

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 28. Limited Adjusters' Licenses

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"SECTION 2. AUTHORITY AND SCOPE

1. This Rule is promulgated under the Commissioner's authority in Ark. Code Ann. Sections 23-61-108, 23-63-106, 23-64-102 (4)(E) as amended by Act 1004 of 1997, and 25-15-201, et seq."

"SECTION 7. EFFECTIVE DATE

The provisions of this Rule and Regulation shall be effective on and after April 15, 1998, upon signature and statutory filing by the Commissioner."

Subpart 1. Generally

23 CAR § 28-101. Purpose.

(a) The purpose of this part is to set out the minimum qualifications for optional and permissive licensure of limited adjusters from applicants desiring but not required to obtain this license under the provisions of Arkansas Code § 23-64-102(4)(E), as amended by Acts 1997, No. 1004, effective July 1, 1997.

(b) It is not the intent of the State Insurance Department in enacting this part to:

(1) Construe this limited license as mandatory or required for self-insured insurance activities in this state; or

(2) Have public or private sector self-insured entities mandate that their employees obtain this limited license.

(c) The purpose includes the availability of an Arkansas license for applicants who need it as a prerequisite for their application for similar licensure in other states.

Authority. Arkansas Code § 23-61-108.

23 CAR § 28-102. Scope.

(a) This part shall apply to all applicants for license as a limited adjuster on and after the effective date of this part.

(b) **Exemptions.** This part shall not be applicable to, and no limited adjuster license shall be required of:

(1) Third-party administrators registered with the State Insurance Department or exempted from the provisions of Arkansas Code § 23-92-201 et seq.;

(2) Valid ERISA-qualified or ERISA-exempt self-insured trusts, plans, METs, or MEWAs or their third-party administrators;

(3) Self-insured plans, policies, or contracts of the State of Arkansas or any of its political subdivisions, including:

(A) Counties;

(B) State agencies;

(C) Boards and commissions;

(D) Cities;

(E) Municipalities;

(F) School districts; and

(G) Improvement or other districts, including any administered by a local trade association or organization;

(4) Self-insured plans administered or regulated by or under the statutory jurisdiction of any other state agency, board, or commission or of the federal government;

(5) Public adjusters who represent insureds or claimants under insured/self-insured policies or contracts, including public adjusters licensed in another:

(A) State;

(B) Country; or

(C) Territory;

(6) Adjusters as independent contractors who are licensed by the commissioner to represent insurance companies or who are otherwise exempted from such licensure under Arkansas Code § 23-64-101 et seq., or other Arkansas laws;

(7) Attorneys at law and other licensed legal representatives of the insurance company, self-insured, insured, or claimant under a policy or contract; and

(8) Salaried and/or commissioned employees of insurers, HMOs, or other department licensees who adjust or settle claims for their employers.

Authority. Arkansas Code § 23-61-108.

Codification Notes. "ERISA" refers to the Employment Retirement Income Security Act of 1974 which is codified at 29 U.S.C. § 1001 et seq.

"HMO" means health maintenance organization.

"MET" means multiple employer trust.

"MEWA" means multiple employer welfare arrangement.

23 CAR § 28-103. Definitions.

As used in this part:

(1) "Commissioner" means the Insurance Commissioner of the State of Arkansas;

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

(3) "Limited adjusters" means individual persons who are sponsored by and are employees of self-insured (self-funded) entities for purposes of the adjustment of claims for or on behalf of that self-insured sponsoring entity, as defined in Arkansas Code § 23-64-102(4)(E), as amended by Acts 1997, No. 1004; and

(4) "Part" means the rules promulgated by the State Insurance Department unless the context requires otherwise.

Authority. Arkansas Code § 23-61-108.

23 CAR § 28-104. License available and optional but not required.

(a) Eligibility.

(1)(A) On and after the effective date of this part, self-insured or self-funded entities may sponsor their employees for limited adjusters' licenses with the State Insurance Department.

(B) In order to be eligible for licensure, the individual persons must be current, full-time employees of the sponsoring self-insured or self-funded entity, not independent contractors for such sponsors.

(2) Eligibility for such licensure shall cease upon the effective date of termination of the applicant's or licensee's employment with the sponsoring self-insured or self-funded entity for any reason by either party.

(3) The applicant shall be of legal age of majority or have the disabilities of minority removed by a court of law for all general purposes and provide evidence of same.

