

## **Chapter 88. Property Insurance.**

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## **Subchapter 1. General Provisions.**

### **23-88-101. Valued policy law.**

- (a) In case of a total loss by fire or natural disaster of the property insured, a property insurance policy other than for flood and earthquake insurance shall be held and considered to be a liquidated demand against the company taking the risk for the full amount stated in the policy or the full amount upon which the company charges, collects, or receives a premium.
- (b) However, the provisions of this section shall not apply to personal property or detached or appurtenant structures.

### **23-88-102. Paying costs of volunteer fire department services.**

- (a) The amount charged by a volunteer fire department for the cost of its services in

responding to a fire on or an emergency call concerning the property of a nonmember within its district shall not exceed an amount equal to the fair market value of the service rendered, except that a claim for services in responding to a fire involving only personal property shall be allowed only for personal property of nonmembers and the claimed amount shall not exceed three hundred dollars (\$300).

- (b) When a volunteer fire department responds to a fire occurring or responds to a 911 or other fire emergency call within its district and the property which is the subject of the alarm is owned by a nonmember and insured in case of any damage resulting from a fire, the insurance company insuring the property against loss shall pay to the volunteer fire department the fair market value of its services from the insurance proceeds. Notice to both the insurance company and to the insured nonmember by the volunteer fire department for its costs of services shall be by certified mail within ten (10) days after the date of the services rendered.
- (c) In the event a nonmember desires to contest an assessment, the nonmember may notify the fire department board of his objection to the assessment, and the fire department board shall file a civil suit in the nearest municipal court within ten (10) days asking for the amount claimed by the fire department. The municipal court shall give a hearing on the matter within ten (10) days to determine if the amount claimed is fair compensation for the services rendered. If the amount of the assessment is contested in municipal court, the fire department shall immediately notify the insurer of the nonmember's property, by certified mail, and the insurer shall upon notification pay into the registry of the court an amount equal to the assessment made by the volunteer fire department for fire services.
- (d) The insurer shall not be liable for any amount of money which exceeds the face amount of the policy unless the provisions of the policy provide otherwise.

**23-88-103. Rate credits or reduced rates in rural fire protection districts or areas.**

- (a)(1) It is found and determined by the General Assembly that:
  - (A) Rural fire protection districts are beneficial to all property owners in the districts;
  - (B) Many of the districts are financed wholly or in part by dues or subscription payments made by members of the district;
  - (C) Some owners of property in the districts fail to refuse to become members of and pay the dues or subscription charges to the district and that under present law insurance companies are permitted to give nonmember property owners the same rate credit as is granted to paying members of the district; and
  - (D) The giving of equal rate credit to paying and nonpaying property owners in the district is most inequitable and should be corrected.
- (2) Therefore, it is the intent and purpose of this section to prohibit insurers from giving nonpaying property owners in rural fire protection districts the rate credit given paying members of the district.
- (b) Any property or casualty insurance company which gives any rate credit or any special reduced rates on risks located in a rural fire protection district or in any area protected by a rural fire department, which district or department is wholly or

partially funded by assessments, dues, or subscription payments paid by owners of property located in the district or property owners who are members of an association supporting the rural fire department, shall give the rate credit or reduced rate only on risks insured by persons who pay the appropriate assessment, dues, or subscription payments for support of the district or department.

(c)(1)(A) It is unlawful for any insurance agent or company to knowingly write an initial policy of fire insurance coverage on any risk located in a rural fire protection district or in any area protected by a rural fire department at any special reduced rate or with any rate credit based on the location of the risk in such a district or area without having first obtained from the insured or from the fire department providing service in the district or area evidence showing that a current assessment, dues, or subscription payments for the property to be insured have been paid to the fire department serving the area in which the insured property is located.

(B) The evidence required by the insurer may be, but is not limited to, a receipt, cancelled check, or other valid proof of payment provided by the insured.

(2)(A) If any agent is found by the Insurance Commissioner to have violated the provisions of this subsection, the agent shall be liable for an administrative penalty of one hundred dollars (\$100) for the first violation and five hundred dollars (\$500) for the second violation.

(B) For any subsequent violation, the agent shall be liable for an administrative penalty of five hundred (\$500) dollars plus an amount equal to the difference between the amount of the premium actually charged on the particular policy involved based on the special rate and the amount of premium which would have been charged if the special rate had not been applied.

## **Subchapter 2. Anti-Arson Applications.**

### **23-88-201. Purpose.**

The purpose of this subchapter is to promote the public welfare by reducing the loss of life and fire damage to property caused by the crime of arson by requiring insurance companies to secure anti-arson applications from applicants for new policies of property insurance containing information to control the incidence of arson fraud.

### **23-88-202. Definition.**

As used in this subchapter, unless the context otherwise requires, "anti-arson application" means any application for insurance covering the peril of fire that includes certain questions which shall be answered by the applicant in addition to the basic information normally supplied to an insurer by an applicant.

