

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

May 22, 2009

BULLETIN NO.: 6-2009

TO: All Licensed Foreign, Alien and Domestic Insurers, Accredited/Trusted Reinsurers, Farmers' Mutual Aid Associations, Hospital and Medical Service Corporations, Health Maintenance Organizations, Fraternal Benefit Societies, Insurer Trade Associations, Rate Service or Advisory Organizations, All Insurance Producer Trade Associations, All Third Party Administrators, Adjuster Trade Association, Approved But Not Admitted Surplus Line Insurers, Licensed Funeral Directors Holding Permits to Sell Prepaid Funeral Benefit Contracts, Licensed Professional Employer Organizations, Licensed Managing General Agents/Agencies, Registered Life Care and Continuing Care Facilities, Licensed Surplus Line Brokers, Registered Notary Bond Surety Corporations, and Other Interested Parties

FROM: Arkansas Insurance Department

SUBJECT: 2009 ARKANSAS LEGISLATION PERTAINING TO INSURANCE

L Life & Health **P** Property & Casualty **A** Producers

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GENERAL OMNIBUS, ACT 726 OF 2009. Effective July 31, 2009 (Except for Section 20 which is effective March 31, 2009, and Section 9 which will be effective January 1, 2010).

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Section 1. Payment of Agent Fees: As currently set forth in Section 1 of Act 901 of 1993 and uncodified in the notes of Ark. Code Ann. § 23-61-706, insurance companies are not allowed to pay agent renewal fees (ARF). The Insurance Department's License Division receives a number of license renewals with insurance company checks that have to be returned unprocessed due to the wording of the statute. Removing all references in the statute as to who is allowed to pay ARF fees allows for the more efficient handling of these transactions.

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Section 2. Amendment to Service Contract Act: There was a codification error in the Service Contracts Act, Ark. Code Ann. § 4-114-101, et seq., which was enacted in the 2007 session. In its erroneous 2007 form, the Act allows a service contract provider to meet the financial requirements for doing business in Arkansas by only placing a minimum of \$25,000 on deposit with the Department. However, that allows providers to be less financially secure than was intended. Therefore, this 2009 Act restores the Service Contract Act to correctly set forth the three ways to comply with the Act's applicable financial requirements.

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Section 3. Electronic Deposit of Workers' Compensation Benefit Payments: With the advent of the computerization of the banking industry, electronic fund transfers (EFTs) have become a common and often preferred way of depositing funds. Currently, Ark. Code Ann. § 11-9-801 requires that workers' compensation benefits be paid only by check or state warrant. This can become problematic for seriously injured and incapacitated workers who have difficulty signing checks or traveling to the bank to deposit the funds. Furthermore, Ark. Code Ann. § 19-4-407 and other statutes permit the state to deposit funds through EFTs if approved by the Chief Fiscal Officer of the State, the State Treasurer, or the Auditor of State. This statute conflicts with Ark. Code Ann. § 11-9-801, allowing the state to deposit workers compensation claims by EFT, but not allowing private workers compensation carriers to do the same. This 2009 statutory amendment allows all carriers to deposit funds via EFTs by adding language to subsection (a) that allows such transfers.

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Section 4. Reword General Penalty Statute: Near the beginning of the Arkansas Insurance Code, sits a general penalty statute enacted in 1947 and amended in 1959. This statute inexplicably requires a "conviction in a court of this state in order to impose a fine in addition to a suspension or revocation of a license." This could limit the Department's power to take action against licensees when appropriate. The language is antiquated and the fine is also limited to no more than \$1000, with a minimum of \$50. The statute was modernized and reworded in the 2009 legislative session to give the Department more flexibility in imposing fines when action is taken against a licensee consistent with the present language in the Producer Licensing Model Act (PLMA) and the Trade Practices Act.

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Section 5. Correction - Release of Active Investigatory or Examination Files Typo: Ark. Code Ann. §23-61-103(d)(6), which speaks to the release of active investigatory or examination files, contains a reference to subsection (d)(4). The correct reference should be (d)(5), and the statute has been amended accordingly to correct the inaccurate reference.

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Section 6. Confidentiality of Ancillary Information: Ark. Code Ann. § 23-61-207 concerns the confidentiality of information ancillary to the examination of an insurer. It states that documents submitted by an insurer in response to a request "from a department financial examiner or analyst" shall be confidential. In order to protect confidentiality of documents submitted in response to a request from someone other than a financial examiner or analyst, this amendment adds the Commissioner to those persons that may request information and keep it confidential under this section.

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Section 7. Collection of Fees: Ark. Code Ann. § 23-61-401 regarding the Commissioner's collection of fees is amended to allow the Commissioner to establish via rule an annual or biennial basis for collection of licensing fees. This is in con-

nection with the change in Sections 30 & 31 from an annual to a biennial period regarding continuing education for insurance producers.*

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Section 8. Equalization of Nonresident License Fees: Ark. Code Ann. § 23-61-401(8) sets the license fees for nonresident producers and agencies. There is no similar statutory provision setting license fees for resident producers and agencies. Under the Gramm-Leach-Bliley Act (GLBA) (1999 Federal Law), states are prohibited from licensing practices that discriminate against nonresident producers and agencies. By repealing these fees, Arkansas will then be in compliance with GLBA and the National Association of Insurance Commissioners (NAIC) Uniformity Licensing Standards. All producer and agency licensing fees will then be set by an Arkansas Insurance Department Rule. The current Rule includes equivalent license fees for resident and nonresident producers and agencies.

