

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 506 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 369

4
5 By: Senator Altes
6 By: Representative Matayo

For An Act To Be Entitled

10 AN ACT TO REVISE THE ARKANSAS INSURANCE CODE TO
11 ADOPT TECHNICAL CORRECTIONS AND UPDATES TO THE
12 ARKANSAS INSURANCE LAWS; TO MODERNIZE AND CONFORM
13 STATE INSURANCE LAWS TO FEDERAL LAWS; TO AMEND
14 OTHER PORTIONS OF ARKANSAS CODE TITLES 9, 21, 23,
15 26, AND 27 CONCERNING STATE INSURANCE
16 COMMISSIONER DUTIES AND RESPONSIBILITIES; AND FOR
17 OTHER PURPOSES.

Subtitle

18
19 2005 GENERAL INSURANCE OMNIBUS ACT.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 9-14-504(a), concerning health insurance
26 communications for minor children, is amended to read as follows:

27 (a) Without regard to the fact that coverage may be provided through a
28 policy benefiting the noncustodial parent of a child or children, Any any
29 insurer, health maintenance organization, self-funded group, multiple-
30 employer welfare arrangement, or hospital or medical services corporation
31 operating in this state shall:

- 32 (1) ~~receive~~ Receive claims for payment;
33 (2) ~~respond~~ Respond to requests concerning information necessary
34 to determine coverage status, claims status, health policy plan, or benefits
35 for minor children, or to obtain benefits through ~~such~~ coverage for minor



1 children; and

2 (3) otherwise Otherwise communicate with the custodial parent or
 3 the noncustodial parent of the minor child or children, an assignee, or the
 4 Office of Child Support Enforcement of the Revenue Division of the Department
 5 of Finance and Administration, ~~without regard to the fact that such coverage~~
 6 ~~may be through a policy benefiting the noncustodial parent of such child or~~
 7 ~~children.~~

8

9 SECTION 2. Arkansas Code § 21-2-704(b), concerning claims covered by
 10 the Self-Insured Fidelity Bond Program, is amended to read as follows:

11 (b)(1) The fidelity bond coverage provided by the program shall cover
 12 actual losses sustained by the participating governmental entities through
 13 any fraudulent or dishonest act or acts committed by any of the officials or
 14 employees of the participating governmental entities, acting alone or in
 15 collusion with others, during the bond period to an amount not exceeding the
 16 lesser of three hundred thousand dollars (\$300,000) or the amount of the
 17 bond.

18 (2) Coverage for loss of property other than money and
 19 securities shall be limited to the actual cash value of the property on the
 20 day the loss was discovered.

21 (3) No coverage shall be provided for any claim in which a
 22 participating governmental entity through fraudulent means takes money or
 23 other property from another participating governmental entity.

24

25 SECTION 3. Arkansas Code § 21-2-705(b)(2), concerning the payment of
 26 per diem and mileage of the Governmental Bonding Board, is amended to read as
 27 follows:

28 (2) The expense reimbursement of members of the board shall be paid ~~by~~
 29 ~~the State Insurance Department from funds specifically appropriated to the~~
 30 ~~State Insurance Department for that purpose or from other funds available to~~
 31 ~~the State Insurance Department for paying expense reimbursement~~ from the
 32 Fidelity Bond Trust Fund.

33

34 SECTION 4. Arkansas Code § 21-2-709 is amended to read as follows:

35 21-2-709. Determination of coverage – Assignment of rights.

36 (a)(1)(A) Upon the receipt of the proof of loss from the Legislative

1 Auditor, the Governmental Bonding Board shall determine whether the loss is
2 covered under the Self-Insured Fidelity Bond Program.

3 (B) The board may withhold claim determination and
4 payments until the investigation in each case has been completed and all
5 information deemed necessary for determination of coverage under the program
6 has been received.

7 (2)(A) If the board determines that the loss is covered under
8 the program, the Insurance Commissioner shall authorize fidelity bond loss
9 payments from the Fidelity Bond Trust Fund to the participating governmental
10 entity on a timely basis.

11 (B) The board shall provide a timely explanation of
12 payments and denial of losses to the Legislative Auditor and to the
13 participating governmental entity.

14 (3) All vouchers for bond claim payments shall include as
15 supporting documents a copy of the payment recommendation by the State Risk
16 Manager and a copy of the proof of loss from the Legislative Auditor.

17 (4) Any loss payment may be adjusted by any applicable
18 deductibles, restitution, or coinsurance payments.

19 ~~(b)(1) Upon fidelity bond loss payment from the fund, the recipients~~
20 ~~of the loss payment shall, to the extent of the payment, assign to the fund~~
21 ~~all rights and claims that they may have against the official, officer, or~~
22 ~~employee involved. Before any loss is paid from the fund, the recipient of~~
23 ~~the payment shall sign and return a transfer of rights form assigning to the~~
24 ~~fund to the extent of payment all rights and claims that the recipient may~~
25 ~~have against the official, officer, or employee involved.~~ The fund shall be
26 subrogated to all of the rights of the recipients of the fidelity bond loss
27 payment to the extent of the payment.

28 (2)(A) If the participating governmental entity shall sustain
29 any loss which exceeds the amount of indemnity provided by the program, the
30 governmental entity shall be entitled to all recoveries, except from
31 suretyship, insurance, reinsurance, security, or indemnity taken by or for
32 the benefit of the program, by whomever made, on account of such loss until
33 fully reimbursed, less the amount of the deductible and coinsurance.

34 (B) Any remainder shall be applied to reimbursement of the
35 program.

36 (3) If a participating governmental entity fails to pay over

1 amounts due the program under these provisions, the board may deduct any
 2 amounts due from future bond loss payments due the applicable participating
 3 governmental entity or from any treasury funds of the applicable
 4 participating governmental entity.

5 ~~(e) The commissioner shall timely notify the Legislative Auditor if~~
 6 ~~the board determines that the loss is not covered under the program.~~

7
 8 SECTION 5. Arkansas Code § 21-2-711 is amended to read as follows:

9 21-2-711. Fidelity Bond Trust Fund.

10 (a) There is established on the books of the Treasurer of State, the
 11 Auditor of State, and the Chief Fiscal Officer of the State a separate fund
 12 to be known as the Fidelity Bond Trust Fund.

13 (b)(1) No money shall be appropriated from this fund for any purpose
 14 except for the use and benefit of participating governmental entities for
 15 bond claims and for Governmental Bonding Board expenses including, but not
 16 limited to, travel, actuarial, consultant, and service contract fees.

17 (2) The fund shall be administered by and disbursed at the
 18 direction of the Governmental Bonding Board.

19 (c)(1)(A) The assets of the fund may be invested and reinvested as the
 20 Governmental Bonding Board may determine with the advice of the State Board
 21 of Finance.

22 (B) All incomes derived through investment of the fund
 23 shall be credited, as investment income, to the fund.

24 (C) For the purposes of investment, fund moneys invested
 25 and interest earned thereon shall be administered as trust funds pursuant to
 26 the provisions of § 19-3-219(a).

27 (2) Further, all moneys deposited to the fund shall not be
 28 subject to any deduction, tax, levy, or any other type of assessment.

29 ~~(d) The bond premiums collected by the Governmental Bonding Board~~
 30 ~~under the provisions of this subchapter~~ All moneys received by the board for
 31 the Self-Insured Fidelity Bond Program, including premiums collected by the
 32 board under this subchapter, restitution, interest payments, grants, gifts,
 33 and refunds shall be deposited in the fund.

34
 35 SECTION 6. Arkansas Code § 23-40-120(b), concerning records pertaining
 36 to the sale of prepaid funeral benefits, is amended by adding a new

1 subdivision to read as follows:

2 (3)(A) All working papers, recorded information, documents, and
 3 copies produced by, obtained by, or disclosed to the Insurance Commissioner
 4 or any other person in the course of an examination made under this chapter:

- 5 (i) Shall be treated as confidential;
- 6 (ii) Are not subject to subpoena; and
- 7 (iii) May not be made public by the commissioner or
 8 any other person, except to the extent provided in § 23-61-205.

9 (B) All working papers, financial statement analyses,
 10 ratio calculations, and any other materials produced by State Insurance
 11 Department financial examiners or analysts, or documents submitted or
 12 disclosed to the department by an insurer in response to a request from a
 13 department financial examiner or analyst during the course of reviewing or
 14 investigating the financial solvency, condition, or affairs of the
 15 organization:

- 16 (i) Shall be treated as confidential;
- 17 (ii) Are not subject to subpoena; and
- 18 (iii) May not be made public by the commissioner or
 19 any other person, except to the extent provided in § 23-61-205.

20 (C) A recipient of information under this section other
 21 than the commissioner or State Insurance Department personnel must agree in
 22 writing to provide the confidential treatment required by this section prior
 23 to receiving the information, unless the prior written consent of the company
 24 to which the information pertains has been obtained.

25

26 SECTION 7. Arkansas Code § 23-61-205(a)(2), concerning examination
 27 reports, is amended to read as follows:

28 (2) No later than sixty (60) days following completion of the
 29 examination, the examiner in charge shall file with the State Insurance
 30 Department a verified written report of the examination under oath. Upon
 31 receipt of the verified report, the department shall transmit the report to
 32 the company examined, together with a notice which shall afford the company
 33 examined a reasonable opportunity of not more than ~~twenty (20)~~ thirty (30)
 34 days to make a written submission or rebuttal with respect to any matters
 35 contained in the examination report.

36

1 SECTION 8. Arkansas Code § 23-61-205(c), concerning the
 2 confidentiality and disclosure of examination reports to insurers, is amended
 3 to read as follows:

4 (c) Upon the adoption of the examination report under subdivision
 5 (a)(3)(A) of this section, the commissioner shall continue to hold the
 6 content of the examination report as private and confidential information for
 7 a period of thirty (30) days from the date the company received by United
 8 States mail or by electronic mail the order issued by the commissioner to
 9 adopt the examination report, except to the extent provided in subdivision
 10 (a)(2) of this section. Thereafter, the commissioner may open the report for
 11 public inspection so long as no court of competent jurisdiction has stayed
 12 its publication.

13
 14 SECTION 9. Arkansas Code § 23-61-113(b), concerning the Insurance
 15 Commissioner’s rulemaking authority relating to disclosure of nonpublic
 16 personal information, is amended to read as follows:

17 (b) The Insurance Commissioner shall adopt rules and regulations
 18 governing the treatment of consumer financial and protected health
 19 information by the Arkansas Comprehensive Health Insurance Pool and by all
 20 licensed insurers, health maintenance organizations, or other insuring health
 21 entities regulated by the commissioner, producers, and other persons licensed
 22 or required to be licensed, authorized or required to be authorized, or
 23 registered or required to be registered by the commissioner.

24
 25 SECTION 10. Effective January 1, 2006, Arkansas Code Title 23, Chapter
 26 62, Subchapter 1, is amended to add a new section to read as follows:

27 23-62-110. Mortgage guaranty insurance.

28 As used in the Arkansas Insurance Code, “mortgage guaranty insurance”
 29 means insurance that insures lenders against financial loss by reason of
 30 nonpayment of principal, interest, or other sums agreed to be paid under the
 31 terms of any note, bond, or other evidence of indebtedness secured by a
 32 mortgage, deed of trust, or other instrument constituting a lien or charge on
 33 improved real estate.

34
 35 SECTION 11. Arkansas Code § 23-62-204 is amended to read as
 36 follows:

1 23-62-204. Allowance of credit.

2 (a)(1) Except as provided in subsection (b) of this section, No no
3 credit shall be allowed, as an asset or a deduction from liability, to any
4 ceding insurer for reinsurance unless the reinsurance contract provides that
5 in the event of the insolvency of the ceding insurer, the reinsurance is
6 payable under one (1) or more contracts reinsured by the assuming insurer on
7 the basis of reported claims allowed by the liquidation court the liability
8 of the ceding insurer under the contracts reinsured without diminution
9 because of the insolvency of the ceding insurer.

10 (2) The payments shall be made directly to the ceding insurer or
11 to its domiciliary liquidator unless:

12 (A) The contract or other written agreement specifically
13 provides another payee of the reinsurance in the event of the insolvency of
14 the ceding insurer; or

15 (B) The assuming insurer with the consent of the direct
16 insured or insureds has assumed the policy obligations of the ceding insurer
17 as direct obligations of the assuming insurer to the payees under the
18 policies and in substitution for the obligations of the ceding insurer to the
19 payees.

20 (b)(1) If a life and health insurance guaranty association has made
21 the election to succeed to the rights and obligations of the insolvent
22 insurer under the contract of reinsurance, then the reinsurer's liability to
23 pay covered reinsured claims shall continue under the contract of
24 reinsurance, provided that the reinsurer is paid the reinsurance premiums for
25 coverage.

26 (2) Payment of the reinsured claims shall only be made by the
27 reinsurer pursuant to the direction of the guaranty association or its
28 designated successor.

29 (3) Any claim payment made at the direction of the guaranty
30 association or its designated successor by the reinsurer will discharge the
31 reinsurer of all further liability to any other party for the payment.

32 (c)(1) The reinsurance agreement may provide that the domiciliary
33 liquidator of an insolvent ceding insurer shall give written notice to the
34 assuming insurer of the pendency of a claim against the ceding insurer on the
35 contract reinsured within a reasonable time after the claim is filed in the
36 liquidation proceeding.

1 (2) During the pendency of the claim, any assuming insurer may
 2 investigate the claim and interpose at its own expense in the proceeding any
 3 defenses which it deems available to the ceding insurer or its liquidator.

4 (3) The expense of asserting a defense may be filed as a claim
 5 against the insolvent ceding insurer to the extent of a proportionate share
 6 of the benefit which may accrue to the ceding insurer solely as a result of
 7 the defense undertaken by the assuming insurer.

8 (4) If two (2) or more assuming insurers are involved in a claim
 9 and a majority in interest elect to interpose one (1) or more defenses to the
 10 claim, the expense shall be apportioned in accordance with the terms of the
 11 reinsurance agreement as though the expense had been incurred by the ceding
 12 insurer.

