

July 5, 2005

Bulletin 4-2005

TO: All Licensed Foreign, Alien and Domestic Insurers, Accredited/Trusteed Reinsurers, Farmers' Mutual Aid Associations, Hospital and Medical Service Corporation, Health Maintenance Organizations, Fraternal Benefit Societies, Insurer Trade Associations, Rate Service or Advisory Organizations; All Agent and Broker Trade Associations, All Third Party Administrators, Adjuster Trade Association; Approved But Not Admitted Surplus Line Insurers and Licensed Funeral Directors Holding Permits to sell Prepaid Funeral Benefit Contract; Licensed Employee Leasing Firms/Groups; 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: The Arkansas Insurance Department

SUBJECT: 2005 ARKANSAS LEGISLATION

SB 233, Now ACT 1697 of 2005 – Effective August 12, 2005

- **Restitution Authority:** This clarifies that the Commissioner has the authority to award restitution to affected consumers in any dispute involving a person involved in the business of insurance consistent with the Department's consumer protection mission. (Sections 3 and 8)
- **Definition of Claim:** Specifies what is not a claim/what should not result in a policy cancellation or premium increase as these specified events "result in no loss to the insurer" per Ark. Code Ann. §23-63-110. The specified events are requests for policy information and discussions between an insured and an insurer/producer about whether an event is covered under an insurance policy, as long as the event does not materially increase the risk. These types of zero payout situations should not equate to "an incident" and otherwise count against the insured as compared with a situation in which the risk being insured against has increased. (Section 4)
- **Waive CE for Producers Sent on Active Duty:** The revisions to Ark. Code Ann. §23-64-302 are applicable to insurance producers who are called to active duty in the U.S. Military. The revisions were made so that producers returning to civilian life will not be overly burdened by continuing education requirements, license fees or any other insurance regulatory requirements for the time they were actively serving in the military. The revised Code section provides that the active duty producer's license fees and CE requirements will be waived during the entire period of active duty. (These privileges for producers commenced on January 1, 2005. Bulletin 8-2003 has been recently issued in this regard and the Department may draft a rule and regulation to address licensing procedure to be followed upon the producer's return.) (Sections 5 and 7)
- **HMO's:** Clarifies HMOs can offer comprehensive health plans to INDIVIDUALS, as well as they can in group health plans. (Section 20)

Clarifies that HMOs licensed in Arkansas do not have to register as a third party administrator (TPA). Places HMOs on same regulatory track as insurers licensed in AR and acting as a TPA. (Section 23)

- **Loss of Use:** Amends Ark. Code Ann. §23-89-404 to require uninsured motorist (UM) property damage benefits to include a reasonable amount for loss of use of the vehicle (like reimbursement for cost of a rental car while the insured's car is getting fixed.) Currently, loss of use as an element of damage is required in third party claims under Ark. Code Ann. §27-53-401. But, carriers may exclude loss of use in first party UM claims, since Ark. Code Ann. §23-89-404 does not include it as an element of damage. Since UM coverage is meant to provide the same protection as liability insurance, loss of use should be included. (Section 21)
- **MEWA Registration:** Requires a MEWA that is not fully insured to get a special certificate of authority pursuant to regulations to be promulgated by the Commissioner. The regulation will specify the criteria for a certificate of authority, as well as reporting requirements, financial requirements, consumer protections, etc. (Prior to the 2005 session, MEWAs that were fully insured were required to register and MEWAs that were not fully insured were required to get a certificate of authority as an insurer before operating in Arkansas.) The subject 2005 legislation recognized there are MEWAs that are not fully insured, but that are still viable coverage options for Arkansas insurance consumers if properly regulated.

