

As Engrossed: 3/16/93 3/22/93 4/8/93

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

A Bill

HOUSE BILL 2051

For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS INSURANCE CODE TO AUTHORIZE
9 LICENSED LIFE INSURERS TO ENTER INTO FUNDING AGREEMENTS
10 WITH LIMITATIONS; AND FOR OTHER PURPOSES."

Subtitle

13 "TO AMEND THE INSURANCE CODE TO AUTHORIZE LICENSED LIFE
14 INSURERS TO ENTER INTO FUNDING AGREEMENTS WITH
15 LIMITATIONS."

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

19 *SECTION 1. Subchapter 1 of Chapter 62 of Title 23 is amended by adding*
20 *the following section to read as follows:*

21 *"23-62-110. Funding Agreements.*

22 *(a) Authorization. An insurer authorized to deliver or issue for*
23 *delivery annuity contracts in this state may deliver or issue for delivery one*
24 *or more funding agreements. Notwithstanding the definition of contracts of*
25 *insurance, life insurance, and endowment insurance or of annuities within*
26 *Subtitle 3 of Title 23 of the Arkansas Code, the issuance or delivery of a*
27 *funding agreement meeting the definition hereinafter set forth shall*
28 *constitute a lawful activity of that insurer which is reasonably related to*
29 *and incidental to its insurance activities and constitutes doing an insurance*
30 *business in this state.*

31 *(b) Definition. As used in this section, the term 'funding agreement'*
32 *means an agreement which authorizes an admitted life insurer to accept funds*
33 *and which provides for an accumulation of those funds for the purpose of*
34 *making one or more payments at future dates in amounts that are not based on*
35 *mortality or morbidity contingencies. However, the term 'funding agreement'*

1 does not include any agreement in connection with the funding of one or more
2 payments which are excludable from the gross income of the recipient under
3 Section 104(a)(2) of the United States Internal Revenue Code, as it may be
4 amended or renumbered from time to time; and, further, the term 'funding
5 agreement' shall not be construed so as to include any annuity contract.

6 (c) Issuance. Funding agreements may be issued to: (1) individuals or
7 (2) entities authorized by this state to engage in an insurance business; or
8 (3) entities other than individuals and other than persons or entities
9 authorized to engage in an insurance business, but only for the purpose of
10 funding benefits under any employee benefit plan as defined in the Employee
11 Retirement Income Security Act of 1974, as now or hereafter amended,
12 maintained in the United States or in a foreign country, (4) to fund any
13 employee benefit plan or program sponsored by the government of the United
14 States, the government of any state, foreign country or political subdivision
15 thereof, or any agency thereof and only if such agreement(s) is/are issued in
16 an amount of no less than \$500,000.00. Otherwise, funding agreements may only
17 be issued to any person or entity identified hereinabove, and in any sum, if
18 same are issued to fund an agreement providing for periodic payments in
19 satisfaction of a claim and pursuant to order of a court of competent
20 jurisdiction and/or a settlement agreement between the claimant, the putative
21 or apparent obligor.

22 (d) General Operation. No amounts shall be guaranteed or credited
23 under a funding agreement except upon reasonable assumptions as to investment
24 income and expenses and on a basis equitable to all holders of funding
25 agreements of a given class. The funding agreements shall not provide for
26 payments to or by the insurer based on mortality or morbidity contingencies.

27 (e) Allocation to separate accounts. Amounts paid to the insurer, and
28 proceeds applied under optional modes of settlement under the funding
29 agreements may be allocated by the insurer to one or more separate accounts
30 pursuant to Arkansas Code Section 23-81-402, but only if the insurer has
31 separately qualified to issue variable products and only if the policy owner
32 has elected and directed the insurer to invest the moneys backing the funding
33 agreement in variable accounts.

34 (f) Prior Contracts. Any and all funding agreements or guaranteed
35 investment contracts issued prior to the effective date of this act which do

1 not meet the definition of 'insurance', 'life insurance', or 'annuity' as
2 hereinabove set forth are, nonetheless, valid obligations of the respective
3 insurers issuing same according to the terms of the particular agreements.

4 (g) Rules. All basic or generic funding agreement forms shall be
5 submitted to the Insurance Commissioner for approval and pursuant to the
6 procedures at Arkansas Code Annotated Section 23-79-109. Further, the
7 commissioner may adopt rules relating to (1) the standards to be followed in
8 the approval of forms of the funding agreements, (2) the reserves to be
9 maintained by insurers issuing the funding agreements, (3) the accounting and
10 reporting of funds credited under the funding agreements, (4) the disclosure
11 of information to be given to holders and prospective holders of the funding
12 agreements, and (5) the qualification and compensation of persons selling the
13 funding agreements on behalf of insurers. Notwithstanding any other provision
14 of law, the commissioner has sole authority to regulate the issuance and sale
15 of the funding agreements, including the persons selling the funding
16 agreements on behalf of insurers."

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18 SECTION 2. All provisions of this act of a general and permanent nature
19 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
20 Revision Commission shall incorporate the same in the Code.

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22 SECTION 3. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

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28 SECTION 4. All laws and parts of laws in conflict with this act are
29 hereby repealed.

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31 SECTION 5. EMERGENCY. It is hereby found and determined by the General
32 Assembly that some insurance companies doing business within this state are
33 issuing contracts, typically or commonly denominated either funding agreements
34 or "guaranteed investment contracts" which do not meet the definition of
35 either "insurance" or "annuity" as otherwise set forth in this code and which,

1 accordingly, are beyond the technical authority of such companies to issue;
2 and further, the General Assembly finds that such activity should be permitted
3 to continue but only under the explicit control and regulation of the
4 insurance commissioner and only to the persons and entities and for the
5 purposes set forth herein. There being a potential danger of such agreements
6 being issued which do not meet the regulatory criteria herein set forth, and
7 such not being in the public interest, the foregoing Section 23-62-110 should
8 go into effect immediately to protect the public interest as soon as possible.
9 Therefore, an emergency is hereby declared to exist and this act being
10 necessary for the preservation of the public peace, health and safety shall be
11 in full force and effect from and after its passage and approval.

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/s/Jim von Grep

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