

As Engrossed: 3/24/93

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Newman**

A Bill

HOUSE BILL 1998

For An Act To Be Entitled

8 "AN OMNIBUS ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
9 CODE AS TO THE INSURANCE LAWS OF THIS STATE; AND IN
10 PARTICULAR TO AMEND PROVISIONS OF TITLE 23 OF THE STATE
11 INSURANCE CODE, INCLUDING AGENT LICENSURE SECTIONS OF THE
12 INSURANCE CODE AT CHAPTER 64; AND FOR OTHER PURPOSES."

Subtitle

15 "INSURANCE DEPARTMENT OMNIBUS ACT."

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

19 *SECTION 1. The administrative and regulatory fee assessed insurance*
20 *agents at a maximum of fifty dollars (\$50) under The State Insurance*
21 *Department Trust Fund Act of 1993 as it is popularly known, with such fee as*
22 *referenced therein to be addressed in the Insurance Commissioner's companion*
23 *rule and regulation to that legislation upon its passage and approval, shall*
24 *be borne as a regulatory fee by insurance agents, and shall not be considered*
25 *to be, or borne or paid as an obligation by sponsoring insurance companies,*
26 *notwithstanding contrary language, if any, of The State Insurance Department*
27 *Trust Fund Act of 1993.*

29 SECTION 2. Arkansas Code 14-26-101 is hereby amended by adding new
30 Subsection (c), to read as follows:

31 "(c) Individuals convicted of a criminal offense and committed to a
32 county detention facility or state correctional facility who are required to
33 perform work for the county shall not be considered employees of the county."

35 SECTION 3. Arkansas Code 14-60-101 is hereby amended by adding new

1 Subsection (c), to read as follows:

2 "(c) Individuals convicted of a criminal offense and committed to a
3 municipal detention facility or state correctional facility who are required
4 to perform work for the municipality shall not be considered employees of the
5 municipality."

6

7 SECTION 4. Subdivision (1) of Subsection (a) of Arkansas Code 21-5-603
8 is hereby amended to read as follows:

9 "(1) State employees and officers: Any officer or employee of any state
10 agency, board, commission, department, institution, college, university, or
11 community college receiving appropriation for regular salaries, extra help or
12 authorized overtime payable from funds deposited in the State Treasury or
13 depositories other than the State Treasury by the General Assembly, provided
14 that inmates of state correctional facilities who perform work for the state
15 while incarcerated or while on a work release program shall not be considered
16 state employees;"

17

18 SECTION 5. Arkansas Code section 23-60-102(1) is hereby amended to read
19 as follows:

20 "(1) _Insurance_ is any agreement, contract or other transaction
21 whereby one party, the _insurer_, is obligated to confer benefit of pecuniary
22 value upon another party, the _insured_ or _beneficiary_, dependent upon the
23 happening of a fortuitous event in which the insured or beneficiary has, or is
24 expected to have at the time of such happening, a material interest which will
25 be adversely affected by the happening of such event. A _fortuitous event_
26 means any occurrence or failure to occur which is, or is assumed by the
27 parties to be, to a substantial event beyond the control of either party.
28 _Insurance_ shall, for purposes of Subtitle 3 of Title 23, be deemed to
29 include _annuities_, which are agreements by insurers to make periodic
30 payments that continue during the survival of *the measuring life or lives*
31 *under the agreements* or for a specified period."

32

33 SECTION 6. Arkansas Code 23-63-108 is hereby amended to read as
34 follows:

35 "(a) The commissioner may utilize, develop, or cause to be developed a

1 consumer information system which will provide and disseminate price and other
2 relevant information on a readily available basis to purchasers of insurance
3 in this state. This activity may be conducted within the State Insurance
4 Department, in cooperation with other state insurance departments, through
5 outside contractors, or in any other appropriate manner. To the extent deemed
6 necessary and appropriate by the commissioner, licensed insurers, advisory
7 organizations, fraternal benefit societies, health maintenance organizations,
8 hospital and medical service corporations, farmers' mutual aid associations,
9 and other persons or organizations involved in conducting the business of
10 insurance in this state shall cooperate in the development and utilization of
11 a consumer information system.

12 (b) The cost of complying with this section may be assessed against
13 the entities listed in subsection (a) and authorized to write the lines of
14 insurance which the commissioner in his discretion deems appropriate and
15 necessary to be addressed in a consumer information system. The assessment to
16 any one (1) entity listed in subsection (a) shall not exceed one hundred
17 dollars (\$100) for any calendar year. Assessment monies received by the State
18 Insurance Department shall be deposited by the commissioner in an account in a
19 recognized financial institution to be used for the maintenance, operation,
20 and support of the State Insurance Department necessary for the operation of
21 the consumer information system."

22

23 *SECTION 7. Arkansas Code 23-63-207(c) is amended to read as follows:*

24 *"(c) (1) For the period commencing upon the effective date of this Act*
25 *until April 1, 1994, as to all insurers referred to in subdivisions (a) (1)*
26 *and (a) (2) of this section, after issuance of its original certificate of*
27 *authority, the insurer shall maintain minimum surplus of not less than fifteen*
28 *percent (15%) of the original capital, if a stock insurer, or original*
29 *surplus, if a mutual or reciprocal insurer, as required under 23-63-205 to*
30 *qualify as an authorized insurer;*

31 *(2) Commencing on and after April 1, 1994, as to all insurers*
32 *referred to in subdivisions (a) (1) and (a) (2) of this section, after*
33 *issuance of its original certificate of authority, all stock insurers shall at*
34 *all times maintain the special surplus contemplated by this section at a level*
35 *of not less than fifteen percent (15%) of the then effective requirements of*

1 23-63-205 as to the amount of minimum paid-in capital for new issuance of an
2 original certificate of authority to do an insurance business in this State;
3 and, further, all mutual or reciprocal insurers shall at all times maintain
4 the additional surplus contemplated by this section at a level of not less
5 than fifteen percent (15%) of the effective requirement as to minimum surplus
6 of such an insurer to qualify for an original certificate of authority in this
7 state under 23-63-205."

8

9 SECTION 8. Subsection (a) of Arkansas Code Annotated §23-63-213 is
10 hereby amended to read as follows:

11 "(a) The commissioner shall, after a hearing thereon, suspend or revoke
12 an insurer's certificate of authority if he finds that the insurer:

13 (1) Is in unsound condition, or is in such condition or is using
14 such methods and practices in the conduct of its business, as to render its
15 further transaction of insurance in Arkansas hazardous or injurious to its
16 policyholders or to the public. For the purposes of this section, the
17 commissioner may consider, among other factors, the present, past, and future
18 trend in the size of the insurer's surplus if a life insurer, disability
19 insurer, or a life and disability insurer, or unassigned funds surplus if a
20 property insurer, casualty insurer, or a property and casualty insurer;

21 (2) Has refused to be examined or to produce its accounts,
22 records and files for examination, or if any of its officers have refused to
23 give information with respect to its affairs, when required by the
24 commissioner;

25 (3) Has failed to pay any final judgment rendered against it
26 within thirty (30) days;

27 (4) Is affiliated with and under the same general management or
28 interlocking directorate or ownership as another insurer which transacts
29 direct insurance in Arkansas without having a certificate of authority
30 therefor, except as permitted as to surplus lines insurers under chapter 65 of
31 this title; or

32 (5) Has knowingly or with reckless disregard of same violated or
33 failed to comply with any applicable provision of this code, or with any
34 lawful rule, regulation, or order of the commissioner."

35

1 SECTION 9. Repealer. Arkansas Code Sections 23-63-401, 23-63-402,
2 23-63-403, and 23-63-404, concerning Arkansas resident agent countersignatures
3 of insurance policies, are hereby repealed.