(4) The applicant must be a:

(A) Resident of the State of Arkansas;

(B) Resident of another state which will permit residents of Arkansas to act as an adjuster or limited adjuster in the other state; or

(C) Nonresident who meets or will meet the requirements imposed on a resident of this state.

(5)(A) The applicant must be a high school graduate or have obtained his or her GED (general equivalency diploma).

(B) The applicant must be deemed by the Insurance Commissioner to be:

(i) Competent;

(ii) Trustworthy;

(iii) Financially responsible;

(iv) Of good personal and business reputation; and

(v) Not otherwise ineligible under the provisions of Acts 1997, No. 217, codified as Arkansas Code § 23-66-501 et seq., and other applicable laws.

(6)(A) The applicant must pass a written examination as to his or her competence to act as a limited adjuster for the self-insured employer, with such examination based on the types of insurance which the applicant shall be adjusting.

(B) The commissioner may specify that the applicant must pass:

(i) An examination for property, casualty, or workers' compensation insurance as is administered under Arkansas Code § 23-64-209 or other laws for adjusters;

(ii) An examination for life and disability insurance as is administered under Arkansas Code § 23-64-203 or other laws for life and disability insurance agents; or

(iii) Other examinations as the commissioner may prescribe in his or her license application instructions.

(C) The commissioner may give, conduct, and grade all examinations, or he or she may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner and without unfair discrimination as between individuals examined.

(D)(i) An oral or other type examination may for good cause be substituted for a written examination of the applicant on his or her written request and if deemed necessary by any applicable laws, including but not limited to the Americans with Disabilities Act of 1990.

(ii) The commissioner shall require a waiting period of eight (8) weeks before reexamination of an applicant who has twice failed to pass previous similar examinations.

(7) The applicant for the limited adjuster's license or renewal license shall not be required to obtain:

(A) Prelicensure education hours under Arkansas Code §§ 23-64-202 and 23-64-203 or Prelicense Education for Producers, 23 CAR pt. 14; or

(B) Continuing education hours under Arkansas Code § 23-64-301 et seq., or Continuing Education for Producers and Adjusters, 23 CAR pt. 18.

(8) The employees of self-insured plans or entities or employees of corporate subsidiaries or affiliates of the self-insured plan or entity are eligible for the limited adjuster's license provided under this part.

(b) **Application.** Each applicant for the limited adjuster's license shall complete and submit the written application form, in format prescribed by or acceptable to the commissioner, accompanied by:

(1) A letter or other documentation from the sponsor confirming active full-time employment of the applicant; and

(2)(A) The fees for adjusters' licenses established by Arkansas Code § 23-61-401 and State Insurance Department Administrative and Regulatory Fees, 23 CAR pt. 22.

(B) Such fees shall be payable by check or money order to "The State Insurance Department Trust Fund" and are nonrefundable.

(c) **License issuance and annual renewal.**

(1)(A) The commissioner may issue the limited adjuster's license for property insurance, casualty insurance, workers' compensation insurance, life insurance, disability insurance, or any combination thereof to individuals meeting all applicable qualifications of this part, including successful examinations and payment of proper fees.

(B) The commissioner shall issue a license on a form he or she shall prescribe to the limited adjuster upon successful completion of these requirements by the applicant.

(C)(i) The term of the limited adjuster's license shall be one (1) year.

(ii) Within one (1) year from issuance date, the license shall be renewable on or before the licensee's birthday and annually on the birthday thereafter.

(2) The limited adjuster shall at the anniversary remit the annual renewal fee for adjusters under State Insurance Department Administrative and Regulatory Fees or

have his or her self-insured employer or any licensing bureau remit it to the department by check or money order payable to "The State Insurance Department Trust Fund".

(3)(A) With the renewal the applicant or licensing bureau shall submit a letter or other evidence from the self-insured employer confirming that the applicant is eligible for licensure because he or she is a full-time employee of the employer.

(B) Alternately, the limited adjuster may continue his or he license upon submission of proof by letter or other documentation that he or she has a new employer and he or she is employed full time in the same capacity as a claims representative for the new employer which is a self-insured entity transacting business in Arkansas, so long as the limited adjuster demonstrates to the commissioner's satisfaction that he or she continues to meet the eligibility requirements for such license under:

- (i) Acts 1997, No. 1004;
- (ii) This part; and
- (iii) Other applicable laws.

