

## **Chapter 60. General Provisions.**

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### **23-60-101. Title.**

This code constitutes the Arkansas Insurance Code.

### **23-60-102. Definitions.**

As used in the Arkansas Insurance Code, unless the context otherwise requires:

- (1)(A)(i) "Insurance" is any agreement, contract, or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such an event.
  - (ii) A "fortuitous event" means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party.
- (B) "Insurance" shall, for purposes of subtitle 3 of this title, be deemed to include "annuities", which are agreements by insurers to make periodic payments that continue during the survival of the measuring life or lives under the agreements or for a specified period.
- (C) "Reinsurance" is a contract under which an originating insurer, called the "ceding" insurer, procures insurance for itself in another insurer, called the "assuming" insurer or reinsurer, with respect to part or all of an insurance risk of the originating insurer;
- (2) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;
- (3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and every legal entity;
- (4) "Commissioner" means the Insurance Commissioner of this state;
- (5) "Department" means the State Insurance Department;
- (6) A "domestic" insurer is one formed under the laws of this state;

- (7) A "foreign" insurer means one formed under the laws of any jurisdiction other than this state;
- (8) An "alien" insurer means one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths;
- (9) Except where distinguished by context, "foreign" insurers include also "alien" insurers;
- (10)(A) When used in a context signifying a jurisdiction other than the State of Arkansas, "state" means any state, district, territory, commonwealth, or possession of the United States.
  - (B) For purposes of conforming the Arkansas Insurance Code to comply with the provisions of the North American Free Trade Agreement, "state" shall also be deemed to include Canada and the Republic of Mexico, as appropriate;
- (11) An "authorized" insurer means one duly authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state;
- (12) An "unauthorized" insurer is one not authorized by a subsisting certificate of authority issued by the commissioner to transact insurance in this state;
- (13) "Transact" with respect to insurance includes any of the following:
  - (A) Solicitation and inducement;
  - (B) Preliminary negotiations;
  - (C) Effectuation of a contract of insurance;
  - (D) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it;
- (14) "Wet marine and foreign trade insurance", with the exception of § 23-67-101 et seq. shall include only:
  - (A) Insurances upon vessels, crafts, hulls, and of interests therein or with relation thereto;
  - (B) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;
  - (C) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and
  - (D) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage,

### **23-60-103. Application of code.**

Unless otherwise expressly provided for in the Arkansas Insurance Code, no provision of the Arkansas Insurance Code shall apply with respect to the following entities:

- (1) Domestic stipulated premium insurers, as identified in § 23-70-101 et seq., concerning stipulated premium insurers except as stated in those sections;
- (2) Assessment life, health, and accident insurers, as identified in § 23-72-102 et seq., concerning assessment life and disability insurers except as stated in those sections;
- (3) Farmers' mutual aid associations or companies, as identified in § 23-73-102 et seq., concerning farmers' mutual aid associations or companies except as stated in those sections, but excepting the requirements for fraudulent insurance acts prevention, codified in § 23-66-501 et seq., and including the payment of assessments due from

insurers and other licensees under The Insurance Fraud Investigation Division Trust Fund Act, § 23-100-101 et seq., which shall apply to farmers' mutual aid associations or companies;

- (4) Fraternal benefit societies, as identified in § 23-74-101 et seq., concerning fraternal benefit societies except as stated in those sections; and
- (5) Nonprofit vision service plan corporations composed of at least fifty (50) participating optometrists or ophthalmologists licensed by the State of Arkansas to provide vision care services on a prepaid basis when each licensed optometrist or ophthalmologist is subject to the rules and regulations of the professional's respective state board and when each participating licensed optometrist or ophthalmologist agrees to assume responsibility for completion of the provisions of the vision care services contracted for so that no element of risk is incurred by any subscriber group or person.

**23-60-104. Exceptions.**

The Arkansas Insurance Code shall not apply with respect to burial associations governed by §§ 23-78-101 - 23-78-119, and 23-78-121 - 23-78-125, and amendments thereto.

**23-60-105. Particular provisions prevail.**

Provisions of the Arkansas Insurance Code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matters in general.

**23-60-106. Prior acts, offenses, rights, etc., not affected.**

The Arkansas Insurance Code shall not impair or affect any act done; offense committed or right accruing, accrued, or acquired; or liability, penalty, forfeiture, or punishment incurred prior to the time the Arkansas Insurance Code takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted, as fully and to the same extent as if the Arkansas Insurance Code had not been passed.

**23-60-107. Captions and headings not to affect meaning.**

The scope and meaning of any provision shall not be limited or otherwise affected by the caption or heading of any chapter, section, or provision.

**23-60-108. Penalty generally.**

Each violation of the Arkansas Insurance Code for which a greater penalty is not provided by other applicable laws of this state, in addition to any applicable refusal, suspension, or revocation of a license or certificate of authority, and upon conviction in a court of this state, shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

**23-60-109. Penalty for false or misleading statements.**

Any person who files any statement, application, form, or other document required to be filed by the Arkansas Insurance Code, knowing the statement or information contained in the document to be false or misleading in any material respect, shall be guilty of a felony and upon conviction

shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment in the Department of Correction for not more than three (3) years, or by both fine and imprisonment.

**23-60-110. Compliance with code required.**

No person shall transact a business of insurance in Arkansas, or relative to a subject of insurance resident, located, or to be performed in Arkansas, without complying with the applicable provisions of the Arkansas Insurance Code.

**23-60-111. Civil liability.**

- (a) In the absence of fraud or bad faith, no civil cause of action of any nature shall arise against the person for supplying any information:
  - (1) Relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials or their agents and employees;
  - (2) Relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of the insurance laws of this state; or
  - (3) Furnished in reports to the State Insurance Department, National Association of Insurance Commissioners, or any organization established to detect and prevent fraudulent insurance acts or their agents, employees, or designees.
- (b) Neither the Insurance Commissioner nor any employee of the department, in the absence of fraud or bad faith, shall be subject to civil liability, and no civil cause of action of any nature shall arise against the person by virtue of the publication of any report or bulletin related to the official activities of the department.
- (c) Nothing in this section is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.