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Section 9. Company Financial Regulation Fee (CFRF): Currently the due date for the CFRF is June 30th. The Department's Accounting Division has requested the due date be changed to June 1st, which would provide relief to the division by not conflicting with the fiscal year end and the due date of the anti-fraud assessment. Although the due date for this fee is provided in Rule 56, it is also codified in Ark. Code Ann. § 23-61-703 and this legislative fix will take effect January 1, 2010, to accomplish this CFRF payment date change.

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Section 10. Employee Benefit Stop Loss Insurance Definition: Ark. Code Ann. § 23-62-111 defines "employee benefit stop loss insurance" as coverage that insures employers against particular risks described therein. In some cases the coverage is purchased by a health plan sponsored by an employer. By adding "employer sponsored health plans" to the definition, coverage will include all types of self funded health plans.

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Section 11. Claim Loss Information – Producers: Ark. Code Ann. § 23-63-111 requires property and casualty companies to provide claim loss information to the policyholder or the policyholder's producer upon request. If the information is provided to the producer, there is no time frame in which the producer is required to forward the information to the policyholder. The change to the statute adds this needed time frame.

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Sections 12-16. Charitable Gift Annuity Modernization: In an effort to modernize state law applicable to organizations permitted to issue charitable gift annuities and to reflect acceptable best practices of the charitable gift annuity sector, our certificate of authority statute Ark. Code Ann. § 23-63-201(d), under which we may issue a special permit to such organizations, is amended in four respects:

1. In Sections 12 and 13 Ark. Code Ann. § 23-63-201(d)(2) is modified to clarify that there are three methods for establishing reserve liabilities, as permittees have found the current statutory language confusing.

2. In Section 14 the current paragraph Ark. Code Ann. § 23-63-201(d)(7)(B) is deleted to remove the requirement that the permittees hold securities with banks and brokers under agreements that meet the requirements of Ark. Code Ann. § 23-69-134(b)(4)(A), as this requirement has been found too burdensome by the permittees. Prior to addition of this requirement in 2005, there had been no known reports of a charity failing to perform due to the assets being held by a bank or custodian not meeting these requirements.
3. In Section 15 Ark. Code Ann. § 23-63-201(d) is being amended to extend the due date for filing of annual statements by charities permitted to issue gift annuities from 90 days to 180 days from the end of their fiscal year.
4. In Section 16, subsection (f) of Ark. Code Ann. § 23-63-201 is added to provide a penalty for failure of a permittee to comply with the provisions of Ark. Code Ann. § 23-63-201(d) and (e).



Section 17. Suspended Companies: Ark. Code Ann. § 23-63-215(b) states that suspended companies “shall” continue to pay fees and taxes. Most of the companies we suspend are foreign companies that are in receivership in their domiciliary states. As a practical matter, those companies are no longer able to pay our fees and taxes either because they do not have the funds or because the funds are being used to fulfill obligations to policyholders. Accordingly, we end up with many suspended companies in violation of our suspension orders because we are unable to collect the fees and taxes due. In order to remedy this problem in the future, Ark. Code Ann. § 23-63-215(b) has been amended to state that the Commissioner may waive any or all fees, taxes, and filings upon suspension. Upon reinstatement of the certificate of authority, all accumulated fees and taxes are due and owing.

Additionally, in the past we have suspended companies on an annual basis, which required a new order each year. At this time, we are suspending companies indefinitely. We will also amend some of the language in Ark. Code Ann. § 23-63-215 that seems to conflict with using an indefinite time period, such as the statute speaking to the “expiration” of the suspension order.



Section 18. Elimination of Hard Copy Filing Requirement: Ark. Code Ann. § 23-63-216(b)(5) currently requires insurers to file both a hard copy and an electronic copy of their financial statements with the NAIC. The NAIC has changed its reporting requirements to no longer require the hard copy filing. Therefore, the statute is amended to remove this requirement from our code. This is a technical correction only and does not affect the quarterly or annual filings with the Arkansas Insurance Department.



Section 19. Limit of Risk: Ark. Code Ann. § 23-63-701(a) prohibits insurers from retaining risk on any one subject of insurance in an amount exceeding 10% of its surplus. This is an industry standard. However, in subsection (g), mutual insurers are directed to another statute, Ark. Code Ann. § 23-69-112, for their risk

limits. That subsection erroneously removes mutuals from the requirements in (a), and that was not the intent. Further, the statute to which mutuals are directed does not discuss limits of risk. The simplest remedy was to repeal subsection (g).