4

5 SECTION 10. Subsection (a) of Arkansas Code 23-63-510 is hereby amended
6 to read as follows:

7 "(a) The Insurance Commissioner shall approve any merger or other
8 acquisition of control referred to in §23-63-506 unless, after a public
9 hearing thereon, he finds that:

10 (1) After change of control, the domestic insurer referred to in
11 §23-63-506 would not be able to satisfy the requirements for the issuance of a
12 license to write the line or lines of insurance for which it is presently
13 licensed;

14 (2) The effect of the merger or other acquisition of control
15 would be substantially to lessen competition in insurance in this state or
16 tend to create a monopoly therein;

17 (3) The financial condition of any acquiring party is such as
18 might jeopardize the financial stability of the insurer or prejudice the
19 interest of its policyholders or the interests of any remaining security
20 holders who are unaffiliated with the acquiring party;

21 (4) The terms of the offer, request, invitation, agreement, or
22 acquisition referred to in §23-63-506 are unfair and unreasonable to the
23 security holders of the insurer;

24 (5) The plans or proposals which the acquiring party has to
25 liquidate the insurer, sell its assets or consolidate or merge it with any
26 person, or to make any other material change in its business or corporate
27 structure or management are unfair and unreasonable to policyholders of the
28 insurer and not in the public interest; or

29 (6) The competence, experience and integrity of those persons who
30 would control the operation of the insurer are such that it would not be in
31 the interest of policyholders of the insurer and of the public to permit the
32 merger or other acquisition of control."

33

34 SECTION 11. Arkansas Code 23-63-515(d) is amended to read as follows:

35 "(d) For purposes of this section, an extraordinary dividend or

1 distribution means any dividend or distribution of cash or other property,
2 whose fair market value together with that of the other dividends or
3 distributions made within the preceding twelve (12) months exceeds the larger
4 of:

5 (1) the lesser of:

6 (a) ten percent (10%) of surplus, or

7 (b) (i) net gain from operations of life and/or disability
8 insurers, or

9 (ii) net income of property and/or casualty insurers,
10 not including with either type of insurer its realized capital gains, and
11 further, in determining under this alternative whether a distribution or
12 dividend is extraordinary, a property and/or casualty insurer may carry
13 forward income from the previous two (2) calendar years that has not already
14 been paid out as dividends; or

15 (2) ten percent (10%) of surplus, with dividends payable only from
16 unassigned funds less twenty-five percent (25%) of unrealized capital gains;
17 or

18 (3) the lesser of:

19 (a) ten percent (10%) of surplus, or

20 (b) (i) net gain before capital gains for life and/or
21 disability insurers with it understood that such an insurer may carry forward
22 net gain before capital gains from the previous two (2) calendar years that
23 has not already been paid out as dividends; or

24 (ii) net investment income for property and/or
25 casualty insurers with it understood that such an insurer may carry forward
26 net investment income from the previous three (3) calendar years, with
27 dividends in each instance being payable only from unassigned funds less
28 twenty five percent (25%) of unrealized capital gains."

29

30 SECTION 12. Subsection (a) of Arkansas Code 23-63-909 is hereby amended
31 to read as follows:

32 "(a) (1) If any insurer which has made the deposit in this state
33 pursuant to §23-63-206 fails to pay promptly any final judgment entered
34 against it in favor of a citizen of this state, the commissioner is authorized
35 to sell at public or private sale, after forty-five (45) days' notice to the

1 insurer by certified mail, a sufficient amount of securities to pay the claim.
2 For purposes of this section, _final judgment_ means any judgment issued by a
3 court of record and the enforcement or execution of which has not been stayed
4 by a court of competent jurisdiction.

5 (2) Except as provided in this section and as otherwise provided
6 in this code, no deposit made in this state pursuant to §23-63-206 by any
7 insurer shall be subject to garnishment, levy or execution."
8

9 SECTION 13. Subsection (f) of Arkansas Code 23-64-202 is hereby amended
10 to read as follows:

11 "(f) No person shall consult, counsel, or advise others on matters
12 related to life or disability or property or casualty risks for insurance for
13 a fee or any other thing of value unless licensed under 23-64-204 or
14 23-64-203; provided, however, that in no event shall this section be construed
15 as to require licensure of a consultant who is an employee of the entity or
16 entities for which he may consult or counsel on the matters aforesaid."
17

18 SECTION 14. Subsection (a) preceding subdivision (1) of Arkansas Code
19 23-64-203 is hereby amended to read as follows:

20 "(a) For the protection of the people of this State, the commissioner
21 shall not at or before completion of application processing issue, continue,
22 or permit to exist any agent, broker, consultant, or solicitor license as to
23 insurance other than life and/or disability, except in compliance with this
24 chapter, and other applicable laws of this State, or as to any individual not
25 qualified therefor as follows:"
26

27 SECTION 15. Subdivision (3) of Subsection (a) of Arkansas Code
28 23-64-203 is hereby amended to read as follows:

29 "(3) If for an agent's license, must have been appointed agent by an
30 authorized insurer, before solicitation or sale of any product;"
31

32 SECTION 16. Subparagraph (C) of Subdivision (9) of Subsection (a) of
33 Arkansas Code 23-64-203 is hereby amended to read as follows:

34 "(C) The provisions of subdivision (a) (9) (A) of this section shall not
35 apply to persons making application for license as agent, broker, or solicitor

1 for crop hail insurance, mobile home physical damage insurance, mortgagor's
2 decreasing term life and disability insurance, and fire and marine insurance
3 written in connection with credit transactions, or any line exempted by law,
4 for which only a limited license is issued, nor any other insurance for which
5 only a limited license may be issued and the commissioner, by order or
6 regulation, exempts from the educational requirements of subdivision (a) (9) (A)
7 of this section."

8

9 SECTION 17. Subsection (a) preceding Subdivision (1) of Arkansas Code
10 23-64-204 is hereby amended to read as follows:

11 "(a) For the protection of the people of this state, the commissioner
12 shall not at or before completion of the application process issue, continue,
13 or permit to exist any agent or broker or consultant license as to life and/or
14 disability insurance except in compliance with this chapter or other
15 applicable laws or as to any individual not qualified therefor as follows:"

16

17 SECTION 18. Subdivision (3) of Subsection (a) of Arkansas Code
18 23-64-204 is hereby amended to read as follows:

19 "(3) Must have been appointed an agent by an authorized insurer, before
20 solicitation or sale of any product;"

21

22 SECTION 19. Subparagraph (C) of Subdivision (7) of Subsection (a) of
23 Arkansas Code 23-64-204 is hereby amended to read as follows:

24 "(C) The provisions of subdivision (a) (7) (A) of this section shall not
25 apply to persons making application for license as agent, broker, or solicitor
26 for crop hail insurance, mobile home physical damage insurance, mortgagor's
27 decreasing term life and disability insurance, and fire and marine insurance
28 written in connection with credit transactions, or any line exempted by law,
29 for which only a limited license is issued, nor any other insurance for which
30 only a limited license may be issued and the commissioner, by order or
31 regulation, exempts from the educational requirements of subdivision (a) (7) (A)
32 of this section."

33

34 SECTION 20. Subdivision (1) of Subsection (c) of Arkansas Code
35 23-64-204 is hereby amended to read as follows:

1 "(1) No person shall be licensed to sell life or disability insurance in
2 this state until that person shall take and pass, to the satisfaction of the
3 commissioner, a written examination to determine the competency of the person
4 to be a life or disability insurance agent. The commissioner shall prescribe
5 the form and content of the examination and shall include therein questions
6 calculated to determine the familiarity of the applicant with the laws of this
7 state and the regulations of the commissioner relative to life or disability
8 insurance. Prior to the examination, the commissioner may issue a license in
9 his discretion and under such conditions as he shall prescribe; but in no
10 event shall any licensee solicit or sell insurance until they have passed the
11 examination and are otherwise qualified pursuant to all the requirements of
12 this chapter."