Provides monetary penalties for those doing business in Arkansas without a license (i.e. unauthorized insurance.) Clarifies that the party named in the cease and desist order has the burden of proving that it did not violate the Insurance Code. Requires the registration of a TPA that administers MEWAs. (This broadens the current TPA statute and registration requirements to give us more leverage and jurisdiction, as those acting as TPAs for MEWAs were not required to register under former law). (Section 22)

- **Insurance Fraud Regarding Proof of Insurance:** Adds (4)(G) to Ark. Code Ann. §23-66-501, in the definition general insurance fraud. This will allow the Criminal Investigation Division of the Arkansas Insurance Department to be able to investigate actions of consumers or agents/brokers/producers who falsify or have on their person or in their possession any fake, false or altered proof of insurance. Also makes it a crime to possess equipment used to falsify, alter or fake documents for proof of insurance. These offenses will be a Class D felony. (Section 13)

Also renames Insurance Fraud Investigation Division to Criminal Investigation Division to better reflect the Division's role. (Section 16)

- **Long Term Care (LTC):** Repeals Arkansas' current (out-of-date) LTC law and adopts the NAIC Long Term Care Insurance Model Act. Modernizes our old LTC statute so we can move effectively to a modern rule and regulation on rate review. This rate review tool will include a certification that companies will be required to file with the Department, that rates are adequate for the life of the contract, which will result in more level rates (fewer premium increases). (Sections 31 and 32)
- **Background Checks:** Amends Ark. Code Ann. §23-64-506(c), requiring the Department to conduct a background check for resident producer applicants. With the background check, we can verify information on applications to ensure that only applicants fit to be producers are licensed. (Insurers remain responsible for undertaking their initial appointment investigations under Ark. Code Ann. §23-66-513.) (Section 6)
- **Producer Compensation:** Amends the current Producer Licensing Model Act (PLMA) to create more transparency for insurance consumers through better disclosure of insurance producer compensation. For the vast majority of producers who do not act as brokers, the disclosure requirements will simply be to tell the customer: (a) the source of their compensation for that placement of insurance; and (b) that the producer represents the insurer and will be providing services to the consumer on behalf of the insurer. The Act requires greater disclosure for those insurance producers who act as brokers (who represent insureds), OR who receive compensation from the customer...to disclose whether the producer will receive additional compensation from the insurer or other third party and to provide the customer an estimate of the amount of such compensation if the customer requests such additional information.

These PLMA amendments will ensure consumers are provided the necessary information to understand any potential conflicts of interest a producer may have because of the manner in which the insurance producer is compensated. (Section 9)

- **Other Insurance Reforms Under SB 233, Now ACT 1697 of 2005**
 - (a) Promotes competition in the insurance marketplace and provides for the dissemination of information by the Commissioner to assist consumers in purchasing, maintaining and utilizing their insurance coverages. (Section 1)
 - (b) Establishes standards to be followed by the Commissioner in exercising her regulatory authority. (Section 2)

- (c) Commissioner will publish all rate increases for auto and homeowner insurance on Department web site. In circumstances where the rate is increased 20% or more, the information on the rate increase will be published in a statewide newspaper for three (3) consecutive days. Insured will receive written notices of rate increases in certain circumstances. (Section 17)
- (d) Commissioner will publish premium comparisons for auto and homeowner insurance and engage in public information campaign to make available information to consumers that will help them choose and maintain insurance coverages. (Section 18)
- (e) If renewal premiums for an insured were increased due to nothing more than a rate increase filing made by the insurer, both the insured and agent shall be notified by the insurer of its intention to increase the rate for renewal not less than thirty (30) days prior to the effective date of the renewal. (Section 17)
- (f) All professional malpractices rates will be approved by the Commissioner, prior to use. Outlines procedures for public hearings and establishes rate standards and rating criteria for professional malpractice insurance. (Section 19)
- (g) Allows Commissioner to consider various factors in the determination of non-competitive markets and requires a report to General Assembly on any line of insurance found to be unavailable. (Section 24)
- (h) Mandates property and casualty policyholder's right to obtain their loss information from property and casualty insurers. (Section 33)

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- **FMAA Solvency Law Amendments: SB 1087, Now ACT 2004 of 2005.**

Effective April 11, 2005 by Emergency Clause.

This Act amends laws primarily concerning the solvency regulation of Farmers' Mutual Aid Associations (FMAAs) in the following respect:

- (a) Increases minimum membership from 50 to 250 providing a larger pool of underwriting units to spread risk. FMAAs have until December 31, 2007 to comply with the new requirement.
- (b) Increases minimum surplus requirement to \$500,000 providing stronger solvency protection to members in the absence of guaranty fund protection. FMAAs have up to December 31, 2012 to comply with the new requirement.
- (c) Requires consideration and application of reinsurance as may be appropriate to reasonably execute an FMAA's business plan to limit catastrophic and other significant potential losses.
- (d) Strengthens standards necessary to implement a plan of dissolution. Puts more structure in the process and includes a provision to allow policyholders to obtain similar coverage with another FMAA in the event of dissolution.