(4) The limited adjuster or his or her self-insured employer or licensing bureau shall also pay the fee of thirty-five dollars (\$35.00) (ARF fee) prescribed in State Insurance Department Administrative and Regulatory Fees on or before the licensee's birthday as required in Acts 1997, No. 1004.

(d) **License continuation.** Licenses of individual persons granted limited adjuster's licenses by the commissioner under his or her discretionary authority pursuant to Arkansas Code § 23-61-103(a), (b) and other applicable laws before the effective date of this part shall continue in full force and effect, but subject to the provisions of this part after it is effective and without the necessity to requalify hereunder except as to the effect or impact of licensing provisions as to felons under Acts 1997, No. 217, codified as Arkansas Code § 23-66-501 et seq.

(e) **Laws applicable.** Except where they conflict with this part, the provisions of the Arkansas Insurance Code, Arkansas Code § 23-60-101 et seq., and the commissioner's rules shall apply to limited adjuster's licenses and applicants.

Authority. Arkansas Code § 23-61-108.

Codification Notes. Americans with Disabilities Act of 1990 is codified as 42 U.S.C. § 12101 et seq.

"ARF" means administrative and regulatory fee.

23 CAR § 28-105. License termination or nonrenewal.

(a)(1) The Insurance Commissioner may suspend or revoke upon notice and a hearing or nonrenew or refuse to continue without notice and a hearing the license of any limited adjuster who has failed to comply with the license continuation provisions of Arkansas Code § 23-64-215, as amended by Acts 1997, No. 1004, including failure of the limited adjuster to remit or timely remit the annual fees or ARF fees to the commissioner.

(2) Alternately the commissioner may in his or her discretion impose a monetary penalty in the amounts contained in Arkansas Code § 23-64-216, as amended by Acts 1997, No. 1004.

(b) The commissioner may immediately terminate, cancel, or expire any license of a limited adjuster without notice or a hearing upon adequate proof that the:

(1) Limited adjuster is no longer a full-time employee of the self-insured employer;

(2) Self-insured employer:

(A) Has terminated its self-insurance plan;

(B) Has gone out of business; or

(C) No longer has insured employees within the State of Arkansas; or

(3) Limited adjuster is no longer employed as an adjuster or claims representative for the self-insured entity or employer but has been hired in a new capacity by such employer.

(c) The commissioner may suspend, revoke, or nonrenew or refuse to continue the license of any limited adjuster who is in violation of or noncompliance with the:

(1) Provisions of the unfair trade practices laws of the state under the Trade Practices Act, Arkansas Code § 23-66-201 et seq., and Arkansas Code § 23-66-301 et seq.;

(2) License provisions under Arkansas Code § 23-64-101 et seq., and § 23-64-201 et seq., particularly Arkansas Code § 23-64-216 as amended by Acts 1997, No. 1004; or

(3) Laws of the State of Arkansas, the Arkansas Insurance Code, or rules of the commissioner.

(d) Administrative proceedings under this part shall be conducted under the:

(1) Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., as applicable; or

(2) Provisions of the Arkansas Insurance Code under Arkansas Code § 23-61-301 et seq.

(e) The commissioner may not again issue any license to an applicant or limited adjuster whose:

(1) Other insurance license under the insurance laws has been suspended or revoked; or

(2) Limited adjuster's license under this part has been revoked.

(f) Upon any revocation, suspension, cancellation, expiration, or lapse, the limited adjuster's license shall be returned to the State Insurance Department as the property of the State of Arkansas.

Authority. Arkansas Code § 23-61-108.

Codification Notes. "ARF" means administrative and regulatory fee.

23 CAR § 28-106. TPA registration not required.

(a) The applicants or renewal applicants for the limited adjuster's license shall not be:

(1) Deemed to be "third-party administrators" (TPAs) under the provisions of Arkansas Code § 23-92-201 et seq.; or

(2) Required to obtain the TPA registration from the Insurance Commissioner.

(b) Third-party administrators registered or licensed by the commissioner shall not be required to obtain the limited adjuster's license under the provisions of Acts 1997, No. 1004, or this part.

(c) The licenses for limited adjusters and third-party administrators shall be deemed mutually exclusive by the State Insurance Department.

Authority. Arkansas Code § 23-61-108.

23 CAR § 28-107. Severability.

Any section or provision of this part held by a court to be invalid or unconstitutional shall not affect the validity of any other section or provision of this part.

Authority. Arkansas Code § 23-61-108.