13

14 SECTION 21. Subsection (g) of Arkansas Code 23-64-205 is hereby amended
15 to read as follows:

16 "(g) As to any application for agent's or broker's or solicitor's
17 license, the commissioner shall require as part of the application the
18 certificate of the insurer, agent, or broker proposed to be *represented that*
19 the insurer, agent, or broker has conducted or caused to be conducted at the
20 insurer's, agent's, or broker's expense an investigation relative to the
21 applicant's identity, residence, experience, or instruction as to the kinds of
22 insurance to be transacted, and relative to the applicant's character,
23 financial condition and financial history. Such certificate shall include at a
24 minimum the following information disclosed by such investigation:

25 (1) Whether the applicant has been convicted of a felony and, if
26 so, the date and nature of conviction, name and location of court, and penalty
27 imposed or other disposition of the case;

28 (2) Whether, at the time of application, the applicant is a named
29 party in any lawsuit and, if so, the style of the lawsuit, a brief description
30 of the litigation, and the name and location of the court;

31 (3) Whether a judgment for monetary damages has been entered
32 against the applicant within the last *five* years and, if so, the date of the
33 judgment, the amount of the judgment, whether the judgment has been satisfied,
34 the name and location of court, and the style of the case; and

35 (4) Such other information as the Commissioner shall require."

1

2 SECTION 22. Subsection (g) of Arkansas Code 23-64-206 is hereby amended
3 to read as follows:

4 "(g) This section shall not apply to, and no examination shall be
5 required of:

6 (1) Applicants for licenses to sell credit life or credit
7 disability insurance to debtors of the applicant or of his employer;

8 (2) Automobile dealers or automobile finance companies or their
9 employees applying for license covering fire, theft, physical damage,
10 comprehensive, and collision insurance on motor vehicles only;

11 (3) Transportation ticket agents of common carriers applying for
12 license to solicit and sell only accident insurance ticket policies, or
13 insurance of personal effects while being carried as baggage on the common
14 carrier, as incidental to their duties as transportation ticket agents;

15 (4) Any applicant for license covering the same kinds of
16 insurance as to which the applicant was licensed in this state, other than
17 under a temporary license, within the twelve (12) months next preceding the
18 date of application other than as to licenses on inactive or retired status for
19 longer periods of time as provided in this Act;

20 (5) Applicants for license as nonresident agent or nonresident
21 broker, but subject to reciprocal arrangements as provided for in
22 §23-64-204(a)(2) or §23-64-212;

23 (6) Any applicant for a temporary license under §23-64-214;

24 (7) Applicants for licenses to sell credit property insurance to
25 debtors of the applicant or his employer;

26 (8) Applicants for license to sell funeral expense insurance
27 exclusively. Funeral expense insurance shall be defined in rules adopted by
28 the State Insurance Commissioner;

29 (9) Applicants for reactivation of a resident agent license from
30 inactive licensure status;

31 (10) Applicants for licenses to sell mortgagors' decreasing term
32 life or mortgagors' decreasing term disability insurance to debtors of the
33 applicant or of his employer."

34

35 SECTION 23. Subsection (b) of Arkansas Code 23-64-216 is hereby amended

1 to read as follows:

2 "(b) The license shall state the name and address of the licensee, date
3 of issue, general conditions relative to expiration or termination, kind or
4 kinds of insurance covered, the license number as determined and assigned by
5 the commissioner, and the other conditions of the license."
6

7 SECTION 24. Subsection (d) of Arkansas Code 23-64-217 is hereby amended
8 to read as follows:

9 "(d) (1) Commencing on and after January 1, 1994, any `resident agent',
10 as defined in §23-64-102(2)(A), who desires not to continue in the business of
11 insurance or who is not permitted to so continue as a condition of employment,
12 but who is not desirous of or eligible for permanent retirement, may apply
13 for inactive status of his resident agent license on forms prescribed by the
14 commissioner.

15 (2)(A) The commissioner, in his discretion, may grant or deny the
16 application for inactive status and shall notify the resident agent of his
17 decision in writing.

18 (B) Inactive status of such resident agent license, once
19 granted, shall continue in force: (i) for a period not to exceed sixty (60)
20 months from the date placed on inactive status; or (ii) until cancelled, or
21 reactivated pursuant to this subsection; or (iii) until the license is
22 suspended or revoked pursuant to §23-64-218.

23 (C) During the period that a licensee remains on inactive
24 status, the licensee shall not transact the business of insurance in this
25 state, nor engage in any other insurance activities which may only be engaged
26 in by active licensees. A licensee on inactive status may continue, subject
27 to the terms of the insurer's (s') contract(s) with the licensee, to receive
28 commissions or other compensation relative to business written by such
29 licensee during active license status. However the commissioner may prescribe
30 payment of fees during inactive license status per other laws or pursuant to a
31 rule and regulation which the Commissioner may promulgate on inactive license
32 status and continuation fees as authorized by this section or other applicable
33 laws of this state. The Commissioner may determine the amount of the fee
34 payment due in his rule and regulation, and specify therein where and when
35 payment shall be made, and where such funds shall be deposited upon receipt;

1 and further he may consider termination or cancellation of any inactive
2 license for failure to comply with the provisions of this section.

3 (3) Any resident agent whose license is placed on inactive status
4 shall be exempt from compliance with §23-64-203(a)(3) or §23-64-204(a)(3) or
5 §23-64-221(b) as to insurance company appointments. However inactive agents
6 must comply with §23-64-301 as to continuing education, during such period of
7 inactive license status.

8 (4) Any resident agent whose license is on inactive status may
9 apply for reactivation of such license on forms prescribed by the
10 commissioner. The commissioner, in his discretion, may grant or deny the
11 application for reactivation. They shall not be required to meet examination
12 requirements or to submit proof of completion of thirty-six hours of
13 pre-licensing insurance education pursuant to the provisions of
14 §23-64-203(a)(9)(A) or §23-64-204(a)(7)(A) as to any line or kind of insurance
15 to be transacted under the reactivated license. However the request shall
16 also include company appointment(s) as required by §23-64-203(a)(3) or
17 §23-64-204(a)(3) along with payment of the biennial continuation of
18 appointment fees specified in §23-61-401.

19 (5) A resident agent whose application for reactivation is
20 granted shall be required to meet any applicable requirements of §§23-64-301,
21 et seq., during the calendar year of reactivation. and thereafter, absent
22 qualification for an applicable exemption pursuant to §§23-64-301, et seq.,
23 during active licensure.

24 (6) Any resident agent on inactive status whose license is
25 revoked or not reactivated in a timely manner shall have his license cancelled
26 or expired and shall be subject to the provisions of §23-64-219(c).

27 (7) For purposes of this subsection, the term `retiree' is deemed
28 to mean only resident agents who retire from active transaction of business
29 under licensure permanently, but who wish to have their licensure records with
30 the Commissioner be maintained in a retired status, rather than cancelled or
31 expired. Upon official notice to the Department of retirement, the resident
32 agent may request that his license be placed in retired status rather than
33 cancelled or expired. Resident agents granted retired status by the
34 Commissioner shall thereafter not be subject to continuing education mandated
35 under §§23-64-301, et seq., but must continue to pay any annual or biennial

1 license or regulatory fee which the Insurance Code or other laws or rules and
2 regulations of the Commissioner impose on a resident agent, or their licenses
3 shall be cancelled or expired.

4 Retired resident agents cannot maintain insurer appointments on
5 Department records during this inactive license status, unless by contract the
6 retiree is required to keep a company appointment on Department records as a
7 condition by the employing insurer(s) for continued receipt of renewal
8 commissions for business written under active licensure. In addition,
9 retirees who must maintain insurer appointments on Department records must
10 arrange for the Department's receipt of each insurer's written certification
11 each biennium that the appointment renewal is only for purposes of the
12 retiree's receipt of commissions for business written under active licensure
13 and that the retiree will solicit or produce no new insurance business while
14 on retired status.

15 Upon the retiree's desire to reactivate the former resident agent
16 license, the retiree must apply for reactivation accompanied by evidence of
17 completion of pre-licensure education requirements under §§23-64-203 and
18 23-64-204, as applicable, all applicable licensure and regulation fees as
19 specified in §23-61-401 and other applicable laws, and one or more insurer
20 appointments as prescribed on the Commissioner's forms for each insurer
21 sponsoring the retiree, and such other information as the Commissioner shall
22 require. The retiree shall not be subject to examination in order to
23 reactivate the license. Upon failure of the retiree to comply with the
24 provisions of this subsection either in maintaining the license on retired
25 status or in successfully reactivating the license shall cause the license to
26 be automatically cancelled and expired.