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Section 20. Domestic Insurer Investments in Subsidiaries: Ark. Code Ann §23-63-818 authorized and established limitations on a domestic insurer's ability to invest in subsidiaries. Subsections (b) and (c) gave the Commissioner express discretion to approve certain investments that might exceed statutory limits. Subsection (c) did not appear to give the Commissioner the same discretion to approve certain investments that might exceed statutory limits. Therefore, subsection (c) was amended to grant the Commissioner the discretion to permit total combined investments in subsidiaries and non-affiliated insurance stocks that exceed the investment limits in the same manner in which the Commissioner has the discretion to permit investment limits that exceed the limits set forth in subsection (b). In addition, new subsections (c) and (d) are added to state that such discretion may be exercised if, after the investment, the domestic insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate for its financial needs. Additional investments require approval by the Commissioner. This section of Act 726 of 2009 became effective March 31, 2009.

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Section 21. Correction - Derivative Transactions Typo: In the 2005 legislative session, Ark. Code Ann. § 23-63-841 pertaining to derivative instruments was added to the part of the Arkansas Insurance Code pertaining to insurer investments. Derivative instruments are securities that derive their value from other financial instruments used to hedge investments. A typo was discovered in Ark. Code Ann. § 23-63-841(f). There was a reference therein to subsection (b) when the correct reference should be subsection (c).

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Section 22. Correction- Controlled Insurer: A correction is needed for Ark. Code Ann. § 23-63-1105(b). This chapter of the Insurance Code governs producer controlled insurers. There was a mistaken reference to "controlling insurer" that is corrected to read "controlled insurer."

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Section 23. Correction - Captive Insurance Annual Report Citation Typo: Ark. Code Ann. § 23-63-1607(b)(3)(A) incorrectly addressed captive insurance companies' annual reporting requirements by referring to Ark. Code Ann. § 23-63-216(h). The citation should be Ark. Code Ann. § 23-63-216(b)(1)(A through C), and is corrected in this section.

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Section 24. Property and Casualty Actuarial Opinion Model Act: Arkansas has added the P&C Actuarial Opinion Model law to codify the requirement to file the Actuarial Opinion, Actuarial Opinion Summary and to provide confidential treatment of the Summary, work papers and other supporting documentation which may be provided in support of the Actuarial Opinion. Previously, the annual actuarial filing requirements were incorporated by reference to NAIC Property and Casualty Annual Statement Instructions.

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Section 25. Adjusters - No License Required for Catastrophes: Ark. Code Ann. § 23-64-209(d) allows an adjuster without an Arkansas license to come into this state and act on behalf of an insurer for losses resulting from a common catastrophe. However, no notice to the Commissioner was previously required when adjusters acted under this provision. Accordingly, the Commissioner was without knowledge when an adjuster comes into the state under this provision and, therefore, had no way to control or supervise the person. An amendment to subsection (d) requiring a notice to the Commissioner has been made. However, the notice requirement is not so stringent as to delay adjusters who wish to assist following a catastrophe.

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Section 26. Continuing Education for Adjusters: This Act requires adjusters to complete 24 hours of continuing education (CE) biennially. Unlike insurance producers, agents and brokers, adjusters previously were not subject to a CE requirement. This legislation is needed in order to achieve conformity with the NAIC Independent Adjusters Licensing Guideline and for the further protection of Arkansas insurance consumers. This new requirement is added to the end of Ark. Code Ann. § 23-64-209.*

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Section 27. Written Examination Requirement: This Act serves as a clean up for language added in 1985 which provided that the examination requirement would only apply to resident applicants after January 1, 1986. That language is no longer necessary as all resident applicants are now required to pass a written examination.

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Section 28. Adjuster and Consultant Licensing Requirements: Under Ark. Code Ann. § 23-64-215, consultants and adjusters are required to pay an annual fee to renew their license. This amendment will allow for changes by rule to establish an annual or biennial basis for collection of license fees.*

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Section 29. Record Retention Requirements for Insurance Producers: Previously, there were no specific record retention requirements applicable to insurance producers or other licensees. All that was required of producers was to maintain the “usual and customary records pertaining to transactions under his or her license” at his or her place of business. See Ark. Code Ann. §23-64-220. This Act sets out specific record retention requirements for producers and follows the trend in Arkansas state government and in other jurisdictions for more specific document retention.

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Sections 30 & 31. Biennial Continuing Education Requirement: Under the NAIC Uniformity Standard Number 23, the six major lines of insurance, life, accident and health or sickness, property, casualty, variable products, and personal lines, as defined in the PLMA, should all require twenty-four (24) hours of continuing education, including three (3) hours of Ethics every two (2) years. In order to

conform to these NAIC standards, this Act amends Ark. Code Ann. § 23-64-301 to set forth the new biennial CE requirement.

Additionally, the Act requires title insurance agents to complete the minimum number of hours of CE courses established by Rule. Finally, the Act adds a reporting requirement for producers to report courses of instruction within the biennial period prescribed by Rule.*

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Section 32. Correction - MGA Typo: Ark. Code Ann. § 23-64-405(g)(2) pertaining to managing general agents had a reference to relationships governed by Subchapter 6 of Chapter 63, pertaining to financial reporting standards. The correct reference should be to relationships governed by Subchapter 5 of Chapter 63, the Insurance Holding Company Regulatory Act. Therefore, Ark. Code Ann. § 23-63-601, et seq., is replaced with Ark. Code Ann. § 23-63-501, et seq., in this statute.

