

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

State of Arkansas
95th General Assembly
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A Bill

SENATE BILL 236

By: Senator J. Boyd

By: Representative Steimel

For An Act To Be Entitled

AN ACT TO AMEND THE INSURANCE HOLDING COMPANY
REGULATORY ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE INSURANCE HOLDING COMPANY
REGULATORY ACT.

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

SECTION 1. Arkansas Code § 23-63-503, concerning the definitions used under the Insurance Holding Company Regulatory Act, is amended to add additional subdivisions to read as follows:

(12) "Group capital calculation instructions" means the instructions issued by the National Association of Insurance Commissioners and adopted by rule by the commissioner;

(13)(A) "NAIC liquidity stress test framework" means the publication of the National Association of Insurance Commissioners that includes a history of the National Association of Insurance Commissioners' development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year.

(B) "NAIC liquidity stress test framework" includes scope criteria, instructions, and reporting templates; and

(14) "Scope criteria" means the designated exposure bases, and the minimum magnitudes of the designated exposure bases for a specified data year, used to establish a preliminary list of insurers considered scoped in the NAIC liquidity stress test framework for that data year.



SECTION 2. Arkansas Code § 23-63-505 is amended to read as follows:
23-63-505. Subsidiaries of insurer.

(a)(1) ~~Authorization.~~ Any A domestic insurer, subject to this subchapter, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries.

(2)(A) The subsidiaries under subdivision (a)(1) of this section may conduct any kind of business authorized by state law.

(B) Being a subsidiary of a domestic insurer does not limit the authority of the subsidiary to conduct business.

(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this subchapter, a domestic insurer may:

(1)(A) Invest in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries in amounts that do not exceed the lesser of ten percent (10%) of the domestic insurer's assets or fifty percent (50%) of the insurer's surplus in relation to policyholders if after the investments, the domestic insurer's surplus is:

(i) Reasonable in relation to the domestic insurer's outstanding liabilities; and

(ii) Adequate to meet the domestic insurer's financial needs.

(B) In calculating the amounts of investments under subdivision (b)(1)(A) of this section, the investments shall include:

(i) The total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities; and

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary after the acquisition or formation of a subsidiary.

(C) In calculating the amount of investments under subdivision (b)(1)(A) of this section, the investments in the domestic insurer's or foreign insurance company's subsidiaries and health maintenance

organizations are excluded;

(2)(A) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the domestic insurer if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the domestic insurer to exceed any of the investment limitations specified in subdivision (b)(1)(A) of this section or in § 23-63-801 et seq., if applicable to the insurer.

(B) As used in subdivision (b)(2)(A) of this section, “the total investment of the domestic insurer” includes:

(i) Any direct investment by the domestic insurer in an asset; and

(ii) The domestic insurer’s proportionate share of any investment in an asset by a subsidiary of the domestic insurer, and which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary; and

(3) With the approval of the Insurance Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, if after the investments, the domestic insurer’s surplus is:

(A) Reasonable in relation to the domestic insurer’s outstanding liabilities; and

(B) Adequate to meet the domestic insurer’s financial needs.

(c) Qualification of Investment — When Determined. Whether any investment ~~pursuant to~~ under subsection (a) of this section meets the applicable requirements ~~thereof~~ of subsection (a) of this section is to be determined immediately after the investment is made, taking into account the then-outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

~~(c)(d) Cessation of Control.~~ If an insurer ceases to control a subsidiary, it shall dispose of any investment ~~therein~~ in the subsidiary made ~~pursuant to~~ under this section within three (3) years from the time of the cessation of control or within such further time as the ~~Insurance~~

~~Commissioner~~ commissioner may prescribe unless, at any time after the investment ~~shall have~~ has been made, the investment shall have met the requirements for investment under any other section of this subchapter and the insurer has notified the commissioner ~~thereof~~ that those requirements for investments have been met.

SECTION 3. Arkansas Code § 23-63-510 is amended to read as follows:

23-63-510. Control of or merger with domestic insurer – Approval by commissioner – Hearing.

(a) The Insurance Commissioner shall approve any merger or other acquisition of control referred to in § 23-63-506 unless, after a public hearing ~~thereon~~ on the merger or other acquisition of control, he or she finds that:

(1) After change of control, the domestic insurer referred to in § 23-63-506 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(2)(A) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein in this state.