### **23-88-203. Issuance of policy or renewal of contract prior to July 4, 1983.**

- (a) "Insurance policy" and "contract" shall not be construed to mean a property insurance policy issued prior to July 4, 1983, or contract that is being renewed.
- (b) However, assignment of the policy or contract because of the transfer of a major

financial interest in the insured real property shall require completion of an anti-arson application if otherwise required by this subchapter.

**23-88-204. Penalty.**

Any insurer willfully violating the provisions of this subchapter shall be subject to a fine imposed by the Insurance Commissioner of not more than five hundred dollars (\$500).

**23-88-205. Promulgation of form by Insurance Commissioner.**

- (a) The Insurance Commissioner, in promulgating the anti-arson application form, shall consider generally recognized two-tier application forms. If the initial first-tier application elicits certain predesignated answers, then the administration of a second-tier supplementary application shall be mandatory.
- (b) The two-tier application shall secure the disclosure of information including, but not limited to:
  - (1) The name and address of the applicant and any mortgagees and any other parties who have an ownership interest in the property;
  - (2) The amount of insurance requested and the method of valuation used to establish the amount of insurance;
  - (3) The dates and selling prices of the property in all real estate transactions involving the property during the last three (3) years;
  - (4) The applicant's loss history over the last five (5) years with regard to any property in which he held an equity interest or a mortgage and where any loss exceeded one thousand dollars (\$1,000) in damages;
  - (5) All taxes unpaid or overdue for one (1) or more years and any mortgage payments overdue by three (3) months or more;
  - (6) All current violations of fire, safety, health, building, or construction codes on the property to be insured; and
  - (7) The present occupancy of the structure.

**23-88-206. Mandatory use.**

- (a) The use of the anti-arson application shall be mandatory for commercial monoline fire policies, designated occupancies, and designated areas of the state, based upon a finding by the Insurance Commissioner, after a public hearing, that the commercial monoline fire policies, the designated occupancies, and the areas of the state have an abnormally high incidence of arson.
- (b) However, if the commissioner desires to extend the application of this subchapter to other than commercial monoline fire policies, he must first find, after public hearing, that the properties insured through those other types of policies are especially prone to arson.
- (c) Designation of any area of the state under this subchapter shall not be deemed a valid reason for refusal to write, for termination, or for nonrenewal of any policy or contract of insurance.

**23-88-207. Required to enter into insurance contract.**

- (a) No insurer may enter into a contract to insure any building, except one (1) to four (4) family owner-occupied dwellings against the peril of fire to be issued after July 4, 1983, unless the insurer first receives an anti-arson application signed and affirmed by the insured, if required by the Insurance Commissioner in accordance with the provisions of this subchapter.
- (b)(1) Any anti-arson application required by this subchapter shall be deemed a material part of the insurance policy to which the application pertains.
- (2) A material misrepresentation shall be deemed grounds to rescind the insurance policy.

**23-88-208. Notification of change in information.**

- (a) Policyholders shall notify their insurer of any change in the information contained in the anti-arson application, within a period of time to be specified.
- (b) A material failure to notify or a material misrepresentation in the notification shall be deemed grounds to rescind the insurance policy.

**23-88-209. Alternative applications.**

- (a) The Insurance Commissioner may not mandate the use of any applications other than the anti-arson application as defined in § 23-88-202. However, he may mandate alternative anti-arson applications pursuant to a finding after a public hearing that:
  - (1) There exists certain types of policies, certain classes of property, and certain geographic areas of the state which have an abnormally high incidence of arson;
  - (2) The anti-arson application described in §§ 23-88-202, 23-88-203, 23-88-205, and 23-88-206 was implemented as respects such types of insurance policies, such classes of property, and areas of the state pursuant to the provisions of this subchapter; and
  - (3) The use of the anti-arson application, pursuant to this subchapter, failed to substantially decrease the arson problems for those types of insurance policies, classes of property, and geographic areas.
- (b) Alternative anti-arson applications may only be mandated for the types of insurance policies, types of occupancies, and the areas of the state which would be permissible subjects for the anti-arson application authorized by this subchapter.

**23-88-210. Termination of policies or contracts.**

- (a) Despite any other provision of law which limits the time for termination of insurance policies to the contrary, an insurer may terminate any policy or contract of insurance where the anti-arson application or any alternative anti-arson application, as provided in § 23-88-209, is required at any time within ninety (90) days from the insurer's acceptance of the applications.
- (b) The notice of cancellation to the insured shall contain the specific reasons for the termination of the policy, provided that the reasons are not otherwise prohibited by law.

**Subchapter 3.  
Rural Risk Underwriting.**

### **23-88-301. Legislative intent.**

It is declared by the General Assembly of the State of Arkansas that adequate insurance upon property in the rural areas is necessary to the economic welfare of the state and that while the need for such insurance is increasing, the market for it is not adequate and may become less adequate in the future. It is the purpose of this subchapter to provide a mandatory plan to assure an adequate market for property insurance on insurable risks in the rural areas of Arkansas.