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Section 33. Claim Loss Information - Surplus Lines Brokers: Ark. Code Ann. § 23-65-311(e) required surplus lines insurers to provide claim loss information to the policyholder upon request. This information is needed to obtain competitive bids for insurance coverage. In the surplus lines business, the surplus lines broker is commonly the entity that maintains this type of information. Amending this subsection to include surplus lines brokers will assist consumers to obtain quotes for insurance coverage.

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Section 34. Non-Life Mutual Insurers - Deposit Required: With respect to what is required for the formation of non-life mutual insurers, Ark. Code Ann. § 23-69-113 is updated to allow such entities to post acceptable securities as their statutory deposit with the Insurance Department, which deposit could then be used to pay the indebtedness or claims of a troubled insurer. The previous wording of said statute provided an option of a corporate surety bond. That option needed to be eliminated because surety bonds are much less liquid than U.S. Government Treasuries, etc. This amendment to the statute brings it in line with the other Arkansas Insurance Code provisions to reflect the use of securities, instead of surety bonds, as a statutory deposit.

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Section 35. FMAA - Deposit for Certain Coverages: Ark. Code Ann. § 23-73-105 governs the organization and membership requirements of a Farmers' Mutual Aid Association (FMAA). As it previously read, subsection (g)(1)(B) required all FMAAs to maintain a minimum surplus of \$50,000 in addition to a second statutory deposit of \$50,000 required by subsection (g)(1)(C). However, the deposit required by subsection (g)(1)(B) was intended only to apply to FMAAs that write coverages listed in subsection (f). Additionally, the second statutory deposit required by subsection (g)(1)(C) should not be included in the statute at all. Accordingly, Ark. Code Ann. §23-73-105 is amended and reorganized to reflect the true intent of the statute and to match up the (g)(1)(B) statutory requirement only for those FMAAs that write the coverages listed in subsection (f). In addition to that

reorganization of the statutes, subsection (g)(1)(C) is deleted because a second “special” deposit was not contemplated under that section.

L **Section 36. Hospital Medical Service Corp. - File Changes to Articles or Bylaws:** Separate provisions in the Arkansas Insurance Code require health maintenance organizations and domestic insurance companies to file any changes to their articles of incorporation or bylaws with the Commissioner. There was no similar requirement for hospital medical service corporations. This amendment requires such filings.

P **Section 37. Exempt Surplus Lines Insurers From Filing Forms for Approval:** Ark. Code Ann. § 23-79-109 requires insurance policy forms to be filed with the Commissioner for approval prior to their use in Arkansas. Several types of policy forms are exempt from this requirement. Policy and contract forms used by surplus lines insurers are added to this list of exemptions.

P A **Section 38. Information to Accompany Title Insurance Policies:** It is obviously important for policyholders to have in their policies complete information with respect to the service office of the company issuing the policy, the insurance producer or agency, and contact information for the Insurance Department. The statute (Ark. Code Ann. §23-79-138) which sets forth this information requirement failed to list “title insurance,” so the Act simply adds “title” to the first line of Ark. Code Ann. §23-79-138(a).

P **Section 39. Medical Malpractice Minimum Policy Requirements:** Given the evolution of the medical malpractice market, it is very important that the minimum policy requirements of Ark. Code Ann. § 23-79-301, et seq., for commercial lines for property and casualty apply to medical malpractice insurance. Insurance consumers need to have guaranteed access to coverage, including tail coverage for claims-made insurance policies such as medical malpractice. The application of the minimum standards of Ark. Code Ann. § 23-79-301, et seq., in this Act to medical malpractice provides such consumer protection. Therefore, the remedy was simply to strike medical malpractice insurance from the exclusions contained in Ark. Code Ann. §23-79-303. Finally, the last sentence of Section 39 makes it clear which minimum standards for commercial property and casualty insurance policies do not apply to medical malpractice insurance.

L A **Sections 40-44. CHIP Amendments to the Arkansas Comprehensive Health Insurance Pool (the Pool):** These sections of Act 726 of 2009 (1) authorize the Arkansas Comprehensive Health Insurance Pool to increase maximum lifetime benefits for pool policyholders; (2) strengthen protection of the pool against fraudulent insurance acts; and (3) update Pool plan benefit exclusions.

Section 40. Ark. Code Ann. § 23-79-506(a), concerning specific authority granted to the Pool was amended to add subdivision (14) authorizing the Pool to establish lifetime maximum benefits for any person covered by a Pool plan, in accordance

with new subdivision (W) of §23-79-510(a)(2) (added by Section 44, described below).

Section 41. Ark. Code Ann. § 23-79-507(d), relating to assessments and fees, was amended by deleting subdivision (2), which is duplicative of information in subdivision (1), and by renumbering the section. This deletion simplifies the text of Ark. Code Ann. § 23-79-507(d), but does not change its substance.

