and return a transfer of rights form assigning to the ~~fund~~ program to the extent of the loss payment all rights and claims

that the recipient may have against the official, officer, or employee involved.

(B) The ~~fund~~ program shall be subrogated to all of the rights of the recipients of the loss payment to the extent of the loss payment.

SECTION 8. Arkansas Code § 21-2-710(a), concerning billing certification under the Self-Insured Fidelity Bond Program, is amended to read as follows:

(a) The Governmental Bonding Board, with the assistance of the State Insurance Department, shall prepare a billing certification to be remitted to the:

(1)(A) Department of Finance and Administration. Upon receipt of ~~this~~ the billing certification, the Secretary of the Department of Finance and Administration shall pay ~~it~~ the billing certification from funds specifically appropriated for ~~it~~ the billing certification by the General Assembly or from other funds available ~~therefor~~ to pay for the billing certification.

(B) Funds ~~so~~ appropriated for premiums for fidelity bonds for state public officials and employees and state officers and employees or funds otherwise made available for this purpose shall not be subject to reduction as a result of any shortfall of projected revenues; and

(2) Chief Fiscal Officer of the State, who shall pay ~~it~~ the billing certification from funds withheld from the:

(A) County Aid Fund ~~which~~ that are due each county participating in the Self-Insured Fidelity Bond Program for premiums for fidelity bonds for county public officials and employees;

(B) Municipal Aid Fund ~~which~~ that are due each municipality participating in the program for premiums for fidelity bonds for municipal public officials and employees; and

(C) Public School Fund ~~which~~ that are due each school district participating in the program for premiums for fidelity bonds for school district officials and employees.

SECTION 9. Arkansas Code § 23-61-707 is repealed.

~~23-61-707. Fees payable by agents on inactive license status.~~

~~(a) Effective on and after July 1, 1999, the Insurance Commissioner shall collect in advance the following fees and miscellaneous charges:~~

- ~~(1) Facsimile copies, per page
\$0.50~~
- ~~(2) Hard copy printout of one microfiche page
1.00~~
- ~~(3) Electronic copies, per page
..... 0.25~~

~~(b) The commissioner shall deposit all such fees required by this section directly into the State Insurance Department Trust Fund as special revenues.~~

SECTION 10. Arkansas Code § 23-63-107 is amended to read as follows:
23-63-107. Prompt processing of payment by insurer.

(a) ~~No~~ An insurer shall not intentionally or unreasonably delay, for more than three (3) business days after presentment for collection, the processing of any properly executed and endorsed check, ~~or~~ draft, or electronic funds transfer issued in settlement of an insurance claim.

(b) It is the intent of the General Assembly that ~~insureds or claimants shall~~ an insured or a claimant be paid ~~their~~ the insured's or the claimant's settlement proceeds at the earliest possible time.

(c) Any insurer violating this section shall pay the insured or the claimant a penalty of two hundred dollars (\$200) or fifteen percent (15%) of the face amount of the check, ~~or~~ draft, or electronic funds transfer, whichever is higher.

SECTION 11. Arkansas Code § 23-63-1601(8), concerning the definition of "captive insurance company" used in the licensing and regulation of captive insurers, is amended to read as follows:

(8) "Captive insurance company" means a producer reinsurance captive insurance company, branch 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;

SECTION 12. Arkansas Code § 23-63-1601(21), concerning the definition

of "producer reinsurance captive insurance company" used in the licensing and regulation of captive insurers, is amended to read as follows:

(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;

SECTION 13. Arkansas Code § 23-63-1602(c)(5), concerning the information required to apply for licensure as a captive insurer, is amended to read as follows:

(5) Information submitted under this ~~subsection~~ subchapter is confidential and ~~may~~ shall not be made public by the commissioner or an agent or employee of the commissioner without the written consent of the captive insurance company except that:

(A)(i) Information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

(a) The information sought is relevant to and necessary for the furtherance of the action or case;

(b) The information sought is unavailable from other nonconfidential sources; and

(c) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner.

(ii) However, subdivision (c)(4) of this section does not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group; and

(B) The commissioner may disclose the information to a public ~~officer~~ official having jurisdiction over the regulation of insurance in another state if:

(i) The public official agrees in writing to maintain the confidentiality of the information; and

(ii) The laws of the state in which the public official serves require the information to be confidential.