13
 14 SECTION 12. Effective January 1, 2006, Arkansas Code § 23-62-302 is
 15 amended to read as follows:

16 23-62-302. Sections 23-62-201, 23-62-202, 23-62-204, and 23-62-205
 17 applicable - Purpose - Construction.

18 (a) Reinsurance of life and accident and health insurance risks by
 19 domestic and foreign insurance companies is regulated under the provisions of
 20 §§ 23-62-201, 23-62-202, 23-62-204, and 23-62-205.

21 (b)(1) ~~The purpose of this subchapter is to promote the public welfare~~
 22 ~~by regulating the reinsuring of risks located in this state with insurance~~
 23 ~~companies not authorized to transact business in this state~~ protect the
 24 interest of insureds, claimants, ceding insurers, assuming insurers, and the
 25 public generally. The General Assembly declares its intent is to ensure
 26 adequate regulation of insurers and reinsurers and adequate protection for
 27 those to whom they owe obligations.

28 (2) In furtherance of the state's interest, the General Assembly
 29 provides a mandate that upon the insolvency of an insurer or reinsurer not
 30 domiciled in the United States that provides security to fund its obligations
 31 within the United States in accordance with this subchapter:

32 (A) The assets representing the security shall be
 33 maintained in the United States, and claims shall be filed with and valued by
 34 the state insurance commissioner with regulatory oversight; and

35 (B) The assets shall be distributed in accordance with the
 36 insurance laws of the state in which the trust is domiciled that are

1 applicable to the liquidation of domestic United States insurance companies.

2 (3) The General Assembly further declares that the matters
 3 contained in this subchapter are fundamental to the business of insurance in
 4 accordance with 15 U.S.C. §§ 1011-1012, as it existed on January 1, 2005.

5 (c)(1) Nothing in this subchapter is intended to prohibit or
 6 discourage reasonable competition or to prohibit or discourage the continued
 7 availability of insurance regulated by this subchapter.

8 (2) The provisions of this subchapter shall be liberally
 9 construed.

10
 11 SECTION 13. Effective January 1, 2006, Arkansas Code § 23-62-305 is
 12 amended to read as follows:

13 23-62-305. Credit allowed a domestic ceding insurer.

14 (a)(1) Credit for reinsurance shall be allowed a domestic ceding
 15 insurer as either an asset or a ~~deduction~~ reduction from liability on account
 16 of reinsurance ceded only when the reinsurer meets the requirements of this
 17 subchapter.

18 (2) Credit shall be allowed under subsection (b), (c), or (d) of
 19 this section only for cessions of the kinds or classes of business which the
 20 assuming insurer is licensed or otherwise permitted to write or assume in:

21 (A) Its state of domicile; or

22 (B) In the case of a United States branch of an alien
 23 assuming insurer, in the state through which it is entered and licensed to
 24 transact insurance or reinsurance.

25 (3) Credit shall be allowed under subsection (d) or (e) of this
 26 section only if the applicable requirements of subsection (g) of this section
 27 have been satisfied.

28 (b) Credit shall be allowed when the reinsurance is ceded to an
 29 assuming insurer which is licensed to transact insurance or reinsurance in
 30 this state.

31 (c)(1) Credit shall be allowed when the reinsurance is ceded to an
 32 assuming insurer which is accredited as a reinsurer in this state. An
 33 accredited reinsurer is one which:

34 ~~(1)~~(A) Files with the Insurance Commissioner evidence of
 35 its submission to this state's jurisdiction;

36 ~~(2)~~(B) Submits to this state's authority to examine its

1 books and records;

2 ~~(3)~~(C) Is licensed to transact insurance or reinsurance in
3 at least one (1) state, or, in the case of a United States branch of an alien
4 assuming insurer, is entered through and licensed to transact insurance or
5 reinsurance in at least one (1) state; and

6 ~~(4)~~(D) Files annually with the commissioner a copy of its
7 annual statement filed with the insurance department of its state of domicile
8 and a copy of its most recent audited financial statement, and either:

9 ~~(A)~~(i) Maintains a surplus ~~as regards~~ regarding
10 policyholders in an amount ~~which is~~ not less than twenty million dollars
11 (\$20,000,000) and whose accreditation has not been denied by the commissioner
12 within ninety (90) days of its submission; or

13 ~~(B)~~(ii) Maintains a surplus as regards policyholders
14 in an amount less than twenty million dollars (\$20,000,000) and whose
15 accreditation has been approved by the commissioner.

16 ~~(d)~~(2) No credit shall be allowed a domestic ceding insurer, if
17 the assuming insurer's accreditation has been revoked by the commissioner
18 after notice and hearing.

19 ~~(e)~~(d)(1) Credit shall be allowed when the reinsurance is ceded to an
20 assuming insurer which is domiciled and licensed in, or in the case of a
21 United States branch of an alien assuming insurer is entered through, a state
22 which employs standards regarding credit for reinsurance substantially
23 similar to those applicable under this statute and the assuming insurer or
24 United States branch of an alien assuming insurer:

25 ~~(1)~~(A) Maintains a surplus as regards policyholders in an
26 amount not less than twenty million dollars (\$20,000,000); and

27 ~~(2)~~(B) Submits to the authority of this state to examine
28 its books and records.

29 (2) ~~Provided, however, that the~~ The requirement of subdivision
30 ~~(e)-(1)~~ (d)(1)(A) of this section does not apply to reinsurance ceded and
31 assumed pursuant to pooling arrangements among insurers in the same holding
32 company system.

33 ~~(f)-(1)~~(e)(1)(A) Credit shall be allowed when the reinsurance is ceded
34 to an assuming insurer which maintains a trust fund in a qualified United
35 States financial institution, as defined in § 23-62-307(b), for the payment
36 of the valid claims of its United States ~~policyholders and~~ ceding insurers,

1 their assigns and successors in interest.

2 (B) To enable the commissioner to determine the
3 sufficiency of the trust fund, The the assuming insurer shall report annually
4 to the commissioner information substantially the same as that required to be
5 reported on the National Association of Insurance Commissioners annual
6 statement form by licensed insurers ~~to enable the commissioner to determine~~
7 ~~the sufficiency of the trust fund.~~

8 (C) The assuming insurer shall submit to examination of
9 its books and records by the commissioner and bear the expense of
10 examination. ~~In the case of a single assuming insurer, the trust shall~~
11 ~~consist of a trusteed account representing the assuming insurer's liabilities~~
12 ~~attributable to business written in the United States and, in addition, the~~
13 ~~assuming insurer shall maintain a trusteed surplus of not less than twenty~~
14 ~~million dollars (\$20,000,000). In the case of a group of incorporated and/or~~
15 ~~individual unincorporated underwriters, the trust shall consist of a trusteed~~
16 ~~account representing the group's liabilities attributable to business written~~
17 ~~in the United States and, in addition, the group shall maintain a trusteed~~
18 ~~surplus of which one hundred million dollars (\$100,000,000) shall be held~~
19 ~~jointly for the benefit of United States ceding insurers of any member of the~~
20 ~~group. The incorporated members of the group shall not be engaged in any~~
21 ~~business other than underwriting as a member of the group and shall be~~
22 ~~subject to the same level of solvency regulation and control by the group's~~
23 ~~domiciliary regulator as are the unincorporated members, and the group shall~~
24 ~~make available to the commissioner an annual certification of the solvency of~~
25 ~~each underwriter by the group's domiciliary regulator and its independent~~
26 ~~public accountants.~~

27 ~~(2) In the case of a group of incorporated insurers under common~~
28 ~~administration which complies with the filing requirements contained in~~
29 ~~subdivision (f)(1) of this section and which has continuously transacted an~~
30 ~~insurance business outside the United States for at least three (3) years~~
31 ~~immediately prior to making application for accreditation, and submits to~~
32 ~~this state's authority to examine its books and records and bears the expense~~
33 ~~of the examination, and which has aggregate policyholders' surplus of ten~~
34 ~~billion dollars (\$10,000,000,000); the trust shall be in an amount equal to~~
35 ~~the group's several liabilities attributable to business ceded by United~~
36 ~~States ceding insurers to any member of the group pursuant to reinsurance~~

1 ~~contracts issued in the name of such group; plus the group shall maintain a~~
 2 ~~joint trustee surplus of which one hundred million dollars (\$100,000,000)~~
 3 ~~shall be held jointly for the benefit of United States ceding insurers of any~~
 4 ~~member of the group as additional security for any such liabilities, and each~~
 5 ~~member of the group shall make available to the commissioner an annual~~
 6 ~~certification of the member's solvency by the member's domiciliary regulator~~
 7 ~~and its independent public accountant.~~

8 ~~(3) Such trust shall be established in a form approved by the~~
 9 ~~commissioner. The trust instrument shall provide that contested claims shall~~
 10 ~~be valid and enforceable upon the final order of any court of competent~~
 11 ~~jurisdiction in the United States. The trust shall vest legal title to its~~
 12 ~~assets in the trustees of the trust for its United States policyholders and~~
 13 ~~ceding insurers, their assigns, and successors in interest. The trust and~~
 14 ~~the assuming insurer shall be subject to examination as determined by the~~
 15 ~~commissioner. The trust described herein must remain in effect for as long~~
 16 ~~as the assuming insurer shall have outstanding obligations due under the~~
 17 ~~reinsurance agreements subject to the trust.~~

18 ~~(4) No later than February 28 of each year, the trustees of the~~
 19 ~~trust shall report to the commissioner in writing setting forth the balance~~
 20 ~~of the trust and listing the trust's investments at the preceding year end~~
 21 ~~and shall certify the date of termination of the trust, if so planned, or~~
 22 ~~certify that the trust shall not expire prior to the next following December~~
 23 ~~31.~~

24 (2)(A) A credit for reinsurance shall not be granted under this
 25 section unless the form of the trust and any amendments to the trust have
 26 been approved by:

27 (i) The insurance commissioner of the state where
 28 the trust is domiciled; or

29 (ii) The insurance commissioner of another state
 30 who, pursuant to the terms of the trust instrument, has accepted principal
 31 regulatory oversight of the trust.

32 (B)(i) The form of the trust and any trust amendments also
 33 shall be filed with the insurance commissioner of every state in which the
 34 ceding insurer beneficiaries of the trust are domiciled.

35 (ii) The trust instrument shall provide that
 36 contested claims shall be valid and enforceable upon the final order of any

1 court of competent jurisdiction in the United States.

2 (iii) The trust shall vest legal title to its assets
3 in its trustees for the benefit of the assuming insurer's United States
4 ceding insurers, their assigns, and successors in interest.

5 (iv) The trust and the assuming insurer shall be
6 subject to examination as determined by the commissioner.

7 (C)(i) The trust shall remain in effect for as long as the
8 assuming insurer has outstanding obligations due under the reinsurance
9 agreements subject to the trust.

10 (ii) No later than February 28 of each year, the
11 trustees of the trust shall:

12 (a) Report to the commissioner in writing the
13 balance of the trust;

14 (b) List the trust's investments at the
15 preceding year end; and

16 (c) Certify either the date of termination of
17 the trust or that the trust will not expire prior to the following December
18 31.

19 (3)(A) The trust fund for a single assuming insurer shall
20 consist of funds in trust in an amount not less than the assuming insurer's
21 liabilities attributable to reinsurance ceded by United States ceding
22 insurers, and, in addition, the assuming insurer shall maintain a trustee
23 surplus of not less than twenty million dollars (\$20,000,000); and

24 (B)(i) In the case of a group including incorporated and
25 individual unincorporated underwriters:

26 (a) For reinsurance ceded under reinsurance
27 agreements with an inception, amendment, or renewal date on or after August
28 1, 1995, the trust shall consist of a trustee account in an amount not less
29 than the group's several liabilities attributable to business ceded by United
30 States domiciled ceding insurers to any member of the group;

31 (b) For reinsurance ceded under reinsurance
32 agreements with an inception date on or before July 31, 1995, and not amended
33 or renewed after that date, notwithstanding the other provisions of this act,
34 the trust shall consist of a trustee account in an amount not less than the
35 group's several insurance and reinsurance liabilities attributable to
36 business written in the United States; and

1 (c) In addition to the other trusts under this
 2 subdivision (e)(3)(B), the group shall maintain in trust a trustee surplus
 3 of which one hundred million dollars (\$100,000,000) shall be held jointly for
 4 the benefit of the United States domiciled ceding insurers of any member of
 5 the group for all years of account.

6 (ii) The incorporated members of the group shall not
 7 be engaged in any business other than underwriting as a member of the group
 8 and shall be subject to the same level of regulation and solvency control by
 9 the group's domiciliary regulator as are the unincorporated members.

10 (iii) Within ninety (90) days after its financial
 11 statements are due to be filed with the group's domiciliary regulator, the
 12 group shall provide to the commissioner:

13 (a) An annual certification by the group's
 14 domiciliary regulator of the solvency of each underwriter member; or

15 (b) If a certification is unavailable,
 16 financial statements, prepared by independent public accountants, of each
 17 underwriter member of the group.

18 ~~(g)(f)~~ Credit shall be allowed when the reinsurance is ceded to an
 19 assuming insurer not meeting the requirements of subsection ~~(a)(b)~~, ~~(b)(c)~~,
 20 ~~(e)(d)~~, or ~~(d)(e)~~ of this section, but only with respect as to the insurance
 21 of risks located in jurisdictions where ~~such~~ the reinsurance is required by
 22 applicable law or regulation of that jurisdiction.