Section 42. Ark. Code Ann. § 23-79-509(a)(2), relating to persons not eligible for coverage under a plan offered by the Pool, was amended by:

Revising subdivision (E) to delete language setting the maximum lifetime benefit for a CHIP policyholder at \$1,000,000, and instead providing that the maximum lifetime benefit shall not be less than \$1,000,000 and shall not exceed \$3,000,000 as set by the Pool's board, in accordance with new subdivision (W) of §23-79-510(a)(2) (added by Section 44, described below); and

Adding subdivision (H), which states a person is ineligible for Pool coverage if the person commits a fraudulent insurance act as defined in Arkansas Code § 23-66-501(4) against the Pool.

Section 43. Ark. Code Ann. § 23-79-509(a)(5), regarding loss of coverage when Pool eligibility ends, is amended to simplify and clarify the language. The amended subdivision states that coverage for an individual ends at the end of the month in which the individual becomes no longer eligible for Pool coverage. This amendment does not change the substance of the subdivision, but eliminates any possible confusion that an ineligible individual could maintain coverage by continuing to pay premiums.

Section 44. Ark. Code Ann. § 23-79-510(a)(2), relating to exclusions from coverage under Pool benefit plans, was amended by:

Changing the introductory language of the section to state that "unless the contractual policy form language adopted by the board provides otherwise," the enumerated services, drugs, or articles shall not be covered by the Pool (this clarifies but does not change the meaning of this introductory language);

Deleting from the enumerated exclusions subdivision (L), relating to routine maternity charges and subdivision (N) relating to expenses for routine physical examinations or tests, as these types of expenses are now part of the standard Pool benefits authorized by the Pool's board; and

Adding a new subdivision (W), which provides for exclusion of any benefits above a maximum lifetime benefit for plan coverage established by the board pursuant to the authority in Ark. Code Ann. § 23-79-506(a)(14), which maximum

lifetime benefit shall not be less than \$1,000,000 and shall not exceed \$3,000,000. Section 23-79-506(a)(14) is added by Section 40 of this bill, as described above.

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Section 45. “Small Employer” Group Insurance Definition: Under our existing “Small Employer Health Insurance” provisions found in Ark. Code Ann. § 23-86-201, et seq., employers with less than 26 employees can obtain insurance coverage without the fear of being turned down for the coverage or being charged unfair premiums for the coverage. Due to the fact that this coverage is basically guaranteed issue and protected by restrictions of premium increases, some larger employers have the ability to place high risk employees into a small group and take advantage of our small group protections. For instance, a large employer in another state may create a new subsidiary with 20 employees including several high risk employees that they want removed from their self-funded health plan. The subsidiary could be located in Arkansas as long as one employee lived and worked in Arkansas. This new small group would then apply for and be issued a group policy under our law. The claims incurred by these high risk individuals would be covered by the insurer, thereby increasing the premiums for all of those in that class of business. In other words, the employer would be dumping high risk individuals from its large health plan into the Arkansas small group market, negatively impacting the small employer market to the detriment of the small employer in Arkansas.

To address the aforementioned issue, the Small Employer Health Insurance provisions are amended in the Act to protect the true small employers in this state by preventing large employers from transferring large claims to our small group market. The amendment would require such employers to put at least 50% of their employees within Arkansas in order to be considered a small employer under Arkansas law.

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Section 46. Restricting Notices of Non-Renewal in Auto to Sixty Day Time Period in Commercial Auto Coverage Requirements: An Act in 2007 which changed the definition of “policy” in Ark. Code Ann. § 23-89-301 removed a subparagraph which restricted that subchapter to what was historically “private passenger automobile policies.” This created an unintended detrimental effect on notices of non-renewal in commercial automobile policies. In the context of commercial automobile coverage, commercial auto coverage is more complicated to place, compared to private passenger automobile policies, and a 60 day period of time has historically been more appropriate with respect to non-renewal notices on commercial risks. The Act resets a 60 day time period, rather than 30, for non-renewal notices in commercial auto in Ark. Code Ann. § 23-79-307(7).

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Section 47. “Continuing Care” Definition: Under Ark. Code Ann. § 23-93-103(2)(A), “continuing care” was previously defined as furnishing living units to individuals and furnishing nursing care or personal care services or requiring an entrance fee. Charging of an entrance fee alone should not require a facility to be-

come licensed as a continuing care provider; therefore, the Act changes “or” to “and.”

Section 48. Emergency Clause (pertaining to Section 20).

Other Department Bills



ASSOCIATIONS, ACT 536 OF 2009. Effective July 31, 2009.

Ark. Code Ann. § 23-86-106(2)(A) deals with group health policies issued to associations. This section states that a bona fide association is one that has been organized and is maintained in good faith for purposes other than that of insuring its members or employees. Under this Act, clarifying language is added which will allow the Department to approve or disapprove any association as a group health policyholder in this state. Two additional requirements are also added. The association must be in existence for two years and have over 100 members before it can be issued a group policy. This follows the requirements for associations in our group life insurance provisions. The final change prohibits insurance companies from having an affiliation with an association to which the insurer issues a group accident and health insurance policy. Generally, the group policyholder has an interest in obtaining the best coverage for certificate holders.