Time extensions for compliance of the above require the Commissioner's prior written approval. The Department is detailing these new requirements in a separate letter currently being disseminated to all FMAAs doing business in Arkansas.

- **Premium Tax Retaliation: HB 2900, Now ACT 1965 of 2005.** Effective August 12, 2005.

Ark. Code Ann. §23-63-102. Section 102 is the Insurance Code's retaliatory statute, which allows the Insurance Department to tax out-of-state insurance companies for premium taxes paid by Arkansas citizens on policies issued in this State in the same manner and at the same rate as Arkansas companies are taxed in the other state. The purpose of our retaliatory statute is to level the playing field for Arkansas insurance companies engaged in interstate business, thus encouraging that business. The Act is applicable to the annual premium tax reports of foreign and alien insurers doing business under an existing Arkansas certificate of authority for the reporting years beginning on or after January 1, 2005 (compliance date for report).

Act 1965 made two (2) technical amendments to §23-63-102:

- (a) It clarifies which fees insurance companies can include in their premium tax calculation and also conforms the statute to long-standing Insurance Department procedure; and
- (b) It re-inserts a tax exemption that was mistakenly deleted from the statute in the 2001 Omnibus Bill.

- **Health Insurance Purchasing Group (HIPG), SB 1138, Now ACT 2159 of 2005.** Effective August 12, 2005.

Amendments to Small Employer Health Insurance Purchasing Group law. A health insurance purchasing group (“HIPG”) is a vehicle through which employers may obtain health insurance for themselves and their employees. Employers join a HIPG and obtain fully-insured coverage through an Arkansas health insurance carrier. Employers may see a small difference in cost, due to lower agent commissions, but the main advantage of a HIPG is plan variety. Employers in a HIPG have more plan options than they might in the open market. Arkansas currently has one HIPG, and it is sponsored by the North Little Rock Chamber of Commerce with the health insurance coverage provided by QCA/QualChoice.

This Act increases the number of persons who may join a HIPG and obtain health insurance coverage. The Act clarifies that self-employed individuals are “employers” for purposes of the HIPG and may be qualified to enroll. This Act also allows more employers to enroll by increasing the employer size from 100 employees to 199 employees. The Act also clarifies that only small employers (employers with 2-50 employees) are guaranteed availability of coverage, if the HIPG covers small employers, in accordance with the state HIPAA law.

THE DEPARTMENT’S GENERAL OMNIBUS ACT, SB 369, Now ACT 506 of 2005. Act effective March 2, 2005.

- **Title Insurance Monoline:** Restricts new title insurers, aviation title insurers, and mortgage guaranty insurers from writing other lines of insurance (makes them “monoline”). Existing licensed insurers are “Grandfathered”. Ark. Code Ann. §23-63-205 requires compliance on and after January 1, 2006. (Section 15)
- **Credit for Reinsurance:** Amends Arkansas’ credit for reinsurance statutes to adopt provisions from the 1996 NAIC Credit for Reinsurance Model Act, including provisions that protect the interest of policyholders, claimants, ceding insurers, reinsurers and the public generally, by establishing appropriate oversight and regulation of ceding insurers and reinsurers. The new language reinforces the state’s actions to compel security from alien reinsurers and to enforce state requirements that claims against insolvent aliens be valued and paid in accordance with state law.

These changes to Ark. Code Ann. §§23-62-302, 305, 306, are effective for compliance on and after January 1, 2006. (Sections 12, 13, and 14)