23 ~~(h)(g)(1)~~ If the assuming insurer is not licensed or accredited to
 24 transact insurance or reinsurance in this state, the credit permitted by
 25 subsections ~~(e)(d)~~ and ~~(g)(e)~~ of this section shall not be allowed unless the
 26 assuming insurer agrees in the reinsurance agreements:

27 ~~(1)(A)~~ That in the event of the failure of the assuming
 28 insurer to perform its obligations under the terms of the reinsurance
 29 agreement, the assuming insurer, at the request of the ceding insurer, shall
 30 submit to the jurisdiction of any court of competent jurisdiction in any
 31 state of the United States, will comply with all requirements necessary to
 32 give such court jurisdiction, and will abide by the final decision of ~~such~~
 33 the court or of any appellate court in the event of an appeal; and

34 (B) To designate the commissioner or a designated attorney
 35 as its true and lawful attorney upon whom may be served any lawful process in
 36 any action, suit, or proceeding instituted by or on behalf of the ceding

1 company.

2 (2) This ~~provision~~ subsection (g) is not intended to conflict
3 with or override the obligation of the parties to a reinsurance agreement to
4 arbitrate their disputes, if ~~such an~~ the obligation is created in the
5 agreement.

6 (h) If the assuming insurer does not meet the requirements of
7 subsection (b), (c), or (d) of this section, the credit permitted under
8 subsection (e) of this section shall not be allowed unless the assuming
9 insurer agrees in the trust agreements to the following conditions:

10 (1) Notwithstanding any other provisions in the trust
11 instrument, if the trust fund is inadequate because it contains an amount
12 less than the amount required by subdivision (e)(3) of this section or if the
13 grantor of the trust has been declared insolvent or placed into receivership,
14 rehabilitation, liquidation, or similar proceedings under the laws of its
15 state or country of domicile, then the trustee shall comply with an order of
16 the insurance commissioner with regulatory oversight over the trust or with
17 an order of a court of competent jurisdiction directing the trustee to
18 transfer to the insurance commissioner with regulatory oversight all of the
19 assets of the trust fund;

20 (2) The assets shall be distributed by and claims shall be filed
21 with and valued by the insurance commissioner with regulatory oversight in
22 accordance with the laws of the state in which the trust is domiciled that
23 are applicable to the liquidation of domestic insurance companies;

24 (3) If the insurance commissioner with regulatory oversight
25 determines that the assets of the trust fund or any part thereof are not
26 necessary to satisfy the claims of the United States ceding insurers of the
27 grantor of the trust, the assets or a part of the assets shall be returned by
28 the insurance commissioner with regulatory oversight to the trustee for
29 distribution in accordance with the trust agreement; and

30 (4) The grantor shall waive any right otherwise available to it
31 under any law of the United States that is inconsistent with this subsection
32 (h).

33
34 SECTION 14. Effective January 1, 2006, Arkansas Code § 23-62-306 is
35 amended to read as follows:

36 23-62-306. Reduction from liability for reinsurance ceded by a

1 domestic insurer to an assuming insurer.

2 (a) A An asset or a reduction from liability for the reinsurance ceded
3 by a domestic insurer to an assuming insurer not meeting the requirements of
4 § 23-62-305 shall be allowed in an amount not exceeding the liabilities
5 carried by the ceding insurer~~;~~.

6 ~~(b) and such~~ The reduction shall be in the amount of funds held by or
7 on behalf of the ceding insurer, including funds held in trust for the ceding
8 insurer, under a reinsurance contract with ~~such the~~ the assuming insurer as
9 security for the payment of obligations thereunder, if ~~such the~~ the security is
10 held:

11 (1) ~~in~~ In the United States subject to withdrawal solely by, and
12 under the exclusive control of, the ceding insurer; or

13 (2) ~~in~~ In the case of a trust, ~~held~~ in a qualified United States
14 financial institution~~;~~ as defined in § 23-62-307(b).

15 ~~(b)(c)~~ This The security may be in the form of:

16 (1) Cash;

17 (2) Securities listed by the Securities Valuation Office of the
18 National Association of Insurance Commissioners and qualifying as admitted
19 assets;

20 (3)(A) Clean, irrevocable, unconditional letters of credit,
21 issued or confirmed by a qualified United States financial institution, as
22 defined in § 23-62-307(a), effective no later than December 31 ~~in respect~~
23 the year for which filing is being made, and in the possession of the ceding
24 company on or before the filing date of its annual statement.

25 (B) Letters of credit meeting applicable standards of
26 issuer acceptability as of the dates of their issuance or confirmation shall,
27 notwithstanding the issuing or confirming institution's subsequent failure to
28 meet applicable standards of issuer acceptability, continue to be acceptable
29 as security until their expiration, extension, renewal, modification, or
30 amendment, whichever first occurs; or

31 (4) Any other form of security acceptable to the Insurance
32 Commissioner.

33

34 SECTION 15. Effective January 1, 2006, Arkansas Code § 23-63-205 is
35 amended to read as follows:

36 23-63-205. Certificate of authority - Eligibility - Capital Funds.

1 (a)(1) On and after ~~January 1, 2002~~, January 1, 2006, to qualify for
2 and maintain authority to transact any one (1) kind of insurance, as defined
3 in §§ 23-62-101 - 23-62-108, or combination of kinds of insurance as shown in
4 this subsection, an insurer applying for its original certificate of
5 authority in Arkansas shall possess and maintain in cash and marketable
6 securities unimpaired paid-in capital if the insurer is a domestic, foreign,
7 or alien stock insurer or surplus if the insurer is a domestic, foreign or
8 alien mutual, or domestic mutual legal reserve life insurer, or foreign or
9 alien reciprocal insurer, in an amount not less than is applicable under the
10 schedule below, and shall possess when first so authorized such additional
11 funds as surplus as are required under § 23-63-207:

Kinds of	Minimum Capital or
Insurance	Surplus Required
Life	\$750,000
Accident and Health.....	750,000
Life and Accident and Health.....	750,000
Property.....	500,000
Casualty.....	750,000
Surety.....	750,000
Marine.....	500,000
Title.....	250,000
<u>Mortgage Guaranty.....</u>	<u>750,000</u>
Property, Casualty, Surety, and Marine.....	750,000
Combination of other lines.....	750,000

25 (2)(A) As to any combination of kinds of insurance, other than
26 combinations of kinds of insurance specifically listed in this subsection,
27 the insurer shall possess the sum of the minimum capital or surplus required
28 by this subsection for the separate kinds of insurance it proposes to
29 transact unless the commissioner deems it sufficient for the applicant to
30 possess and maintain the total amount of seven hundred fifty thousand dollars
31 (\$750,000) for the proposed combination of kinds of insurance.

32 (B) If Arkansas law does not specify the minimum capital
33 or surplus for any kind of insurance, then the commissioner shall establish a
34 minimum capital or surplus requirement of not less than five hundred thousand
35 dollars (\$500,000).

36 (3) The Insurance Commissioner may require reinsurance on terms

1 and in amounts as are reasonable under the circumstances for abstractor's
2 professional liability insurance when written by title insurers.

3 (4) In his or her discretion, the commissioner may require the
4 insurer to possess and maintain additional capital, if a stock insurer, and
5 surplus, if a mutual or reciprocal insurer, in addition to that required by
6 this section, based on the financial condition of the insurer or based on the
7 types, volume, or nature of the business transacted by the insurer.

8 (b) An insurer holding a valid certificate of authority to transact
9 insurance in this state immediately prior to ~~January 1, 2002~~, January 1,
10 2006, may continue to be authorized to transact the same kinds of insurance
11 as permitted by the certificate of authority by maintaining thereafter the
12 same amount of paid-in capital stock, if the insurer is a stock insurer, or
13 the amount of surplus, if the insurer is a mutual or reciprocal insurer, as
14 required by the laws of this state for such an insurer immediately prior to
15 ~~January 1, 2002~~ January 1, 2006. However, the insurer shall not be granted
16 authority to transact any other or additional kind of insurance, unless it
17 then fully complies with the requirement as to capital and surplus, as
18 applied to the kinds of insurance it then proposes to transact, as provided
19 by this section with respect to insurers applying for original certificates
20 of authority.

21 (c) Capital and surplus requirements shall be based upon all the kinds
22 of insurance actually transacted or currently to be transacted by the insurer
23 in any and all areas in which it operates, whether or not only a portion of
24 the kinds are to be transacted in this state.

25 (d) As to surplus required for qualification to transact one (1) or
26 more kinds of insurance and to be maintained, domestic mutual insurers, other
27 than mutual life insurers, shall be governed by §§ 23-69-101 - 23-69-103, 23-
28 69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, and domestic
29 reciprocal insurers shall be governed by §§ 23-70-101 et seq.

30 (e) A life insurer may also grant annuities without additional capital
31 or additional surplus.

32 (f) A casualty insurer may be authorized to transact ~~also~~ accident and
33 health insurance without additional capital or additional surplus.

34 (g)(1) Except as provided in subdivision (g)(2) of this section:

35 (A) A title insurer shall not be approved to write any
36 other kind of insurance other than title insurance; and

1 (B) A mortgage guarantee insurer shall not be approved to
 2 write any other kinds of insurance other than mortgage guarantee insurance.

3 (2) The provisions of this subsection (g) shall not apply to an
 4 insurer authorized to write title or mortgage guaranty insurance along with
 5 other kinds of insurance as of January 1, 2006, but the insurer shall not be
 6 allowed to add additional kinds of insurance to its certificates of authority
 7 after January 1, 2006.

8
 9 SECTION 16. Arkansas Code § 23-63-206 is amended to read as follows:
 10 23-63-206. Certificate of authority – Deposit of securities required.

11 (a) All insurers authorized to transact insurance in this state shall
 12 make and maintain a deposit of securities as follows:

13 (1)(A)(i) All insurers authorized to transact only life or
 14 accident and health insurance, or both, shall deposit through the Insurance
 15 Commissioner and subject to the conditions specified in § 23-63-909
 16 securities eligible for deposit under § 23-63-903 and having at all times a
 17 market value of not less than one hundred thousand dollars (\$100,000),
 18 conditioned for the payment of policyholders and creditors of the insurer in
 19 this state and the prompt payment of all claims arising and accruing to any
 20 person in this state.

21 (ii)(a) On and after January 1, 2002, the provisions
 22 of subdivision (a)(1)(A)(i) of this section shall apply only to domestic
 23 insurers licensed or hereafter licensed.

24 (b) Foreign and alien insurers licensed or
 25 hereafter licensed shall be exempt upon filing evidence with the commissioner
 26 of a satisfactory deposit for continued licensure in the state of domicile,
 27 Canada, Mexico, or a port-of-entry state.

28 (B) On and after January 1, 2002, licensed foreign and
 29 alien insurers may apply for release of an Arkansas deposit upon filing of
 30 evidence of a satisfactory deposit in the state or country of domicile.
 31 ~~Further, the State Insurance Department shall specify a release of these~~
 32 ~~foreign and alien company assets to be disbursed during the three year period~~
 33 ~~from January 1, 2002, through December 31, 2004;~~

34 (2)(A)(i) Insurers applying for an original certificate of
 35 authority in Arkansas for kinds of insurance other than life, accident and
 36 health, surety, or any combination thereof, and insurers holding a valid

1 certificate of authority who thereafter apply to transact any other or
 2 additional kinds of insurance excluding life, accident and health, surety, or
 3 any combination thereof, shall deposit, through the commissioner and subject
 4 to the conditions specified in § 23-63-909, securities eligible for deposit
 5 under § 23-63-903 and having at all times a market value of not less than one
 6 hundred thousand dollars (\$100,000), conditioned for the payment of
 7 policyholders and creditors of the insurer in this state and the prompt
 8 payment of all claims arising and accruing to any person in this state.

9 (ii)(a) On and after January 1, 2002, the provisions
 10 of subdivision (a)(2)(A)(i) of this section shall apply only to domestic
 11 insurers licensed or hereafter licensed.

12 (b) Foreign and alien insurers licensed or
 13 hereafter licensed shall be exempt upon filing evidence with the commissioner
 14 of a satisfactory deposit for continued licensure in the state of domicile,
 15 Canada, Mexico, or a port-of-entry state.

16 (B) On and after January 1, 2002, licensed foreign and
 17 alien insurers may apply for release of an Arkansas deposit upon filing of
 18 evidence of a satisfactory deposit in the state or country of domicile.
 19 ~~Further, the department shall specify a release of these foreign and alien~~
 20 ~~company assets to be disbursed during the three year period from January 1,~~
 21 ~~2002, through December 31, 2004;~~

22 (3)(A) An insurer authorized to transact solely surety insurance
 23 in this state shall deposit through the commissioner and subject to the
 24 conditions provided in § 23-63-909 securities eligible for deposit under §
 25 23-63-903 and having at all times a market value of not less than one hundred
 26 thousand dollars (\$100,000), conditioned for the payment of policyholders and
 27 creditors of the insurer in this state and prompt payment of policyholders
 28 and creditors of the insurer in this state and prompt payment of all claims
 29 arising and accruing to any obligee in this state.

30 (B) All insurers authorized to transact the lines or
 31 classes of insurance under subdivision (a)(2) of this section or any
 32 combination thereof may also be authorized to transact surety insurance by
 33 depositing in accordance with this subsection additional securities with a
 34 market value of fifty thousand dollars (\$50,000).

35 (C) Any authorized surety insurer also licensed as a
 36 professional bail bond company shall make and maintain an additional deposit,

1 as required in § 17-19-101 et seq., applicable to bail bond transactions.

2 (D)(i)(a) On and after January 1, 2002, the provisions of
3 this subdivision (a)(3) shall apply only to domestic insurers licensed or
4 hereafter licensed.

5 (b) Foreign and alien insurers licensed or
6 hereafter licensed shall be exempt upon filing evidence with the commissioner
7 of a satisfactory deposit for continued licensure in the state of domicile,
8 Canada, Mexico, or a port-of-entry state.

9 (ii) On and after January 1, 2002, licensed foreign
10 and alien insurers may apply for release of an Arkansas deposit upon filing
11 of evidence of a satisfactory deposit in the state or country of domicile.
12 ~~Further, the department shall specify a release of these foreign and alien~~
13 ~~company assets to be disbursed during the three year period from January 1,~~
14 ~~2002, through December 31, 2004.~~

15 (b) All deposits made through the commissioner and held in this state
16 shall be subject to the applicable provisions of §§ 23-63-901 et seq., which
17 refer to the administration of deposits.