POOLING/CLOSED BLOCKS, ACT 537 OF 2009. Effective July 31, 2009.

Ark. Code Ann. § 23-79-153 requires insurance companies to pool experience from all closed blocks of business when determining premium rate increases. The 2007 Act excluded specified disease, hospital indemnity and other limited benefit health insurance policies from this requirement. This amendment removes products of this type from the exemptions therein.

In addition, this Act makes technical corrections and clarifications to the subject law. Since the Insurance Department only approves rates for individual policies, all references to group policies and certificates are deleted. The Act also allows the commissioner to approve rates for other reasons and allows insurance companies to request a hearing for any adverse determination made by the commissioner on a rate request under this section.



PREPAID FUNERAL BENEFITS CONTRACTS, ACT 538 OF 2009. Effective July 31, 2009.

There previously existed no marketing behavior standards in the Prepaid Funeral Benefits Code (which is an Act outside of the Arkansas Insurance Code that the Department is also responsible for regulating). Therefore, it would aid in our regulation of prepaid funeral benefits to incorporate within the Prepaid Funeral Benefits Code those parts of the Arkansas Insurance Code’s Trade Practice Act

which we believe should be made applicable to the Prepaid Funeral Benefits Code. This Act has done that.

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ANNUITY AND LIFE INSURANCE REPLACEMENT, ACT 539 OF 2009.
Effective July 31, 2009.

Ark. Code Ann. § 23-66-307 sets forth consumer protection steps to be taken when an insurance producer is replacing an insurance consumer's life insurance or annuity. Ark. Code Ann. § 23-66-307 is amended to remove the word "permanent" before "life insurance" and make its applicability clearer. The inclusion of the word "permanent" before the words "life insurance" is confusing and is not a term used in the industry. Additionally, this section was amended to make it clear that it is applicable to both annuity contracts and life insurance policies. This will make it easier for the Department to regulate the marketing and the sale of annuities. The Act adds general language regarding the abuses that occur when unsuitable products are sold and/or there is a failure to exercise good faith and professional discretion. Finally, the Act clarifies the comparison memorandum and record retention requirements applicable when replacing an insurance consumer's life insurance or annuity.*

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CEASE AND DESIST POWERS, ACT 717 OF 2009. **Effective July 31, 2009.**

This Act provides the Insurance Commissioner with summary cease and desist or injunctive powers that can be imposed upon any person who is engaged in or is about to engage in any act or practice constituting a violation of an insurance law, rule or order. Prior to this Act, these powers were relegated to the Insurance Code's Trade Practices Act and the Insurance Code's Unauthorized Practices Act. Prior to this Act, for illegal acts of licensees that did not meet a "trade practice" or an "unauthorized" activity, the Commissioner was restricted to license suspension, revocation and fines related strictly to licensure. This Act provides additional powers of the Commissioner to cease and desist the activity itself on the licensee and is patterned after the Arkansas Securities Commissioner's injunctive, mandamus, and ancillary powers. In conjunction with cease and desist orders, the Act requires the Commissioner to promptly notify the person who is the subject of the order of his or her right to a hearing concerning the order. A hearing shall be held on the written request of the person aggrieved by the cease and desist order, as long as the request is received within thirty (30) days of the entry of the order. If a hearing is requested in such a timely manner, the Commissioner shall conduct the hearing within ten (10) days of the date a hearing is requested.

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VIATICAL/LIFE SETTLEMENTS, ACT 796 OF 2009. **Effective July 31, 2009.**

This Act updates the antiquated Viatical Settlements Act codified in Ark. Code Ann. § 23-81-601, replacing it with the National Conference Of Insurance Legis-

lators (NCOIL) Model Act governing life settlement sales and practices. This was done to provide sufficient consumer protections in the areas of marketing and sales in today's life settlement industry, particularly focusing on stranger initiated life settlement sales. Since Arkansas's adoption in 2003 of the NAIC Model Act on life settlement/viatical contracts, the industry has seen a large expansion of sophisticated financing and stranger initiated life insurance programs without adequate consumer protections, licensing, reporting, and disclosure. Arkansas's previous law did not correctly or adequately address what might be problematic life settlement transactions, licensing, exceptions, and reporting in today's marketplace. The NCOIL model is a needed improvement and modernization of Arkansas's previous law.*



NOTICE CONCERNING USE OF INSURANCE PROCEEDS, SECTION 1 OF ACT 1452 OF 2009 (WHICH MODIFIED ACT 485 OF 2009). Effective July 31, 2009.

With respect to Section 1 of this Act, a new section of the Insurance Code's subchapter dealing with Automobile Liability Insurance has been added, Ark. Code Ann. § 23-89-216, which requires a written notice from motor vehicle liability insurers when making claims payments to third-party claimants. Language is provided that insurers should use (perhaps in their property damage releases or accompanying letters) when informing third-party claimants that failure to use the subject insurance proceeds in accordance with their security agreements may result in criminal charges. While the Act sets forth an option of allowing the insurer to place the pre-printed notice language on its loss estimates, this appears to the Department to be of no help with third-party claims; regardless, it simply is an optional method for complying with the statute.



