

Chapter 89.

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Subchapter 1.
General Provisions.

23-89-101. Subrogation of injured person to right of insured.

(a) Any policy of insurance issued or delivered in this state indemnifying any person against any actual money loss sustained by the person for damages inflicted upon the property or person of another shall contain a provision that the injured person, or his or her personal representative, shall be subrogated to the right of the insured named in the policy.

(b) The policy shall also contain a provision that the injured person, or his or her personal representative, whether the provision is actually inserted in the policy or not, may maintain a direct cause of action against the insurer issuing the policy for the amount of the judgment rendered against the insured, not exceeding the amount of the policy, provided the judgment remains unsatisfied at the expiration of thirty (30) days from the serving of notice of entry of judgment upon the attorney for the insured or upon the insured or upon the insurer.

23-89-102. Insolvency of insured does not release liability insurer.

(a) No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or against loss or damage to property caused by horses or by any vehicles drawn, propelled, or operated by any motive power and for which loss or damage the person insured is liable shall be issued or delivered to any person in this state unless the policy contains a provision that the insolvency or bankruptcy of the person insured shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of the policy.

(b) The policy must also state that in case execution against the insured is returned unsatisfied because of the insolvency or bankruptcy, in an action brought by the injured or his or her personal representative in case death results from the accident, that then an action may be maintained by the injured person or his or her personal representative against the insurer under the terms of the policy for the amount of the judgment in the action not exceeding the amount of the policy.

Subchapter 2.
Automobile Liability Insurance Generally.

23-89-201. Broader than minimum benefits.

Nothing contained in this subchapter shall be construed to prevent an insurer from providing broader benefits than the minimum benefits enumerated in § 23-89-202.

23-89-202. Required first party coverage.

Every automobile liability insurance policy covering any private passenger motor vehicle issued or delivered in this state shall provide minimum medical and hospital benefits, income disability, and accidental death benefits, under policy provisions and on forms approved by the Insurance Commissioner, to the named insured and members of his family residing in the same household injured in a motor vehicle accident, to passengers injured while occupying the insured motor vehicle, and to persons other than those occupying another vehicle struck by the insured motor vehicle, without regard to fault, as follows:

- (1) Medical and Hospital Benefits. All reasonable and necessary expenses for medical, hospital, nursing, dental, surgical, ambulance, funeral expenses, and prosthetic services incurred within twenty-four (24) months after the automobile accident, up to an aggregate of five thousand dollars (\$5,000) per person and may include any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. Expenses for hospital room charges may be limited to semiprivate accommodations;
- (2) Income Disability Benefits. Seventy percent (70%) of the loss of income from work during a period commencing eight (8) days after the date of the accident, and not to exceed fifty-two (52) weeks, but subject to a maximum of one hundred forty dollars (\$140) per week. In the case of a nonincome earner, the benefits shall consist of expenses not to exceed seventy dollars (\$70.00) per week, or any fractional part of a week, which are reasonably incurred for essential services in lieu of those the injured person would have performed without income during a period commencing eight (8) days after the date of the accident and not to exceed fifty-two (52) weeks; and
- (3) Accidental Death Benefits. The sum of five thousand dollars (\$5,000), to be paid to the personal representative of the insured, should injury, sickness, or disease resulting from an automobile accident cause death within one (1) year from the date of the accident.

23-89-203. Rejection of coverage.

- (a) The named insured shall have the right to reject in writing all or any one (1) or more of the coverages enumerated in § 23-89-202.
- (b) After a named insured or applicant for insurance rejects this coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

23-89-204. Coverage for passengers and persons struck by insured vehicle.

(a) The coverages provided in § 23-89-202 shall apply only to occupants of the insured vehicle and to persons struck by the insured vehicle, including pedestrians, bicyclists, motorcyclists, persons in a horse-drawn wagon or cart, and persons riding on an animal, and to none other.

(b) However, the coverages shall not be applicable, or payable, if the prescribed minimum coverages are afforded to those occupants and to persons struck by the insured vehicle, either as a named insured or additional insured under another valid and collectible automobile insurance policy.

23-89-205. Exclusion of benefits.

An insurer may exclude benefits to any insured, or his personal representative, under a policy required by § 23-89-202, when the insured's conduct contributed to the injury he sustained in any of the following ways:

- (1) Causing injury to himself intentionally;
- (2) Causing injury while in the commission of a felony or while seeking to elude lawful apprehension or arrest by a law enforcement official.

23-89-206. Retention of tort liability.

Tort liability arising from the ownership, maintenance, or use of a motor vehicle within this state is retained.

23-89-207. Insurer's right of reimbursement.

(a) Whenever a recipient of § 23-89-202(1) and (2) benefits recovers in tort for injury, either by settlement or judgment, the insurer paying the benefits has a right of reimbursement and credit out of the tort recovery or settlement, less the cost of collection, as defined.

