

"AN ACT TO AMEND CHAPTER 28 OF THE ARKANSAS INSURANCE CODE, THE SAME BEING ARKANSAS STATUTES ANNOTATED SECTIONS 66-2801 THROUGH 66-2838, AS TO AGENT LICENSING; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 146 (1) of Act 148 of 1959, the same being Arkansas Statute 66-2803 (1), is hereby amended to read as follows:

"(1) A 'resident agent' is an agent of a property, marine (other than wet marine and foreign trade insurance as defined in Section 69(4)(c), as amended), casualty, life, disability or surety insurer who resides in this State or who is licensed as a resident agent by the Commissioner in accordance with subsection (2) of this Section. Every reference herein to 'an agent, a resident of this State' and to 'a licensed agent, a resident of this State' shall include any duly licensed resident agent as herein defined."

SECTION 2. Section 154(3) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2811(3), is hereby amended to read as follows:

"(3)(a) No person shall be licensed to sell life or disability insurance in this State until such person shall take and pass, to the satisfaction of the Commissioner, a written examination to determine the competency of such person to be a life or disability insurance agent or broker.

The Commissioner shall prescribe the form and content of such examination and shall include therein questions calculated to determine the familiarity of the applicant with the laws of this State and the regulations of the Commissioner relative to life or disability insurance. Prior to the examination the Commissioner may issue a temporary license for a period not to exceed ninety (90) days.

(b) Upon receipt of application by a person for a license to act as agent to sell life or disability insurance in this State the Commissioner may investigate the character, experience and general trustworthiness of the applicant in such manner and to such extent as he shall deem necessary to determine the moral fitness of the applicant to sell life or disability insurance in this State. If after such investigation the Commissioner is satisfied that the applicant is morally fit to sell life or disability insurance in this State then he shall notify the applicant by mail of the time and place where such applicant may take the written examination required in subsection (a) hereof.

(c) If the employment of any life or disability insurance agent is terminated by an insurance company because of the said agent's misrepresentation of insurance policies to any person, for acts of fraud, or for any other reason, the insurance company shall notify the Commissioner of such dismissal and the reasons therefor. Such notice shall be a privileged communication. Upon receipt of such notice from any insurance company, the Commissioner shall, if he determines that such dismissal was because of misrepresentation of any insurance policy or for fraud or for violation of any of the laws of this State, immediately suspend the license of said insurance agent.

(d) The Commissioner shall maintain a file on each licensed life or disability insurance agent in this State. A complete record of all information furnished the Commissioner regarding the conduct of any life or disability insurance agent in this State shall be maintained. If the Commissioner receives information from any insurance company, or from any other person,

about acts of fraud by an insurance agent, or about misrepresentations of the terms and provisions of any life or disability insurance policy by said insurance agent, the Commissioner is directed to transmit such information to the proper authorities for legal action against such agent as authorized by the laws of this State.

(e) The provisions of this subsection (3) shall be supplemental to an shall not repeal any existing laws on the same subject."

SECTION 3. Section 1 of Act 484 of 1985, the same being Arkansas Statute 66-2812.1, is hereby amended to read as follows:

"Every firm or corporation licensed as an agent and every applicant for such a license shall file with the Commissioner the true name of the firm or corporation and also all fictitious names under which it conducts or intends to conduct its business and after licensing shall file with the Commissioner any change in or discontinuance of such names. The Commissioner may in writing disapprove the use of any name on any of the following grounds:

(a) the name is identical to or is similar to that of another licensed agency so as to confuse or otherwise mislead the public; or

(b) the name includes words or phrases that may mislead the public as to activities not authorized under such license or which are in violation of any insurance law or insurance regulation; or

(c) the name states, infers or implies that the firm or corporation is an insurer, motor club or hospital service plan or entitled to engage in insurance activities not permitted under the license applied for or held; or

(d) such other reasonable grounds as the Commissioner may determine."

SECTION 4. Section 156(9) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2813(9), is hereby amended to read as follows:

"(9) If the application is approved, and if the nonrefundable application fee is paid, an examination permit will be issued to the applicant. The permit will be valid for a period of ninety (90) days from date of issuance. If the applicant does not schedule and appear for examination within that ninety (90) day period, the permit shall expire and the applicant may be required to file a new application, and shall pay another nonrefundable application fee before issuance of another examination permit to the applicant. If an applicant appears for examination but fails to pass such examination, he shall be required to pay a nonrefundable reexamination fee before reexamination."

SECTION 5. Section 157 (1) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2814(1), is hereby amended to read as follows:

"(1) Within a reasonable time and in a location to be determined by the Commissioner, after filing of application and payment of the applicable fees, the Commissioner shall subject each applicant for license as agent, broker, or solicitor, unless exempted therefrom under subsection (7) of this Section, to a written examination."

SECTION 6. Section 157(6) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2814(6), is hereby amended to read as follows:

"(6) The Commissioner may give, conduct, and grade all examinations, or he may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner, and without unfair discrimination as between individuals examined. Any written examination may be supplemented by an oral examination of the applicant at the Commissioner's discretion. The Commissioner may require a waiting period of eight (8) weeks before reexamination of an applicant who twice failed to pass previous similar examinations."

SECTION 7. Section 158 of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2815, is hereby amended to read as follows:

"(1) The Commissioner may promptly issue licenses applied for to persons qualified therefor in accordance with this Act.