PROHIBITED PRACTICES BY EMPLOYERS AND ELIGIBILITY REQUIREMENTS REGARDING CHIP, SECTION 2 OF ACT 1452 OF 2009. Effective July 31, 2009.

Section 2 of this Act was spurred by concerns regarding agents working with employers to drop group health insurance coverage and enroll some of their employees in the Comprehensive Health Insurance Pool (CHIP). An agent and employer worked together recently to do this, with the employer paying 75% of the premium. Under federal HIPAA law, such an arrangement is still a "group health plan" as defined by HIPAA. Persons covered by or eligible for a group health plan are not eligible for CHIP by law. Ark. Code Ann. § 23-79-503(10), (definitions of CHIP eligibility categories exclude persons eligible for coverage under a group health plan). Section 2 of this Act amends two sections of the CHIP statutes to make clear that employers cannot use CHIP as a vehicle for providing group health insurance coverage.

Non-Department Bills

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INSURANCE COMMISSIONER SERVE AT THE PLEASURE OF THE GOVERNOR, ACT 149 OF 2009. Effective July 31, 2009.

This Act amends Ark. Code Ann. § 23-61-102(b) to remove the four year term of office of the Insurance Commissioner so that the Commissioner shall serve at the pleasure of the Governor.

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TO DECREASE THE AMOUNT OF TIME ALLOWED FOR PROCESSING APPLICATIONS OF PROVIDERS, ACT 350 OF 2009. Effective July 31, 2009.

This Act changes a pre-existing law in the Insurance Code, Ark. Code Ann. § 23-99-411, which governs the amount of time a health care insurer has to process a medical provider's application to participate in the network of the health insurer. The Act reduces the amount of time a health insurer has to accept or reject the application from 180 days to 90 days for physician applications and restricts the time allowed for non-physician medical providers to 180 days. The Act adds a new section to the law which also tolls the 90 day period for the physicians when a physician's credentials are verified through the Arkansas State Medical Board's Centralized Credentials Verification Service.*

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TO REQUIRE THE STATE EMPLOYEE AND PUBLIC SCHOOL EMPLOYEE PERSONNEL SELF-FUNDED HEALTH PLAN TO COMPLY WITH THE PATIENT PROTECTION ACT AND ANY WILLING PROVIDER LAWS, ACT 702 OF 2009. Effective July 31, 2009.

This Act simply clarifies that the Arkansas Patient Protection Act and Any Willing Provider laws apply both to the state employees' health plan and teachers' health plan which are both self-funded health plans of the State of Arkansas. The Act removed the applicability of the non-insurer exception to the Any Willing Provider law for health plans of state employees and teachers administrated by non-insurers.

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ARKANSAS HISTORIC REHABILITATION INCOME TAX CREDIT ACT, ACT 498 OF 2009. Effective July 31, 2009.

This Act creates a new tax credit which can be used to offset income or premium taxes due in Arkansas. The credit is earned when a person or entity incurs expenses related to rehabilitation of historic structures. The credit will be 25% of the total rehabilitation expenses, up to the first \$500,000 on income producing properties or \$100,000 on non-income producing properties.

The Department of Arkansas Heritage makes the determination regarding whether a credit is allowed and, when allowed, a "certification of completion" is issued

and states the amount of the credit to be allowed. This certification is freely transferable. If it is transferred or assigned, the “appropriate tax collection authority” must be notified within 30 days of the transfer or assignment.

The holder of the certification presents it along with its income or premium tax return. If unused, the credit may be carried forward for 5 years.

The Department of Arkansas Heritage is required to consult with our Department in promulgating rules. Additionally, our Department is instructed to promulgate rules relating to this new premium tax credit.*

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CASUALTY INSURANCE INCLUDES MORTGAGE LIEN PROTECTION, ACT 210 OF 2009. Effective July 31, 2009.

This Act clarifies mortgage lien protection as a casualty insurance product. The Act also sets out the coverage limitations of the product. The Department initially approved mortgage lien protection as a casualty product under miscellaneous casualty. This Act provides more certainty and definition to the product.

P A

ISSUANCE OF PARTS ONLY TITLE TO INSURERS, ACT 445 OF 2009. Effective July 31, 2009.

This Act provides that if an owner (who may be an insurer) owns a vehicle that has no resale value except as a source for parts or scrap, then the vehicle shall be dismantled for parts or scrap and issued a “parts only” title in Arkansas. This Act is just a clarification of existing law.

L P A

EXEMPTS CASH SURRENDER VALUES AND CLAIMS PROCEEDS OF LIFE INSURANCE POLICIES FROM CREDITORS, ACT 469 OF 2009. Effective July 31, 2009.

This Act clarifies the use of the term “moneys” by defining it in Ark. Code Ann. §16-66-209 as a payment made under an insurance policy for compensation on a claim on the policy or for the cash surrender value of the policy.

P A

USING INSURANCE PROCEEDS CONTRARY TO SECURITY AGREEMENT, ACT 485 OF 2009. Effective July 31, 2009.