(b) All cost of collection thereof shall be assessed against insurer and insured in the proportion each benefits from the recovery.

(c) The insurer shall have a lien upon the recovery to the extent of its benefit payments.

23-89-208. Payments.

(a) Payment under the coverages enumerated in § 23-89-202(1) and (2) shall be made on a monthly basis as benefits accrue.

(b) Benefits for any period are overdue if not paid within thirty (30) days after the insurer received reasonable proof of the amount of all benefits accruing during that period.

(c) If reasonable proof is not supplied as to all benefits accrued, the portion supported by reasonable proof is overdue if not paid within thirty (30) days after the proof is received by the insurer.

(d) Any part or all of the remainder of the benefits that is later supported by reasonable proof is overdue if not paid within thirty (30) days after the proof is received by the insurer.

(e) In the event the insurer fails to pay the benefits when due, the person entitled to the benefits may bring an action in contract to recover them.

(f) In the event the insurer is required by the action to pay the overdue benefits, the insurer shall, in addition to the benefits received, be required to pay the reasonable attorney's fees incurred by the other party, plus twelve percent (12%) penalty, plus interest thereon from the date these sums became overdue.

23-89-209. Underinsured motorist coverage.

(a)(1) No private passenger automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicles in this state shall be delivered or issued in this state or issued as to any private passenger automobile principally garaged in this state unless the insured has the opportunity, which he may reject in writing, to purchase underinsured motorist coverage.

(2) After a named insured or applicant for insurance rejects underinsured motorist coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

(3) The coverage shall enable the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injuries to or death of an insured which the insured is legally entitled to recover from the owner or operator of another motor vehicle whenever the liability insurance limits of such other owner or operator are less than the amount of the damages incurred by the insured.

(4) Underinsured motorist coverage shall be at least equal to the limits prescribed for bodily injury or death under § 27-19-605.

(5) Coverage of the insured pursuant to underinsured motorist coverage shall not be reduced by the tortfeasor's insurance coverage except to the extent that the injured party would receive compensation in excess of his damages.

(b)(1) Underinsured motorist coverage as described in this section shall not be available to insureds nor shall insurers be mandated to offer same unless the insured has elected uninsured motorist coverage as provided by § 23-89-403.

(2) Underinsured motorist coverage shall not be issued without uninsured motorist coverage being issued in coordination therewith.

(c) If a tentative agreement to settle for the liability limits of the owner or operator of the other vehicle has been reached between the insured and such owner or operator, written notice may be given by the insured injured party to his underinsured motorist coverage insurer by certified mail, return receipt requested. Such written notice shall include:

(1) Written documentation of pecuniary losses incurred, including copies of all medical bills;

(2) Written authorization or a court order authorizing the underinsured motorist insurer to obtain medical reports from all employers and medical providers; and

(3) Written confirmation from the tortfeasor's liability insurer as to the amount of the alleged tortfeasor's liability limits and the terms of the tentative settlement, which shall in

no event include any component sum representing punitive or exemplary damages; provided, however, that in no event shall evidence of the referenced liability limits, the fact that a tentative settlement was reached, or the terms of such tentative settlement be admissible in any civil action with the sole exceptions of:

(A) Actions by underinsured motorist insurers to enforce subrogation rights as contemplated by this subchapter;

(B) Actions by first party liability insureds against their insurer to enforce their contract or a settlement hereunder, if any; and

(C) Actions by first party underinsured motorist insureds against their insurer to enforce their contract or a settlement hereunder.

(d)(1) Within thirty (30) days of receipt of such written notice, the underinsured motorist insurer may make payment to its insured of an amount equal to the tentative settlement amount agreed to by the owner or operator of the other motor vehicle or his liability insurer.

(2) In such event, the underinsured motorist insurer shall be entitled to subrogate to its insured's right of recovery against the owner or operator of such other motor vehicle to the extent of such payments and to the extent of any underinsured motorist insurance benefit it pays to its insured.

(3) If the underinsured motorist insurer fails to pay its insured the amount of the tentative tort settlement within thirty (30) days, the underinsured motorist insurer has no right to the proceeds of any settlement or judgment between its insured and the other owner or operator and/or such owner's or operator's liability insurer, no right to otherwise recoup the amount of the underinsured motorist benefit it may pay from such other owner or operator or his insurer, and no right to refuse payment of its underinsured motorist coverage benefit by reason of the settlement made by its insured.

(e) In the event that the tortfeasor's motor vehicle liability insurance carrier and the underinsured motorist coverage are provided by the same insurance company, the requirements of subsection (c) and (d) of this section are hereby waived, and the underinsured party may proceed against his underinsured insurance carrier at any time after settlement of the underlying tortfeasor's liability policy claim.