27 (8) Retirees are not entitled to change their license status from
28 retired to inactive but may apply only to activate a retired license to active
29 status. Inactive licensees are not entitled to change their license status
30 from inactive to retired status, but may apply only to activate an inactive
31 license to active status. Further, inactive resident agents and retired
32 resident agents shall be subject to provisions of §23-64-218 as to license
33 sanctions for Code or rule violations as if they held active licenses.

34 (9) The provisions of this subsection shall not be available or
35 applicable to any other persons licensed under §§23-64-101, et seq. or to any

1 other provisions of the Insurance Code or other licensure laws which the
2 Commissioner administers and enforces; or to any full time or part time
3 employee of or intern or volunteer for the Arkansas Insurance Department or to
4 any resident firm or corporation licensed under §23-64-211 or other sections
5 of the Insurance Code.

6 (10) An inactive resident agent or a retired resident agent whose
7 license is cancelled or expired shall have twelve (12) full months to apply
8 for active licensure without complying with applicable exam or pre-licensure
9 education requirements; and upon failure to apply for and obtain a new
10 original resident agent license within that time period the applicant shall
11 have to comply with exam and pre-licensure requirements and others to obtain
12 the new original resident agent license as though they never held a resident
13 agent license previously."

14

15 SECTION 25. Arkansas Code 23-64-217 is hereby amended by adding new
16 Subsection (e), to read as follows:

17 "(e) This section shall not apply to temporary licenses issued under
18 §23-64-214."

19

20 SECTION 26. Arkansas Code 23-64-218 is hereby amended to read as
21 follows:

22 "(a) The commissioner may suspend for up to twelve (12) months, or may
23 revoke or refuse to continue, any license issued by him if, after notice to
24 the licensee and after hearing, he finds any one or more of the following
25 causes exist:

26 (1) Any cause for which issuance of the license could have been
27 refused had it then existed and been known to the commissioner;

28 (2) Violation of or noncompliance with any applicable provision
29 of the laws of this state, this code, or of any lawful rule, regulation, or
30 order of the commissioner;

31 (3) Obtaining or attempting to obtain any such license through
32 misrepresentation or fraud;

33 (4) Misappropriation or conversion to his own use, or illegal
34 withholding, of moneys belonging to policyholders, insurers, beneficiaries, or
35 others and received in conduct of business under the license;

1 (5) Conviction of a felony;

2 (6) If in the conduct of his affairs under the license, the
3 licensee has used fraudulent or dishonest practices, or trade practices
4 prohibited by the insurance laws and regulations of this state;

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

9 (8) Having an insurance license suspended or revoked in any other
10 state, province, district or territory; or

11 (9) The licensee no longer meets the qualifications required for
12 a license as described in §23-64-203 and §23-64-204.

13 (10) Refusing to be examined or to produce any of his accounts,
14 records and files for examination when required by the Commissioner.

15 (b) The license of a firm or corporation may be suspended, revoked, or
16 refused also for any of such causes as relate to any individual designated in
17 the license to exercise its powers.

18 (c) If the commissioner finds that one (1) or more grounds exist for
19 the suspension or revocation of any license or permit, the commissioner in his
20 discretion may impose upon the licensee or permittee an administrative penalty
21 in the amount of three hundred dollars (\$300) or, if the commissioner has
22 found willful misconduct or willful violation on the part of the licensee or
23 permittee, one thousand dollars (\$1,000). The administrative penalty may, in
24 the commissioner's discretion, be augmented by an amount equal to any
25 commissions received by or accruing to the credit of the licensee for any
26 transaction related to the proceeding against the licensee.

27 (d) If the commissioner determines that the public health, safety, or
28 welfare imperatively requires emergency action, and incorporates a finding to
29 that effect in his order, a summary suspension of any license issued by him
30 may be ordered pending an administrative hearing before the commissioner,
31 which hearing shall be promptly instituted.

32 (e) (1) If the commissioner finds upon notice and hearing that the
33 licensee has violated a provision of the insurance laws of this state or any
34 rule, regulation, or order of the commissioner and that the licensee
35 previously has been found to have violated provisions of the insurance laws of

1 this state or any rule, regulation, or order of the commissioner by an order
2 of the commissioner after hearing or by an order entered with the consent and
3 agreement of the parties, the commissioner may take judicial notice of such
4 previous orders against the licensee, and without an abuse of discretion may
5 enhance or increase the penalties ordered in the current proceeding as to the
6 licensee, and the commissioner shall incorporate a finding to that effect in
7 his order.

8 (2) Statutory or regulatory violations for which an order has
9 been entered as to the licensee by the insurance department or equivalent
10 regulatory body in any other jurisdiction may be taken into consideration and
11 included in assessing the enhanced or increased
12 penalties provided in subdivision (e)(1) of this subsection.

13 (f) The penalties recited in this Section may be imposed by the
14 Commissioner for violations of this Code or other applicable laws, or rules or
15 orders of the Commissioner, committed by any resident agent whose license is
16 on inactive or retired status."

17

18 SECTION 27. Arkansas Code 23-64-219 is hereby amended to read as
19 follows:

20 "(a) Upon the suspension or revocation of license, the commissioner
21 shall immediately notify the licensee of the suspension or revocation either
22 in person or by mail addressed to the licensee at his address last of record
23 with the commissioner.

24 (1) Notice by mail shall be deemed effectuated when so mailed.

25 (2) The commissioner shall give like notice to the insurers
26 represented by the agent in the case of an agent's license, and to the agent
27 or broker by whom appointed in the case of a solicitor's license. Where the
28 license has been revoked, each such insurer represented by the agent, shall
29 upon receipt of notice from the commissioner, take appropriate and prompt
30 action necessary:

31 (A) To retrieve from the agent all solicitation materials,
32 policy applications, binders, and any and all other materials in the
33 possession of the agent which are the property of such insurer; and

34 (B) To retrieve the agent's policyholder files and records
35 for policies in force at the time such insurer receives notice of the

1 revocation.

2 (b) Suspension or revocation of the license of an agent or broker shall
3 automatically revoke or suspend the licenses of all solicitors appointed by
4 him.

5 (c) The commissioner may not again issue a license under this code to
6 any person whose license has been revoked until after the expiration of three
7 (3) years, and thereafter not until :

8 (1) Such person has paid in full any fines, administrative
9 penalties or monetary penalties imposed on such person at the time of
10 revocation;

11 (2) Such person has paid restitution of actual losses to affected
12 persons, where the order of revocation contains findings that the conduct of
13 such person resulted in actual losses to affected persons and specifies the
14 dollar amount of such losses; and

15 (3) Such person again qualifies for license in accordance with
16 the applicable provisions of this code.

17 (d) If the license of a firm or corporation is so suspended or revoked,
18 no member of the firm or officer or director of the corporation shall be
19 licensed or be designated in any license to exercise the powers thereof during
20 the period of the suspension or revocation, unless the commissioner determines
21 upon substantial evidence that the member, officer, or director was not
22 personally at fault and did not acquiesce in the matter on account of which
23 the license was suspended or revoked."

24

25 SECTION 28. Arkansas Code 23-64-221 is hereby amended to read as
26 follows:

27 "(a) Each insurer appointing an agent in this state shall file with the
28 commissioner the appointment setting out the kinds of insurance to be
29 transacted by the agent and pay the fee therefor.

30 (b) Subject to a biennial continuation by the insurer not later than
31 June 1, commencing on January 1, 1988 for life and disability insurers, and
32 commencing on January 1, 1989 for all other insurers, each appointment shall
33 remain in effect until the agent's license is revoked or otherwise terminated
34 unless written notice of earlier termination of the appointment is filed with
35 the commissioner by the insurer or agent.

1 (c) Biennially, prior to June 1 of each even-numbered year, each
2 insurer maintaining a certificate of authority to transact life and disability
3 insurance, and prior to June 1 of each odd-numbered year, all other insurers
4 maintaining a certificate of authority to transact insurance in this state,
5 shall file with the commissioner an alphabetical list of the names and
6 addresses of all its agents whose appointments in this state are to remain in
7 effect, accompanied by payment of the biennial continuation of appointment fee
8 as provided in §23-61-401. At the same time, the insurer shall also file with
9 the commissioner an alphabetical list of the names and addresses of all its
10 agents whose appointments in this state are not to remain in effect,
11 accompanied by any documentation the Commissioner shall require.

