Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: S3/20/13*
89th General Assembly
A Bill
Regular Session, 2013 SENATE BILL 1071

By: Senators Files, *Bledsoe*
By: Representatives Vines, Wren, S. Malone, Biviano, Branscum, Broadaway, Cozart, Lea, Shepherd, Wright

For An Act To Be Entitled

AN ACT TO CLARIFY THE INSURANCE PREMIUM RATE APPROVAL PROCESS; TO ALLOW INSURERS TO COLLECT RATE INCREASES UNDER BOND; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE INSURANCE PREMIUM RATE APPROVAL PROCESS; AND TO ALLOW INSURERS TO COLLECT RATE INCREASES UNDER BOND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-67-208(a), concerning insurance rate standards, is amended to read as follows:

(a)(1) Rates shall be actuarially sound and not be excessive, inadequate, or unfairly discriminatory.

(2) A rate is actuarially sound if it is supported by an actuarial analysis made by a member of the American Academy of Actuaries and based upon generally accepted actuarial principles and methodologies that show the rate to be reasonable.

(3) An insurer's submission of an actuarially sound rate does not prevent the Insurance Commissioner from relying on the contrary opinion of a member of the American Academy of Actuaries who utilized generally accepted actuarial principles and methodologies to contest the rate filed by the insurer.

SECTION 2. Arkansas Code § 23-67-213(b), concerning disapproval procedures for insurance rates, is amended to add an additional subdivision to read as follows:

(3) If the commissioner disapproves a rate under subdivision (b)(1) of this section or withdraws approval under subdivision (b)(2) of this section, the commissioner, on request and within five (5) working days after the receipt of the request, shall provide to the filer of the disapproved rate an actuarial analysis, interpretation of statistical data, and other methodology reviewed by the commissioner or his or her staff.

SECTION 3. Arkansas Code § 23-67-213, concerning disapproval procedures for insurance rates, is amended to add additional subsections to read as follows:

(d) Collection of Rates During Hearing and Judicial Review Procedures.

(1)(A) If the commissioner disapproves a rate, the insurer may request a hearing under subdivision (b)(1) of this section.

(B) The insurer may put the disapproved rate into effect immediately if, after requesting a hearing, the insurer files a bond that:

(i) Is payable to this state;

(ii) Is approved by the commissioner;

(iii) Is in an amount and has sufficient security to ensure payment of a refund to affected policyholders if the rate is determined to be excessive; and

(iv) Includes interest, if any, at an interest rate established by the commissioner not to exceed five percent (5%) a year above the primary credit rate of the Federal Reserve System at the time the bond is filed.

(C) The disapproved rate is effective during a rehearing and a judicial review under subdivision (b)(1) of this section and §§ 23-61-303(b)(1) and § 23-61-307.

(2) The bond may be substituted if the commissioner approves other arrangements to protect the interested parties.

(e) Refunds of Excessive Rate Collection Under Bond. If an insurer has implemented a rate under bond or other arrangements that exceeds that allowed by a final order of the commissioner or a court decision on judicial review, the commissioner shall order the immediate refund of the excessive bonded rate collections.

SECTION 4. Arkansas Code § 23-79-109, concerning filing and approval of forms, is amended to add an additional subsection to read as follows:

(i)(1) If the commissioner disapproves a rate, the insurer may:

(A)(i) Request that the commissioner provide with the filing an actuarial analysis, interpretation of statistical data, and other methodology that was reviewed by the commissioner or his or her staff.

(ii) The information required under subdivision (i)(1)(A)(i) of this section shall be provided within five (5) working days after the receipt of the request;

(B)(i) Implement the disapproved rate immediately upon the filing of a bond that:

(a) Is payable to this state;

(b) Is approved by the commissioner;

(c) Is in an amount and has sufficient security to ensure payment of a refund to affected policyholders if the rate is determined to be excessive; and

(d) Includes interest, if any, at an interest rate established by the commissioner not to exceed five (5%) percent a year above the primary credit rate of the Federal Reserve System at the time the bond is filed.

(ii) The disapproved rate is effective throughout the review process of the commissioner and a judicial review under § 23-61-301 et seq.; and

(C) Request other arrangements in lieu of a bond if approved by the commissioner.

(2) If an insurer implements a disapproved rate under subdivision (i)(1)(B)(i) of this section and the commissioner or court order approves a lower rate after review, the insurer shall refund to an affected policyholder the amount paid in excess of the approved rate payment within thirty (30) days after the date of a final order.

SECTION 5. Arkansas Code § 23-79-110 is amended to read as follows:

23-79-110. Forms and premium rates — Grounds for disapproval.