23-89-210. Premium reduction for college graduates.

(a) Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the Insurance Commissioner shall provide for an appropriate reduction in premium charges for those insured under the age of twenty-five (25) years who have graduated from a college or university, and whose cumulative scholastic records show that the insured attained one of the following:

(1) If letter grades are used, had a grade average of "B" or higher;

(2) Had at least a 3 point average on a 4 point scale (or equivalent).

(b) All insurance companies writing automobile liability and physical damage insurance in Arkansas shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.

(c) This reduction in premium charges shall not apply to those insureds who qualify for a premium reduction due to marriage.

23-89-211. Total loss settlements.

- (a) If an insurer settles a claim for damages to an automobile as a total loss to its own insured or a person having a claim against its insured, the insurer shall include with the payment for the loss:
- (1) All applicable taxes, including sales taxes and fees as required under Rule and Regulation 43 of the State Insurance Department; and
 - (2) An itemized list stating the amount of the claim attributable to the value of the automobile and attributable to the sales tax on an automobile of that value.
- (b) When settling a claim against an insured for damages to an automobile as a total loss, the insurer will take into consideration all applicable taxes, license fees, and other fees.
- (c) The failure of an insurer to comply with the requirements of subsections (a) and (b) of this section shall be considered an unfair claims settlement practice under § 23-66-206(13).

23-89-212. Motor vehicle liability insurance - Extraterritorial provision.

- (a)(1) Motor vehicle liability insurance applies to the amounts which the owner is legally obligated to pay as damages because of accidental bodily injury and accidental property damage arising out of the ownership or operation of a motor vehicle if the accident occurs in the United States, its possessions, or Canada.
- (2) Motor vehicle liability insurance must afford limits of liability not less than those required under the financial responsibility laws of this state.
- (b) If the accident occurs outside this state but in the United States, its possessions, or Canada and if the limits of liability of the financial responsibility or compulsory insurance laws of the applicable jurisdiction exceed the limits of liability of the financial responsibility laws of this state, the motor vehicle liability insurance is deemed to comply with the limits of liability of the laws of the applicable jurisdiction.
- (c) For purposes of this section, "motor vehicle" is defined as provided in § 27-14-207.

23-89-213. Premium delinquencies.

- (a) All insurance companies authorized to do business in this state and issuing automobile liability insurance policies in this state shall furnish to the insured a proof-of-insurance card.
- (b) This proof-of-insurance card or any temporary proof of insurance issued by the insurance company shall contain the following information:
- (1) The name, address, telephone number, and National Association of Insurance Commissioners' code number of the insurer;
 - (2) The name and telephone number of the local agent through whom the policy was issued, if any, or a blank space where a local agent's name may be stamped or filled in;
 - (3) The policy number;
 - (4) The effective date of the insurance policy coverage and the expiration date of the insurance policy coverage;
 - (5) The vehicle identification number and a brief description of the insured vehicle; and
 - (6) The name and address of the insured person.

(c) At the discretion of the Insurance Commissioner, any person or insurance company that violates this section may be subject to the following penalties:

- (1) Suspension or revocation of the person's or insurer's certificate of authority to transact insurance in this state under § 23-63-213; or
- (2) A monetary penalty in lieu of revocation or suspension as provided under § 23-63-213.

23-89-214. Motor vehicle liability insurance - Prohibition regarding step-downs.

No motor vehicle liability insurance policy issued or delivered in this state shall contain a provision that converts the limits for bodily injury or property damage to lower limits in the event that the insured motor vehicle is involved in an accident while it is being driven by a driver other than the insured.

Subchapter 3.

Automobile Liability Insurance - Cancellation and Nonrenewal.

23-89-301. Definitions.

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

- (1) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset;
- (2) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists coverage;
- (3) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset;
- (4) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;
- (5) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof delivered or issued for delivery in this state insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
 - (A) A motor vehicle of the private passenger or station wagon-type that is not used as a public or livery conveyance for passengers, nor rented to others; or
 - (B) Any other four-wheel motor vehicle with a load capacity of one thousand five hundred pounds (1,500 lbs.) or less which is not used in the occupation, profession, or business of the insured, provided however, that this subchapter shall not apply to any policy:
 - (i) Issued under an automobile assigned risk plan;
 - (ii) Insuring more than four (4) automobiles; or

(iii) Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; and

(6) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. However, for the purpose of this subchapter, any policy with a policy period or term of less than six (6) months shall be considered as if written for a policy period or term of six (6) months. For the purposes of this subchapter, any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving twenty (20) days' notice of cancellation prior to the anniversary date. This cancellation shall not be subject to any other provisions of this subchapter.

23-89-302. Consideration of railroad accident prohibited.