Section 1 of this Act amends Ark. Code Ann. § 5-37-203 to create classes within the criminal offense of defrauding a secured creditor. The offense in the first degree is a Class D felony. The offense in the second degree is a Class A misdemeanor and will arise when a person uses insurance proceeds in excess of \$1000 in contravention of the security agreement on the vehicle.

Section 2 of the Act adds a new section to Chapter 89 of the Insurance Code which provides language that motor vehicle insurers should use on payment claim

forms and written estimates that informs the holder of the insurance proceeds that failure to use the funds in accordance with the agreement may result in criminal charges. However, this Section 2 of Act 485 of 2009 has been amended by Section 1 of Act 1452 of 2009, as summarized earlier in this Bulletin.



MANDATORY OFFERING FOR HEARING AIDS, ACT 1179 OF 2009.
Effective July 31, 2009.

This Act requires insurance companies to offer coverage for hearing aids under all health plans offered, issued or renewed in Arkansas after January 1, 2010. This includes individual and group policies, but excludes policies that are considered limited benefit products and homeowners and automobile policies that include medical benefits.

The benefits for hearing aids cannot be subject to deductibles or copayment requirements under the policy. The benefit cannot be less than one thousand four hundred dollars (\$1,400) per ear for each three year period.*



PRESCRIPTION DRUGS USED IN CANCER TREATMENTS, NEW REFERENCE STANDARDS, ACT 270 OF 2009. Effective July 31, 2009.

This Act amends Ark. Code Ann. § 23-79-147(b) by changing the reference manuals that can be used in determining whether a drug must be covered even though the drug has not been approved by the United States Food and Drug Administration for the treatment of a specific cancer. It also allows the Secretary of the US Department of Health and Human Services or the Insurance Commissioner to identify other authoritative compendia that can be used.



MANDATORY COVERAGE FOR PROSTATE CANCER SCREENING, ACT 75 OF 2009. Effective July 31, 2009.

This Act requires all individual and group policies and contracts offered, issued or renewed in the State of Arkansas after January 1, 2010, to include benefits for prostate cancer screening. This coverage shall only apply to men over the age of forty and is limited to one screening per year. The screening shall comply with the National Comprehensive Cancer Network guidelines.

This Act does not apply to policies or contracts that are commonly referred to as limited benefit products or to medical benefits under a homeowners or automobile policy.



MANDATORY BENEFITS FOR ORTHOTIC OR PROSTHETIC DEVICES OR SERVICES, ACT 950 OF 2009. Effective July 31, 2009.

This Act amends Ark. Code Ann. § 23-99-403 and adds a new subsection to this section. In amending § 23-99-403, the definition for a health benefit plan is

changed to include self-insured governmental and church plans. New definitions for orthotic devices, orthotic services, prosthetic devices and prosthetic services are also added.

Coverage for these benefits must be included in all health plans issued or renewed after the effective date of this Act. The policy may impose co-payments, deductibles or coinsurance amounts for these benefits as long as these amounts are no greater than those that apply to other benefits under the health plan. In addition, the replacement or repair of these devices must also be covered under the health care plan and can be subject to co-payments, deductibles and coinsurance amounts.*



NOTARY PUBLIC BONDS, ACT 1404 OF 2009. Effective July 31, 2009.

This Act amends Ark. Code Ann. § 21-14-101. This section requires notary publics to obtain a surety bond in the amount of \$7500 “executed to the State of Arkansas” for the faithful discharge of the notary public’s duties. The reference regarding the execution of the bonds to the state was previously the only guidance regarding who could make a claim on the bond. During the drafting of this Act, it was the Secretary of State’s position that only the state could make a claim on the bond and that the bond held no benefit for third parties injured by notary publics. The Act was intended to clarify the law that only the state could make a claim on the bond and that aggregate liability was limited to the face value of the bond.



AMENDMENT TO TITLE INSURANCE ACT, ACT 1190 OF 2009. Effective July 31, 2009.

In Section 1 of this Act, the definition of a title Insurance Agency is added and used and clarified throughout the remainder of this Act. By adding the definition of an agency, the Act now requires that an agent be appointed through an agency and any title insurance business written must now be done so through an agency. Section 2 strikes the language that allowed title insurance business to be written directly by an insurer. Section 13 is added to guarantee that a title insurance agent, title insurance agency and a person affiliated with a title insurance agency shall have free access to instruments of record affecting real property filed in any city, county or state office.



GEOTOURISM PREMIUM TAX CREDIT, ACT 349 OF 2009. Effective March 10, 2009.

This Act amends the Delta Geotourism Incentive Act of 2007 to allow a geotourism tax credit to transfer to other tourism projects. The definition of “Geotourism tax credit” is added to include a credit against premium taxes where the holder of the tax credit is an insurance company paying an annual premium tax on its gross premium receipts. Section 4 of the Act deals with what is needed to qualify for such a tax credit. Section 5 lays down the rules and evidence needed to be submit-

ted to the Department of Finance and Administration. Section 6 deals with the use and transfer of the credit. The Act expires at the end of the 2016 tax year, and is effective for income tax years beginning January 1, 2009.

(signed by Jay Bradford)

(signed May 22, 2009)

JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS

DATE

*Acts with this designation call for the Department to promulgate Rules.