(B) In applying the competitive standard under subdivision (a)(2)(A) of this section:

(i) The information required under §§ 23-63-527(b) and 23-63-528(b) shall not apply;

(ii) The merger or other acquisition of control shall not be disapproved if the commissioner finds that any of the situations meeting the criteria under § 23-63-528(c) exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition of control on the removal of the basis of disapproval within a specified period of time;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) The terms of the offer, request, invitation, agreement, or acquisition referred to in § 23-63-506 are unfair and unreasonable to the

security holders of the insurer;

(5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(6) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(b)(1) The public hearing referred to in subsection (a) of this section shall be held within thirty (30) days after the statement required by § 23-63-506 is filed, and at least twenty (20) days' notice of the hearing shall be given by the commissioner to the person filing the statement.

(2) Not less than seven (7) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to the other persons as may be designated by the commissioner.

(3)(A) The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction.

(B) In connection with the change in control of the insurer, any determination by the commissioner that the person acquiring control of a domestic insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and rules of this state shall be made not later than sixty (60) calendar days after the date of notification of the change in control submitted pursuant to § 23-63-506(b).

(4) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the courts of this state.

(5) All discovery proceedings shall be concluded not later than three (3) days ~~prior to~~ before the commencement of the public hearing.

(6)(A) If a proposed acquisition of control requires the approval of more than one (1) state insurance commissioner, the public

hearing referred to in subsection (a) of this section may be held on a consolidated basis upon request of the person filing the statement under § 23-63-506(a)(2)(A).

(B) The party requesting a consolidated hearing under subdivision (b)(6)(A) of this section shall file the statement with the National Association of Insurance Commissioners within five (5) days of the request.

(C) A state insurance commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt-out within ten (10) days of receipt of the statement.

(D) A hearing conducted on a consolidated basis shall be:
(i) Public; and
(ii) Held within the United States before the commissioners of the states in which the insurers are domiciled.

(E) The state insurance commissioners shall hear testimony, examine witnesses, and receive evidence.

(F) A state insurance commissioner may attend a consolidated hearing in person or by telecommunication.

SECTION 4. Arkansas Code § 23-63-514(c), concerning materiality under the Insurance Holding Company Regulatory Act, is amended to read as follows:

(c) Materiality.

(1)(A) No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if the information is not material for the purposes of this section.

(B) Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the December 31 next-preceding shall not be deemed material for purposes of this section.

(C) For purposes of this section, materiality under this subsection shall not apply for purposes of the group capital calculation instructions or the NAIC liquidity stress test framework.

(2)(A) However, each registered insurer shall disclose in writing to the commissioner within five (5) business days following the declaration of a dividend and no less than ten (10) business days prior to

the payment of the dividend, all ordinary dividends payable to shareholders.

(B) The disclosure shall also be included in the reporting insurer's next annual and restated insurance registration statement and upon any statutory filing required under § 23-63-514 or § 23-63-515.

SECTION 5. Arkansas Code § 23-63-514(k) is repealed.

~~(k) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this section.~~

SECTION 6. Arkansas Code § 23-63-514, concerning the registration of insurers, is amended to add additional subsections to read as follows:

(n) Group Capital Calculation.

(1) Except as provided below, the ultimate controlling person of every insurer subject to this section shall concurrently file with the insurer's registration an annual group capital calculation report as directed by the lead state commissioner.

(2) The annual group capital calculation report under subdivision (n)(1) of this section shall be:

(A) Completed according to the group capital calculation instructions; and

(B) Filed with the lead state commissioner of the insurance holding company system as determined by the Insurance Commissioner according to the Financial Analysis Handbook procedures adopted by the National Association of Insurance Commissioners, as adopted by rule of the Insurance Commissioner.

(3)(A) The following insurance holding company systems are exempt from filing an annual group capital calculation report under subdivision (n)(1) of this section:

(i) An insurance holding company system that:
(a) Has only one (1) insurer within its holding company structure;

(b) Is licensed and writes business only in its domestic state; and

(c) Assumes no business from another insurer;

(ii)(a) An insurance holding company that is

required to perform a group capital calculation specified by the Board of Governors of the Federal Reserve System.

(b) The lead state commissioner shall request the group capital calculation from the Board of Governors of the Federal Reserve System under an information sharing agreement, if applicable.