No automobile insurer shall use a railroad accident occurring while the insured engineer, conductor, fireman, or brakeman was performing his duties as an engineer, conductor, fireman, or brakeman of a railroad in determining the rates or cancelling the automobile liability coverage, the automobile collision coverage, or the automobile physical damage coverage of the insured engineer, conductor, fireman, or brakeman, as those types of coverage are defined in § 23-89-301, where the insurance covers and protects the insured and any motor vehicle registered or principally garaged in this state.

23-89-303. Grounds for cancellation.

(a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:

- (1) Nonpayment of premium;
- (2) The named insured or any driver of the insured vehicle shall be convicted of:
 - (A) Driving while intoxicated;
 - (B) Homicide or assault arising out of the use of a motor vehicle; or
 - (C) Three (3) separate convictions of speeding or reckless driving, or any combination of the two (2) during the policy period, including three (3) months prior to the effective date of the policy;
- (3) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under this policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
- (4) Fraud or misrepresentation of a material fact, the knowledge of which would have caused the insurer to decline to issue a policy; or
- (5) Nonpayment of membership dues where they are a requirement in the bylaws, agreements, or other legal instruments of a company before issuance and maintenance of a policy under this subchapter.

(b) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(c) This section shall not apply to nonrenewal.

(d)(1) However, an insurer shall not be able to rescind bodily injury or property damage liability coverage under an insurance policy for fraud or misrepresentation with respect to any injury to a third party when suffered as a result of the insured's negligent operation of a motor vehicle.

(2) Nothing in this subsection is intended to negate an insurer's right to rescind other coverages in the insurance policy purchased by the insured.

23-89-304. Time for notice of cancellation.

(a)(1) No notice of cancellation of a policy to which § 23-89-303 applies, and no notice of cancellation of a policy which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered, shall be effective unless mailed or delivered by the insurer to the named insured.

(2) No notice of cancellation to any named insured shall be effective unless mailed or delivered at least twenty (20) days prior to the effective date of cancellation, provided that, where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given.

(b)(1) No notice of cancellation to any bank, or other lending institution shown on the policy and having a lien on the insured's automobile shall be effective unless mailed or delivered by the insurer to the bank or other lending institution.

(2) No notice of cancellation to any bank or other lending institution shall be effective unless mailed or delivered at least twenty (20) days prior to the termination of the insurance protecting the interest of the bank or lending institution, provided that where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given.

(c) Failure to properly notify a named insured or failure to properly notify a bank or other lending institution shall have no effect on a party properly notified.

(d) This section shall not apply to nonrenewals.

23-89-305. Notice required prior to renewal or nonrenewal.

(a)(1) The insurer shall give either a written notice of nonrenewal or an offer of renewal at least thirty (30) days prior to the expiration of the policy's existing term.

(2) The insurer shall send the insured a written notice and the insurance producer written or electronic notice of the offer of renewal under subdivision (a)(1) of this section indicating the new premium and providing a description of any change in deductible or policy provisions in the renewal policy.

(b)(1) This section shall not apply in case of nonpayment of premium.

(2) However, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) Unless a statement of the grounds for nonrenewal accompanies or is included in the notice of nonrenewal, the notice of nonrenewal shall state or be accompanied by a statement that, upon written request of the named insured mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of the nonrenewal, the insurer shall specify the grounds for the nonrenewal.

(d) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.

23-89-306. Proof of mailing of notices.

Proof of mailing of notice of cancellation, or of intention not to renew, or of grounds for cancellation to the named insured at the address shown in the policy shall be sufficient proof of notice.

23-89-307. Eligibility for automobile liability assigned risk plan.

(a) When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which § 23-89-305 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through the automobile liability assigned risk plan.

(b) The notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

23-89-308. Nonliability of commissioner and insurer.

There shall be no liability on the part of and no cause of action of any nature shall arise against the Insurance Commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to the grounds for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the grounds for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Subchapter 4.

Uninsured Motorist Coverage.

23-89-401. Definition.

For the purposes of automobile liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle registered or principally garaged in this state, unless the context otherwise requires, "uninsured motor vehicle" shall, subject to the terms and conditions of the coverage, be deemed to include an insured motor

vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured with the limits specified therein because of insolvency.

23-89-402. Applicability of insurer's insolvency protection.

(a) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one (1) year after an accident.

(b) Nothing in this section shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided in this subchapter.

23-89-403. Bodily injury coverage required.

(a)(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto and is not less than limits described in § 27-19-605, under provisions filed with and approved by the Insurance Commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

(2) However, the coverage required to be provided under this section shall not be applicable where any insured named in the policy has rejected the coverage in writing, and this rejection shall continue until withdrawn in writing by the insured.