- **Investment Law Revisions:**
 - (a) Raises from 20% to 25% the limit of investment a domestic insurer can make in direct obligations of certain federal agencies; (Section 24)
 - (b) Raises from 1% to 1-1/2% the amount of admitted assets that an insurer can invest in any combination of medium and lower grade obligations, and grants the Commissioner discretion to provide an insurer temporary relief from this limitation in event of downgrade of securities already held by insurer; (Section 25)
 - (c) Redefines “lower grade obligations” to encompass only those rated “5” and “6” by the NAIC’s Securities Valuation Office, versus the old “4” “5”, and “6”. The change provides more flexibility to insurers and the Commissioner to prevent otherwise mandatory, unnecessary and even harmful disposal of securities already held by an insurer in the event of a temporary market condition; (Section 26) and
 - (d) Repeals Ark. Code Ann. §23-63-838 (Arkansas’s 22-year old investment hedging statute) and replaces it with Ark. Code Ann. §23-63-841 relating to use of risk-limiting or “hedging” transactions, which are designed to allow more predictable outcomes on investment returns. (Section 27)
- **Electronic Notice:** Consistent with The Arkansas Uniform Electronic Transactions Act and modern business practices, this provides for electronic notice, and electronic policies and certificates of coverage and renewal coverage to be provided by insurers to consumers increasing speed and reducing cost. Insurers must keep electronic transmittals in its records. Amends Ark. Code Ann. §§23-79-121(a) and 23-79-123(a). (Sections 39 and 40).
- **Annuity Interest Rates/ Non Forfeiture:** A 2003 Amendment to Ark. Code Ann. §23-81-304 reduced minimum nonforfeiture amount from a rate of interest of 3% to 1.5% per annum. Thereafter, in March, 2003 NAIC adopted new language for Model Standard Nonforfeiture Law for Individual Deferred Annuities Model 805. Many states already incorporated this Model change, which calculates annuity nonforfeiture rate according to Index specified in the Model. In the subject 2005 amendment to this law, until 7-15-2006, companies are given a choice to comply with existing law or the newer NAIC model index law. After 7-15-06, compliance date, companies must use newer NAIC model index law. (Section 42)
- **Mortality Table Update:** Amends Ark. Code Ann. §23-84-103(b)(1). First, to correctly establish effective dates for the use of 1958 CSO mortality table; second, to clarify that female risk setback of up to six years is applicable to the

1958 CSO mortality table. The female risk setback is to allow adjustment for the mortality rate differential between male and female lives. 1980 CSO and later tables utilize separate tables for male and female lives. (Section 44)

- **Associations:** Clarifies that the Commissioner must make a finding that an association was formed in good faith for purposes other than to provide insurance, before that association can be considered to be a “group” for purposes of group A & H policies, regardless of domicile. Under this clarification to existing law, any association wishing to market group coverage in Arkansas must file with the Department in order to enable a regulatory determination that the association is not merely selling insurance while avoiding stricter regulation of individual insurance and evading agent licensing laws. (Associations already “approved” by the Department will not have to refile). (Section 45)
- **HMO’s:** Addresses a possible ambiguity in Ark. Code Ann. §23-76-110 to clarify that “HMO Governing Board” (now to be called “Advisory Board”) is not the Board of Directors elected by HMO stockholders, and does not “govern” the HMO. (Section 37)

OTHER INSURANCE LEGISLATION OF INTEREST:

- **Required Notice of Intent to Settle Contested Claims, SB 236, Now ACT 2271 of 2005.** Act is effective August 12, 2005.

Under this new Act if an insured contests liability arising from an incident for which the insured would otherwise be indemnified under a liability provision of the insurance policy, and so notifies the insurer before the insurer settles a claim, the insurer must give the insured ten (10) days written notice of its intention to settle. Nothing about this new Act shall be deemed to alter or abridge the insurer’s ultimate right and authority under the law and contract to handle and determine the defense of any liability claim.

- **Motor Vehicle Liability Insurance, HB 1781, Now ACT 1194 of 2005.** Act is effective August 12, 2005.

While expressly allowing insurers to cancel, not renew, or revise rating if the insurer is otherwise permitted to do so by statute or regulation, Act 1194 prohibits cancellation, premium increases and negative risk ratings under motor vehicle liability insurance when an insured is innocent of any negligent or intentional act that was the proximate cause of an accident or injury.

- **Closing Of Blocks Of Business By Health Carriers, SB 1145, Now ACT 2293 of 2005.** Act is effective August 12, 2005.

A closed block of business is a health insurance policy form that a carrier no longer actively sells. Any block of business that a carrier closes after the effective date of this act must be pooled for experience with all its other closed blocks of business to determine the percentage premium increase. Carriers must notify the Commissioner within 30 days of a decision to close a block of business. Certain blocks will be presumed closed unless carrier presents evidence to the contrary. Blocks closed prior to the effective date of the act must be pooled for experience with all closed blocks of business to determine the percentage premium increase not later than compliance of January 1, 2007. Prior to the effective date of this Act, the Dept. will promulgate a Rule or issue a Directive on point.