12 (d) (1) Subject to the terms of the agency contract, an insurer may
13 terminate an agent appointment at any time. The insurer shall promptly give
14 written notice of such termination to the commissioner and thirty (30) days
15 advance notice to the agent by certified mail, return receipt requested. The
16 return receipt shall be retained as part of the insurer's records. However,
17 less than thirty (30) days notice of cancellation may be given to the agent
18 when the termination is for cause relating to the misconduct of the agent.

19 (2) Any information as to the cause of termination of any such
20 appointment furnished the commissioner as part of the notice of termination
21 shall be deemed a privileged communication and shall not be admissible in
22 evidence in any action or proceedings other than those brought by the
23 commissioner; nor shall any agent whose appointment has been so terminated
24 have a cause of action against the insurer or any of its officers, directors,
25 or employees by reason of the furnishing of such information to the
26 commissioner.

27 (e) The insurer shall promptly give written notice of nonrenewal of the
28 agent appointment to the agent by certified mail, return receipt requested,
29 and the return receipt shall be retained as part of the insurer's records."
30

31 SECTION 29. Arkansas Code 23-64-224 is hereby amended by adding new
32 subsection (e) at the end of the current section to read as follows:

33 "(e) Payment of commissions accrued or earned under active licensure to
34 a resident agent after his license is recorded as on inactive or retired
35 status on Insurance Department licensure records is not prohibited by this

1 Section."

2

3 SECTION 30. Subsection (4) of Arkansas Code 23-64-302 is hereby amended
4 to read as follows:

5 "(4) Any natural person who has held an active license as an agent,
6 solicitor, consultant or broker for a period of at least fifteen (15)
7 consecutive years, and"

8

9 SECTION 31. (a) Notwithstanding any provisions of Chapter 17, Title 17
10 of the Arkansas Code to the contrary, and notwithstanding any other provisions
11 of Arkansas law to the contrary, professional bail bond companies are hereby
12 required to charge and collect and remit the following fees for direct deposit
13 as special revenues into The State Insurance Department Trust Fund for the
14 support, personnel, maintenance and operations of the Arkansas Insurance
15 Department, in addition to any other fees, taxes, premium taxes, levy or other
16 assessments imposed in connection with the issuance of bail bonds by
17 professional bail bond companies under Arkansas law.

18 (b) Commencing on the first day of the first month after the effective
19 date of this Act, and in addition to the bail or appearance bond premium or
20 compensation allowed under Arkansas Code 17-17-301, each licensed professional
21 bail bond company shall charge and collect as a nonrefundable fee for The
22 State Insurance Department Trust Fund an additional ten dollar (\$10) per bail
23 bond fee for giving bond for each and every bail and appearance bond issued by
24 the licensed professional bail bond company by or through its individual
25 licensees. These fees shall be collected quarterly and then reported and filed
26 with the Insurance Commissioner no later than fifteen (15) calendar days after
27 the end of each quarter. The notarized quarterly reporting form and a
28 notarized annual reconciliation form as to all such fees collected for The
29 State Insurance Department Trust Fund shall be filed by each professional bail
30 bond company on forms prescribed by the Insurance Commissioner, and at such
31 times and in the manner as the Insurance Commissioner shall prescribe in
32 conformity with this Section.

33 (c) The Insurance Commissioner may in his discretion grant an extension
34 for filing of the report and/or fees for good cause shown upon timely written
35 request. Absent an extension for good cause shown, each licensed professional

1 bail bond company failing to report and/or pay these fees shall be liable to
2 The State Insurance Department Trust Fund for a monetary penalty of one
3 hundred dollars (\$100) per day for each day of delinquency. The Insurance
4 Commissioner may pursue any appropriate legal remedies on behalf of The State
5 Insurance Department Trust Fund to collect any delinquent fees and penalties
6 owed as special revenues.

7 (d) Upon collection of these fees and any monetary penalties, the
8 Insurance Commissioner shall deposit all fees and penalties directly into The
9 State Insurance Department Trust Fund as special revenues. These fees and
10 penalties shall be in addition to all other fees, licensure or registration
11 fees, taxes, assessments, levies or penalties payable to any Federal or state
12 office, court, agency, board, or commission or other public official or
13 officer of the state, or its political subdivisions, including counties,
14 cities or municipalities by professional bail bond companies. Each
15 individual bail bondsman is required to assist in collection of these fees but
16 is exempt from the duty and responsibility of payment of these fees to The
17 State Insurance Department Trust Fund unless he misappropriates or converts
18 such monies to his own use or the use of others not entitled to these fees.
19 In such case, the Insurance Commissioner shall proceed on behalf of The State
20 Insurance Department Trust Fund with any civil or criminal remedies at his
21 disposal against the individual(s) responsible. Upon criminal conviction of
22 the individual(s) responsible for fraudulent conversion of these monies due
23 The State Insurance Department Trust Fund, the individual(s) responsible shall
24 pay restitution to this Trust Fund and the court shall incorporate a finding
25 to that effect in its order. Absent substantial evidence to the contrary, the
26 violations of the individual may be attributed to the employing bail bond
27 company, and any criminal or civil court may in its discretion and upon
28 substantial evidence order the employing bail bond company to pay restitution
29 to The State Insurance Department Trust Fund on behalf of the responsible
30 individual(s), and shall incorporate any such finding into its order.

31 (e) For purposes of any statutory security deposit Arkansas law requires
32 of professional bail bond companies, including but not limited to the deposit
33 under § 17-17-205, the payment of the fees required by this Section is
34 considered to be a "duty of the licensee", so as to allow the Insurance
35 Commissioner on behalf of The State Insurance Department Trust Fund to make a

1 claim against any such deposit for the fees required by this Section and any
2 penalties owed thereon, up to the limit of any such security deposit.

3 (f) Under no circumstances shall these fees or penalties thereon held in
4 or for deposit into The State Insurance Department Trust Fund as special
5 revenues be subject to any tax, levy or assessment of any kind, including but
6 not limited to any bond forfeiture claims, any garnishment or general
7 creditors' claims, any remedies under Title 17 or other provisions of Arkansas
8 law.

9

10 SECTION 32. Section 23-65-101(a) of the Arkansas Code is hereby amended
11 to read as follows:

12 "(a) (1) No person shall in this state act as agent or broker for, or
13 otherwise represent or aid on behalf of another, any insurer or health
14 maintenance organization not then authorized to transact insurance in this
15 state, in the solicitation, negotiation, or effectuation of insurance,
16 inspection of risks, fixing of rates, investigation or adjustment of losses,
17 collection of premiums, or in any other manner in the transaction of insurance
18 with respect to subjects of insurance resident, located, or to be performed in
19 this state.

20 (2) (A) No person shall act as a solicitor, adjuster, consultant,
21 without first obtaining appropriate licensure or registration as required by
22 the insurance laws of this state for the transaction of insurance with respect
23 to subjects of insurance or self-insurance resident, located, or to be
24 performed in this state.

25 (B) No person shall act as a multiple employer trust,
26 multiple employer welfare arrangement, collectively-bargained or
27 self-insurance plan, or any other type of employee welfare benefit plan,
28 providing disability benefits to citizens of this state without first
29 obtaining appropriate registration as required by §23-92-101; provided,
30 however, this provision, while requiring registration and proof of their bona
31 fides, shall not be deemed to authorize regulation of multiple employer trusts
32 or multiple employer welfare arrangements, collectively-bargained or
33 self-insurance plans or any other type of employee welfare benefit plan which
34 are in fact exempt from regulation by this state under the Employee Retirement
35 Income Security Act of 1974, as amended.