18 (c)(1) The application of a foreign or alien insurer to obtain a
19 release of deposited assets under this section shall demonstrate by special
20 filing the adequacy and sufficiency of the deposit in the state of domicile,
21 Canada, Mexico, or port-of-entry state for continued Arkansas licensure.

22 (2) Applicants shall:

23 (A)(i) Agree to maintain deposits at all times adequate to
24 cover Arkansas deposit obligations.

25 (ii) The deposits shall be certificate of authority
26 lines of insurance in this state as reflected on the uniform certificate of
27 authority application; and

28 (B) File with the commissioner an updated certificate of
29 deposit issued by the insurance regulator in the state of domicile, Canada,
30 Mexico, or port-of-entry state.

31
32 SECTION 17. Arkansas Code § 23-63-215(a), concerning the suspension of
33 insurers' licenses, is amended to read as follows:

34 (a) Beginning January 1, 2006, Suspension suspension of an insurer's
35 certificate of authority shall be for ~~such~~ the period ~~as is~~ fixed by the
36 Insurance Commissioner in the order of suspension, ~~but not to exceed one (1)~~

1 year, unless the commissioner shortens or rescinds the suspension ~~or the~~
 2 ~~order upon which the suspension is based is modified, rescinded, or reversed.~~

3
 4 Section 18. Arkansas Code § 23-63-216 is amended to read as follows:

5 23-63-216. Annual statement and other information.

6 (a)(1) Annually on or before March 1, or within any extension of time
 7 which the Insurance Commissioner for good cause may have granted, each
 8 authorized insurer shall file with the commissioner a full and true statement
 9 of its financial condition, transactions, and affairs as of the December 31
 10 preceding.

11 (2) The statement shall be the appropriate and most recent
 12 National Association of Insurance Commissioners':

13 (A) "Annual Statement Blank For Life And Accident And
 14 Health";

15 (B) "Property And Casualty Annual Statement Blank";

16 (C) "Title Insurance Annual Statement Blank";

17 (D) "Annual Statement Blank for Health" for use by
 18 hospital, medical, and dental service or indemnity corporations;

19 (E) "Fraternal Annual Statement Blank";

20 (F) "Annual Statement Blank for Health" for health
 21 insurers or health maintenance organizations and others; or

22 (G)~~(i)~~ Other National Association of Insurance
 23 Commissioners' convention blank as appropriate~~r~~.

24 (3) which The statement shall be prepared in accordance with the
 25 most recent and appropriate, companion National Association of Insurance
 26 Commissioners' "Annual Statement Instructions" and follow those accounting
 27 practices and procedures prescribed by the most recent and appropriate
 28 companion National Association of Insurance Commissioners' Accounting
 29 Practices and Procedures Manual.

30 (4) Arkansas domestic insurers shall file the statement with the
 31 commissioner in hardcopy format.

32 (5) Authorized foreign and alien insurers complying with
 33 subsection (b) of this section are deemed to have satisfied the requirement
 34 to file the statement with the commissioner.

35 ~~(i)~~(6) The commissioner is authorized to allow a life insurer
 36 or property and casualty insurer whose insurance premiums and required

1 statutory reserves for accident and health insurance constitute at least
 2 ninety-five percent (95%) of its total premium considerations or total
 3 statutory required reserves, respectively, to file the "Annual Statement
 4 Blank for Health" as its annual statement with the companion quarterly
 5 statement forms.

6 ~~(3) The insurer shall furnish all information as called for by~~
 7 ~~the applicable portions of the National Association of Insurance~~
 8 ~~Commissioners' annual statement convention blank, and casualty and surety~~
 9 ~~insurance companies shall include a report on income derived from investment~~
 10 ~~of unearned premiums.~~

11 ~~(4)(7)(A)~~ The National Association of Insurance Commissioners'
 12 annual statement convention blank shall be verified by the oath of the
 13 insurer's president or vice president and secretary or actuary as applicable
 14 or, if a reciprocal insurer, by the oath of its attorney in fact or its like
 15 officers if a corporation.

16 ~~(b)(B)(i)~~ The statement of an alien insurer shall be
 17 verified by the oath of the insurer's United States manager or other officer
 18 authorized and shall relate only to its transactions and affairs in the
 19 United States unless the commissioner requires otherwise.

20 (ii) If the commissioner requires a statement as to
 21 the alien insurer's affairs throughout the world, the insurer shall file the
 22 statement with the commissioner as soon as reasonably possible.

23 ~~(e)(C)~~ The commissioner may waive any requirement under
 24 this section for verification under oath.

25 ~~(d) The commissioner shall furnish to each domestic insurer two (2)~~
 26 ~~copies of the forms on which the annual statement is to be made.~~

27 ~~(e)(i)(8)(A)~~ The commissioner may refuse to continue the
 28 insurer's certificate of authority, as provided in § 23-63-211, or in his or
 29 her discretion may suspend or revoke the certificate of authority of an
 30 insurer failing to file its annual statement when due.

31 ~~(2)(B)(i)~~ In addition, the insurer shall be subject to a
 32 penalty of one hundred dollars (\$100) for each day of delinquency.

33 (ii) The penalty shall be collected by the
 34 commissioner, if necessary, by a civil suit ~~therefor~~ brought by the
 35 commissioner in the Circuit Court of Pulaski County, unless the penalty is
 36 waived by the commissioner upon a showing by the insurer of good cause for

1 its failure to file its report on or before the date due.

2 ~~(f)~~(9) At the time of filing, the insurer shall pay the fee for
3 filing its annual statement as prescribed by § 23-61-401.

4 ~~(g)~~(1)(10) In addition to information called for and furnished
5 in connection with its annual statement, an insurer shall furnish to the
6 commissioner as soon as reasonably possible such information with respect to
7 any of its transactions or affairs as the commissioner may from time to time
8 request in writing.

9 ~~(2)~~(11)(A) In accordance with the specifications applicable to
10 annual financial statements, each authorized domestic insurer and health
11 maintenance organization and hospital or medical service corporation, or
12 other domestic licensee so directed by the department in writing, shall also
13 file with the commissioner a quarterly financial statement on a form
14 prescribed by the commissioner, not later than forty-five (45) days following
15 the end of each of the first three (3) calendar quarters of each year,
16 excepting the fourth quarter of each calendar year which shall be reconciled
17 in the annual financial statement.

18 ~~(3)~~(B) The filing specifications of this section for
19 annual financial reports ~~shall~~ apply to quarterly financial reports.

20 ~~(h)~~(1)(b)(1)(A) ~~On~~ Annually on or before March 1, 1992, ~~and annually~~
21 ~~on or before March 1 of each year thereafter~~, each domestic, foreign, and
22 alien insurer authorized to transact business in this state shall file with
23 the National Association of Insurance Commissioners a copy of its annual
24 statement convention blank, along with such additional filings as prescribed
25 by the commissioner as of the December 31 preceding.

26 (B) The information filed with the National Association of
27 Insurance Commissioners shall be in the same format and scope as that
28 required by the commissioner and shall include the signed jurat page and the
29 actuarial certification.

30 (C) Any amendments and addendums to the annual statement
31 filing subsequently filed with the commissioner shall also be filed with the
32 National Association of Insurance Commissioners.

33 (2) Foreign insurers that are domiciled in a state ~~which has~~
34 with a law substantially similar to this subsection (b) and comply with their
35 state's law shall be deemed in compliance with ~~these requirements~~ this
36 subsection (b).

1 (3) In the absence of actual malice, members of the National
 2 Association of Insurance Commissioners, their duly authorized committees,
 3 subcommittees, task forces, delegates, National Association of Insurance
 4 Commissioners' employees, and all others charged with the responsibility of
 5 collecting, reviewing, analyzing, and disseminating the information developed
 6 from the filing of the annual statement convention blanks shall be acting as
 7 agents of the commissioner under the authority of this subsection and shall
 8 not be subject to civil liability for libel, slander, or any other cause of
 9 action by virtue of their collection, review, and analysis or dissemination
 10 of the data and information collected from the filings required hereunder.

11 (4) The commissioner may impose the sanctions set out in
 12 ~~subsection (e) subdivision (a)(8)~~ of this section on any insurer failing to
 13 file its annual statement with the National Association of Insurance
 14 Commissioners when due or within any extension of time which the commissioner
 15 for good cause may have granted.

16 (5) Each authorized insurer shall submit its annual and
 17 quarterly statement and supplemental information to the National Association
 18 of Insurance Commissioners in hardcopy and electronic format as specified by
 19 the National Association of Insurance Commissioners.

20 ~~(i)(1)(c)(1)~~ Each domestic insurer authorized to
 21 transact business in this state shall include in its annual statement an
 22 opinion, as is relevant to the lines of business the domestic insurer is
 23 authorized to write, on its life and health policy and claim reserves and its
 24 property and liability loss and loss adjustment expense reserves by a
 25 qualified actuary.

26 ~~Such~~ The opinion shall be in the format prescribed by the
 27 National Association of Insurance Commissioners' Annual Statement Instruction
 28 Handbook.

29 ~~(j)(1) The National Association of Insurance Commissioners Annual~~
 30 ~~Statement Diskette Filing Specifications are hereby adopted incorporated by~~
 31 ~~reference.~~

32 ~~(2) Each authorized insurer shall submit its annual and~~
 33 ~~quarterly statement information in manual and computer readable form using~~
 34 ~~the diskette medium.~~

35
 36 SECTION 19. Arkansas Code § 23-63-304 is amended to read as follows:

1 23-63-304. Service of process of foreign or alien insurers or domestic
2 reciprocal insurers.

3 (a) The registered agent of a licensed foreign insurer or a licensed
4 domestic reciprocal insurer is the insurer's agent for service of process,
5 notice, or demand required or permitted by law to be served on the insurer.

6 (b) A licensed foreign insurer or a licensed domestic reciprocal
7 insurer may be served by registered or certified mail, return receipt
8 requested, addressed to the president or the secretary at its principal
9 office shown in its application for a certificate of authority or in its most
10 recent annual statement if the insurer:

11 (1) Has no registered agent or its registered agent cannot with
12 reasonable diligence be served;

13 (2) Has withdrawn from transacting business in this state under
14 this subchapter; or

15 (3) Has had its certificate of authority revoked under this
16 subchapter.

17 ~~(c) Service is perfected under subsection (b) of this section at the~~
18 ~~earliest of:~~

19 ~~(1) The date the insurer receives the mail;~~

20 ~~(2) The date shown on the return receipt, if signed on behalf of~~
21 ~~the insurer; or~~

22 ~~(3) Five (5) calendar days after its deposit in the United~~
23 ~~States mail, as evidenced by the postmark, if mailed postpaid and correctly~~
24 ~~addressed.~~

25 (c) When service is made under this section or upon the designated
26 Arkansas-registered agent, service shall be perfected under the Arkansas
27 Rules of Civil Procedure.

28 (d) This section does not prescribe the only means, or necessarily the
29 required means, of serving a licensed foreign insurer or a licensed domestic
30 reciprocal insurer.

31
32 SECTION 20. Arkansas Code § 23-63-503(5)(A), concerning the definition
33 of "person" under the Insurance Holding Company Regulatory Act, is amended to
34 read as follows:

35 (5)(A) A "person" is a corporation, a partnership, an
36 association, a joint-stock company, a business trust, an unincorporated

1 organization, depository corporation, or any similar entity or any
 2 combination of the foregoing acting in concert, but shall not include any
 3 securities broker performing no more than the usual and customary broker's
 4 function.

5
 6 SECTION 21. Arkansas Code § 23-63-506(a), concerning notice of changes
 7 in control of domestic insurers under the Insurance Holding Company
 8 Regulatory Act, is amended to read as follows:

9 (a)(1) No person other than the issuer shall make a tender offer for
 10 or a request or invitation for tenders of, or enter into any agreement to
 11 exchange securities for, seek to acquire, or acquire, in the open market or
 12 otherwise, any voting security of a domestic insurer if, after the
 13 consummation thereof, the person would, directly or indirectly, or by
 14 conversion or by exercise of any right to acquire, be in control of the
 15 insurer.

16 (2) No person shall enter into an agreement to merge with or
 17 otherwise ~~to~~ acquire control of a domestic insurer or any person controlling
 18 a domestic insurer unless, at the time ~~any~~ the offer, request, or invitation
 19 is made or ~~any~~ the agreement is entered into, or prior to the acquisition of
 20 the securities if no offer or agreement is involved~~;~~:

21 (A) ~~the~~ The person has filed with the Insurance
 22 Commissioner and has sent to the insurer, ~~and the insurer has sent to its~~
 23 ~~shareholders~~, a statement containing the information required by this section
 24 and §§ 23-63-507 - 23-63-513; and

25 (B) ~~such an~~ The offer, request, invitation, agreement, or
 26 acquisition has been approved by the commissioner in the manner prescribed in
 27 this section and §§ 23-63-507 - 23-63-513.

28
 29 SECTION 22. Arkansas Code § 23-63-514(d), requiring notice to
 30 shareholders of dividends and distributions under the Insurance Holding
 31 Company Regulatory Act, is amended to read as follows:

32 (d) Amendments to Registration Statements. Each registered insurer
 33 shall keep current the information required to be disclosed in its
 34 registration statement by reporting all material changes or additions on
 35 amendment forms provided by the commissioner within fifteen (15) days after
 36 the end of the month in which it learns of each material change or addition.

1 However, subject to § 23-63-515(c), each registered insurer shall ~~so~~ report
 2 all dividends and other distributions to shareholders within ~~two (2)~~ five (5)
 3 business days following the declaration and no less than ten (10) business
 4 days prior to the payment thereof of the dividend or other distribution.
 5 Registered insurers shall annually refile an amended and restated
 6 registration statement in ~~such~~ the manner and at ~~such~~ the times as prescribed
 7 by the commissioner shall prescribe.