(a) The Insurance Commissioner shall disapprove ~~any~~ a form filed under

§ 23-79-109, or withdraw ~~any~~ a previous approval, only if the form:

(1) Is in ~~any respect in~~ violation of or does not comply with this code;

(2) Contains or incorporates by reference, when the incorporation is otherwise permissible, ~~any~~ an inconsistent, ambiguous, or misleading ~~clauses, or exceptions and conditions~~ clause, or an exception and a condition that deceptively affect the risk purported to be assumed in the general coverage of the contract;

(3) Has ~~any~~ a title, heading, or other indication of its provisions that is misleading; and

(4) Is printed or otherwise reproduced in ~~such manner as to render any~~ that makes a provision of the form substantially illegible or not easily legible to persons of normal vision~~;~~.

~~(5)(A) Is an individual accident and health contract in which the benefits are unreasonable in relation to the premium charge. Rates on a particular policy form will be deemed approved upon filing with the commissioner if the insurer has filed a loss ratio guarantee with the commissioner and complied with the terms of the loss ratio guarantee. Benefits will continue to be deemed reasonable in relation to the premium so long as the insurer complies with the terms of the loss ratio guarantee. This loss ratio guarantee must be in writing, signed by an officer of the insurer, and must contain at least the following:~~

~~(i) A recitation of the anticipated target loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved;~~

~~(ii) A guarantee that the actual Arkansas loss ratios for the experience period in which the new rates take effect, and for each experience period thereafter until new rates are filed, will meet or exceed the loss ratio standards referred to in subdivision (a)(5)(A)(i) of this section. If the annual earned premium volume in Arkansas under the particular policy form is less than one million dollars ($1,000,000) and therefore not actuarially credible, the loss ratio guarantee will be based on the actual nationwide loss ratio for the policy form. If the aggregate earned premium for all states is less than one million dollars ($1,000,000), the experience period will be extended until the end of the calendar year in which one million dollars ($1,000,000) of earned premium is attained;~~

~~(iii) A guarantee that the actual Arkansas, or national, if applicable, loss ratio results for the year at issue will be independently audited at the insurer's expense. This audit must be done in the second quarter of the year following the end of the experience period and the audited results must be reported to the commissioner not later than the date for filing the applicable accident and health policy experience exhibit;~~

~~(iv)(a) A guarantee that affected Arkansas policyholders will be issued a proportional refund, based on premium earned of the amount necessary to bring the actual aggregate loss ratio up to the loss ratio standards referred to in subdivision (a)(5)(A)(i) of this section. If nationwide loss ratios are used, then the total amount refunded in Arkansas will equal the dollar amount necessary to achieve the loss ratio standards multiplied by the total premium earned in Arkansas on the policy form and divided by the total premium earned in all states on the policy form.~~

~~(b) The refund must be made to all Arkansas policyholders who are insured under the applicable policy form as of the last day of the experience period and whose refund would equal ten dollars ($10.00) or more.~~

~~(c) The refund will include statutory interest from the end of the experience period until the date of payment.~~

~~(d) Payment must be made during the third quarter of the year following the experience period for which a refund is determined to be due; and~~

~~(v) A guarantee that refunds of less than ten dollars ($10.00) will be aggregated by the insurer and paid to the State Insurance Department.~~

~~(B) As used in this section, the term "loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration, for all combined durations.~~

~~(C) As used in this section, the term "experience period" means, for any given rate filing for which a loss ratio guarantee is made, the period beginning on the first day of the calendar year during which the rates first take effect and ending on the last day of the calendar year during which the insurer earns one million dollars ($1,000,000) in premium on the form in question in Arkansas or, if the annual premium earned on the form~~

~~in Arkansas is less than one million dollars ($1,000,000) nationally. Successive experience periods shall be similarly determined beginning on the first day following the end of the preceding experience period.~~

~~(D)(i) An insurer whose rates on a policy form are approved pursuant to a loss ratio guarantee shall provide affected policyholders with a notice that advises that rates may be increased more than one (1) time a year. For new policyholders with policies subject to the loss ratio guarantee, the notice must be delivered no later than delivery of the policy.~~

~~(ii) Nothing in this section shall be deemed to require an insurer to provide the notice required by this subdivision on more than one (1) occasion to any given policyholder while insured under the guaranteed form.~~

<u>(b)(1) The commissioner shall disapprove a premium rate filed with an individual accident and health contract if the commissioner finds that the rate is not actuarially sound, is excessive, is inadequate, or is unfairly discriminatory.</u>