1 (C) No person shall act as a third-party administrator for
2 *multiple employer trusts, multiple employer welfare arrangements,*
3 *collectively-bargained trusts or self-insurance plans providing disability*
4 *insurance benefits to the citizens of this state without first obtaining*
5 *appropriate registration as required by §23-92-201 et seq.*

6 (3) Whenever the commissioner shall have reason to believe that:

7 (A) Any person has been acting as an unauthorized insurer
8 in this state as defined in §23-60-102(12), in violation of §23-60-110 and
9 §23-63-201; or

10 (B) Any person has been acting as an agent or broker for,
11 or otherwise aiding on behalf of another, an unauthorized insurer or health
12 maintenance organization in this state in violation of subsection (1) of this
13 section; or

14 (C) Any person has been acting as an unauthorized licensee
15 or registrant in violation of subsection (a)(2) of this section; and that an
16 action by him in respect thereto would be in the best interests of the public,
17 he shall issue and serve upon such person by certified mail, return receipt
18 requested, an order containing a statement of the charges in that respect and
19 requiring such person immediately to cease and desist from the acts, methods
20 or practices stated. The commissioner may, in his discretion, order the
21 immediate suspension of any license or registration issued by him pending
22 further proceedings under subdivision (4) of this section.

23 (4) The order shall contain a provision that, within twenty (20)
24 days from receipt of the order, the person shall have an opportunity to be
25 heard in person or by counsel and to show cause why those acts, methods, or
26 practices are not in violation of the Arkansas Insurance Code, §23-60-101 et
27 seq. and why the commissioner should modify or set aside any order issued by
28 him under this section. Upon good cause shown, the commissioner shall permit
29 any person to intervene, appear, and be heard by counsel or in person at the
30 hearing."

31

32 SECTION 33. Arkansas Code 23-68-102 is hereby amended by adding new
33 subsection (14), which shall read as follows:

34 "(14) The term 'Hazardous Financially' as used in this chapter means the
35 existence of any condition or the omission or commission of any act which

1 would, in the reasonable discretion of the Commissioner, seriously affect the
2 advisability of an insurer's continued operation in this State, or as a result
3 of its financial condition or other matters, would render the insurer's
4 continued operation in this State perilous to the general public or to the
5 policyholders or creditors of the insurer. The Commissioner is authorized to
6 promulgate regulations to set forth standards by which he might make a
7 determination that the continued operation of an insurer might be 'hazardous
8 financially'."

9

10 SECTION 34. Arkansas Code Annotated §23-68-106 is amended to read as
11 follows:

12 "The Commissioner may apply to the court for an order appointing him in
13 his official capacity and his successors in office as receiver of and
14 directing him to rehabilitate a domestic insurer upon one (1) or more of the
15 following grounds:

16 (1) The insurer is impaired or insolvent;

17 2) The insurer has refused to submit any of its books, records,
18 accounts, or affairs to reasonable examination by the commissioner;

19 (3) The insurer has concealed or removed records or assets or otherwise
20 violated §23-69-134;

21 (4) The insurer has failed to comply with an order of the Commissioner
22 to make good an impairment of capital or surplus or both;

23 (5) The insurer has transferred or attempted to transfer substantially
24 its entire property or business, or has entered into any transaction the
25 effect of which is to merge substantially its entire property or business in
26 that of any other insurer without having first obtained the written approval
27 of the commissioner;

28 (6) The insurer has willfully violated its charter or articles of
29 incorporation or any law of this state;

30 (7) The insurer has an officer, director, or manager who has refused to
31 be examined under oath concerning its affairs;

32 (8) The insurer has been or is the subject of an application for the
33 appointment of a receiver, trustee, custodian, or sequestrator of the insurer
34 or its property otherwise than pursuant to the provisions of this code, but
35 only if the appointment has been made or is imminent and its effect is or

1 would be to oust the courts of this state of jurisdiction hereunder;

2 (9) The insurer has consented to an order through a majority of its
3 directors, stockholders, members or subscribers;

4 (10) The insurer has failed to pay a final judgment rendered against it
5 in this state upon any insurance contract issued or assumed by it, within
6 thirty (30) days after the judgment became final, or within thirty (30) days
7 after the time for taking an appeal has expired, or within thirty (30) days
8 after dismissal of an appeal before final termination, whichever date is the
9 later;

10 (11) The insurer is in such condition that the further transaction of
11 business would be hazardous financially to its policyholders, creditors or the
12 public;

13 (12) There is a reasonable cause to believe that there has been
14 embezzlement from the insurer, wrongful sequestration or diversion of the
15 insurer's assets, forgery or fraud affecting the insurer, or other illegal
16 conduct in, by, or with respect to the insurer that if established would
17 endanger assets in an amount threatening the solvency of the insurer;

18 (13) The insurer has failed to remove any person who in fact has
19 executive authority in the insurer, whether an officer, manager, general
20 agent, employee, or other person if the person has been found after notice and
21 hearing by the Commissioner to be dishonest or untrustworthy in a way
22 affecting the insurer's business;

23 (14) Control of the insurer, whether by stock ownership or otherwise,
24 and whether direct or indirect, is in a person or persons found after notice
25 and hearing to be untrustworthy; or

26 (15) The insurer has failed to file its *annual* statement or other
27 financial report required by law within the time allowed by law and, after
28 written demand by the Commissioner, has failed to give an adequate explanation
29 immediately."

30

31 SECTION 35. Subsection (a) of Arkansas Code 23-76-107 is hereby amended
32 to read as follows:

33 "(a) Any corporation which meets the requirements of 23-76-101 et seq.
34 may apply to the commissioner for and obtain a certificate of authority to
35 establish and operate a health maintenance organization."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SECTION 36. Arkansas Code 23-76-127 is hereby amended by adding new subsection (c) to the end of the existing section to read as follows:

"(c) Every health maintenance organization subject to this chapter shall pay to The State Insurance Department Trust Fund as special revenues the following fees:

(1) For filing and reviewing all documents necessary for issuance of original certificate of authority, one thousand dollars (\$1,000);

(2) For issuance of the original certificate of authority, two hundred dollars (\$200);

(3) For annual renewal of the certificate of authority, one hundred dollars (\$100);

(4) For filing an annual statement, fifty dollars (\$50.00); and

(5) For filing amendments to documents required under 23-76-107, one hundred dollars (\$100)."

SECTION 37. Arkansas Code Section 23-68-126 is hereby amended by the addition of the following subsection (c):

"(c) Every claim under a separate account established under the provisions of Arkansas Code §23-81-402 (providing that the income, gains, and losses, realized and unrealized, from assets allocated to the separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the life insurance company, and, to the extent provided under the applicable contracts, that that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to the separate account shall not be chargeable with liabilities arising out of any other business the company may conduct) shall be satisfied out of the assets in the separate account equal to the reserves maintained in such account for such contracts. To the extent, if any, reserves maintained in such separate account are in excess of the amounts needed to satisfy claims under such separate account contracts, the excess shall be treated as general assets of the life insurance company."

SECTION 38. Subsection (a) of Arkansas Code 23-77-109 is hereby amended to read as follows:

1 "(a) Each licensed automobile club or association shall annually on or
2 before April 1, or within any extension of time therefor which the Insurance
3 Commissioner for good cause may have granted, file with the commissioner a
4 full and true statement of its financial condition, transactions, and affairs
5 as of the December 31 preceding. The statement shall be in a general form and
6 context as required or not disapproved by the commissioner."
7

8 SECTION 39. Subdivision (1) of Subsection (a) of Arkansas Code
9 23-79-109 is hereby amended to read as follows:

10 "(1) This subsection shall not apply to commercial umbrella policy or
11 coverage forms, excess umbrella policy or coverage forms, excess of loss
12 policy or coverage forms, public officials liability policy or coverage forms,
13 fiduciary liability policy or coverage forms, directors and officers liability
14 policy or coverage forms, kidnap and ransom policy or coverage forms,
15 political risk policy or coverage forms, expropriation coverage policy or
16 coverage forms, mortgage pool insurance policy or coverage forms, railroad
17 protective liability policy or coverage forms, equity loan programs (second
18 mortgage coverage) policy or coverage forms, highly protected risk forms,
19 surety bonds, nor to policies, orders, endorsements, or forms of unique
20 character designed for, and used with relation to, insurance upon a particular
21 subject, or which relate to the manner of distribution of benefits or to the
22 reservation of rights and benefits under life and disability insurance
23 policies and are used at the request of the individual policyholder, contract
24 holder, or certificate holder. The exemption of a particular type of
25 insurance policy form from the requirement that it be filed with the
26 commissioner and expressly approved thereby is not to be taken by an insurer
27 as meaning that any insurance effected by use of such form may in any fashion
28 be inconsistent with the statutory and common law of this state which is
29 properly applicable thereto."
30

31 SECTION 40. Arkansas Code 23-79-119 is hereby amended to read as
32 follows:

33 "23-79-119. Construction of policies.

