

TITLE 23

CHAPTER 66 – Trade Practices

Subchapter 5. Fraudulent Insurance Acts Prevention.

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23-66-501. Definitions.

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

- (1) "Actual malice" means knowledge that information is false, or reckless disregard of whether it is false;
- (2) "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as, or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf;
- (3) "Commissioner" means the Insurance Commissioner of this state;
- (4) "Fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:
 - (A) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to an insurer, a reinsurer, broker or its agent, or by a broker or agent, false information as part of, in support of, or concerning a fact material to one or more of the following:
 - (i) An application for the issuance or renewal of an insurance policy or reinsurance contract;
 - (ii) The rating of an insurance policy or reinsurance contract;
 - (iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (iv) Premiums paid on an insurance policy or reinsurance contract;
 - (v) Payments made in accordance with the terms of an insurance policy or reinsurance contract;

- (vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (vii) The financial condition of an insurer or reinsurer;
 - (viii) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (ix) The issuance of written evidence of insurance; or
 - (x) The reinstatement of an insurance policy;
- (B) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;
- (C) Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance;
- (D) Willful embezzlement, abstracting, purloining or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance;
- (E) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or
- (F) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection;
- (5)(A) "Insurance" means a contract or arrangement in which one undertakes to:
- (i) Pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance;
 - (ii) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;
 - (iii) Pay an annuity to another; or
 - (iv) Act as surety.
- (B) "Insurance" shall, for the purposes of this subchapter, be deemed to include any definition used in the Arkansas Insurance Code;
- (6) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subdivision (5)(A) of this section. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;
- (7) "NAIC" means the National Association of Insurance Commissioners;
- (8)(A) "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing;
- (B) "Person" shall, for the purposes of this subchapter, be deemed to include any definition used in the Arkansas Insurance Code;
- (9) "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered

- or issued for delivery in this state; and
- (10) "Reinsurance" means a contract, binder of coverage, including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

23-66-502. Fraudulent insurance acts, interferences, and participation of convicted felons prohibited.

- (a) A person shall not commit a fraudulent insurance act.
- (b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this subchapter or investigations of suspected or actual violations of this subchapter.
- (c)(1) A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance, unless the person was pardoned, the conviction was expunged, or the person has obtained the written consent of the Insurance Commissioner pursuant to subsection (d) of this section.
- (2) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to conviction was expunged, or the person has obtained the written consent of the commissioner pursuant to subsection (d) of this section.
- (d)(1) A person described in subdivision (c)(1) of this section may participate in the business of insurance if written consent is obtained from the commissioner who, in the commissioner's sole discretion, may grant the written consent upon a finding that to do so would not endanger the public health, safety, and welfare.
- (2) Notwithstanding any other provision in this subchapter, a person convicted in this state of a felony involving a fraudulent insurance act, dishonesty, or breach of trust after having obtained the written consent of the commissioner under this subsection shall have the fine and term of imprisonment for such a class of felony under the Arkansas Criminal Code enhanced to that of the next highest classification and shall be permanently disqualified from participating in the business of insurance in this state. If after obtaining the written consent of the commissioner under this subsection a person is convicted in a foreign jurisdiction of a felony involving a fraudulent insurance act, dishonesty, or breach of trust, the person shall be permanently disqualified from participating in the business of insurance in this state.

23-66-503. Fraud warning required.

- (a) Claim forms, proofs of loss, or any similar documents, however designated, seeking payment or benefit pursuant to an insurance policy, and applications for insurance, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:
- "Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison."
- (b) The lack of a statement as required in subsection (a) of this section does not constitute a defense in any prosecution for a fraudulent insurance act.

- (c) Policies issued by unauthorized insurers shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by § 23-65-307.
- (d) The requirements of this section shall not apply to reinsurance proofs of loss or applications.

23-66-504. Investigative authority of the commissioner.

The commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance.

23-66-505. Mandatory reporting of fraudulent insurance acts.