- **Any Willing Provider; SB 43, SB 44 and HB 2015, Now ACTS 490, 491, and 960 of 2005.**

Due to the 8th Circuit Court of Appeal’s recent opinion on point this will be subject to a forthcoming more extensive explanatory bulletin.

- **Discount Cards; HB 1209, Now ACT 875 of 2005.** Act is effective August 12, 2005.

This Act strengthens the Attorney General’s authority over health-related cash discount cards. It provides consumers with an absolute 30-day right of cancellation as well as instructions on how to cancel. The notification of a right of cancellation must be on the card or attached to the card. The Act prohibits the use of insurance-like terminology in the marketing and sale of the card that could have a tendency to deceive the public into believing the cards are a form of insurance. Printed advertisements and other promotional materials must disclose that the cards are not insurance. The Attorney General has authority to file suit against the sellers of health discount cards in Pulaski County.

- **Workers’ Compensation. Premium Tax Collection - SB 368, Now ACT 505 of 2005.** Act is Effective August 12, 2005.

This Act transfers to Arkansas Workers' Compensation Commission (AWCC) the premium tax collection duties for the up-to-3% additional tax on casualty insurers writing workers' compensation premiums in Arkansas. This includes AWCC collection of premium taxes payable by both insurers and State public employers, thereby combining collection and spending of tax income dedicated to support the AWCC.

Sanctions for insurers' non-payment of premium tax assessed will be referred to Insurance Commissioner for action. Sanctions for state employers' non-payment will be transferred to Public Employee Claims Division (PECD) of the Department for action.

The Act delays requirement that licensed casualty insurers must adopt and provide "accident prevention services" until the licensed casualty insurer is preparing to write and issue Workers' Compensation policies.

- **Recoupment of Health Claim Payments - HB 1181, Now ACT 422 of 2005.** Act is Effective August 12, 2005.

This Act restricts the time and manner in which health insurance companies and health maintenance organizations ("health insurers") have in recovering payments from medical providers when payments are made by health insurers to providers for "services not covered under the person's health insurance coverage." Recoupment is defined as: "reducing other payments currently owed to the health care provider; withholding or setting off the amount against current or future payments to the health care provider; demanding payment from a health care provider for a claim already paid; or, in any other manner [taking an action] that reduces or affects the future claim payments to the health care provider." Ark. Code Ann. §23-104-101(5). The Act restricts the time of recoupment by the health insurer, "except in cases of fraud committed by the health care provider," to "an eighteen-month period after the date the health care insurer paid the claim submitted by the health care provider." Ark. Code Ann. §23-104-102.

- **Dental Anesthesia - HB 1452, Now ACT 439 of 2005.** Act is Effective August 12, 2005.

This Act requires health insurance plans in Arkansas to pay for anesthesia and hospitalization charges for "dental procedures in a hospital or ambulatory surgical facility," under circumstances meeting the restrictions in the Act. The Act restricts this coverage requirement or mandate in the following circumstances on health benefit plans in this State: the provider treating the patient must certify that, because of the patient's age or condition, hospitalization or general anesthesia is required in order to safely and effectively perform the procedures and the patient is (1) a child under seven (7) determined by two dentists to have a significantly complex dental condition; (2) a person diagnosed with a serious medical or physical condition; (3) a person with a significant behavioral problem as determined by his or her physician." Ark. Code Ann. §23-86-121(b). This mandate for coverage will apply to "health benefit plans that are issued, renewed, extended or modified on and after January 1, 2006" compliance date.. It is important to note that the above coverage mandate does not cover the "dental care" itself during the anesthesia or hospitalization unless the policy covers the dental benefits. This Act does not require "a health benefit plan that does not cover dental benefits, to cover dental care for which general anesthesia, hospital or ambulatory surgical facility services, or both, are performed in connection with dental procedures." Ark. Code Ann. §23-86-121(h).

- **Audiology Coverage - SB 998, Now ACT 1995 of 2005.** Act is Effective April 10, 2005.

