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Arkansas
Insurance Code

TITLE 23 -- PUBLIC UTILITIES AND REGULATED INDUSTRIES...Subtitle 3. Insurance...Chapter 63 -- INSURANCE COMPANIES GENERALLY...Subchapter 2. Authority to Do Business

23-63-201

Certificates of authority; charitable annuities

Former Citations ~~66-2201, 66-2202~~, [66-2201](#); [66-2202](#); 66-2203

(a) No person shall act as an insurer and no insurer shall transact insurance in this state unless authorized by a subsisting certificate of authority issued to it by the Insurance Commissioner except as to such transactions as are expressly otherwise provided for in the Arkansas Insurance Code.

(b) A certificate of authority shall not be required of an insurer with respect to the following:

(1) Investigation, settlement, or litigation of claims under its policies lawfully written in Arkansas, or making change of beneficiary or other modifications of an insurance or annuity contract, or otherwise administering insurance or annuity contracts in force, or liquidation of assets and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in Arkansas;

(2) Transactions subsequent to issuance of or relative to a policy covering only subjects of insurance not resident, located, or expressly to be performed in Arkansas at time of issuance, or covering property in course of transportation by land, air, or water to, from, or through Arkansas and including any preparation or storage incidental thereto, and lawfully solicited, written, or delivered outside Arkansas; or

(3) Transactions pursuant to surplus lines coverages lawfully written under § 23-65-101 et seq., the Unauthorized Insurer Process Act, § 23-65-201 et seq., and the Surplus Lines Insurance Law § 23-65-301 et seq., of the Arkansas Insurance Code.

(c) A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Arkansas real estate or securities, by complying with the laws of this state relating to foreign business corporations in general. Such an insurer shall not be subject to any other provisions of the Arkansas Insurance Code.

[Text of subsection \(d\) effective until 90 days after legislature adjourns](#)

(d)(1)(A) The commissioner, in his or her reasonable discretion guided by the standards contained in this subsection and consistent with the purposes set forth in this subsection, may issue a special permit to make fixed-dollar life-only annuity agreements with donors to any duly organized domestic or foreign nonstock corporation or association conducted without profit and:

(i) Engaged in active operation for at least five (5) years prior to receiving the permit solely in bona fide charitable, religious, missionary, educational, or philanthropic activities; or

(ii) Not engaged in active operation solely in bona fide charitable, religious, missionary, educational, or philanthropic activities for five (5) years if the commissioner is reasonably satisfied that:

(a) The entity is affiliated with a corporation or association that meets the requirements of subdivision (d)(1)(A)(i) of this section; and

(b) An adequate level of management expertise is readily available to the entity requesting the permit.

(B) The permit shall authorize the corporation or association to receive gifts of money conditioned upon, or in return for, its agreement to pay an annuity to the donor or his or her nominee and to make and carry out the annuity agreement.

(C) Before making an annuity agreement under this subsection, every corporation or association shall file with the commissioner for his or her approval either:

(i) A schedule of its maximum annuity rates that shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or

(ii) A statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the American Council on Gift Annuities or its successor until the corporation or association advises the commissioner to the contrary in writing and files a schedule of its new proposed maximum annuity rates for approval.

(D) Filings and approvals required under this subsection shall be subject to the provisions of §§ 23-79-109 and 23-79-110.

(2) Each domestic corporation or association shall maintain reserves with respect to the annuity or income stream that it has agreed to pay to a charitable donor by:

(A) Calculation of the reserves:

(i) Upon the obligation of the permittee to the donor annuitant in the manner set forth in the Standard Valuation Law for Life Insurance and Annuities, § 23-84-101 et seq., concerning the standard valuation law for life insurance and annuities; or

(ii) As the present value of all future benefits to be paid to the donor annuitant based upon the most recent mortality table published by the Internal Revenue Service; or

(B) Maintaining account reserves in an amount equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.

(3)(A) Unless otherwise permitted by the commissioner, each corporation or association shall maintain a segregated account or accounts for its charitable gift annuities.

(B) The segregated account or accounts shall be used solely to pay the charitable gift annuity obligations of the corporation or association.

(C) If the commissioner finds the reserve established by a permittee inadequate at any time, the commissioner shall order the permittee to increase its reserve accordingly, or the commissioner may stipulate the reserving method for the permittee to rectify the reserve deficiency.

(4) Each corporation or association, except those identified in subdivision (d)(5) of this section, shall maintain net admitted assets at least equal to the greater of:

(A) The sum of its reserves on its outstanding agreements, all other liabilities, and a surplus of at least ten percent (10%) of the reserves; or

(B) The amount of fifty thousand dollars (\$50,000).