(c) If the Board of Governors of the Federal Reserve System cannot share the group capital calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in § 23-62-305 that recognizes the United States state regulatory approach to group supervision and group capital; and

(iv) An insurance holding company:

(a) That provides information to the lead state that meets the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program, either directly or indirectly, through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the National Association of Insurance Commissioners group supervision approach, as detailed in the NAIC Financial Analysis Handbook; and

(b) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the Insurance Commissioner by rule, the group capital calculation as the world-wide group capital assessment for United States insurance groups who operate in that jurisdiction.

(B) Notwithstanding subdivisions (n)(3)(A)(iii) and (iv) of this section, a lead state commissioner shall require the group capital calculation instructions for United States operations of any non-United States based insurance holding company system when it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(4) Notwithstanding the exemptions from filing the group capital calculations stated in subdivisions (n)(3)(A)(i) and (iv) of this section, the lead state commissioner has the discretion to exempt the ultimate

controlling person from filing the annual group calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the Insurance Commissioner by rule.

(5) If the lead state commissioner determines that an insurance holding company system no longer meets one (1) or more of the requirements for an exemption from filing the group capital calculation under subdivision (n)(3) of this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner.

(o)(1) Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and scoped into the NAIC liquidity stress test framework shall file the results of a specific year's NAIC liquidity stress test framework.

(2) The filing under subdivision (o)(1) of this section shall be made to the lead state insurance commissioner of the insurance holding company system, as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners and adopted by rule by the Insurance Commissioner.

(3)(A) The NAIC liquidity stress test framework includes scope criteria that is applicable to a specific date year.

(B) The scope criteria is reviewed at least annually by the NAIC Financial Stability E Task Force or its successor.

(C) Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when the changes are adopted.

(D) An insurer that meets at least one (1) threshold of the scope criteria is considered scoped into the NAIC liquidity stress test framework for the specified date year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability E Task Force or its successor, determines that the insurer should not be scoped into the NAIC liquidity stress test framework for that data year.

(E) An insurer that does not trigger at least one (1) threshold of the scope criteria is considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial

Stability E Task Force or its successor, determines the insurer should be scoped into the NAIC liquidity stress test framework for that data year.

(4) The performance of, and filing of the results from, a specific year's NAIC liquidity stress test framework shall comply with:

(A) The NAIC liquidity stress test framework's instructions and reporting templates for that year; and

(B) Any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability E Task Force or its successor, provided within the NAIC liquidity stress test framework.

(p) Violations. The failure to file a registration statement, summary of the registration statement, or enterprise risk filing required by this section within the time specified is a violation of this section.

SECTION 7. Arkansas Code § 23-63-515(a), concerning material transactions by an insurer under the Insurance Holding Company Act, is amended to read as follows:

(a)(1) Material transactions by insurers registered with the Insurance Commissioner under § 23-63-514 with their affiliates shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) The books, accounts, and records of every party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;

(C) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(D) The charges or fees for services performed shall be reasonable;

(E) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied; and

(F) The commissioner by rule may establish additional requirements for a cost-sharing service agreement or a management agreement.

(G)(i) If an insurer subject to this subchapter is deemed by the commissioner to be in a hazardous financial condition as defined by rule or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer, for the duration of the transaction or until the condition no longer exists.

(ii) In determining whether or not a deposit or bond is required, the commissioner may consider if concerns exist with respect to the affiliate's ability to fulfill the contract or agreement if the insurer were to be put into liquidation.

(iii) Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the transaction in any one (1) year, and whether the deposit or bond should be required for each transaction or only for transactions with specified persons.

(iv)(a) All records and data of an insurer held by the insurer's affiliate shall remain the property of the insurer and be subject to the insurer's control.

(b) Insurer records shall be identifiable and segregated or readily capable of segregation from all other records and data at no cost to the insurer.

(v)(a)(1) Premiums or other funds belonging to an insurer that are collected by or held by the insurer's affiliate are the exclusive property of the insurer and are subject to the control of the insurer.

(2) Any right of offset in the event an insurer is placed into receivership shall be subject to § 23-68-101 et seq.

(b) At the request of an insurer, the insurer's affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business, obtain access to the servers on which the data is maintained, obtain the software that runs those systems either through assumption of licensing agreements or otherwise, and restrict the use of the data by the affiliate if it is not

operating the insurer's business.