34 (a) Every insurance contract shall be construed according to the
35 entirety of its terms and conditions as set forth in the policy and as

1 amplified, extended, or modified by any rider, endorsement, or application
2 made a part of the policy.

3 (b) All insurance contracts which are issued for specific terms and
4 which may be renewed for subsequent terms at the option of the insured and/or
5 the insurer shall be construed from and after their respective dates of
6 renewal as being new contracts to the extent of having incorporated therein
7 all applicable public policy which by statute or regulation may have become
8 applicable to such contracts in the interval between: (i) original issuance or
9 last renewal, and (ii) the renewal following the newly applicable statement of
10 public policy."

11

12 SECTION 41. Arkansas Code 23-81-402 is hereby amended to read as
13 follows:

14 "A domestic life insurance company may establish one (1) or more
15 separate accounts and may allocate thereto amounts including, without
16 limitation, proceeds applied under optional modes of settlement or under
17 dividend options to provide for life insurance or annuities, and benefits
18 incidental thereto, payable in fixed or variable amounts, or subject to a
19 market value adjustment as provided in rules and regulations adopted by the
20 commissioner, subject to the following:

21 (1) The income, gains, and losses, realized or unrealized, from assets
22 allocated to a separate account shall be credited to or charged against the
23 account, without regard to other income, gains, or losses of the company or to
24 any other separate account of the company;

25 (2) Except as may be provided with respect to reserves for guaranteed
26 benefits and funds referred to in subdivision (3) of this section, amounts
27 allocated to any separate account and accumulations thereon may be invested
28 and reinvested without regard to any requirements or limitations prescribed by
29 the laws of this state governing the investments of life insurance companies.
30 The investments in the separate accounts shall not be considered when
31 applying the investment limitations otherwise applicable to the investments of
32 the company;

33 (3) Except with the approval of the Insurance Commissioner and under
34 such conditions as to investments and other matters as he may prescribe, which
35 shall recognize the guaranteed nature of the benefits provided, reserves for

1 benefits guaranteed as to dollar amount and duration and funds guaranteed as
2 to principal amount or stated rate of interest shall not be maintained in a
3 separate account;

4 (4) Unless otherwise approved by the commissioner, assets allocated to
5 a separate account shall be valued at their market value on the date of
6 valuation, with the exception of separate accounts supporting modified
7 guaranteed annuities which shall be valued as provided in such rules and
8 regulations as the commissioner shall adopt, or if there is no readily
9 available market, then as provided under the terms of the contract or the
10 rules or other written agreement applicable to such separate account.
11 However, unless approved by the commissioner, the portion if any of the assets
12 of the separate account equal to the company's reserve liability with regard
13 to the guaranteed benefits and funds referred to in subdivision (3) of this
14 section shall be valued in accordance with the rules otherwise applicable to
15 the company's assets;

16 (5) Amounts allocated to a separate account in the exercise of the
17 power granted by this subchapter shall be owned by the company. The company
18 shall not be, nor hold itself out to be, a trustee with respect to the
19 amounts. If and to the extent so provided under the applicable contracts,
20 that portion of the assets of any such separate account equal to the reserves
21 and other contracts liabilities with respect to the account shall not be
22 chargeable with liabilities arising out of any other business the company may
23 conduct; provided, however, that in no event shall the assets in a separate
24 account for support of modified guaranteed annuity contracts subject to a
25 market adjustment as hereinabove provided be immune from liabilities arising
26 out of any other business the company conducts.

27 (6) No sale, exchange, or other transfer of assets may be made by a
28 company between any of its separate accounts or between any other investment
29 account and one (1) or more of its separate accounts unless, in case of a
30 transfer into a separate account, the transfer is made solely to establish the
31 account or to support the operation of the contracts with respect to the
32 separate account to which the transfer is made, and unless such transfer,
33 whether into or from a separate account, is made by a transfer of cash, or by
34 a transfer of securities having a readily determinable market value, provided
35 that the transfer of securities is approved by the commissioner. The

1 commissioner may approve other transfers among accounts if, in his opinion,
2 the transfers would not be inequitable;

3 (7) To the extent the company deems it necessary to comply with any
4 applicable federal or state laws, the company, with respect to any separate
5 account, including, without limitation, any separate account which is a
6 management investment company or a unit investment trust, may provided for
7 persons having an interest therein appropriate voting and other rights and
8 special procedures for the conduct of the business of the account, including,
9 without limitation, special rights and procedures relating to investment
10 policy, investment advisory services, selection of independent public
11 accounts, and the selection of a committee, the members of which need not be
12 otherwise affiliated with the company, to manage the business of the account."
13

14 SECTION 42. Repealer. Arkansas Code Annotated Section 23-85-135, ruled
15 unconstitutional by the Chancery Court of Pulaski County in 1985, is hereby
16 repealed.

17

18 SECTION 43. Arkansas Code 23-97-210 is hereby amended to read as
19 follows:

20 "(a) Effective one year from the effective date of this act no
21 long-term care insurance policy or certificate may be delivered or issued for
22 delivery in this State if such policy or certificate:

23 (1) Conditions eligibility for any benefits on a prior
24 hospitalization requirement; or

25 (2) Conditions eligibility for benefits to be provided in an
26 institutional care setting on the receipt of a higher level of institutional
27 care; or

28 (3) Conditions eligibility for any benefits other than waiver of
29 premium, post-confinement, post-acute care or recuperative benefits on a prior
30 institutionalization requirement.

31 (b) Effective one year from the effective date of this act a long term
32 care insurance policy or certificate containing any limitations or conditions
33 for eligibility specified in subsection (a)(3) shall clearly label in a
34 separate paragraph of the policy or certificate entitled Limitations or
35 Conditions on Eligibility for Benefits such limitations or conditions,

1 including any required number of days of confinement.

2 (c) A long-term care insurance policy or certificate:

3 (1) Containing a benefit advertised, marketed, or offered as a
4 home health care or home care benefit may not condition receipt of benefits on
5 a prior institutionalization requirement;

6 (2) Which conditions eligibility of noninstitutional benefits on
7 the prior receipt of institutional care shall not require a prior
8 institutional stay of more than thirty (30) days for which benefits are paid;

9 (3) Which provides for waiver of premium, post-confinement,
10 post-acute care, or recuperative benefits only following institutionalization
11 shall not condition such benefits upon admission to a facility for the same or
12 related conditions within a period of less than thirty (30) days after
13 discharge from the institution."
14

15 *SECTION 44. DOMICILED INSURERS_ PREMIUM TAX CREDIT FOR CERTAIN FEES*
16 *PAYABLE TO OTHER JURISDICTIONS.*

17 (a) *If, by the laws of any state other than Arkansas or by the*
18 *retaliatory laws of any state other than Arkansas, any insurer domiciled in*
19 *Arkansas on or after the effective date of this Act shall be required to pay*
20 *any fee based on the insurer's premium volume in such other state of*
21 *licensure, and the fee imposed by such other state is due and payable either*
22 *because the administrative and financial regulatory fee ("financial fee")*
23 *based on premium volume assessed by The State Insurance Department Trust Fund*
24 *Act of 1993 ("Arkansas Act" or "Act"), as it is popularly known, on insurers*
25 *licensed in Arkansas and organized or domiciled in such other state is greater*
26 *than the comparable fee assessed in such other state, or such other state has*
27 *no comparable fee but requires payment on a retaliatory basis, then to the*
28 *extent such fee amounts are legally due and are paid in such other state, any*
29 *insurer domiciled in Arkansas on and after the effective date of this Act may*
30 *claim a dollar for dollar credit for such fees paid against its annual premium*
31 *taxes due the State of Arkansas under §26-57-601, et seq., but such credit*
32 *shall only be calculated on the amount which would not have been required to*
33 *be paid in such other state of licensure in the absence of the existence of*
34 *the financial fee assessed under the Act, and in no event shall the credit*
35 *permitted by this Section exceed ninety percent (90%) of the insurer's annual*

1 premium tax due the State of Arkansas.