(5) Each domestic corporation or association maintaining reserves in the manner described in subdivision (d)(2)(B) of this section shall maintain net admitted assets at least equal to the amount of the reserves plus all other outstanding liabilities.

(6) In determining reserves, a deduction shall be made for all or any portion of an annuity risk that is reinsured by a life insurance company authorized to do business in this state.

(7)(A) The required admitted assets shall be invested:

(i) Only in securities permitted by the provisions of §§ 23-63-801 — 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

(ii) In accordance with the provisions of the prudent investor rule stated in §§ 24-2-610 — 24-2-619.

(B) The investments shall be held by a custodian in accordance with § 23-69-134(b)(4).

(8) No corporation or association organized under the laws of another state shall be permitted to make annuity agreements in this state unless it complies with all requirements of this subsection imposed upon domestic corporations or associations, except that a corporation or association organized under the laws of another state may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile.

(9)(A) No corporation or association shall make or issue in this state any annuity contract before obtaining a permit issued in accordance with the provisions of this subsection.

(B) If after notice and hearing the commissioner finds that a corporation or association having a permit has failed to comply with the requirements of this subsection, the commissioner may revoke or suspend the permit or order the permittee to cease making new annuity contracts until it complies.

(C)(i) All corporations or associations operating under this subsection shall be required to file an annual financial statement of their operations and accounts and schedule of outstanding annuities with applicable reserves within ninety (90) days of the end of their fiscal year.

(ii) The report shall be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or association as of the conclusion of its most recent fiscal year.

(iii) Each domestic corporation or association investing assets in the manner described in subdivision (d)(7)(A)(ii) of this section shall file with the annual report:

(a) A description of the organization's investment philosophy for charitable gift annuities and how the investments of the company are designed to meet future charitable gift annuity obligations;

(b) A report from the organization identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets including a description of each committee member's investment expertise; and

(c) A certification of the board of directors of the corporation or association that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in §§ 24-2-610 — 24-2-619.

(10) The commissioner may promulgate any rules and regulations the commissioner considers necessary or desirable to implement the provisions of this subsection.

Text of subsection (d) effective 90 days after legislature adjourns

(d)(1)(A) The commissioner, in his or her reasonable discretion guided by the standards contained in this subsection and consistent with the purposes set forth in this subsection, may issue a special permit to make fixed-dollar life-only annuity agreements with donors to any duly organized domestic or foreign nonstock corporation or association conducted without profit and:

(i) Engaged in active operation for at least five (5) years prior to receiving the permit solely in bona fide charitable, religious, missionary, educational, or philanthropic activities; or

(ii) Not engaged in active operation solely in bona fide charitable, religious, missionary, educational, or philanthropic activities for five (5) years if the commissioner is reasonably satisfied that:

(a) The entity is affiliated with a corporation or association that meets the requirements of subdivision (d)(1)(A)(i) of this section; and

(b) An adequate level of management expertise is readily available to the entity requesting the permit.

(B) The permit shall authorize the corporation or association to receive gifts of money conditioned upon, or in return for, its agreement to pay an annuity to the donor or his or her nominee and to make and carry out the annuity agreement.

(C) Before making an annuity agreement under this subsection, every corporation or association shall file with the commissioner for his or her approval either:

(i) A schedule of its maximum annuity rates that shall be computed on the basis of the annuity standard adopted by it for calculating its reserves; or

(ii) A statement certifying that it adopts and will adhere to the annuity rates as published from time to time by the American Council on Gift Annuities or its successor until the corporation or association advises the commissioner to the contrary in writing and files a schedule of its new proposed maximum annuity rates for approval.

(D) Filings and approvals required under this subsection shall be subject to the provisions of §§ 23-79-109 and 23-79-110.

(2) Upon entering an annuity agreement, a domestic corporation or association shall establish and maintain liabilities with respect to the annuity by one (1) of the following

methods, using an amount :

(A) Not less than the present value of future benefits payable to the donor as determined by the most recent method established by the Internal Revenue Service;

(B) Determined by applying the method established for annuities under the Standard Valuation Law for Life Insurance and Annuities, Section 23-84-101 et seq.; or

(C) Equal to the aggregate values determined at the dates of contribution of all assets received from donors with respect to annuities for annuitants who are then living.

(3)(A) Unless otherwise permitted by the commissioner, each corporation or association shall maintain a segregated account or accounts for its charitable gift annuities.

(B) The segregated account or accounts shall be used solely to pay the charitable gift annuity obligations of the corporation or association.

(C) If the commissioner finds the reserve established by a permittee inadequate at any time, the commissioner shall order the permittee to increase its reserve accordingly, or the commissioner may stipulate the reserving method for the permittee to rectify the reserve deficiency.