This Act requires all group and individual health insurers in this State, including health maintenance organizations, "to provide coverage for the treatment of loss or impairment of speech or hearing." Ark. Code Ann. §23-79-130(a). This mandate for insurance or HMO coverage for audiology and speech pathology services applies immediately to all policies or contracts issued, renewed, extended or modified in Arkansas. The audiology and speech pathology coverage requirements however will not apply to disability income, specified disease, hospital indemnity, or accident-only policies, and are subject to the same durational limits, dollar limits, deductibles, and coinsurance factors as other covered services in the policies or contracts. See Ark. Code Ann. §23-79-130 for further details.

- **Athletic Trainers - HB 2794, Now ACT 2238 of 2005.** Act is Effective August 12, 2005.

This Act added "athletic trainers" to the list of medical providers entitled to "Any Willing Provider" status under Act 490, "The Patient Protection Act of 2005." See the Department's summary of Act 490 in this Bulletin about the State's new "Any Willing Provider" law.

- **Tortfeasor's Insurance Carrier – HB 1076, Now ACT 269 of 2005.** Act is Effective August 12, 2005

This Act prohibits a Tortfeasor's Insurance Carrier from Conditioning Settlement of a Judgment or Claim upon Issuing a *Single Check* Jointly to the Injured Party and the *Injured Party's* Insurance Carrier.

This Act adds a provision to Ark. Code Ann. §28-89-207. Section 23-89-207(d)(1) states that “[t]he insurer for the party who is liable in damages to the injured party shall not condition settlement or payment of a judgment in favor of the insured party upon issuing a single check jointly to the injured party and the injured parties’ insurance company.”

This Act has three possible effects:

- (1) Injured party/plaintiff – it will be much easier for the injured party/plaintiff to be able to get a check, without having to wait for the insurance company to co-sign.
- (2) Injured party/plaintiff’s attorney – relieves some of the burden on the attorney from having to divide the money between the consumer and the insurance company.
- (3) Insurance company – the insurance company issuing the check would probably prefer to issue one check. This serves to protect its interest by ensuring that all parties have notice, and it helps eliminate the possibility of a further lawsuit for subrogation.

However, the Act says that settlement cannot be conditioned on issuing a single check. It does not say that a single check cannot be issued. It appears to leave issuing a single check as an option as long as all parties are agreeable.

- **Arkansas Uniform Simultaneous Death Act – HB 1025, Now ACT 74 of 2005:** Act is Effective August 12, 2005.

This Act adds an additional subchapter to Title 28, Chapter 10, entitled “Subchapter 2 – Uniform Simultaneous Death Act.” Section 2 of this Act provides that except as provided in Ark. Code Ann. §28-10-211, Ark. Code Ann §§28-10-101 through 28-10-112 shall be repealed and superseded by Ark. Code Ann §§28-10-201 through 28-10-211, effective January 1, 2006.

This Act affects the insurance industry in the way insurance and annuity policies will be treated when the beneficiary and insured have died. Previously, if there was no sufficient evidence, it was treated as if the insured survived the beneficiary. The new code section makes the requirement more specific and increases the standard. If it is not established by clear and convincing evidence that the individual survived the event by more than 120 hours, then that individual is deemed to have predeceased the event. Insurance and annuity policies that specifically address the situation of simultaneous deaths will not be held to this standard.

- **Clarify Prime Contractor and Subcontractor Laws Under the Arkansas Workers’ Compensation Act, SB 941, Now ACT 1917 of 2005.** Act is Effective August 12, 2005.

This Act amends Ark. Code Ann §11-9-402(a) to require the prime contractor’s workers’ compensation policy to cover injuries to an uninsured subcontractor’s employees; unless there is an intermediate contractor’s WC policy, in which case the intermediate subcontractor’s WC policy will cover the uninsured subcontractor’s employees. It also states in new paragraph (ii) of (c)(1)(B) that a certificate of noncoverage may not be presented to any subcontractor who does not have workers’ compensation coverage. An intermediate contractor that is uninsured for workers’ compensation cannot provide his subcontractors’ certificates of noncoverage to the prime contractor and his subcontractors’ payroll cannot be excluded from the prime contractor’s policy.