<u>(2) A rate is actuarially sound if it is:</u>

<u>(A) Supported by an actuarial analysis made by a member of the American Academy of Actuaries; and</u>

<u>(B) Based on generally accepted actuarial principles and methodologies that show the rate to be reasonable.</u>

<u>(3) An insurer's submission of an actuarially sound rate shall not foreclose the commissioner from relying upon a contrary opinion made by a member of the American Academy of Actuaries who utilized generally accepted actuarial principles and methodologies to contest the rate filed by the insurer.</u>

<u>(4) A rate is excessive if it is likely to produce a profit that is unreasonably high in relation to past and prospective loss experience for the form which the filing affects or if expenses are unreasonably high in relation to services given.</u>

<u>(5) A rate is not unfairly discriminatory if:</u>

<u>(A) It shows equitably the differences in expected losses and expenses; or</u>

<u>(B) Different premiums result for policyholders with like loss exposures but different expense factors or with like expense factors but</u>

different loss exposures, if the rates show the differences with reasonable accuracy.

(6) A rate is inadequate if the investment income attributable to the rate fails to satisfy projected losses and expenses for the form which the filing affects.

(c)(1) A rate on a particular policy form is approved when filed with the commissioner if the insurer has filed a loss ratio guarantee with the commissioner and complied with the terms of the loss ratio guarantee.

(2) A benefit is reasonable in relation to the premium so long as the insurer complies with the terms of the loss ratio guarantee.

(3) The loss ratio guarantee shall be in writing, signed by an officer of the insurer, and contain at least the following:

(A) A recitation of the anticipated target loss ratio standards contained in the original actuarial memorandum filed with the policy form when it was originally approved;

(B) A guarantee that if the new rate takes effect the loss ratios in this state for the experience period in which the new rate takes effect and for each experience period thereafter until a new rate is filed, shall meet or exceed the loss ratio standards referred to in subdivision (a)(4) of this section;

(C) A statement or guarantee that affected policyholders in this state shall be issued a proportional refund based on premium earned of the amount necessary to bring the total loss ratio up to the loss ratio standards referred to in subdivision (a)(4) of this section;

(D) If nationwide loss ratios are used, then the total amount refunded in this state shall equal the dollar amount necessary to achieve the loss ratio standards multiplied by the total premium earned in this state on the policy form and divided by the total premium earned in a state on the policy form;

(E) The refund shall be made to a policyholder in this state who is insured under the applicable policy form on the last day of the experience period and whose refund would equal ten dollars ($10.00) or more;

(F) The refund in subdivision (c)(6)(C) of this section shall include interest from the end of the experience period until the date of payment;

(G) The payment of the refund shall be made during the third quarter of the year following the experience period for which a refund is determined to be due; and

(F) Refunds of less than ten dollars ($10.00) shall be aggregated by the insurer and paid to the State Insurance Department.

(4)(A) If the annual earned premium volume in this state under a policy form is less than one million dollars ($1,000,000) and therefore not actuarially credible, the loss ratio guarantee shall be based on the nationwide loss ratio for the policy form.

(B) If the total earned premium in this state is less than one million dollars ($1,000,000), the experience period shall be extended until the end of the calendar year in which one million dollars ($1,000,000) of earned premium is attained.

(5)(A) An insurer shall submit a guarantee that the loss ratio in this state or nationally, if applicable, for the year at issue shall be independently audited at the insurer's expense.

(B) An audit shall be made in the second quarter of the year following the end of the experience period and the audited results reported to the commissioner at or before the date for filing the policy experience exhibit.

(6) An insurer shall file with the commissioner the following with a loss ratio guarantee:

(7) As used in this section:

(A)(i) "Experience period" means the period for a given rate filing for which a loss ratio guarantee is made beginning on the first day of the calendar year during which the rate first takes effect and ending on the last day of the calendar year during which the insurer earns one million dollars ($1,000,000) in premium on the form in this state or if the annual premium earned on the form in Arkansas is less than one million dollars ($1,000,000) nationally.

(ii) Successive experience periods shall be determined beginning on the first day following the end of the preceding experience period; and

(B) "Loss ratio" means the ratio of incurred claims to earned premium by number of years of policy duration for the combined durations.

(8)(A) An insurer whose rates on a policy form are approved according to a loss ratio guarantee shall provide a notice to an affected policyholder that advises that rates may be increased more than one (1) time a year.

(B) The notice shall be delivered to a new policyholder with policies subject to the loss ratio guarantee at or before the time of delivery of the policy.

(d) This section does not require an insurer to provide the notice required by this section on more than one (1) occasion to a policyholder while the policyholder is insured under the guaranteed form.

/s/Files