

**2010 Arkansas Code**  
**Title 23 - Public Utilities and Regulated Industries**  
**Subtitle 3 - Insurance**  
**Chapter 64 - Licensees, Agents, Brokers, Adjusters, and Consultants**  
**Subchapter 2 - Licensing and Appointment**  
**§ 23-64-223 - Fiduciary duties of licensees.**

**23-64-223. Fiduciary duties of licensees.**

**(a)** All funds, fees, moneys, premiums, or return premiums received by a licensee in the capacity as a licensee shall be trust funds so received by the licensee in a fiduciary capacity, and the licensee shall in the applicable regular course of business account for and pay these funds, fees, moneys, premiums, or return premiums to the insured, insurer, licensee, or any other person entitled thereto.

**(b)** Any licensee who, not being lawfully entitled thereto, diverts or appropriates those funds or any portion thereof to his or her own use shall upon conviction be guilty of theft of property and shall be punished as provided by law.

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**2010 Arkansas Code**  
**Title 23 - Public Utilities and Regulated Industries**  
**Subtitle 3 - Insurance**  
**Chapter 66 - Trade Practices**  
**Subchapter 3 - Miscellaneous Prohibited Practices**  
**§ 23-66-310 - Illegal dealing in premiums -- Excess charges for insurance.**

**23-66-310. Illegal dealing in premiums -- Excess charges for insurance.**

**(a)** No person shall willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by the Arkansas Insurance Code.

**(b) (1)** No person shall willfully collect as a premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance in accordance with the applicable classifications and rates as filed and approved if necessary by the Insurance Commissioner, or in cases in which classifications, premiums, or rates are not required by the Arkansas Insurance Code to be so filed and approved, the premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer.

**(2)** However, the provision in subdivision (b)(1) of this section shall not be deemed to prohibit:

**(A)** The charging and collection by surplus lines brokers licensed under 23-65-101 et seq. of the amount of applicable state and federal taxes in addition to the premium and expense of underwriting as required by the insurer on risks written pursuant to the surplus lines law;

**(B)** The charging and collection by a life insurer of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy;

**(C)** A property and casualty agent from charging and collecting interest upon premiums

and charges that remain unpaid for a period of thirty (30) days beyond the date that the original premium was due, subject to the supervision of the commissioner. The interest shall not exceed the maximum rate prescribed by the Arkansas Constitution;

**(D)** The collection of membership dues by a property and casualty agent when membership of the applicant in an organization is a prerequisite of the insurer to the issuance of coverage; or

**(E)** The charging of a fee by a licensed consultant if the fee is not excessive.

**(c)** Nothing shall prohibit a duly licensed property or casualty agent or broker from charging a fee to the insured in addition to the premium properly charged for a policy or contract according to the insurer's rate and rule filings with the State Insurance Department, provided that:

**(1)** Each such fee is separately disclosed on the invoice or billing statement mailed or delivered to the insured; and

**(2)** The aggregate sum of the fees and all producers' commissions or other compensation due and owing for that policy or contract does not exceed twenty percent (20%) of the total gross premium charged the insured by the insurer for that policy or contract.

**(d) (1)** Any fee charged by a licensed insurance agent or producer for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance policy or contract shall not be deemed a premium or a charge for insurance and not prohibited by this section if:

**(A)** The fee is based upon a written agreement signed by the party to be charged in advance of the performance of services under the agreement;

**(B)** A copy of the agreement is provided to the party to be charged;

**(C)** The services for which the fee is charged are:

**(i)** Specifically stated in the agreement; and

**(ii)** Other than those customarily associated with solicitation, negotiation, and servicing of an insurance policy or contract;

**(D)** The amount of the fee charged is specifically stated in the agreement;

**(E)** The agreement contains a statement that:

**(i)** If an insurance policy or contract is purchased through the agent or producer, the agent or producer will receive a policy commission or fee in connection with the sale;

(ii) The fee charged is unrelated to any compensation received by the agent or producer for the sale of any insurance product; and

(iii) The fee under the agreement may not be waived under any circumstances; and

(F) (i) The agent or producer retains a copy of the agreement for not less than three (3) years after completion of the services.

(ii) The copy shall be available to the commissioner and his or her staff upon request.

(2) This subsection shall not apply to:

(A) Transactions for financial or estate planning services offered by insurance producers under 23-66-206(15); or

(B) Membership dues payable to entities either directly or indirectly affiliated with an agent or insurer.

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