- **Pre-license Education for Insurance Agents, Brokers and Producers, HB 2852, Now ACT 1948 of 2005.** Act is effective August 12, 2005.

This Act amends Ark. Code Ann §23-64-202(b), to reduce from 36 to 20 hours per line of authority the pre-license insurance instruction course hours for licensure of insurance agent, broker or producer state licensure applicants. Adjusters and consultants are exempt from pre-license education hours. In (b)(2)(A)(iii), electronic courses per line of insurance authority (i.e., computer education courses, not classroom hours with a human instructor) are also permissible as pre-license education, upon approval by the Department; also adds that classroom instruction for pre-license insurance education must also be per line of insurance authority, upon approval by the Department. Also added in (b)(2)(A)(iii), an applicant shall not be required to take five (5) education hours on Arkansas laws and rules, as part of the pre-license requirements for a subsequent license application, if five (5) hours on laws and rules were taken within the previous two (2) years, for a previous line of authority. 2005 changes will prompt amendments to DOI Rule and Regulation 31, viewable in current form via various links at DOI website at www.accessarkansas.org/insurance. Pending completion of the revised rule, the License Division will follow and honor the new law’s provisions on and after compliance date August 12, 2005.

- **Damage Limit for Reporting Accidents to the Department of Finance and Administration, HB 1391, Now ACT 199 of 2005.** Act is effective August 12, 2005.

Amends Ark. Code Ann §27-19-501 to increase the limit for damage to property resulting from an accident from \$500 to \$1,000 before requiring the driver of the vehicle to report the accident to the Office of Driver Services.

- **Arkansas Advisory Commission On Mandated Health Benefits, HB 1877, Now ACT 1926 of 2005.** Act is effective August 12, 2005.

Significantly increases the powers of the Mandated Health Commission formed two legislative sessions ago, whose function it is to review the costs and impacts of current and proposed state legislation making health insurers or HMOs pay for new health treatments. The intent of the Commission is to help determine whether such mandates will raise the costs of health insurance in this State; however, the Commission was, prior to Act 1926 of 2005, unable to meet and form because initial appointments were not finalized and funds were not available. This Act allows the Insurance Commissioner to make appointments to the Commission, which are not timely appointed by other governmental officials, and requires proposed legislative bills containing health benefit mandates to be referred to the Commission, upon a majority vote by the legislative committee to which the bill is referred. The Act also requires the Commission to review currently imposed health benefit mandates to study their costs and impact on rates, and to report its findings to the legislature and Governor.

- **Comprehensive Health Insurance Pool (“CHIPS”), SB 1136 Now ACT 2292 of 2005.** Effective August 12, 2005.

Amends ACA §23-79-506(a)(12) to allow CHIPS to add optional coverage for health savings accounts which comply with federal laws in effect on and after January 1, 2005. Repeals one-year cap for insurer assessments (amounts not to exceed premium \$ written in the previous year for type of insurance this Pool covers, or .01% of total premiums written in Arkansas, whichever is greater) in §23-79-507(c)(2). Amends §23-79-507 (e) to reduce from \$8 million to \$2 million the amount from Department Trust Fund which CHIPS may use for specific Pool deficits, although this subsection expires on June 30, 2007.

- **Charitable Gift Annuities, SB 577 Now ACT 905 of 2005.** Effective August 12, 2005.

Amends Subsection (d) of Ark. Code Ann. §23-63-201, and states that the affiliate (of an applicant who has not been in active business for the preceding 5 years) must be active and eligible under [able to meet] the requirements of subsection (d). The affiliate, which does not issue charitable gift annuities and is active as a charity, need not be licensed by the Insurance Commissioner, so long as she is satisfied that the applicant meets the standards contained in Ark. Code Ann. §23-63-201(d) (has ready access to management expertise on charitable annuities). Adds that the charity’s segregated accounts are to be used solely for payment of the charitable organization’s obligations. CAVEAT - No assets for charitable annuities can be used to pay other debts (non-gift annuity debts) of the charitable organization. Permits gift annuity assets to be invested in Bank Certificates of Deposit. Adds an alternative method of investing charitable annuity assets, "Prudent Investor" rule, subject to the permittee’s annual filing, at the conclusion of its fiscal year, of:

- (1) the organization’s written philosophy for investing charitable gift annuity assets; and describing how the organizations can meet future gift obligations;
- (2) the identity of the members of the investment committee charged with making gift annuity asset investments, and a description of each individual’s expertise; and
- (3) an attestation from the charity’s board of directors that investments and investment activity match the organization’s philosophy, and met the standards of the “prudent investor” law.