(3) Should a named insured or applicant purchase third-party liability coverage in greater limits than the minimum provided in § 27-19-605, the insurer shall have available and the agent shall offer a named insured or applicant coverage required under this section in limits up to his or her third-party liability limits. No insurer shall be required to offer, provide, or make available coverage conforming to this section in connection with an excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, or use of a specifically identified motor vehicle. An insured or applicant not desiring to purchase higher limits shall reject the increased limits in writing on the application for insurance coverage, although agents must offer the increased limits to all new applicants for insurance on and after the passage of this act. The requirement for written rejection shall be applicable to new business written on and after January 1, 2000. For an existing business, insurers shall provide at the next two (2) renewals after the passage of this act notice that such increased limits are available. Where an existing-named insured has coverage under this section less than the insured's third-party liability limits, that coverage shall not change on July 30, 1999, unless a named insured requests in writing to purchase the higher limits.

(b) After a named insured or applicant for insurance rejects this coverage, the insurer or any of its affiliates shall not be required to notify any insured in any renewal,

reinstatement, substitute, amended, or replacement policy as to the availability of such coverage.

23-89-404. Property damage coverage.

(a) Every insured purchasing uninsured motorist bodily injury coverage shall be provided an opportunity to include uninsured motorist property damage coverage, subject to provisions filed with and approved by the Insurance Commissioner, applicable to losses in excess of two hundred dollars (\$200). However, the deductible of two hundred dollars (\$200) shall not apply if:

(1) The vehicle involved in the accident is insured by the same insurer for both collision and uninsured motorist property damage coverage; and

(2) The operator of the other vehicle has been positively identified and is solely at fault.

(b) No insurer shall be required to offer limits of uninsured motorist property damage coverage greater in amount than the property damage liability limits purchased by the insured.

(c) After the uninsured motorist property damage coverage has been made available to an insured one (1) time and has been rejected in writing, it need not again be made available in any continuation, renewal, reinstatement, or replacement of the policy, or the transfer of vehicles insured thereunder, unless the insured makes a written request for the coverage. However, whenever a new application is submitted in connection with any renewal, reinstatement, or replacement transaction, the provisions of this section shall apply in the same manner as when a new policy is being issued.

(d) As used in this section, "property damage" means damage to the insured vehicle.

23-89-405. Subrogation of insurer making payment.

In the event of payment to any person under the coverage required by this subchapter and subject to the terms and conditions of the coverage, the insurer making the payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of the person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

Subchapter 5.

Amusement Rides and Attractions.

23-89-501. Title.

This subchapter shall be known and may be cited as the "Amusement Ride and Amusement Attraction Safety Insurance Act".

23-89-502. Definitions.

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

- (1) "Amusement attraction" means any building or structure around, over, and through which persons may be moved by vehicle or mechanically driven device integral to the building or structure, and which provides amusement, pleasure, thrills, or excitement, but this term does not include theatres, museums, or enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- (2) "Amusement ride" means any mechanical device which carries or conveys passengers along, around, or over a fixed route or course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills, or excitement and includes the following:
 - (A) Bungee rides or bungee operations which utilize as a component a bungee cord, which is an elastic rope made of rubber, latex, or other elastic-type materials whether natural or synthetic;
 - (B) Go-kart, which means a ride in which a vehicle controlled or driven by patrons specifically designed for and run on a fixed course;
 - (C) Inflatable attractions such as "space walks", inflatable slides, or inflatable jousting or boxing rings; and
 - (D) Any wave pool, water slide, or other similar attraction that totally or partially immerses a patron in water;
- (3) "Department" means the Department of Labor;
- (4) "Director" means the Director of the Department of Labor;
- (5) "Nondestructive testing" is the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing to examine materials or components in ways that do not impair their future usefulness and serviceability in order to:
 - (A) Detect, locate, measure, and evaluate discontinuities, defects, and other imperfections;
 - (B) Assess integrity, properties, and composition; and
 - (C) Measure geometrical characters; and
- (6) "Owner" means any person who owns an amusement ride or attraction, or in the event that the amusement ride or attraction is leased, the lessee.

23-89-503. Exemptions.

The following amusement rides or attractions are exempt from the provisions of this subchapter:

- (1) Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, swinging gates, and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to immediate areas where the equipment is located;
- (2) An amusement ride or amusement attraction which is owned and operated by a nonprofit religious, educational, or charitable institution or association, or a fair if the ride or attraction is subject to inspection by the State Fire Marshal or by any political subdivision of the state under its building, fire, electrical, and related public safety ordinances;

- (3) Coin-operated amusement rides or amusement attractions located on the premises of retail business establishments; and
- (4) An amusement ride or amusement attraction which is owned and operated by the State of Arkansas or any political subdivision thereof.

23-89-504. Safety inspection and insurance required - Enforcement - Violations.