(c) The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

(2)(A) A domestic insurer subject to this subchapter and a person in its holding company system may not enter into a transaction, as described in subdivision (a)(2)(B) of this section, unless the insurer notifies the commissioner in writing of its intention at least thirty (30) days before, or less, as the commissioner may permit, and the commissioner does not disapprove of the transaction within such a period.

(B) A transaction that requires prior notice to the commissioner by a domestic insurer includes:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided the transactions are equal to or exceed as of December 31 next-preceding:

(a) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(b) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

(ii) Loans or extensions of credit to any person who is not an affiliate when the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making the loans or extensions of credit, provided that the transactions are equal to or exceed as of December 31 next-preceding:

(a) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(b) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

(iii) Reinsurance agreements or modifications thereto, including:

(a) All reinsurance pooling agreements; and

(b) Agreements in which the reinsurance premium, a change in the insurer's liabilities, any projected reinsurance premium, or a change in the insurer's liabilities in any of the next three (3) years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next-preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;

(iv) All management agreements, service contracts, tax allocation agreements, and all cost-sharing arrangements;

(v) Any material transactions specified by regulation that the commissioner determines may adversely affect the interests of the insurer's policyholders; and

(vi)(a) Any amendment or modification of an affiliate agreement that is subject to the materiality standards under subdivision (a)(1) of this section, including the reason for the amendment or modification and the financial impact on the domestic insurer.

(b) A domestic insurer shall notify the commissioner within thirty (30) days after a termination of a previously filed agreement in a format that is acceptable to the commissioner, to determine if further reporting or filing is required.

(3) A domestic insurer subject to this subchapter may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that those separate transactions were entered into over any twelve-month period for such a purpose, the commissioner may exercise his or her authority under § 23-63-522.

(4) In reviewing transactions pursuant to subdivision (a)(2) of this section, the commissioner shall consider whether the transactions comply with the standards set forth in subdivision (a)(1) of this section and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of a domestic insurer subject to this subchapter in any one

(1) corporation if the total investment in such a corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(6)(A) An affiliate that is a party to a contract with a domestic insurer subject to subdivision (a)(2)(B)(iv) of this section is subject to:

(i) The jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer; and

(ii) The authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed under § 23-68-101 et seq., for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations.

(B) The affiliates' obligations under subdivision (a)(6)(A)(ii) of this section include those that:

(i) Are an integral part of the insurer's operations, including without limitation management, administration, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(ii) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

(C) The commissioner may require that a contract under subdivision (a)(2)(B)(iv) of this section for the provisions of services described in subdivisions (a)(6)(A)(i) and (ii) of this section specify that the affiliate consents to the jurisdiction stated in subdivision (a)(6)(A) of this section.

SECTION 8. Arkansas Code § 23-63-517(a), concerning confidentiality under the Insurance Holding Company Act, is amended to read as follows:

(a)(1) All information and documents obtained by or disclosed to the Insurance Commissioner or any other person in the course of an examination or investigation made under § 23-63-516 and all information reported under §§ 23-63-514 and 23-63-515 shall be given confidential treatment and shall not be subject to subpoena or discovery or admissible in evidence in any private civil action or be made public by the commissioner under the Freedom of Information Act of 1967, § 25-19-101 et seq., or any other public records law, or by the National Association of Insurance Commissioners. However, the

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

(2)(A)(i) Information provided to the State Insurance Department under § 23-63-514(n) shall be confidential with respect to the group capital calculation, the group capital ratio produced within the calculation, and any group capital information received from an insurance holding company supervised by the Board of Governors of the Federal Reserve System or any United States group-wide supervisor.

(ii) The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's duties.

(B)(i) Information provided to the department under § 23-63-514(o) shall be confidential with respect to the results of the NAIC liquidity stress test framework, supporting disclosures, and any liquidity stress test information received from an insurance holding company supervised by the Board of Governors of the Federal Reserve System and non-United States group-wide supervisors.

(ii) The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's duties.

(3) The information, documents, and copies of the information shall not be subject to subpoena or be made public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and any of the insurer's affiliates that may be affected notice and an opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information.

~~(3)~~(4) In that event, the commissioner may publish any part of the information in the manner the commissioner considers appropriate.