- (a) A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed shall provide to the Insurance Commissioner the information required by, and in a manner prescribed by, the commissioner.
- (b) Any person engaged in the business of insurance who knowingly fails to report as required by subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed one (1) year, or by both fine and imprisonment.
- (c) Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

23-66-506. Immunity from liability.

- (a) There shall be no civil liability for libel, slander, or any other cause of action imposed on, and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent insurance acts, if the information is provided to or received from:
 - (1) The Insurance Commissioner or the commissioner's employees, agents, or representatives;
 - (2) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
 - (3) A person employed by or authorized by an insurer whose activities include the investigation or reporting of suspected fraudulent insurance acts when furnishing, disclosing, or requesting information on such suspected fraudulent insurance acts to or from a person employed by or authorized by other insurers or insurer organizations acting in the same capacity; or
 - (4) The National Association of Insurance Commissioners or its employees, agents, or representatives.
- (b) Subsection (a) of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent insurance act, the party bringing the action shall

plead specifically any allegation that subsection (a) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.

- (c) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection (a) of this section.

23-66-507. Confidentiality.

- (a) Notwithstanding any other provision of law, the documents and evidence provided pursuant to §§ 23-66-505 and 23-66-508 or obtained by the Insurance Commissioner in an investigation of suspected or actual fraudulent insurance acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action until the matter under investigation is closed by the Insurance Fraud Investigation Division with the consent of the commissioner.
- (b) Subsection (a) of this section does not prohibit release by the commissioner of documents and evidence obtained by the division in an investigation of suspected or actual fraudulent insurance acts:
 - (1) In administrative or judicial proceedings to enforce laws administered by the commissioner;
 - (2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent insurance acts, or to the National Association of Insurance Commissioners; or
 - (3) At the discretion of the commissioner, to a person in the business of insurance that is aggrieved by a fraudulent insurance act.
- (c) Release of documents and evidence under subsection (b) of this section does not abrogate or modify the privilege granted in subsection (a) of this section.

23-66-508. Creation and purpose of the Insurance Fraud Investigation Division.

- (a)(1) The Insurance Fraud Investigation Division is established within the State Insurance Department.
 - (2) The Insurance Commissioner shall appoint the full-time supervisory and investigative personnel of the division, who shall be qualified by training and experience to perform the duties of their positions.
 - (3)(A) The commissioner shall designate the personnel assigned to the division, who, upon meeting the qualifications established by the Arkansas Commission on Law Enforcement Standards and Training, shall have the powers of specialized law enforcement officers of the State of Arkansas for the purpose of conducting investigations under § 23-66-504 and any criminal violations related to those investigations.
 - (B) Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the Arkansas Commission on Law Enforcement Standards and Training.
 - (4) The commissioner shall also appoint clerical and other staff necessary for the division to carry out its duties and responsibilities under this subchapter.
- (b) It shall be the duty of the division to:

- (1) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that a fraudulent insurance act may be, is being, or has been committed;
 - (2) Review reports or complaints of alleged fraudulent insurance activities from federal, state, and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and
 - (3) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.
- (c) The division shall have the authority to:
- (1)(A) Issue subpoenas to examine any individual under oath and to compel the production of records, books, papers, contracts, and other documents.
 - (B) Subpoenas shall be served in the same manner as if issued by a circuit court.
 - (C) If any individual fails to obey a subpoena issued and served pursuant to this subsection, upon application of the division, the Pulaski County Circuit Court or the circuit court of the county where the subpoena was served may issue an order requiring the individual to comply with the subpoena.
 - (D) Any failure to obey the order of the court may be punished by the court as contempt thereof;
 - (2) Administer oaths and affirmations;
 - (3) Share records and evidence with federal, state, or local law enforcement or regulatory agencies;
 - (4)(A) Make criminal referrals to prosecuting authorities.
 - (B) The prosecuting attorney of the judicial district where a criminal referral has been made shall, for the purpose of assisting in the prosecution, have the authority to appoint as special deputy prosecuting attorneys licensed attorneys in the employment of the division.
 - (C) The prosecuting attorney shall have the right and discretion to proceed against any person or organization on criminal referrals made hereunder, both organizational and individual liability being intended; and
 - (5)(A) Conduct investigations outside of this state.
 - (B) If the information the division seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the division to examine at the place where the information is located.
 - (C) The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the division, and the division may respond to similar requests from officials of other states.