- (a) It is unlawful for any person or entity to operate an amusement attraction or amusement ride, unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or ride in the state and, unless the person has a current safety inspection report made at the time of set-up of the attraction or ride, but before use by the public.
- (b)(1) The Director of the Department of Labor may conduct examinations and investigations into the affairs of any person or entity subject to the provisions of this subchapter for the purpose of determining compliance with the provisions of this subchapter.
- (2) The director shall administer and enforce the provisions of this subchapter.
- (3) The director shall promulgate regulations for the proper administration and enforcement of this subchapter, including regulations establishing minimum safety requirements for the operation and maintenance of amusement rides and attractions.
- (4) The director shall employ amusement ride inspectors certified by the National Association of Amusement Ride Safety Officials.
- (c) If the director finds that an operator or owner has failed to comply with the provisions of this subchapter, he or she may order the operator or owner to immediately cease operating the amusement attraction or ride and may impose upon the operator or owner an administrative penalty of not more than ten thousand dollars (\$10,000).
- (d)(1) If the director finds that an operator or owner failed to comply with the provisions of this subchapter, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred.
- (2)(A) Upon conviction, the operator or owner shall be guilty of a Class A misdemeanor.
- (B) Upon conviction of a willful or knowing violation, the operator or owner shall be guilty of a Class D felony.
- (3) Each day of violation shall constitute a separate offense.
- (e) The director shall have authority to bring a civil action in any court of competent jurisdiction, without payment of costs or giving bond for costs, to recover any administrative penalty imposed pursuant to this subchapter or to recover any delinquent fees owed pursuant to this subchapter.
- (f) The director and his or her deputies, assistants, examiners, and employees and the Director of the Department of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

23-89-505. Safety inspections, notice, and insurance required.

- (a) Any person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall as a condition

thereof obtain a safety inspection report issued by the owner or operator's liability insurer or an inspector employed by the Department of Labor prior to commencing operation or opening to the public.

(b) Each person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall be covered by a policy of insurance issued by an insurance company authorized to do business in Arkansas or by a surplus lines insurer approved in Arkansas and insuring the owner or operator against liability for personal injury or property damage arising out of the use or operation of the amusement attraction or ride, in the minimum amount of one million dollars (\$1,000,000) for each incident or occurrence.

(c)(1) Any person or entity intending to operate an amusement attraction or ride in this state shall notify the director of such intent and shall notify the director of the location, dates, and times of intended operation.

(2) Such notice must be made to the director four (4) days prior to intended operation, excluding Saturdays, Sundays, or any legal holidays.

(d) Any person or entity failing to comply with subsection (c) of this section shall be subject to an administrative penalty issued by the Director of the Department of Labor of no more than five thousand dollars (\$5,000) in addition to other penalties, both administrative and criminal, contained in this subchapter.

(e) The owner, manager, or operator shall:

(1) Promptly file proof of insurance with each fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or ride being offered for use by the public for each location in this state where each attraction or ride is in operation or is scheduled to be in operation; and

(2) Provide a copy of any safety inspection report to the fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or ride being offered for use by the public, upon request or pursuant to contractual agreement.

23-89-506. Inspections and fees.

(a)(1) The Director of the Department of Labor is authorized to inspect each person or entity to ensure compliance with this subchapter.

(2) Twice per calendar year, the director shall inspect all permanently placed operational amusement rides or attractions located in this state being operated for profit or charity.

(3) All portable amusement rides or attractions shall be inspected by the director every time they are moved to a new location in Arkansas and before they are permitted to commence operation or open to the public.

(4)(A) Inflatable attractions and self-contained mobile playgrounds shall be inspected every six (6) months, unless a more frequent schedule of inspections is established by regulation of the director for certain types of inflatable attractions and self-contained mobile playgrounds.

(B) Self-contained mobile playgrounds shall be inspected pursuant to subdivision

(a)(4)(A) of this section only if such playgrounds contain no mechanical or electrical parts, structures, or additions such as blowers or lights.

(b) The director is authorized to make an inspection on an emergency basis when notification pursuant to this subchapter is made less than four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the date of the operation of the facility, if he or she determines that the owner or operator could not have reasonably known of the proposed operation prior to the four-day period, and that the owner or operator meets all other requirements for operation in this state.

(c) If the director or an authorized employee of the department finds that any amusement ride or attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or attraction a notice and order prohibiting its use or operation. Operation of the amusement ride shall not resume until the unsafe or hazardous condition is corrected and the director or his or her authorized representative permit such operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or attraction, finds the ride or attraction to be defective or unsafe shall immediately report the ride or attraction and its condition to the Department of Labor.