8
 9 SECTION 23. Arkansas Code § 23-63-515(d), concerning the computation
 10 of extraordinary dividends and distributions, is amended to read as follows:

11 (d)(1) For purposes of this section, an extraordinary dividend or
 12 distribution means any dividend or distribution of cash or other property
 13 whose fair market value, together with that of the other dividends or
 14 distributions made within the preceding twelve (12) months, exceeds the
 15 ~~larger~~ greater of:

16 ~~(1) The lesser of:~~

17 ~~(A) Ten percent (10%) of surplus; or~~

18 ~~(B) Either:~~

19 ~~(i) The net gain from operations of life insurers or~~
 20 ~~accident and health insurers, or both; or~~

21 ~~(ii) The net income of property insurers or casualty~~
 22 ~~insurers, or both, not including with either type of insurer its realized~~
 23 ~~capital gains, and, further, in determining under this alternative whether a~~
 24 ~~distribution or dividend is extraordinary, a property insurer or casualty~~
 25 ~~insurer, or both, may carry forward income from the previous two (2) calendar~~
 26 ~~years that has not already been paid out as dividends;~~

27 ~~(2) Ten percent (10%) of surplus, with dividends payable only~~
 28 ~~from unassigned funds less twenty five percent (25%) of unrealized capital~~
 29 ~~gains; or~~

30 ~~(3) The lesser of:~~

31 ~~(A) Ten percent (10%) of surplus; or~~

32 ~~(B) Either:~~

33 ~~(i) The net gain before capital gains for life~~
 34 ~~insurers or accident and health insurers, or both, with it understood that~~
 35 ~~such an insurer may carry forward net gain before capital gains from the~~
 36 ~~previous two (2) calendar years that has not already been paid out as~~

1 ~~dividends; or~~

2 ~~(ii) The net investment income for property insurers~~
 3 ~~or casualty insurers, or both, with it understood that such an insurer may~~
 4 ~~carry forward net investment income from the previous three (3) calendar~~
 5 ~~years with dividends in each instance being payable only from unassigned~~
 6 ~~funds less twenty five percent (25%) of unrealized capital gains.~~

7 (A) Ten percent (10%) of the insurer's surplus with regard
 8 to policyholders as of the December 31 preceding the payment of the dividend
 9 or distribution; or

10 (B) The net gain from operations of the insurer if the
 11 insurer is a life insurer or the net income if the insurer is not a life
 12 insurer not including realized capital gains for the twelve-month period
 13 ending on the preceding December 31, but shall not include pro rata
 14 distributions of any class of the insurer's own securities.

15 (2)(A) In determining whether a dividend or distribution is
 16 extraordinary, an insurer may carry forward net income from the previous two
 17 (2) calendar years that has not already been paid out as dividends.

18 (B) The carry-forward shall be computed by taking the net
 19 income from the second and third preceding calendar years, not including
 20 realized capital gains, less dividends paid in the second and immediately
 21 preceding calendar years.

22
 23 SECTION 24. Arkansas Code § 23-63-805(1)(A), concerning the
 24 diversification of domestic insurer's investments, is amended to read as
 25 follows:

26 (A)(i)(a) Except with the consent of the Insurance Commissioner
 27 and except as otherwise specified in this subchapter, an insurer shall not
 28 have, directly or indirectly through an investment subsidiary, an investment
 29 under this subchapter if, as a result of and after giving effect to the
 30 investment, the insurer would hold more than five percent (5%) of its
 31 admitted assets in investments of all kinds issued, assumed, accepted,
 32 insured, or guaranteed by a single person, or five percent (5%) of its
 33 admitted assets in investments in the voting securities of a depository
 34 institution or any company that controls the institution.

35 (b) The five percent (5%) limitation shall not
 36 apply to the aggregate amounts insured by a single financial guaranty insurer

1 with the highest generic rating issued by a nationally recognized statistical
2 rating organization.

3 (ii)(a) Investments in certificates of deposit and
4 savings and loan association deposits in any one (1) person may be the
5 greater of ten percent (10%) of the insurer's assets or the maximum amount of
6 federal insurance applicable to the deposit.

7 (b) This restriction shall not apply as to
8 general obligations of the United States or of any state, or include policy
9 loans made under § 23-63-821.

10 (iii) ~~Provided further, the~~ The applicable
11 limitation shall be ~~twenty percent (20%)~~ twenty-five percent (25%) rather
12 than five percent (5%) ~~as to direct obligations of certain federal agencies~~
13 ~~identified in~~ for investments permitted under § 23-63-812 ~~of the Arkansas~~
14 ~~Insurance Code.~~

15
16 SECTION 25. Arkansas Code § 23-63-805(7)(A)(ii), concerning limits on
17 investments of domestic insurers, is amended to read as follows:

18 (ii)(a) No insurer may invest more than an aggregate
19 of one percent (1%) of its admitted assets in medium grade obligations
20 issued, guaranteed, or insured by any one (1) person or institution, nor may
21 it invest more than one-half of one percent (0.5%) of its admitted assets in
22 lower grade obligations issued, guaranteed, or insured by any one (1) person
23 or institution.

24 (b) ~~In no event, however, may an insurer~~
25 ~~invest more than one percent (1%) of its admitted assets in any medium grade~~
26 ~~or lower grade obligations issued, guaranteed, or insured by any one (1)~~
27 ~~institution~~ In the case of a downgrade of securities held by an insurer, the
28 commissioner may grant temporary relief from the investment limitations on
29 medium and lower grade obligations.

30
31 SECTION 26. Arkansas Code § 23-63-805(7)(B), concerning limits on
32 investments of domestic insurers, is amended to read as follows:

33 (B) For purposes of this subdivision (7):

34 (i) "Admitted assets" means the amount thereof as of
35 the last day of the most recently concluded annual statement year, computed
36 in the same manner as admitted assets pursuant to § 23-63-601 et seq.;

1 (ii) "Aggregate amount" of medium grade and lower
 2 grade obligations means the aggregate statutory statement value thereof;

3 (iii) "Institution" means a corporation, a joint-
 4 stock company, an association, a trust, a business partnership, a business
 5 joint venture, or similar entity;

6 (iv) "Lower grade obligations" means obligations
 7 which are rated ~~four (4)~~, five (5), or six (6) by the Securities Valuation
 8 Office of the National Association of Insurance Commissioners; and

9 (v) "Medium grade obligations" means obligations
 10 which are rated three (3) or four (4) by the Securities Valuation Office of
 11 the National Association of Insurance Commissioners.

12
 13 SECTION 27. Arkansas Code § 23-63-838 is repealed.

14 ~~23-63-838. Risk limiting and related provisions.~~

15 ~~(a) As used in this section, unless the context otherwise requires:~~

16 ~~(1) "Call option" means an option contract that entitles the~~
 17 ~~holder to buy a fixed number of shares or a fixed amount of an underlying~~
 18 ~~security at a stated price on or before a fixed expiration date;~~

19 ~~(2) "Commodity Futures Trading Commission" means the federal~~
 20 ~~regulatory agency charged and empowered under the Commodity Futures Trading~~
 21 ~~Commission Act of 1974, as amended, with the regulation of futures trading in~~
 22 ~~commodities;~~

23 ~~(3) "Financial futures contract" means a contract of sale or~~
 24 ~~option on a contract of sale made through a member of a board of trade which~~
 25 ~~has been designated by the Commodity Futures Trading Commission as a contract~~
 26 ~~market. Financial futures contracts shall be limited to the following~~
 27 ~~categories:~~

28 ~~(A) United States Treasury bills;~~

29 ~~(B) Bonds and notes;~~

30 ~~(C) Securities or pools of securities issued by the~~
 31 ~~Government National Mortgage Association;~~

32 ~~(D) Bank certificates of deposit;~~

33 ~~(E) Standard and Poor's 500 Futures Index;~~

34 ~~(F) New York Stock Exchange composite futures;~~

35 ~~(G) Kansas City Value Line Futures; and~~

36 ~~(H) Such other financial futures contracts which have been~~

1 approved by and which are governed by the rules and regulations of the
2 Commodity Futures Trading Commission and the respective contract markets on
3 which the financial futures contracts are traded and which have been approved
4 as financial futures contracts by rules and regulations adopted by the
5 Insurance Commissioner;

6 (4) "Put option" means an option contract that entitles the
7 holder to sell a fixed number of shares or a fixed amount of an underlying
8 security at a stated price on or before a fixed expiration date;

9 (5) "Securities and Exchange Commission" means the federal
10 regulatory agency charged and empowered under the Securities Exchange Act of
11 1934, as amended, with the regulation of trading in securities; and

12 (6) "Underlying security" means the security subject to being
13 purchased or sold upon exercise of a call option or put option.

14 (b)(1) An insurer may purchase put options or sell call options with
15 regard to underlying securities owned by the insurer, or underlying
16 securities which the insurer may reasonably expect to obtain through exercise
17 of warrants or conversion rights owned by the insurer at the time the put
18 option is purchased or the call option is sold.

19 (2) An insurer may sell put options or purchase call options on
20 underlying securities, provided that the rights and obligations thereunder
21 effectively offset the obligations and rights of the insurer under other
22 options held by the insurer pertaining to the same underlying securities.

23 (3) An insurer may purchase or sell put options or call options
24 only on underlying securities which are eligible for investment by an insurer
25 under the Arkansas Insurance Code.

26 (4) An insurer may purchase or sell put or call options only
27 through an exchange which is registered with the Securities and Exchange
28 Commission as a national securities exchange pursuant to the provisions of
29 the Securities Exchange Act of 1934, as amended, or for good cause shown
30 through an over the counter transaction with a counterparty on the list of
31 approved counterparties published in the "Purposes and Procedures Manual" of
32 the Securities Valuation Office of the National Association of Insurance
33 Commissioners, or with a counterparty otherwise approved in advance by the
34 Insurance Commissioner when a petition is filed with his or her office, or
35 other such transactions approved in advance by the commissioner within his or
36 her discretion.

1 ~~(c)(1) An insurer may purchase financial futures contracts for the~~
 2 ~~purpose of minimizing the effect of falling interest rates. Purchases of~~
 3 ~~financial futures contracts shall be limited as follows:~~

4 ~~(A) For financial futures contracts on United States~~
 5 ~~Treasury bills, bonds, and notes; securities or pools of securities issued by~~
 6 ~~the Government National Mortgage Association; and bank certificates of~~
 7 ~~deposit, the limits shall be as imposed by the Arkansas Insurance Code for~~
 8 ~~the investments with applicable limits being calculated by adding the cash~~
 9 ~~positions and the financial futures contract positions;~~

10 ~~(B) For all other categories of financial futures~~
 11 ~~contracts together, an insurer may invest at any one time in an aggregate~~
 12 ~~amount not more than five percent (5%) of its assets.~~

13 ~~(2) An insurer may sell financial futures contracts for the~~
 14 ~~purpose of hedging against the effects of rising interest rates and~~
 15 ~~corresponding declining prices.~~

16 ~~(d)(1) Written investment policies and recordkeeping procedures shall~~
 17 ~~be approved by the board of directors of the insurer before the insurer may~~
 18 ~~engage in the practices and activities authorized by this section.~~

19 ~~(2) These policies and procedures must be specific enough to~~
 20 ~~define and control permissible and suitable investment strategies with regard~~
 21 ~~to put options, call options, and financial futures contracts with the view~~
 22 ~~toward the protection of the policyholders.~~

23 ~~(3) All transactions in put options, call options, and financial~~
 24 ~~futures contracts permitted by this section shall be authorized or approved~~
 25 ~~by the insurer's board of directors or by a committee authorized by the board~~
 26 ~~and charged with the supervision or making of the transactions.~~

27 ~~(4) The minutes of any committee shall be recorded and regular~~
 28 ~~reports of the committee shall be submitted to the board of directors.~~

29 ~~(e) The commissioner may promulgate rules, guidelines, and regulations~~
 30 ~~establishing standards and requirements relating to practices and activities~~
 31 ~~authorized in this section.~~

32
 33 SECTION 28. Arkansas Code Title 23, Chapter 63, Subchapter 8, is
 34 amended to add an additional section to read as follows:

35 23-63-841. Derivative transactions.

36 (a) As used in this section:

1 (1) "Cap" means an agreement obligating the seller to make
2 payments to the buyer with each payment based on the amount by which a
3 reference price or level or the performance or value of one (1) or more
4 underlying interests exceeds a predetermined number, sometimes called the
5 strike rate or strike price;

6 (2) "Collar" means an agreement to receive payments as the buyer
7 of an option, cap, or floor and to make payments as the seller of a different
8 option, cap, or floor;

9 (3) "Counterparty exposure amount" means:

10 (A) The net amount of credit risk attributable to an over-
11 the-counter derivative instrument. The amount of credit risk equals:

12 (i) The market value of the over-the-counter
13 derivative instrument if the liquidation of the derivative instrument would
14 result in a final cash payment to the insurer; or

15 (ii) Zero (0) if the liquidation of the derivative
16 instrument would not result in a final cash payment to the insurer.

17 (B) If over-the-counter derivative instruments are entered
18 into under a written master agreement which provides for netting of payments
19 owed by the respective parties and the domiciliary jurisdiction of the
20 counterparty is either within the United States or if not within the United
21 States within a foreign jurisdiction listed in the National Association of
22 Insurance Commissioners' publication prepared by its Securities Valuation
23 Office as it existed on January 1, 2005, entitled the "Purposes and
24 Procedures Manual" as eligible for netting, the net amount of credit risk
25 shall be the greater of zero (0) or the net sum of:

26 (i) The market value of the over-the-counter
27 derivative instruments entered into under the agreement, the liquidation of
28 which would result in a final cash payment to the insurer; and

29 (ii) The market value of the over-the-counter
30 derivative instruments entered into under the agreement, the liquidation of
31 which would result in a final cash payment by the insurer to the business
32 entity.