23-66-509. Other law enforcement of regulatory authority.

This subchapter shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

- (2) Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law enforcement or regulatory agency other than the Insurance Fraud Investigation Division; or
- (3) Limit the powers granted elsewhere by the laws of this state to the Insurance Commissioner or the division to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

23-66-510. Insurer antifraud initiative.

- (a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts. Antifraud initiatives may include, but are not limited to:
 - (1) Fraud investigators, who may be insurer employees or independent contractors; or
 - (2) An antifraud plan submitted to the Insurance Commissioner. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.
- (b) Upon the written request of an insurer, the commissioner may grant an exemption from the requirements of this section if the commissioner determines that such an exemption would not be detrimental to the interests of the public.

23-66-511. Regulations.

The Insurance Commissioner may promulgate reasonable rules and regulations deemed necessary by the commissioner for the administration of this subchapter.

23-66-512. Penalties.

A person who violates this subchapter is subject to the following:

- (1)(A) Suspension or revocation of license, civil penalties of up to ten thousand dollars (\$10,000) per violation, or both.
- (B) Suspension or revocation of license and imposition of civil penalties shall be pursuant to an order of the Insurance Commissioner issued under § 23-61-301 et seq.
- (C) The commissioner's order may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter; and
- (2)(A) A person convicted of a violation of § 23-66-502 by a court of competent jurisdiction shall be guilty of a Class D felony.
- (B) A person convicted of a violation of § 23-66-502 shall be ordered to pay restitution to persons aggrieved by the violation of this subchapter.
- (C) Restitution shall be ordered in addition to a fine or imprisonment; and
- (3) A person convicted of a felony violation of this subchapter pursuant to subdivision (2) of this section shall be disqualified from engaging in the business of insurance.

23-66-513. Initial appointment investigation. [Effective July 1, 2002 - provisional date.]

(a)(1)(A) Prior to the approval of any application or request for appointment by an insurer or company to be added to the license obtained by an individual resident agent or producer who has had no previous appointments on his or her Arkansas license prior to this request, the insurer shall conduct or secure at its expense an investigation as to the applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, and as to the agent's or producer's character, financial condition, and financial history.

(B) The Insurance Commissioner may accept a background check performed by the National Association of Securities Dealers for any required broker or producer background check required by this section.

(2) At a minimum, the investigation shall include the following information disclosed by the investigation:

(A) Whether the applicant has been convicted of a felony, and, if so, the date and nature of the conviction, the name and location of the court, and the penalty imposed or other disposition of the case, for review in compliance with the provisions of § 23-66-502(c) and other applicable state or federal laws;

(B) Whether, at the time of the application, the agent or applicant is a named party in any lawsuit, and, if so, the style of the lawsuit, a brief description of the litigation, and the name and location of the court;

(C) Whether a judgment for monetary damages has been entered against the applicant within the last five (5) years, and, if so, the date of the judgment, the amount of the judgment, whether the judgment has been paid or otherwise satisfied, the name and location of the court, and the style of the case; and

(D) Such other information as the Insurance Commissioner shall require.

(3) The forms and the requirements of this subsection shall not apply to:

(A) Any limited or restricted license as defined in § 23-64-502(7) or (9), any limited or restricted license which the commissioner may exempt, or any temporary license the commissioner may issue;

(B) Corporations, partnerships, limited liability companies, and partnerships licensed as insurance agencies under this chapter; and

(C) Any individual requesting a renewal license or requesting his or her second or subsequent insurer appointments added after the first-time license or appointment.

(b) The requirements for broker or producer background checks of subdivisions (a)(1) and (2) of this section shall apply to each first-time original license applicant for a resident broker's or producer's license in this state. However, those requirements shall not be required for any renewal broker's or producer's license and all filings shall exclude appointment forms for first or renewal licenses for brokers or producers.