SECTION 14. Arkansas Code § 23-63-2002(b), concerning the intent of the Corporate Governance Annual Disclosure Act, is amended to read as follows:

- (b) It is the intent of the General Assembly that this subchapter:
- (1) ~~Shall not~~ 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~~ Not be construed to limit the commissioner's authority or the rights or obligations under § 23-61-201 et seq.; and
 - (3) ~~Applies~~ Apply only to ~~an~~ a multistate insurer domiciled in this state.

SECTION 15. Arkansas Code § 23-65-302 is amended to read as follows:
23-65-302. Exceptions.

This subchapter ~~shall~~ does not apply to reinsurance or to the following ~~insurances~~ types of insurance when ~~so~~ placed by licensed agents or brokers of this state:

- (1) Wet marine and foreign trade insurance;
- (2) Insurance on subjects that are:
 - (A) Located, resident, or to be performed outside this state; or
 - (B) On vehicles or aircraft principally garaged outside this state;
- (3) Insurance on property or operation of railroads engaged in interstate commerce; ~~and~~
- (4) Accident and health coverage; and
- (5) Insurance of aircraft:
 - (A) Owned or operated by manufacturers of aircraft;
 - (B) Operated in scheduled interstate flight;
 - (C) Cargo; or
 - (D) Against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

SECTION 16. Arkansas Code § 23-69-144(c)(3), concerning the filing of a duplicate original of the agreement of merger or consolidation or plan of

exchange of shares, is repealed.

~~(3) One (1) of the duplicate originals, bearing the file marks of the commissioner, shall be filed for record in the office of the clerk of the county court of the county in which the principal office or place of business of the merged or consolidated corporation adopting the plan of exchange, as specified in the merger or consolidation agreement or plan of exchange, is located.~~

SECTION 17. Arkansas Code § 23-71-103(9), concerning provisions of the Arkansas Insurance Code applicable to stipulated premium plan insurers, is amended to read as follows:

(9) Sections 23-66-201 – ~~23-66-214~~ 23-66-213, 23-66-301 – 23-66-306, 23-66-308 – 23-66-311, 23-66-313, ~~and 23-66-314,~~ and 23-66-501 – 23-66-513, trade practices and frauds;

SECTION 18. Arkansas Code § 23-72-103(8), concerning provisions of the Arkansas Insurance Code applicable to mutual assessment life and disability insurers, is amended to read as follows:

(8) Sections 23-66-201 – ~~23-66-214~~ 23-66-213, 23-66-301 – 23-66-306, 23-66-308 – 23-66-311, 23-66-313, ~~and 23-66-314,~~ and 23-66-501 – 23-66-513, trade practice and frauds;

SECTION 19. Arkansas Code § 23-73-104(4), concerning provisions of the Arkansas Insurance Code applicable to farmers' mutual aid companies or associations, is amended to read as follows:

(4) Sections 23-66-201 – ~~23-66-214~~ 23-66-213, 23-66-301 – 23-66-306, 23-66-308 – 23-66-311, 23-66-313, ~~and 23-66-314,~~ and 23-66-501 – 23-66-513, trade practices and frauds;

SECTION 20. Arkansas Code § 23-74-705 is amended to read as follows:
23-74-705. Applicability of other code provisions.

In addition to ~~those~~ the provisions contained in this chapter, the following provisions of this code shall also apply to fraternal benefit societies to the extent as applicable:

(1) Sections 23-60-101 – 23-60-108 and 23-60-110, general provisions;

- (2) Section 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et seq., the State Insurance Department;
- (3) Section 23-61-401, license and miscellaneous fees;
- (4) Section 23-65-101 et seq., the Unauthorized Insurers Process Act, § 23-65-201 et seq., and the Surplus Lines Insurance Law, § 23-65-301 et seq., unauthorized insurers and surplus lines;
- (5) Sections 23-66-501 – 23-66-513, fraudulent insurance acts;
- (6) Sections 23-68-101 – 23-68-113 and 23-68-115 – 23-68-132, rehabilitation and liquidation; and
- ~~(6)~~(7) Section 23-79-208, damages and attorney's fees on loss claims.

SECTION 21. Arkansas Code § 23-75-102(7), concerning provisions of the Arkansas Insurance Code applicable to hospital service corporations and medical service corporations, is amended to read as follows:

- (7) ~~Section~~ The Trade Practices Act, § 23-66-201 et seq., §§ 23-66-301 – 23-66-306, 23-66-308 – 23-66-311, 23-66-313, ~~and~~ 23-66-314, and 23-66-501 – 23-66-513, referring to trade practices and frauds;

SECTION 22. Arkansas Code § 23-76-118 is repealed.