2 (b) Credits for fees paid in states of licensure other than Arkansas in
3 calendar 1993 shall be allowed insurers domiciled in this State pursuant to
4 subsection (a) of this Section against annual Arkansas premium taxes reported
5 and paid on March 1, 1994; and in subsequent years, such credits permitted in
6 subsection (a) of this Section shall be reported annually on March 1st. The
7 Insurance Commissioner shall prescribe the forms for reporting such credits;
8 and further shall examine insurer claims for credit made under this Act. If
9 the Insurance Commissioner shall determine that any amount for which a credit
10 shall have been claimed was not legally due to another state, or that an error
11 exists in the amount of credit shown on such return, or the amount claimed is
12 a refund or refunded, the Insurance Commissioner shall take appropriate action
13 under any and all civil and administrative Arkansas laws at his disposal,
14 including suspension or revocation of the Arkansas certificate of authority of
15 the noncomplying insurer, for collection and recovery of the premium tax due
16 resulting from the disallowance of a claim for credit made under this Section
17 or to disallow any such claim for refund.

18

19 SECTION 45. Arkansas Code 23-90-103(2) is hereby amended to read as
20 follows:

21 "(2) 'Covered claim' is an unpaid claim of an insured or third party
22 liability claimant which arises out of and is within the coverage and not in
23 excess of the applicable limits of an insurance policy to which this chapter
24 applies, and which is issued or assumed, whereby an assumption certificate is
25 issued to the insured, by an insurer licensed to do business in this state, in
26 cases where the insurer becomes an 'insolvent insurer' and the third party
27 claimant or liability claimant or insured is a resident of this state at the
28 time of the insured event, or the property from which the claim arises is
29 permanently located in this state. Covered claims shall also include one
30 hundred percent (100%) of unearned premiums up to an amount not exceeding
31 twenty-five thousand dollars (\$25,000) per policy. Individual covered claims
32 shall be limited to three hundred thousand dollars (\$300,000) and shall not
33 include any amount in excess of three hundred thousand dollars (\$300,000).
34 Covered claim shall not include an unpaid claim of an insured or third party
35 liability claimant whose net worth as of December 31 of the year next

1 preceding the date the insurer becomes an 'insolvent insurer' exceeds fifty
2 million dollars (\$50,000,000); provided that an insured_s or third party
3 liability claimant's net worth on such date shall be deemed to include the
4 aggregate net worth of the insured or third party liability claimant and all
5 of its affiliates as calculated on a consolidated basis. Covered claim shall
6 not include any amount awarded as punitive or exemplary damages, sought as
7 return of premium under any retrospective rating plan or due any reinsurance,
8 insurer, insurance pool, or underwriting association, as subrogation
9 recoveries or otherwise. Covered claim shall not include supplementary
10 payment obligations, including, but not limited to, adjustment fees and
11 expenses, attorneys_ fees and expenses, court costs, interest, and bond
12 premiums incurred prior to the determination that an insurer is an insolvent
13 insurer under this chapter. With respect to a covered claim for unearned
14 premiums, persons who were residents of this state at the time the policy was
15 issued and persons who are residents of this state at the time the company is
16 found to be an insolvent insurer shall be considered to have covered claims
17 under this chapter."

18

19 SECTION 46. On and after the effective date of The State Insurance
20 Department Trust Fund Act as it is popularly known, but commencing no later
21 than July 1, 1993, the Insurance Commissioner shall at the end of each
22 biennium period thereafter cause to be transferred into the General Revenue
23 Fund Account the excess of The State Insurance Department Trust Fund monies
24 over an amount equal to three (3) fiscal year budgets for the Arkansas
25 Insurance Department.

26

27 SECTION 47. Arkansas Code 23-92-309 is hereby amended to read as
28 follows:

29 "23-92-309. License Fees.

30 An applicant shall pay as an annual fee for a license a sum to be
31 established by the commissioner, but not to exceed five thousand dollars
32 (\$5,000) per year. All such license fees shall be collected by the
33 commissioner and shall be deposited directly into The State Insurance
34 Department Trust Fund as special revenues, for the operation, personnel,
35 support and maintenance of the Arkansas Insurance Department, as provided in

1 The State Insurance Department Trust Fund Act of 1993, as it is popularly
2 known."

3

4 SECTION 48. Arkansas Code 23-61-301 is hereby amended to read as
5 follows:

6 "23-61-301. Examination, investigation, or hearing - Witnesses and
7 evidence.

8 (a) With respect to the subject of any examination, investigation, or
9 hearing being conducted by him, the commissioner may subpoena witnesses and
10 administer oaths or affirmations and examine any individual under oath and may
11 require and compel the production of records, books, papers, contracts, and
12 other documents.

13 (b) (1) Witness fees and mileage shall not be allowed as to any licensee
14 of the commissioner.

15 (2) Witness fees and mileage of persons or entities not licensees of
16 the commissioner, if claimed, shall be allowed the same as for testimony in a
17 circuit court; provided, however, that such claim must be made at the time,
18 date and place of the hearing to which the person or entity has been summoned,
19 and the amount thereof shall be processed in the same manner as are Insurance
20 Department employees_ requests for expense reimbursement from the State of
21 Arkansas.

22 (3) Witness fees, mileage, and the actual expense necessarily
23 incurred in securing attendance of witnesses and their testimony shall be
24 itemized and shall be paid by the person being examined or investigated if, in
25 the proceedings in which the witness is called, the person is found to have
26 been in violation of the law, or paid by the person, if other than the
27 commissioner, at whose request the hearing is held.

28 (c) Subpoenas of witnesses shall be served in the same manner as if
29 issued by a circuit court, and may be served by certified mail.

30 (1) If any individual fails to obey a subpoena issued and served
31 pursuant to this section with respect to any matter concerning which he may be
32 lawfully interrogated, upon application of the commissioner, the circuit court
33 of the county in which is pending the proceeding at which the individual was
34 required to appear, may issue an order requiring the individual to comply with
35 the subpoena and to testify.

1 (2) Any failure to obey the order of the court may be punished by
2 the court as a contempt thereof.

3 (d) If any officer, director, or manager of an insurer has refused, in
4 connection with examination of the insurer by the commissioner, to be examined
5 under oath concerning its affairs, then the commissioner is authorized to
6 conduct and enforce by all appropriate and available means any examination
7 under oath in any state or territory of the United States in which any
8 officer, director, or manager may then presently be to the full extent
9 permitted by the laws of the state or territory, this special authorization
10 considered.

11 (e) Any person willfully testifying falsely under oath in this state as
12 to any matter material to any examination, investigation, or hearing shall,
13 upon conviction, be guilty of perjury and punished accordingly."
14

15 SECTION 49. All provisions of this act of a general and permanent
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
17 Code Revision Commission shall incorporate the same in the Code.
18

19 SECTION 50. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.
24

25 SECTION 51. All laws and parts of laws in conflict with this act are
26 hereby repealed.
27

28 SECTION 52. EMERGENCY. It is hereby found and determined by the
29 General Assembly of the State of Arkansas that the present laws addressed in
30 this omnibus Act on workers' compensation benefits and insurance licensure and
31 other insurance regulatory issues are inadequate for the protection of the
32 Arkansas public and immediate passage of this Act is necessary in order to
33 provide for the protection of the public. Therefore, an emergency is hereby
34 declared to exist and this omnibus Act being necessary for the preservation of
35 the public peace, health and safety shall be in full force and effect from and

1 after its passage and approval.

2

3

/s/Rep. Newman

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35