(e) The director shall charge a fee to be paid by the owner of any amusement ride or amusement attraction for all amusement ride safety inspections performed by any employee of the department. Such fees shall be as follows:

(1) For one (1) to five (5) rides or attractions, one hundred dollars (\$100);

(2) For six (6) to fifteen (15) rides or attractions, two hundred dollars (\$200);

(3) For sixteen (16) to twenty-five (25) rides or attractions, three hundred dollars (\$300);

(4) For twenty-six (26) to thirty-five (35) rides or attractions, four hundred dollars (\$400); and

(5) For thirty-six (36) and more rides or attractions, six hundred dollars (\$600).

(f) The director is authorized by regulation to implement an inspection fee waiver program for the benefit of a county fair association, provided that:

(1) The county's population is under fifteen thousand (15,000) based on U.S. Census Bureau estimates as of July 1, 1999; and

(2) The county fair association can demonstrate that it would be unable to obtain a carnival for its county fair without such a waiver.

23-89-507. Inspection by insurance company - Change in coverage.

(a)(1) Each insurance company insuring an operator of an amusement attraction or ride as required in this subchapter shall inspect the amusement attraction or rides of the insured for safety at least one (1) time each calendar year.

(2) The operator shall maintain a copy of such report at the site of operation of the attraction or ride, together with proof of insurance coverage.

(b) If any insurer insuring an operator shall cancel the coverage of the operator, the insurer shall notify the Director of the Department of Labor of the cancellation at least ten (10) days before the cancellation is effective.

(c) The insurer shall immediately notify the director if the cancellation notice is rescinded or coverage is reinstated.

(d) If the insurer finds any amusement attraction or ride to be unsafe or cancels the insurance coverage and so notifies the director, then the director shall immediately issue a

cease and desist order preventing any operation until written documentation is provided to the director that the amusement attraction or ride has been made safe or insurance coverage has been obtained.

(e) Any insurance company or surplus lines insurer failing to comply with this section shall be subject to revocation of its certificate of authority or registration by the Insurance Commissioner, or in lieu of suspension or revocation, a fine assessed by the commissioner of not more than fifty thousand dollars (\$50,000).

(f) Any employee or contractor of an insurer inspecting amusement rides in Arkansas shall be registered and certified by the department pursuant to regulation adopted by the director.

23-89-508. Rules and regulations.

The Director of the Department of Labor is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this subchapter and to assure its efficient and effective enforcement.

23-89-509. Cease and desist orders - Notice required.

(a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-504 or § 23-89-507, the Director of the Department of Labor shall promptly transmit his order to the Director of the Department of Arkansas State Police.

(2) Whenever possible, the Director of the Department of Labor shall notify any applicable fair boards or sponsoring organizations in the respective districts or counties of this state where the attractions or rides are in operation or are scheduled to be in operation.

(3) The Director of the Department of Labor shall promptly notify these parties when a cease and desist order has been rescinded upon proof of the operator's compliance with the provisions of this subchapter.

(b) Upon receipt of the Director of the Department of Labor's order to cease and desist operations pursuant to subsection (a) of this section, the Department of Arkansas State Police shall promptly serve the order on the operator and order the operator immediately to cease operation of all applicable amusement attractions or rides in operation or scheduled to be in operation in those districts or counties until the cease and desist order has been rescinded.

23-89-510. Accidents - Reporting injuries or death - Investigations.

(a) Any mechanical, structural, or electrical defects directly affecting patron safety for which an amusement ride is closed to patron use for a period of time more than three (3) hours, must be reported in writing personally or by facsimile by the owner or operator to the Department of Labor within twenty-four (24) hours after the closing of the amusement ride.

(b)(1) The operator of an amusement ride shall immediately cease to operate any ride involved in a fatality or serious physical injury. The owner or operator shall notify the department of such accident within four (4) hours of its occurrence by telephone or

facsimile. The owner or operator shall file a written accident report personally or by facsimile with the department within twenty-four (24) hours of the accident. Within twenty-four (24) hours after receipt of such a report, the department shall initiate an investigation of the occurrence and an inspection of the ride. The department shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the amusement facility at which the amusement ride is located.

(2) Unless authorized in writing by the department, no amusement ride may be operated, moved, altered, repaired, or tampered with, except to protect life, limb, and property, following an accident involving a serious injury or death until the department has completed its inspection and investigation.

23-89-511. Amusement ride operators.

(a) Any person directly operating any amusement ride or attraction:

- (1) Must be at least sixteen (16) years of age;
- (2) Must be trained in the proper use and operation of the device;
- (3) Must operate only one (1) ride at a time; and
- (4) May not operate any amusement ride or attraction while intoxicated.

(b) For the purposes of this section, "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the operator's reactions, motor skills, and judgment are substantially altered and the operator, therefore, constitutes a clear and substantial danger of physical injury or death to ride patrons.

23-89-512. Prohibited bungee operations.