33 (C) For open transactions, market value shall be
34 determined at the end of the most recent quarter of the insurer's fiscal year
35 and shall be reduced by the market value of acceptable collateral held by the
36 insurer or placed in escrow by one (1) or both parties;

1 (4) "Covered" means that an insurer:

2 (A) Owns or can immediately acquire through the exercise
3 of options, warrants, or conversion rights already owned the underlying
4 interest in order to fulfill or secure its obligations under a call option,
5 cap, or floor it has written; or

6 (B) Has set aside under a custodial or escrow agreement,
7 cash or cash equivalents with a market value equal to the amount required to
8 fulfill its obligations under a put option it has written in an income
9 generation transaction;

10 (5)(A) "Derivative instrument" means an agreement, option,
11 instrument, or a series or combination thereof:

12 (i) To make or take delivery or assume or relinquish
13 a specified amount of one (1) or more underlying interests or to make a cash
14 settlement in lieu thereof; or

15 (ii) That has a price, performance, value, or cash
16 flow based primarily upon the actual or expected price, level, performance,
17 value, or cash flow of one (1) or more underlying interests.

18 (B) "Derivative instrument" includes options, warrants
19 used in a hedging transaction and not attached to another financial
20 instrument, caps, floors, collars, swaps, forwards, futures, and any other
21 agreements, options, or instruments substantially similar thereto or any
22 series or combination thereof and any agreements, options, or instruments
23 permitted under regulations adopted by the Insurance Commissioner.

24 (C) "Derivative instrument" does not include an investment
25 authorized by any other provision of this subchapter;

26 (6) "Derivative transaction" means a transaction involving the
27 use of one (1) or more derivative instruments;

28 (7) "Direct" or "directly", when used in connection with an
29 obligation, means that the designated obligor is primarily liable on the
30 instrument representing the obligation;

31 (8) "Floor" means an agreement obligating the seller to make
32 payments to the buyer in which each payment is based on the amount by which a
33 predetermined number, sometimes called the floor rate or price, exceeds a
34 reference price, level, performance, or value of one (1) or more underlying
35 interests;

36 (9) "Forward" means an agreement other than a future to make or

1 take delivery or effect a cash settlement based on the actual or expected
2 price, level, performance, or value of one (1) or more underlying interests;

3 (10) "Future" means an agreement traded on a qualified exchange
4 or qualified foreign exchange to make or take delivery or effect a cash
5 settlement based on the actual or expected price, level, performance, or
6 value of one (1) or more underlying interests;

7 (11) "Hedging transaction" means a derivative transaction which
8 is entered into and maintained to reduce:

9 (A) The risk of a change in the value, yield, price, cash
10 flow, or quantity of assets or liabilities that the insurer has acquired or
11 incurred or anticipates acquiring or incurring; or

12 (B) The currency exchange rate risk or the degree of
13 exposure of assets or liabilities that an insurer has acquired or incurred or
14 anticipates acquiring or incurring;

15 (12) "Income" means with respect to a security, any interest,
16 accrual of discount, dividends, or other distributions, such as rights, tax
17 or assessment credits, warrants, and distributions in kind;

18 (13) "Income generation transaction" means a derivative
19 transaction involving the writing of covered call options, covered put
20 options, covered caps, or covered floors that is intended to generate income
21 or enhance return;

22 (14) "Option" means an agreement giving the buyer the right to
23 buy or receive (a "call option"), sell or deliver (a "put option"), enter
24 into, extend, or terminate or effect a cash settlement based on the actual or
25 expected price, level, performance, or value of one (1) or more underlying
26 interests;

27 (15) "Over-the-counter derivative instrument" means a derivative
28 instrument entered into with a business entity other than through a qualified
29 exchange, qualified foreign exchange, or cleared through a qualified
30 clearinghouse;

31 (16) "Potential exposure" means the amount determined in
32 accordance with the National Association of Insurance Commissioners Annual
33 Statement Instructions in effect on January 1, 2005;

34 (17)(A) "Replication transaction" means a derivative transaction
35 that is intended to replicate the performance of one (1) or more assets that
36 an insurer is authorized to acquire under Arkansas law.

1 (B) A derivative transaction entered into as a hedging
2 transaction is not considered a replication transaction;

3 (18) "Swap" means an agreement to exchange or to net payments at
4 one (1) or more times based on the actual or expected price, level,
5 performance, or value of one (1) or more underlying interests;

6 (19) "Underlying interest" means the assets, liabilities, other
7 interests, or a combination thereof underlying a derivative instrument, such
8 as any one (1) or more securities, currencies, rates, indices, commodities,
9 or derivative instruments; and

10 (20)(A) "Warrant" means an instrument that gives the holder the
11 right to purchase an underlying financial instrument at a given price and
12 time or at a series of prices and times outlined in the warrant agreement.

13 (B) Warrants may be issued alone or in connection with the
14 sale of other securities, for example, as part of a merger or
15 recapitalization agreement, or to facilitate divestiture of the securities of
16 another business entity.

17 (b)(1) An insurer may use derivative instruments under this section to
18 engage in:

19 (A) Hedging transactions; and

20 (B) Certain income generation transactions if the
21 commissioner does not object to the proposed derivative transaction plan
22 submitted by the insurer.

23 (2) An insurer shall be able to demonstrate to the commissioner
24 the intended hedging characteristics and the ongoing effectiveness of the
25 derivative transaction or combination of the transactions through cash flow
26 testing or other appropriate analyses.

27 (3)(A) Before engaging in derivative transactions, an insurer
28 shall establish written guidelines that shall be used for effecting and
29 maintaining the transactions.

30 (B) The guidelines shall:

31 (i) Address investment or, if applicable,
32 underwriting objectives and risk constraints such as credit risk limits;

33 (ii) Address permissible transactions and the
34 relationship of those transactions to its operations, such as a precise
35 identification of the risks being hedged by a derivative transaction; and

36 (iii) Require compliance with internal control

1 procedures.

2 (4) An insurer shall have a system for determining whether a
3 derivative instrument used for hedging has been effective.

4 (5) An insurer shall have a credit risk management system for
5 over-the-counter derivative transactions that measure credit risk exposure
6 using the counterparty exposure amount.

7 (6) An insurer's board of directors shall approve the guidelines
8 required by this subsection (b) and determine whether the insurer has
9 adequate professional personnel, technical expertise, and systems to
10 implement investment practices involving derivatives.

11 (c) An insurer may enter into hedging transactions under this section
12 if as a result of and after giving effect to the transaction:

13 (1) The aggregate statement value of options, caps, floors, and
14 warrants not attached to another financial instrument purchased and used in
15 hedging transactions does not exceed seven and one half percent (7.5%) of its
16 admitted assets;

17 (2) The aggregate statement value of options, caps, and floors
18 written in hedging transactions does not exceed three percent (3%) of its
19 admitted assets; and

20 (3) The aggregate potential exposure of collars, swaps,
21 forwards, and futures used in hedging transactions does not exceed six and
22 one-half percent (6.5%) of its admitted assets.

23 (d) An insurer may only enter into the following types of income
24 generation transactions if as a result of and after giving effect to the
25 transactions the aggregate statement value of the fixed income assets that
26 are subject to call or, for life and health insurers, that generate the cash
27 flows for payments under the caps or floors, plus the face value of fixed
28 income securities underlying a derivative instrument subject to call, plus
29 the amount of the purchase obligations under the puts, does not exceed ten
30 percent (10%) of its admitted assets:

31 (1) Sales of covered call options on noncallable fixed income
32 securities, callable fixed income securities if the option expires by its
33 terms prior to the end of the noncallable period, or derivative instruments
34 based on fixed income securities;

35 (2) Sales of covered call options on equity securities if the
36 insurer holds in its portfolio, or can immediately acquire through the

1 exercise of options, warrants, or conversion rights already owned, the equity
 2 securities subject to call during the complete term of the call option sold;

3 (3) Sales of covered puts on investments that the insurer is
 4 permitted to acquire under Arkansas law if the insurer has escrowed or
 5 entered into a custodian agreement segregating cash or cash equivalents with
 6 a market value equal to the amount of its purchase obligations under the put
 7 during the complete term of the put option sold; or

8 (4) Sales of covered caps or floors if the insurer is a life and
 9 health insurer and holds in its portfolio the investments generating the cash
 10 flow to make the required payments under the caps or floors during the
 11 complete term that the cap or floor is outstanding.

12 (e) An insurer shall include all counterparty exposure amounts in
 13 determining compliance with the limitations of § 23-63-805.

14 (f) The commissioner may approve additional transactions involving the
 15 use of derivative instruments in excess of the limits of subsection (b) of
 16 this section or for other risk management purposes, but replication
 17 transactions shall not be permitted for other than risk management purposes.

18
 19 SECTION 29. Arkansas Code § 23-63-909(b), concerning the release and
 20 replacement of security deposits of insurers, is amended to read as follows:

21 (b)(1) The commissioner, under procedures he or she shall prescribe,
 22 may release to the insurer any part of the special additional four percent
 23 (4%) accident and health deposit ~~to the insurer~~ formerly required under § 23-
 24 63-206.

25 (2) ~~Provided, that any funds withdrawn pursuant to this~~
 26 ~~subsection shall be replaced within one hundred eighty (180) days after such~~
 27 ~~a withdrawal. For good cause, the commissioner may in writing exempt~~
 28 insurers from filing replacement deposits for any line of insurance,
 29 including, but not limited to, statutory deposits for discontinued lines of
 30 insurance.

31
 32 Section 30. Arkansas Code § 23-63-1601(10), concerning the definition
 33 of "controlled unaffiliated business" for captive insurers, is amended to
 34 read as follows:

35 (10) "Controlled unaffiliated business" means a company:

36 (A) That is not in the corporate system of a parent and

1 affiliated companies;

2 (B) That has an existing contractual relationship with a
3 parent or affiliated company; and

4 (C) Whose risks are managed by a pure captive insurance
5 company ~~or reinsured by a pure captive insurance company;~~

6
7 SECTION 31. Arkansas Code § 23-64-512(a), concerning reasons the
8 Insurance Commissioner may place on probation, suspend, revoke, or refuse to
9 issue or renew an insurance producer's license or may levy a civil penalty,
10 is amended to read as follows:

11 (a) The Insurance Commissioner may place on probation, suspend,
12 revoke, or refuse to issue or renew an insurance producer's license or may
13 levy a civil penalty in accordance with § 23-64-216 or any combination of
14 actions, for any one (1) or more of the following causes:

15 (1) Providing incorrect, misleading, incomplete, or materially
16 untrue information in the license application;

17 (2) Violating any insurance laws or violating any regulation,
18 subpoena, or order of the commissioner or of another state's insurance
19 commissioner;

20 (3) Obtaining or attempting to obtain a license through
21 misrepresentation or fraud;

22 (4) Improperly withholding, misappropriating, or converting any
23 moneys or properties received in the course of doing insurance business;

24 (5) Intentionally misrepresenting the terms of an actual or
25 proposed insurance contract or application for insurance;

26 (6) Having been convicted of a felony;

27 (7) Having admitted or been found to have committed any
28 insurance unfair trade practice or fraud;

29 (8) Using fraudulent, coercive, or dishonest practices or
30 demonstrating incompetence, untrustworthiness, lack of good personal or
31 business reputation, or financial irresponsibility;

32 (9) Having an insurance producer license or its equivalent
33 denied, suspended, or revoked in any other state, province, district, or
34 territory;

35 (10) Forging another's name to an application for insurance or
36 to any document related to an insurance transaction;

1 (11) Improperly using notes or any other reference material to
2 complete an examination for an insurance license;

3 (12) Knowingly accepting insurance business from an individual
4 who is not licensed;

5 (13) Failing to provide a written response after receipt of a
6 written inquiry from the commissioner or his or her representative as to
7 transactions under the license within thirty (30) days after receipt thereof
8 unless the timely written response is knowingly waived in writing by the
9 commissioner;

10 (14) Failing to comply with an administrative or court order
11 imposing a child support obligation; ~~or~~

12 (15) Failing to pay state income tax or comply with any
13 administrative or court order directing payment of state income tax;

14 (16) Refusing to be examined or to produce any accounts,
15 records, or files for examination; or

16 (17) Failing to cooperate with the commissioner in an
17 investigation when required by the commissioner.

18
19 SECTION 32. Arkansas Code § 23-66-310, concerning excess charges
20 for insurance, is amended to add an additional subsection to read as follows:

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

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

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

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

32 (i) Specifically stated in the agreement; and

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

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

1 (E) The agreement contains a statement that:

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

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

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

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

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

14 (2) This subsection (d) shall not apply to:

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

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

19
 20 SECTION 33. Arkansas Code § 23-68-128, concerning the allowance of
 21 claims against an insolvent insurer, is amended to add an additional
 22 subsection to read as follows:

23 (e)(1) Nothing in this chapter shall be construed to authorize the
 24 receiver, liquidator, or any other entity to compel payment from a reinsurer
 25 on the basis of estimated incurred but not reported losses or outstanding
 26 reserves.

27 (2) Notwithstanding any provision of this chapter to the
 28 contrary, the receiver or liquidator may negotiate a voluntary commutation
 29 and release of all obligations arising from reinsurance contracts or other
 30 agreements.

31
 32 SECTION 34. Arkansas Code § 23-69-108(a)(1), concerning officers for
 33 domestic stock or mutual insurers, is amended to read as follows:

34 (a)(1)(A) Every domestic stock or mutual insurer shall have:

35 (i)(a) A chief executive officer or a president, who
 36 shall be a director, or both.

1 (b) The chief executive officer or president
 2 shall also serve as a member of the board of directors; and

3 (ii) a A secretary and a treasurer.

4 (B) They The chief executive officer, president,
 5 secretary, and treasurer shall be chosen by the board of directors and shall
 6 hold their offices until their respective successors are chosen and qualify.

7
 8 SECTION 35. Arkansas Code § 23-69-129(a), concerning the payment of
 9 dividends to stockholders of domestic stock or mutual insurers, is amended to
 10 read as follows:

11 (a) A domestic stock insurer shall not pay any ~~cash~~ dividend to
 12 stockholders except out of that part of its available surplus funds which is
 13 derived from net profits on its business.