~~23-76-118. Protection against insolvency.~~

~~(a) Deposit Requirements.~~

~~(1)(A) All health maintenance organizations authorized to transact business in this state shall deposit through the Insurance Commissioner securities eligible for deposit under § 23-63-903 that at all times shall have a par or market value of not less than three hundred thousand dollars (\$300,000), with the exception of limited benefit health maintenance organizations whose security deposit shall not be less than one hundred thousand dollars (\$100,000).~~

~~(B) The commissioner shall also be authorized to require a special surplus deposit for the benefit of enrollees from each health maintenance organization.~~

~~(2) All deposits made through the commissioner and held in this state shall be subject to the applicable provisions of §§ 23-63-903 – 23-63-907, 23-63-910, and 23-63-911, which refer to administration of deposits.~~

~~(3)(A)(i) A health maintenance organization, excluding limited~~

~~benefit health maintenance organizations, that is in operation on August 1, 1997, shall make a deposit equal to one hundred fifty thousand dollars (\$150,000).~~

~~(ii) In the second year, the amount of the additional deposit for a health maintenance organization that is in operation August 1, 1997, shall be equal to one hundred fifty thousand dollars (\$150,000), for a total of three hundred thousand dollars (\$300,000).~~

~~(B)(i) A limited benefit health maintenance organization that is in operation on August 1, 1997, shall make a deposit equal to seventy five thousand dollars (\$75,000).~~

~~(ii) In the second year, the amount of the additional deposit for a limited benefit health maintenance organization that is in operation on August 1, 1997, shall be equal to twenty five thousand dollars (\$25,000) for a total of one hundred thousand dollars (\$100,000).~~

~~(4) The deposit shall be an admitted asset of the health maintenance organization in the determination of net worth.~~

~~(5)(A) The deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of healthcare services to enrollees of a health maintenance organization that is in rehabilitation or conservation.~~

~~(B) The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation.~~

~~(C) If the health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of the Uniform Insurers Liquidation Act, § 23-68-101 et seq.~~

~~(b)(1)(A) No participating provider or the provider's agent, trustee, or assignee may maintain an action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization nor make any statement, either written or oral, to any subscriber or enrollee that makes demand for, or would lead a reasonable person to believe that a demand is being made for, payment of any amounts owed by the health maintenance organization.~~

~~(B)(i) If a participating provider has a pattern or practice of violating this subsection and continues to violate this subsection after the Insurance Commissioner has issued a written warning to the participating provider, the commissioner may levy a penalty in an amount~~

~~not less than one hundred fifty dollars (\$150) nor more than one thousand five hundred dollars (\$1,500).~~

~~(ii) Before imposing the penalty, the commissioner shall send a written notice to the participating provider informing the provider of the right to a hearing pursuant to §§ 23-61-303—23-61-307.~~

~~(2) “Participating provider” means a “provider” as defined in § 23-76-102(10) who, under an express or implied contract with the health maintenance organization or with its contractor or subcontractor, has agreed to provide healthcare services to enrollees with an expectation of receiving payment, other than copayment or deductible, directly or indirectly, from the health maintenance organization.~~

~~(c) Continuation of Benefits.—The commissioner shall require that each health maintenance organization has a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:~~

~~(1) Insurance to cover the expenses to be paid where date of services precedes the premium paid for it;~~

~~(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization’s insolvency for which premium payment has been made and until the enrollees’ discharge from inpatient facilities;~~

~~(3) Insolvency reserves;~~

~~(4) Acceptable letters of credit; and~~

~~(5) Any other arrangements to assure that benefits are continued as specified in this subsection.~~

SECTION 23. Arkansas Code § 23-87-115(b), concerning the methods of settling claims by an insurer under the Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance, is amended to read as follows:

(b) All claims shall be paid by check or draft of the insurer to the order of, or by electronic funds transfer to an account of, the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon

direction of the claimant, to one specified.

SECTION 24. Arkansas Code § 23-92-101(d), concerning the registration or licensure requirements for a multiple employer trust or multiple employer welfare arrangement, is amended to add an additional subdivision to read as follows:

(3) The commissioner may by rule allow any type of business organization, whether for-profit or nonprofit, to form an association or group of employers in the multiple employer trust or multiple employer welfare arrangement.

/s/Lowery