The following bungee operations are prohibited:

- (1) A bungee operation conducted with balloons, blimps, helicopters, or other aircraft;
- (2) "Sand bagging", which is the practice of holding onto any object, including another person, while bungee jumping, for the purpose of exerting more force on the bungee cord to stretch it further, and then releasing the object during the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone;
- (3) Tandem or multiple bungee jumping, except for rides that the manufacturer has designed for multiple patrons; and
- (4) Bungee jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride or attraction.

23-89-513. Posting ride safety rules required.

All requirements for rider safety within the control of the rider must be prominently posted in a manner reasonably expected to provide notice to the rider. Such requirements or restrictions should include:

- (1) Any height or weight restrictions;
- (2) Safety belt or bars or other safety restraint systems requirements; and
- (3) Prohibitions against:

- (A) Standing before cessation of the ride or attraction; and
- (B) Horseplay.

23-89-514. Patron safety.

- (a) All patrons on any amusement ride or attraction subject to this subchapter, at a minimum, shall:
 - (1) Obey the posted safety rules and oral instructions issued by the amusement ride owner or manager or such owner's employee or agent;
 - (2) Refrain from acting in any manner that may cause or contribute to injuring the patron or others, including:
 - (A) Interfering with the safe operation of the amusement ride;
 - (B) Not engaging any safety devices provided;
 - (C) Disconnecting or disabling a safety device except at the express instruction of the operator;
 - (D) Altering or enhancing the intended speed, course, or direction of the amusement ride;
 - (E) Extending arms and legs beyond the carrier or seating area;
 - (F) Throwing, dropping, or expelling an object from or toward an amusement ride; and
 - (G) Getting on or off an amusement ride or attraction except at the designated time and area, unless directed to do otherwise by an operator due to an emergency.
- (b) Parents or guardians of patrons under the age of eighteen (18) have a duty to ensure that the patron complies with the provisions of this section.
- (c) Any person eighteen (18) years of age or older who violates the provisions of this section may be charged with a Class A misdemeanor.

23-89-515. Nondestructive testing.

- (a) An owner may not operate an amusement ride for which the manufacturer recommends nondestructive testing, unless the owner complies with the manufacturer's standards for the testing and the ride meets the manufacturer's acceptance criteria.
- (b) If manufacturer's nondestructive testing standards are unavailable for an amusement ride and the department deems it necessary, the owner shall provide such standards through a registered professional engineer or engineering agency or any individual qualified by training and experience to compile standards based upon the ride's specifications and history and using accepted engineering practices. The engineer or other qualified individual shall be approved by the director and the ride must meet the criteria so established.

23-89-516. Records.

- (a) The Director of the Department of Labor shall keep records and statistics by year of serious injuries and fatalities resulting from amusement ride accidents. Such records and statistics shall specify the year of the accident, type of injury, type of ride or attraction involved, and cause of the accident.

(b) Each owner or operator shall retain on the premises or with a portable amusement ride the following records:

- (1) Proof of insurance coverage as required by this subchapter;
- (2) The latest safety inspection report by the department and by the owner or operator's insurer;
- (3) All maintenance and repair records for a period of one (1) year;
- (4) All accident records for a period of one (1) year on premises, although such records shall be maintained and subject to being made available to the director for a period of three (3) years;
- (5) A record of employee or operator training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride or attraction; and
- (6) A copy of any affidavit of nondestructive testing required by this subchapter.

23-89-517. Disposition of funds.

All money received under the provisions of this subchapter shall be deposited in the State Treasury to the credit of the Department of Labor Special Fund.

23-89-518. Amusement Ride Safety Advisory Board - Creation - Duties.

(a)(1) There is created an Amusement Ride Safety Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Department of Labor or his or her designee shall be ex officio chair.

(C) The board shall consist of five (5) additional members:

(i) One (1) member of the board shall be the Director of the Department of Parks and Tourism or his or her designee;

(ii) One (1) member of the board shall represent owners or operators of amusement rides that are portable in nature;

(iii) One (1) member of the board shall represent owners or operators of permanently placed amusement rides;

(iv) One (1) member of the board shall represent fair managers in Arkansas; and

(v) One (1) member of the board shall represent the general public.

(3)(A) Except for the Director of the Department of Labor and the Director of the Department of Parks and Tourism, the terms of office of the members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B) No member of the board shall be appointed to serve more than two (2) consecutive full terms.

(C) At the time of appointment or reappointment, the Governor shall adjust the length of terms to ensure that the terms of board members are staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(b) The duties of the board shall be:

(1) To assist the Director of the Department of Labor with the formulation of rules and regulations regarding the safe operation of amusement rides; and

(2) To give the Department of Labor such counsel and advice as will aid it in the proper enforcement and administration of the provisions of this subchapter.

(c) Except for the ex officio chair and the Director of the Department of Parks and Tourism, the members of the board shall be for four (4) years or until a successor is appointed.