14
 15 SECTION 36. Arkansas Code § 23-69-156 is amended to read as follows:

16 23-69-156. ~~Extinguishment of unused corporate charters~~ Nonactive
 17 corporate charter -- Nullification.

18 (a) For purposes of this section, a corporation shall be deemed to
 19 have engaged in the business of insurance as a domestic insurer if any of its
 20 officers, directors, agents, or employees has engaged in:

21 (1) The writing of insurance;

22 (2) The reinsurance of risks;

23 (3) The handling of claims; or

24 (4) Any acts necessary or incidental to writing insurance,
 25 reinsuring risks, or handling claims.

26 ~~(a)~~(b) The corporate charter of any corporation formed under the laws
 27 of this state more than three (3) years prior to January 1, 1960, for the
 28 purpose of becoming an insurer and which corporation within the three-year
 29 period has not at any time actively engaged in business as a domestic insurer
 30 under a certificate of authority issued to it by the Insurance Commissioner
 31 under laws then in force, is extinguished and nullified.

32 ~~(b)~~(c) The corporate charter of any other corporation formed under the
 33 laws of this state for the purpose of becoming an insurer, and which
 34 corporation during any period of thirty-six (36) consecutive months after
 35 January 1, 1960, is not actively engaged in business as a domestic insurer
 36 under a certificate of authority issued to it by the commissioner under laws

1 currently in force, is not automatically extinguished and nullified at the
2 expiration of the thirty-six-month period.

3 ~~(e)~~(d) The period during which a corporation referred to in subsection
4 ~~(b)~~(c) of this section is the subject of delinquency proceedings under §§ 23-
5 68-101 -- 23-68-113 and 23-68-115 -- 23-68-132 shall not be counted as part
6 of any such thirty-six-month period.

7 ~~(d)~~(e) Upon merger or consolidation of a domestic insurer with another
8 insurer under this chapter, the corporate charter of the merged or
9 consolidated domestic insurer shall automatically be extinguished and
10 nullified.

11 ~~(e)~~(f) In the event a domestic insurer assumption reinsures all of the
12 ceding domestic insurer's business in force, or all except a token amount of
13 the ceding domestic insurer's business, the commissioner, after notice and a
14 hearing, shall make a determination and order that the ceding domestic
15 insurer's corporate charter is extinguished or is continued in full force and
16 effect. In making such a determination and order, the commissioner shall
17 fully consider the equities to the stockholders, or members if the ceding
18 domestic insurer is a mutual, and the policyholders of the ceding domestic
19 insurer. With regard to proposed transactions of a domestic insurer which is
20 a subsidiary or affiliate of a depository institution, the hearing shall be
21 concluded and the order issued within the period required by federal law, and
22 the order shall be final upon entry.

23
24 SECTION 37. Arkansas Code § 23-76-110 is amended to read as follows:
25 23-76-110. ~~Governing body~~ Advisory board.

26 (a) The ~~governing body~~ advisory board of any health maintenance
27 organization shall include at least one (1) physician, one (1) dentist, one
28 (1) pharmacist, one (1) nurse, one (1) consumer, and one (1) enrollee.

29 (b) The ~~governing body~~ advisory board shall establish a mechanism to
30 afford the enrollees an opportunity to participate in matters of policy and
31 operation through the establishment of advisory panels, by the use of
32 advisory referenda on major policy decisions, or through the use of other
33 mechanisms.

34 (c) The advisory board shall not be deemed to be the governing body of
35 the health maintenance organization licensed under this chapter.

36

1 SECTION 38. Arkansas Code § 23-77-107(a)(2), concerning the suspension
2 or revocation of the certificate of authority of an automobile club, is
3 amended to read as follows:

4 (2) If the automobile club or association no longer meets the
5 requirements for the authority originally granted due to a deficiency in the
6 deposit required by § 23-77-106(d)(1)(A) or the failure to maintain a ~~surety~~
7 ~~bond~~ deposit of securities or other assets acceptable to the commissioner in
8 ~~such~~ the amount ~~as~~ prescribed by § 23-77-106(d)(1)(A); or

9
10 SECTION 39. Arkansas Code § 23-79-121(a), concerning insurance policies
11 delivered to consumers, is amended to read as follows:

12 (a)(1) Subject to the insurer's requirements as to payment of premium,
13 every policy shall be mailed or delivered to the insured or to the person
14 entitled to receive it, within a reasonable period of time after its
15 issuance, except where a condition required by the insurer has not been met.

16 (2)(A) The insurer may mail or deliver an electronic copy of the
17 policy to the insured or to the person entitled to receive it.

18 (B) The insurer shall retain the electronic transmittal
19 and an electronic or imaged copy of the policy as a part of the insurer's
20 records.

21
22 SECTION 40. Arkansas Code § 23-79-123(a), concerning delivery of
23 insurance certificates or endorsements to policyholders, is amended to read
24 as follows:

25 (a)(1) Any insurance policy terminating by its terms at a specified
26 expiration date and not otherwise renewable may be renewed or extended at the
27 option of the insurer upon a currently authorized policy form and at the
28 premium rate then required for that type of policy, for a specific additional
29 period or periods by certificate or by endorsement of the policy or by
30 electronic certificate or electronic endorsement properly executed and
31 without requiring the issuance of a new policy.

32 (2) The insurer shall retain the electronic transmittal and a
33 copy of the certificate or endorsement as a part of the insurer's records.

34
35 SECTION 41. Arkansas Code § 23-81-303 is amended to read as follows:
36 23-81-303. Nonforfeiture requirements.

1 (a) In the case of contracts issued on or after the operative date of
 2 this subchapter as defined in § 23-81-312, no contract of annuity, except as
 3 stated in § 23-81-302, shall be delivered or issued for delivery in this
 4 state unless it contains in substance the following provisions or
 5 corresponding provisions, which in the opinion of the Insurance Commissioner
 6 are at least as favorable to the contract holder, upon cessation of payment
 7 of considerations under the contract:

8 (1) That upon cessation of payment of considerations under a
 9 contract, or upon the written request of the contract owner the insurer will
 10 grant a paid-up annuity benefit on a plan stipulated in the contract of such
 11 value as is specified in §§ 23-81-305 - 23-81-308 and 23-81-310;

12 (2) If a contract provides for a lump sum settlement at maturity
 13 or at any other time, that upon surrender of the contract at or prior to the
 14 commencement of any annuity payments, the insurer will pay in lieu of any
 15 paid-up annuity benefit a cash surrender benefit of such amount as is
 16 specified in §§ 23-81-305, 23-81-306, 23-81-308, and 23-81-310. The insurer
 17 ~~shall~~ may reserve the right to defer the payment of the cash surrender
 18 benefit for a period ~~of~~ not to exceed six (6) months after demand therefor
 19 with surrender of the contract, after making written request and receiving
 20 written approval of the commissioner. The request shall address the
 21 necessity and equitability of the deferral to all policyholders;

22 (3) A statement of the mortality table, if any, and interest
 23 rates used in calculating any minimum paid-up annuity, cash surrender, or
 24 death benefits that are guaranteed under the contract, together with
 25 sufficient information to determine the amounts of the benefits; and

26 (4) A statement that any paid-up annuity, cash surrender, or
 27 death benefits that may be available under the contract are not less than the
 28 minimum benefits required by any statute of the state in which the contract
 29 is delivered and an explanation of the manner in which such benefits are
 30 altered by the existence of any additional amounts credited by the insurer to
 31 the contract, any indebtedness to the insurer on the contract, or any prior
 32 withdrawals from or partial surrenders of the contract.

33 (b) Notwithstanding the requirements of this section, any deferred
 34 annuity contract may provide that if no considerations have been received
 35 under a contract for a period of two (2) full years and the portion of the
 36 paid-up annuity benefit at maturity on the plan stipulated in the contract

1 arising from consideration paid prior to the period would be less than twenty
 2 dollars (\$20.00) monthly, the insurer may at its option terminate the
 3 contract by payment in cash of the then-present value of the portion of the
 4 paid-up annuity benefit, calculated on the basis of the mortality table, if
 5 any, and interest rate specified in the contract for determining the paid-up
 6 annuity benefit, and by the payment shall be relieved of any further
 7 obligation under the contract.

8
 9 SECTION 42. Arkansas Code § 23-81-304 is amended to read as follows:
 10 23-81-304. Minimum values.

11 (a)(1) Prior to July 15, 2006, a company may elect to comply with the
 12 provisions of:

13 (A) Subsections (b) and (c) of this section; or

14 (B) Subsections (d) – (f) of this section.

15 (2) On and after July 15, 2006, all companies shall comply with
 16 the provisions of subsections (d) – (f) of this section.

17 (b) The minimum values as specified in §§ 23-81-305 - 23-81-308 and
 18 23-81-310 of any paid-up annuity, cash surrender, or death benefits available
 19 under an annuity contract shall be based upon minimum nonforfeiture amounts
 20 as defined in this subchapter.

21 ~~(b)(1)(A)(c)(1)(A)~~ With respect to contracts providing for flexible
 22 considerations, the minimum nonforfeiture amount at any time at or prior to
 23 the commencement of any annuity payments shall be equal to an accumulation up
 24 to such time at a rate of interest of one and one-half percent (1.5%) per
 25 annum of percentages of the net considerations paid prior to the time,
 26 decreased by the sum of:

27 (i) Any prior withdrawals from or partial surrenders
 28 of the contract accumulated at a rate of interest of one and one-half percent
 29 (1.5%) per annum; and

30 (ii) The amount of any indebtedness to the insurer
 31 on the contract, including interest due and accrued and increased by any
 32 existing additional amounts credited by the insurer to the contract.

33 (B)(i) The net considerations for a given contract year
 34 used to define the minimum nonforfeiture amount shall be an amount not less
 35 than zero (0) and shall be equal to the corresponding gross considerations
 36 credited to the contract during that contract year less an annual contract

1 charge of thirty dollars (\$30.00) and less a collection charge of one dollar
2 and twenty-five cents (\$1.25) per consideration credited to the contract
3 during that contract year.

4 (ii) The percentages of net considerations shall be
5 sixty-five percent (65%) of the net consideration for the first contract year
6 and eighty-seven and one-half percent (87.5%) of the net considerations for
7 the second and later contract years.

8 (iii) Notwithstanding the provisions of subdivision
9 (b)(1)(B)(ii) of this section, the percentage shall be sixty-five percent
10 (65%) of the portion of the total net consideration for any renewal contract
11 year that exceeds by not more than two (2) multiplied by the sum of those
12 portions of the net considerations in all prior contract years for which the
13 percentage was sixty-five percent (65%).

14 (2) With respect to contracts providing for fixed scheduled
15 considerations, minimum nonforfeiture amounts shall be calculated on the
16 assumption that considerations are paid annually in advance and shall be
17 defined as for contracts with flexible considerations that are paid annually,
18 with two (2) exceptions:

19 (A) The portion of the net consideration for the first
20 contract year to be accumulated shall be the sum of sixty-five percent (65%)
21 of the net consideration for the first contract year plus twenty-two and one-
22 half percent (22.5%) of the excess of the net considerations for the first
23 contract year over the lesser of the net considerations for the second and
24 third contract years; and

25 (B) The annual contract charge shall be the lesser of
26 thirty dollars (\$30.00) or ten percent (10%) of the gross annual
27 consideration.

28 (3) With respect to contracts providing for a single
29 consideration, minimum nonforfeiture amounts shall be defined as for
30 contracts with flexible considerations except, that the percentage of net
31 consideration used to determine the minimum nonforfeiture amount shall be
32 equal to ninety percent (90%), and the net consideration shall be the gross
33 consideration less a contract charge of seventy-five dollars (\$75.00).

34 (d) On and after July 1, 2006, the minimum values as specified in §§
35 23-81-305 - 23-81-308 and 23-81-310 of any paid-up annuity, cash surrender,
36 or death benefits available under an annuity contract shall be based upon

1 minimum nonforfeiture amounts as defined in subsections (e) and (f) of this
2 section.

3 (e)(1)(A) The minimum nonforfeiture amount at any time at or prior to
4 the commencement of any annuity payments shall be equal to an accumulation up
5 to such time at a rate of interest as indicated in subdivision (c)(2) of this
6 section of the net considerations paid prior to the time, decreased by the
7 sum of:

8 (i) Any prior withdrawals from or partial surrenders
9 of the contract accumulated at a rate of interest as indicated in subdivision
10 (c)(2) of this section;

11 (ii) An annual contract charge of fifty dollars
12 (\$50.00), accumulated at rates of interest as indicated in subdivision (c)(2)
13 of this section;

14 (iii) Any premium tax paid by the company for the
15 contract, accumulated at rates of interest as indicated in subdivision (c)(2)
16 of this section; and

17 (iv) The amount of an indebtedness to the insurer on
18 the contract, including interest due and accrued.

19 (B) The net considerations for a given contract year used
20 to define the minimum nonforfeiture amount shall be an amount equal to
21 eighty-seven and one-half percent (87.5%) of gross considerations credited to
22 the contract during that contract year.

23 (2) The interest rate used in determining minimum nonforfeiture
24 amounts shall be an annual rate of interest equal to the lesser of:

25 (A) Three percent (3%) per annum; or

26 (B) The following rate, which shall be specified in the
27 contract if the interest rate will be reset:

28 (i) The five-year Constant Maturity Treasury Rate
29 reported by the Federal Reserve as of a date or average over a period rounded
30 to the nearest 1/20th of one percent (.0005%) that is specified in the
31 contract no longer than fifteen (15) months prior to the contract issue date
32 or redetermination date under subdivision (e)(3) of this section, reduced by
33 one hundred twenty-five (125) basis points.

34 (ii) The resulting interest rate shall not be less
35 than one percent (1%).

36 (3) The interest rate under subdivision (e)(2)(B) of this

1 section shall apply for an initial period and may be redetermined for
2 additional periods. The redetermination date, basis, and period, if any,
3 shall be stated in the contract. The basis is the date or average over a
4 specified period that produces the value of the five-year Constant Maturity
5 Treasury Rate to be used at each redetermination date.