- **Equity in Prescription Insurance and Contraceptive Coverage; HB 2618, Now Act 2217 of 2005.** This Act is effective August 12, 2005.

This Act amends Arkansas Code Title 23, Chapter 79 to add an additional subchapter codified as §23-79-1101, et. seq. requiring health insurance plans providing prescription drug coverage to include benefits for prescription contraceptive drugs or devices. However, the Act also clearly provides that nothing in this subchapter requires insurance companies to provide coverage for an abortion, an abortifacient, or any emergency contraception. Section 23-79-1104 establishes the extraordinary surcharges that are prohibited and clarifies that this subchapter does not affect policies that did not otherwise provide coverage for prescription drugs. Section 23-79-1104 also creates an exemption to the requirements of this subchapter for religious employers.

- **Proof of Insurance; HB 2834, Now Act 2246 of 2005.** This Act is effective August 12, 2005.

Section 1 of this Act amends Ark. Code Ann. §27-22-104(c)(1) by adding that if the operator of the motor vehicle proves that the liability coverage required by §§27-22-101 – 27-22-104 was in effect at the time of the traffic stop, then the failure to present proof of insurance at the time of the traffic stop when requested by a law enforcement officer shall be punished by a fine of twenty-five dollars. This Act establishes that eighty percent of the fines collected under this provision will be for the benefit of the Arkansas Citizens First Responder Safety Enhancement Fund, while the remaining twenty percent will be retained by the court that tries the offense. It is also established that if liability coverage is not proven to be in effect at the time of the traffic stop, then failure to present proof of insurance is punishable under § 27-22-103.

Section 2 of this Act adds an additional section to Title 19, Chapter 6, Subchapter 4. This new section, § 19-6-495, establishes the Arkansas Citizens First Responder Safety Enhancement Fund. Half of the fund is to be used for emergency medical services and the other half is to be used for local law enforcement.

- **The Colorectal Cancer Act Of 2005: HB 2781 Now ACT 2236 of 2005.** Effective August 1, 2005.

This Act requires all individual and group major medical policies and health maintenance contracts, issued, renewed, or continued after compliance date August 1, 2005, to provide coverage for colorectal cancer examinations and laboratory tests. The Act provides colorectal benefit coverages for persons who are over fifty (50), or who are under fifty (50) years of age but at high risk of colon cancer, or other persons experiencing a variety of symptoms outlined in Ark. Code Ann. §23-79-1102. The covered screenings and laboratory work, required to be covered after August 1, 2005, are listed in the Act. The Act imposes its coverage requirements on all state-regulated insurance policies and health maintenance organizations contracts, the state employees' and public school teachers' health insurance program. The Act, however, will not apply to self-insured group health plans regulated under federal law (under ERISA). The Act also creates a program of study at the Arkansas Cancer Research Center at the University of Arkansas for Medical Sciences to assess colorectal treatments, screenings, and testing in the State.

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The purpose of this Bulletin is to summarize insurance-related legislation enacted during the 2005 State Legislative Session. The Department does not represent that this list is complete. It remains your duty to review new legislation. Each recipient is hereby requested to promptly notify all officers, directors, managers, employees, agents & brokers, and adjusters about these new laws.

Full texts of Acts can be obtained from the Arkansas Secretary of State, Elections Division, Room 26, State Capitol Building, State Capitol Grounds, Little Rock, Arkansas, 72201, or 501-682-3478. Internet access to full texts of Acts is available on the State web page with a link to the State Legislature's Home Page on the State's Web at

www.arkansas.gov

or by direct access in links available on the State Legislature's home page at

www.arkleg.state.ar.us

which is also available through a link to the Insurance Department's Home Page at

www.accessarkansas.org/insurance

Please call the office of the Arkansas Secretary of State, Elections Division, at 501-682-3478 to obtain copies of these Acts.

(signed by Julie Benafield Bowman)
Julie Benafield Bowman
Insurance Commissioner
State of Arkansas

July 5, 2005
Date