(4) Each corporation or association, except those identified in subdivision (d)(5) of this section, shall maintain net admitted assets at least equal to the greater of:

(A) The sum of its reserves on its outstanding agreements, all other liabilities, and a surplus of at least ten percent (10%) of the reserves; or

(B) The amount of fifty thousand dollars (\$50,000).

(5) Each domestic corporation or association maintaining reserves in the manner described in subdivision (d)(2)(C) of this section shall maintain net admitted assets at least equal to the amount of the reserves plus all other outstanding liabilities.

(6) In determining reserves, a deduction shall be made for all or any portion of an annuity risk that is reinsured by a life insurance company authorized to do business in this state.

(7) The required admitted assets shall be invested:

(A) Only in securities permitted by Sections 23-63-801 — 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

(B) In accordance with the prudent investor rule stated in Sections 24-2-610 - 24-2-619.

(8) No corporation or association organized under the laws of another state shall be permitted to make annuity agreements in this state unless it complies with all requirements of this subsection imposed upon domestic corporations or associations, except that a corporation or association organized under the laws of another state may invest its reserves and surplus funds in securities permitted by the laws of its state of domicile.

(9)(A) No corporation or association shall make or issue in this state any annuity

contract before obtaining a permit issued in accordance with the provisions of this subsection.

(B) If after notice and hearing the commissioner finds that a corporation or association having a permit has failed to comply with the requirements of this subsection, the commissioner may revoke or suspend the permit or order the permittee to cease making new annuity contracts until it complies.

(C)(i) All corporations or associations operating under this subsection shall file an annual financial statement of their operations and accounts and schedule of outstanding annuities with applicable reserves within one hundred eighty (180) days of the end of their fiscal year.

(ii) The report shall be prepared by a certified public accountant in accordance with generally accepted accounting principles detailing the financial condition and status of the corporation or association as of the conclusion of its most recent fiscal year.

(iii) Each domestic corporation or association investing assets in the manner described in subdivision (d) (7) (A) (ii) of this section shall file with the annual report:

(a) A description of the organization's investment philosophy for charitable gift annuities and how the investments of the company are designed to meet future charitable gift annuity obligations;

(b) A report from the organization identifying the members of the investment committee charged with making investment decisions regarding charitable gift annuity assets including a description of each committee member's investment expertise; and

(c) A certification of the board of directors of the corporation or association that attests that its investments and investment transactions match the organization's philosophy and meet the standards of the prudent investor rule stated in §§ 24-2-610 — 24-2-619.

(10) The commissioner may promulgate any rules and regulations the commissioner considers necessary or desirable to implement the provisions of this subsection.

(e)(1) The commissioner shall promulgate rules to allow a city, town, municipality, or county of this state acting independently or in any combination pursuant to an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, Section 25-20-101 et seq., to obtain a charitable annuity permit for the purpose of establishing a charitable annuity program.

(2)(A) The charitable annuity program shall permit any person or an entity to make voluntary and charitable donations to benefit the bona fide charitable, educational, and philanthropic programs, including without limitation libraries, museums, and governmentally owned hospitals, of a city, town, municipality, or county acting alone or pursuant to an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, Section 25-20-101 et seq.

(B) The charitable donation may be made to assist the establishment or maintenance of streets, parks, children's playgrounds, libraries, museums, beautification projects, or any other charitable, educational, or philanthropic purpose of a city, town, municipality, or county.

(3) The charitable annuity permit shall authorize the city, town, municipality, or county acting alone or pursuant to an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, Section 25-20-101 et seq., to receive unconditional gifts of money and property and to receive gifts of money and property conditioned upon paying an annuity to the donor or the donor's nominee.

(4) The rules of the commissioner to implement this subsection (e) shall provide without limitation:

(A) That the city, town, municipality, or county acting alone or pursuant to an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, Section 25-20-101 et. Seq., has been actively involved in the operation of the public charitable, educational, or philanthropic activity for at least five (5) years prior to the issuance of the permit;

(B) For the investment of the assets and maintenance of the liabilities and surplus of the charitable annuity program appropriate to funding the annuities;

(C) That separate accounts be maintained solely for the benefit of annuity contract owners;

(D) The prior approval of annuity contract forms and annuity rates by the commissioner; and

(E) Annual financial reporting of a charitable annuity program of a city, town, municipality, or county acting alone or pursuant to an Interlocal Cooperation Agreement under the Interlocal Cooperation Act, Section 25-20-101 et. seq., that has been granted a charitable annuity permit under this subsection (e).

Text of subsection (f) effective 90 days after legislature adjourns

(f) The commissioner may punish a person that fails to meet the requirements of subsection (d) or subsection (e) of this section by:

(1) Imposing a penalty of up to ten thousand dollars (\$10,000); or

(2) Suspending or revoking the charitable annuity permit and authority to operate under subsection (d) or subsection (e) of this section.

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