

Chapter 95.

Risk-sharing Plans For Property And Casualty Insurance.

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23-95-101. Purpose.

The purpose of this chapter is to provide for the establishment of risk-sharing plans for property or casualty insurance if the Insurance Commissioner determines that the insurance is not reasonably available in the voluntary market for the citizens of this state. This chapter is not intended to conflict with the provisions as to other risk-sharing plans established under prior law or in the Arkansas Insurance Code, § 23-60-101 et seq., and, in particular, the provisions of §§ 23-88-301 and 27-19-106.

23-95-102. Construction.

This chapter shall be deemed cumulative of prior laws, and no prior law or part of a law shall be deemed to be in conflict with this chapter unless failure to so determine would prevent giving effect to an explicit provision of this chapter.

23-95-103. Governing board.

There is created a governing board of seven (7) members to be appointed by the Insurance Commissioner which shall meet as necessary to review and prescribe operating procedures and rules to implement any plan promulgated pursuant to this chapter. The governing board shall be comprised of the following members:

- (1) The Insurance Commissioner, who shall serve as chairman;
- (2) Two (2) representatives from insurers licensed to operate in this state;
- (3) Two (2) representatives who are licensed insurance agents in this state; and
- (4) Two (2) consumer representatives.

23-95-104. Plan for coverage - Requirement.

If the Insurance Commissioner finds, after a hearing, that in all or in any part of this state, any amount or kind of insurance authorized by §§ 23-62-104 and 23-62-105 is not reasonably available in the voluntary market and that the public interest requires the availability of that insurance, he shall direct insurers doing business within this state to prepare a voluntary plan which will provide that insurance coverage. The plan shall be submitted to the commissioner within the time he designates and, if approved by him, may be put into operation. If the plan is not approved by the commissioner, or if the plan

is not submitted as required, the commissioner may promulgate a plan to provide insurance coverage for any risks in this state which are, based on reasonable underwriting standards, entitled to obtain coverage but are otherwise unable to obtain coverage in the voluntary market.

23-95-105. Plan for coverage - Contents.

- (a) Each plan promulgated or prepared pursuant to § 23-95-104 shall:
 - (1) Give consideration to:
 - (A) The need for adequate and readily accessible coverage;
 - (B) Optional methods of improving the market affected;
 - (C) The inherent limitations of the insurance mechanism;
 - (D) The need for reasonable underwriting standards; and
 - (E) The requirement of reasonable loss prevention measures;
 - (2) Establish procedures that will create minimum interference with the voluntary market;
 - (3) Distribute the obligations imposed by the plan and any profits or losses experienced by the plan equitably and efficiently among the participating insurers;
 - (4) Establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The filing and processing of a complaint or grievance pursuant to this section does not waive or stay the requirement for participation in the plan; and
 - (5) Establish a rating plan which shall be actuarially sound.
- (b) Each plan may, on behalf of its participants:
 - (1) Issue policies of insurance to eligible applicants;
 - (2) Underwrite, adjust, and pay losses on insurance issued by the plan;
 - (3) Appoint a service company or companies to perform the functions enumerated in this subsection; and
 - (4) Obtain reinsurance for any part or all of its risks.
- (c) Participation by the insurer in the losses and expenses of the plan shall be in the proportion that the direct written premiums of the insurer written in this state bears to the total aggregate written premium written in this state. Premiums which serve as the basis for participation in other risk-sharing plans established under prior law shall be excluded both from the insurer's direct written premium and the total aggregate direct written premium in determining participation in the losses and expenses of the plan.
- (d) Each plan shall provide for:
 - (1) The method of classifying risks;
 - (2) The making and filing of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the various risks insured by the plan;
 - (3) The adjusting and processing of claims;
 - (4) The commission rates to be paid to agents or brokers for coverages written by the plan; and
 - (5) Any other insurance of investment functions that are necessary for the purpose of

providing adequate and readily accessible coverage.

23-95-106. Information for individuals.

Every participating insurer and agent shall provide to any person seeking the insurance available in each plan information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan.

23-95-107. No liability in creating plan.

There shall be no liability on the part of and no cause of action shall arise against the Insurance Commissioner, his representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this chapter.

23-95-108. Rules and regulations.

The Insurance Commissioner shall have the authority to promulgate rules and regulations necessary to effectuate the purpose of this chapter.

History. Acts 1987, No. 896, § 9.