### **23-88-302. Definitions.**

As used in this subchapter, unless the context otherwise requires:

- (1) "Association" means the Arkansas Rural Risk Underwriting Association established pursuant to the provisions of this subchapter;
- (2) "Commissioner" means the Insurance Commissioner;
- (3) "Insurer" means any person who:
  - (A) Writes any kind of insurance to which this subchapter applies under § 23-88-303, including the exchange of reciprocal or interinsurance contracts; and
  - (B) Is licensed to transact insurance in this state;
- (4) "Net direct written premiums" means the gross amount of premiums received from policies of insurance issued in this state to which this subchapter applies, less return premiums and dividends paid or credited to policyholders. The term does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deduction for premiums for indemnity reinsurance ceded to other insurers; and
- (5) "Person" means any individual, corporation, partnership, association, or voluntary organization.

### **23-88-303. Arkansas Rural Risk Underwriting Association - Plan of property insurance.**

- (a) All insurers licensed to transact property insurance, as defined in § 23-62-104, shall become members of the Arkansas Rural Risk Underwriting Association.
- (b) This association shall provide a plan of property insurance to insurable rural risk applicants. Rural risk applicants are those applicants seeking insurance on risks located in geographic areas to be determined "rural areas" by the governing board, subject to the approval of the Insurance Commissioner.

### **23-88-304. Governing board.**

For the plan or plans there shall be a governing board of seven (7) members to be appointed by the Insurance Commissioner, which shall meet at least annually to review and prescribe operating rules and which shall consist of the following members:

- (1) Four (4) members shall be representatives of foreign insurance companies with those members to be appointed for terms of three (3) years; and
- (2) Three (3) members shall be representatives of domestic insurance companies, with those members to be appointed for terms of three (3) years.

**23-88-305. Promulgation and approval of plan - Hearing.**

- (a) The governing board shall within sixty (60) days following June 26, 1985, submit the plan to the Insurance Commissioner for his approval.
- (b) When the plan has been approved by the commissioner, all insurance companies authorized to transact the kinds of insurance set forth in § 23-88-303 shall subscribe to and participate in the plan.
- (c) If no plan meeting the purpose set forth in § 23-88-301 is submitted to the commissioner within the period of time specified, the commissioner shall prepare and promulgate a plan meeting those requirements. The commissioner may designate one (1) or more insurers or other agencies to assist him in the preparation, operation, and promulgation of a plan.
- (d) Notwithstanding the provisions contained in this section, no application shall be submitted to or accepted by the plan until the commissioner has, after a hearing, determined that a need for the implementation of the plan exists.

**23-88-306. Provisions of plan.**

- (a)(1) The plan shall provide for the efficient, economical, and fair administration of the Arkansas Rural Risk Underwriting Association and shall be consistent with the purposes of this subchapter. Therefore, it shall include provisions for the equitable apportionment among the association's members of the expenses, profits, and losses arising from the association's rural risk writings.
  - (2) A member's participation in the association's expenses, profits, and losses shall be in the proportion that the net direct property insurance premiums of each member, written in this state during the preceding calendar year, bears to the aggregate net direct property insurance premiums of all members of the association, written in this state during the preceding calendar year.
  - (3) The governing board shall be empowered to make assessments as may be necessary to provide funds needed to make payment of all loss claims and expenses of the association. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year results in a deficiency in premiums to losses, assessments may be made in the next and any successive calendar year.
  - (4) Further, the plan shall provide for an annual credit to members for basic property insurance voluntarily written on rural risks. This dollar credit shall relieve a member wholly or partially from participation in the association's expenses and losses.
- (b) The plan shall also establish reasonable underwriting standards, subject to the approval of the Insurance Commissioner. Any applicant that meets these standards will be an insurable risk and entitled to property insurance through the association.
  - (c) The plan shall include deductibles, rules for classification of risks, rate modifications consistent with the objective of providing and maintaining funds sufficient to pay rural risk losses and expenses, and the limits of coverage available.

**23-88-307. Liability of insurer.**

It being the intention of this subchapter to provide an adequate market for the property insurance coverages defined in this subchapter, no insurer participating in this plan shall be liable for any damages which may result from any extra-contractual liability or for any act or omission of any kind, the insurer's liability being limited solely to the property insurance coverages provided for herein.

**23-88-308. Commissioner's powers and duties.**

- (a) In addition to approving the plan of operation, the Insurance Commissioner shall have the authority to promulgate rules and regulations necessary to effect the purpose of this subchapter.
- (b) Further, the commissioner, after review of annual statements, other reports, and any other statistics which he deems necessary, shall certify to the plan the aggregate net direct property insurance premiums written on property in this state by all members. This information will be used to determine a member's participation.

**23-88-309. Appeal decisions of governing board to Insurance Commissioner.**

Any applicant for a policy, any persons insured under the plan, and any agency or insurer affected by the plan may appeal to the Insurance Commissioner any ruling or decision of the governing board or the authorized representative designated to operate a plan.