6 (f)(1) During the period or term that a contract provides substantive
7 participation in an equity indexed benefit, it may increase the reduction
8 described in subdivision (c)(2) of this section by up to an additional one
9 hundred (100) basis points to reflect the value of the equity index benefit.

10 (2) The present value of the additional reduction at the
11 contract issue date and at each redetermination date shall not exceed the
12 market value of the benefit.

13 (3)(A) The Insurance Commissioner may require a demonstration
14 that the present value of the additional reduction does not exceed the market
15 value of the benefit.

16 (B) If no demonstration is acceptable to the commissioner,
17 the commissioner may disallow or limit the additional reduction.

18 (g) The commissioner may adopt rules to implement the provisions of
19 subsection (d) of this section and to provide for further adjustments to the
20 calculation of minimum nonforfeiture amounts for contracts that provide
21 substantive participation in an equity index benefit and for other contracts
22 for which the commissioner determines adjustments are justified.

23
24 SECTION 43. Title 23, Chapter 81, Subchapter 3, is amended by adding a
25 new section to read as follows:

26 23-81-313. Rules and regulations.

27 The Insurance Commissioner may adopt rules and regulations to implement
28 the provisions of this subchapter.

29
30 SECTION 44. Arkansas Code § 23-84-103(b)(1), concerning standard
31 valuations for life and annuity policies, is amended to read as follows:

32 (b) Except as otherwise provided in §§ 23-84-104 and 23-84-105, the
33 minimum standard for the valuation of all policies and contracts issued on or
34 after the operative date of § 23-81-213(a) shall be the Insurance
35 Commissioner's reserve valuation methods defined in §§ 23-84-106, 23-84-107,
36 and 23-84-110, three and one-half percent (3.5%) interest, or in the case of

1 policies and contracts, other than annuity and pure endowment contracts, five
 2 and one-half percent (5.5%) interest for single premium life insurance
 3 policies and four and one-half percent (4.5%) interest for all other policies
 4 issued on and after March 18, 1977, and the following tables:

5 (1) For all ordinary policies of life insurance issued on the
 6 standard basis, excluding any disability and accidental death benefits in the
 7 policies;

8 (A) ~~the~~ The commissioner's 1941 Standard Ordinary
 9 Mortality Table for policies issued prior to the operative date of § 23-81-
 10 213(b); ~~and,~~

11 (B)(i) ~~for~~ For policies issued on or after the operative
 12 date of § ~~23-81-213(d)~~ 23-81-213(b) and prior to the operative date of § 23-
 13 81-213(d), the commissioner's 1958 Standard Ordinary Mortality Table.

14 (ii) ~~, provided that, for~~ For any category of
 15 policies issued on female risks under this subdivision (b)(1)(B), all
 16 modified net premiums and present values referred to in this chapter may be
 17 calculated according to an age not more than six (6) years younger than the
 18 actual age of the insured; ~~or~~

19 (C) For ~~such~~ policies issued on or after the operative
 20 date of § 23-81-213(d):

21 ~~(A)(i)~~ The commissioner's 1980 Standard Ordinary
 22 Mortality Table;

23 ~~(B)(ii)~~ At the election of the insurer, for any one
 24 (1) or more specified plans of life insurance, the commissioner's 1980
 25 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

26 ~~(C)(iii)~~ Any ordinary mortality table, adopted after
 27 1980 by the National Association of Insurance Commissioners, that is approved
 28 by regulation promulgated by the commissioner for the use in determining the
 29 minimum standard of valuation for the policies;

30
 31 SECTION 45. Arkansas Code § 23-86-106(2), concerning the policy
 32 requirements for group accident and health insurance, is amended to read as
 33 follows:

34 (2)(A) Under a policy issued to an association, including a
 35 labor union, that shall have a constitution and bylaws and that the Insurance
 36 Commissioner finds, regardless of where the association is domiciled or does

1 business, has been organized and is maintained in good faith for purposes
 2 other than that of obtaining insurance or insuring members, employees, or
 3 employees of members of the association for the benefit of persons other than
 4 the association or its officers or trustees.

5 (B) The term "employees" as used in this subdivision (2)
 6 may include retired employees;

7
 8 Section 46. Arkansas Code § 23-86-508 is amended to read as follows:
 9 23-86-508. Prevention of conflicts of interest.

10 (a) A member of a board of directors of a health insurance purchasing
 11 group shall not serve as an employee or paid consultant to the health
 12 insurance purchasing group but may receive reasonable reimbursement for
 13 travel expenses for purposes of attending meetings of the board or committees
 14 thereof.

15 (b) An individual is not eligible to serve in a paid or unpaid
 16 capacity on the board of directors of a health insurance purchasing group or
 17 as an employee of the health insurance purchasing group, if the individual is
 18 employed by, represents in any capacity, owns, or controls any ownership
 19 interest in an organization from whom the health insurance purchasing group
 20 receives contributions, grants, or other funds, unless the organization has
 21 purchased ~~not connected with~~ a contract for coverage through the health
 22 insurance purchasing group.

23 (c)(1) An individual who is serving on a board of directors of a
 24 health insurance purchasing group as a representative described in subsection
 25 (b) of this section shall not be employed by or affiliated with a health
 26 insurance purchasing group health carrier.

27 (2) For purposes of subdivision (c)(1) of this section, the term
 28 "affiliated" does not include membership in a health benefits plan or the
 29 obtaining of health benefits coverage offered by a health insurance
 30 purchasing group health carrier.

31
 32 SECTION 47. Arkansas Code § 23-89-213(b)(5), concerning proof-of-
 33 insurance cards for vehicles, is amended to reads as follows:

34 (5) The vehicle identification number and a brief
 35 description of the insured vehicle, except that insurance cards for fleet
 36 vehicles are not required to list separate vehicle identification numbers for

1 each vehicle in the fleet; and

2
3 SECTION 48. Arkansas Code § 26-57-606 is repealed.

4 ~~§ 26-57-606. Foreign automobile insurance companies—Annual reports.~~
5 ~~Each alien and foreign insurance company insuring motor vehicles in~~
6 ~~this state shall annually file a report with the Insurance Commissioner~~
7 ~~showing the total premiums collected on collision, comprehensive, and~~
8 ~~liability insurance written on motor vehicles, the licensed address of which~~
9 ~~is a city or town in the state, and the total premium taxes paid thereon to~~
10 ~~the state. The report shall show separately the premiums collected upon~~
11 ~~insurance policies or contracts for motor vehicles addressed in each city or~~
12 ~~town in this state and the amount of premium taxes paid to the State of~~
13 ~~Arkansas on such premiums.~~

14
15 SECTION 49. Arkansas Code § 26-57-614(e), concerning premium taxes for
16 fire protection services, is amended to read as follows:

17 (e)(1) Premium tax payments shall be made upon company checks payable
18 to the Fire Protection Premium Tax Fund.

19 (2) If the cumulative premium tax payment is less than twenty-
20 five dollars (\$25.00), then the insurer may defer payment to the following
21 quarter or quarters of the current calendar year but shall pay the tax no
22 later than March 1 of the following year.

23
24 SECTION 50. Arkansas Code § 27-19-716 is repealed.

25 ~~27-19-716. Bond as proof.~~

26 ~~(a)(1)(A) Proof of financial responsibility may be evidenced by the~~
27 ~~bond of a surety company duly authorized to transact business within this~~
28 ~~state, or a bond with at least two (2) individual sureties each owning real~~
29 ~~estate within this state, and together having equities equal in value to at~~
30 ~~least twice the amount of the bond.~~

31 ~~(B) Real estate shall be scheduled in the bond approved by~~
32 ~~a judge of a court of record, and the bond shall be conditioned for payment~~
33 ~~of the amounts specified in § 27-19-701.~~

34 ~~(2) The bond shall be filed with the office and shall not be~~
35 ~~cancelable except after ten (10) days' written notice to the office.~~

36 ~~(b)(1) Such a bond shall constitute a lien in favor of the state upon~~

1 ~~the real estate so scheduled of any surety, which lien shall exist in favor~~
 2 ~~of any holder of a final judgment against the person who has filed the bond,~~
 3 ~~for damages, including damages for care and loss of services, because of~~
 4 ~~bodily injury to or death of any person, or for damage because of injury to~~
 5 ~~or destruction of property, including the loss of use thereof, resulting from~~
 6 ~~the ownership, maintenance, use, or operation of a vehicle of a type subject~~
 7 ~~to registration under the laws of this state after the bond was filed, upon~~
 8 ~~the filing of notice to that effect by the office in the office of the~~
 9 ~~circuit clerk of the county where the real estate shall be located.~~

10 ~~(2)(A) The notice shall include a description of the real estate~~
 11 ~~scheduled in the bond and shall be accompanied by the statutory fee for the~~
 12 ~~services of the circuit clerk in connection with the recordation of the~~
 13 ~~notice.~~

14 ~~(B)(i) The circuit clerk, upon receipt of the notice,~~
 15 ~~shall acknowledge and cause it to be recorded in the lien records.~~

16 ~~(ii) Recordation shall constitute notice as provided~~
 17 ~~by statutes governing the recordation of liens on real estate.~~

18 ~~(c)(1) If a judgment rendered against the principal on the bond shall~~
 19 ~~not be satisfied within thirty (30) days after it has become final, the~~
 20 ~~judgment creditor may, for his own use and benefit and at his sole expense,~~
 21 ~~bring an action in the name of the state against the company or persons~~
 22 ~~executing the bond, including an action or proceeding to foreclose any lien~~
 23 ~~that may exist upon the real estate of a person who has executed the bond.~~

24 ~~(2) The foreclosure action shall be brought in like manner and~~
 25 ~~subject to all the provisions of law applicable to an action to foreclose a~~
 26 ~~mortgage on real estate.~~

27
 28 SECTION 51. Arkansas Code § 27-19-717 is amended to read as follows:

29 27-19-717. Money or security as proof.

30 (a)(1) Proof of financial responsibility may be evidenced by the
 31 certificate of the ~~Insurance Commissioner~~ Director of the Department of
 32 Finance and Administration acting in his or her capacity as Commissioner of
 33 Motor Vehicles after filing with the Office of Driver Services of the Revenue
 34 Division of the Department of Finance and Administration evidence that the
 35 person named therein has deposited with him or her seventy-five thousand
 36 dollars (\$75,000) in cash or securities other than surety bonds ~~such as that~~

1 may be legally purchased by savings banks or for trust funds of a market
2 value of seventy-five thousand dollars (\$75,000).

3 (2) The ~~commissioner~~ director shall not accept any such deposit
4 and issue a certificate therefor and the office shall not accept the
5 certificate unless accompanied by evidence that there are no unsatisfied
6 judgments of any character against the depositor in the county where the
7 depositor resides.

8 (b)(1) The deposit shall be held by the ~~commissioner~~ director to
9 satisfy, in accordance with the provisions of this subchapter, any execution
10 on a judgment issued against the person making the deposit, for damages,
11 including damages for care and loss of services because of bodily injury to
12 or death of any person, or for damages because of injury to or destruction of
13 property, including the loss of use thereof, resulting from the ownership,
14 maintenance, use, or operation of a vehicle of a type subject to registration
15 under the laws of this state after the deposit was made.

16 (2) Money or securities so deposited shall not be subject to
17 attachment or execution unless the attachment or execution shall arise out of
18 a suit for damages as indicated.

19
20 SECTION 52. Arkansas Code § 27-19-719 is amended to read as follows:

21 27-19-719. Substitution of proof.

22 The ~~office~~ Office of Driver Services of the Revenue Division of the
23 Department of Finance and Administration shall consent to the cancellation of
24 any bond or certificate of insurance or the office shall direct, and the
25 ~~Insurance Commissioner~~ Director of the Department of Finance and
26 Administration acting in his or her capacity as Commissioner of Motor
27 Vehicles shall return, any money or securities to the person entitled thereto
28 upon the substitution and acceptance of other adequate proof of financial
29 responsibility ~~pursuant to~~ under this chapter.

30
31 SECTION 53. Arkansas Code § 27-19-721(a), concerning refund deposits
32 posted to meet vehicle financial responsibility laws, is amended to read as
33 follows:

34 (a) The ~~office~~ Office of Driver Services of the Revenue Division of
35 the Department of Finance and Administration shall, upon request, consent to
36 the immediate cancellation of any bond or certificate of insurance, or the

1 office shall direct, and the ~~Insurance Commissioner~~ Director of the
2 Department of Finance and Administration acting in his or her capacity as
3 Commissioner of Motor Vehicles shall return, to the person entitled thereto
4 any money or securities deposited ~~pursuant to~~ under this subchapter as proof
5 of financial responsibility, or the office shall waive the requirement of
6 filing proof, in any of the following events:

7 (1) At any time after three (3) years from the date the proof
8 was required when, during the three-year period preceding the request, the
9 office has not received record of a conviction or a forfeiture of bail which
10 would require or permit the suspension or revocation of the license or
11 registration of the person by or for whom the proof was furnished; ~~or~~

12 (2) In the event of the death of the person on whose behalf the
13 proof was filed or the permanent incapacity of the person to operate a motor
14 vehicle; or

15 (3) In the event the person who has given proof surrenders his
16 license and registration to the office.

17
18 SECTION 54. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that the laws of this state as to
20 insurance regulation and the Governmental Bonding Board, among others, are
21 inadequate for the protection of the public, and the immediate passage of
22 this act is necessary in order to provide for the adequate protection of the
23 public. Therefore, an emergency is declared to exist and this act being
24 immediately necessary for the preservation of the public peace, health, and
25 safety shall become effective on:

26 (1) The date of its approval by the Governor;

27 (2) If the bill is neither approved nor vetoed by the Governor,
28 the expiration of the period of time during which the Governor may veto the
29 bill; or

30 (3) If the bill is vetoed by the Governor and the veto is
31 overridden, the date the last house overrides the veto.

32
33
34 APPROVED: 3/02/2005

1