(2) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, kind or kinds of insurance covered, and the other conditions of the license.

(3) If the licensee agent or broker is a firm or corporation, the license shall also state the name of each individual authorized thereunder to exercise the license powers.

(4) If the licensee is a solicitor, the license shall state the name and address of the agent or broker to be represented.

(5) Every licensee shall notify the Commissioner, in writing, of any change in his residence address within ten (10) days of such change."

SECTION 8. Section 159 of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2816, is hereby amended to read as follows:

"(1) Qualified life or disability agents shall have one (1) appointment for each such insurer to be so represented as agent, and the same appointment may include both life and disability insurance.

(2) Qualified property, casualty, surety, or marine agents shall have one (1) appointment for each such insurer to be so represented as agent, and the same appointment may include property, casualty, surety, and marine insurance."

SECTION 9. Section 160 of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2817, is hereby amended to read as follows:

"(1) Each insurer appointing or licensing an agent in this State shall file with the Commissioner the appointment or license setting out the kinds of insurance to be transacted by the agent and pay the fee therefor.

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

(3) Biennially, prior to June 1, of each even-numbered year, each insurer maintaining a certificate of authority to transact life and disability insurance, and prior to June 1 of each odd-numbered year all other insurers, maintaining a certificate of authority to transact insurance in this State, shall file with the Commissioner an alphabetical list of the names and addresses of all its agents whose appointments or licenses in this State are to remain in effect, accompanied by payment of the biennial continuation of appointment fee as provided in Section 68, as amended. At the same time, the insurer shall also file with the Commissioner, an alphabetical list of the names and addresses of all its agents whose appointments or licenses in this State are not to remain in effect.

(4) Subject to the terms of the agency contract, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the Commissioner, and thirty (30) days advance notice to the agent by certified mail, return receipt requested; and such return receipt shall be retained as part of the insurer's records; provided, however, that less than thirty (30) days notice of cancellation to the agent may be given when the termination is for cause relating to the misconduct of the agent.

Any information as to the cause of termination of any such appointment

furnished the Commissioner as part of such notice of termination shall be deemed a privileged communication and shall not be admissible in evidence in any action or proceedings, other than those brought by the Commissioner; nor shall any agent whose appointment has been so terminated have a cause of action against the insurer or any of its officers, directors, or employees by reason of the furnishing of any such information to the Commissioner.

(5) The insurer shall promptly give written notice of nonrenewal of the agency appointment to the agent by certified mail, return receipt requested; and such return receipt shall be retained as part of the insurer's records.

(6) The Commissioner may require of the insurer proof that the insurer has given written notice of termination or nonrenewal of its appointment to an agent affected thereby."

SECTION 10. Section 162 of Act 148 of 1959, the same being Arkansas Statute 66-2819, is hereby amended to read as follows:

"A license as a broker shall cover property, casualty, surety and marine insurance and the Commissioner shall not issue a broker's license limited to particular lines of insurance; provided that a broker's license shall not include life or disability insurance."

SECTION 11. Section 163(1) of Act 148 of 1959, the same being Arkansas Statute 66-2820(1), is hereby amended to read as follows:

"(1) Every applicant for a broker's license and for a renewal license shall file with the application and shall thereafter maintain in force while so licensed, a bond in favor of the people of the State of Arkansas executed by an authorized surety insurer. The bond may be continuous in form, and total aggregate liability on the bond may be limited to payment of twenty-five thousand dollars (\$25,000.00). The bond shall be conditioned upon full accounting and due payment to the person entitled thereto, of funds coming into the broker's possession through insurance transactions under the license."

SECTION 12. Section 169 of Act 148 of 1959, the same being Arkansas Statute 66-2826, is hereby amended to read as follows:

"(1)(a) The Commissioner may license as a broker a person who is a licensed resident property, casualty, surety or marine agent or broker of another state, and who is otherwise qualified therefor under this chapter except as to residence, if under the laws of the State of his domicile a similar privilege is granted to persons resident or domiciled in Arkansas.

(b) Such a licensee shall not have the right to solicit Arkansas business in Arkansas, nor to solicit by mail or telephone Arkansas business in Arkansas, but shall have the right under his license to solicit outside the boundaries of this State and place insurance coverages on subjects of insurance resident, located or to be performed in Arkansas, if the policies are so issued in insurers authorized to transact insurance in this State and countersigned by an Arkansas agent of the insurer, where applicable.

(c) By reciprocal arrangements with the insurance supervisory official in such other state, the Commissioner may waive written examination of an applicant for license as nonresident broker, if such official certifies that the applicant is licensed as a resident agent or broker of such state, and has complied with its qualification standards therefor.

(d) As part of the application for any such license, the Commissioner shall require the applicant to file his written agreement, acknowledged under the oath of the applicant, that he will not during the period of the license directly or indirectly place insurance upon subjects resident, located or to be performed in this State, except by policies or contracts in insurers authorized to transact insurance in this State and countersigned by Arkansas

resident agents, where countersignature is required under this code.

(e) The fee for any such license shall be as stated in Section 68, as amended.

(2)(a) The Commissioner may license as a nonresident agent a person who is a licensed resident life or disability agent or broker of another state, and who is otherwise qualified therefor under this chapter except as to residence, if under the laws of the state of his domicile a similar privilege is granted to persons resident or domiciled in Arkansas.

(b) By reciprocal arrangements with the insurance supervisory official in such other state, the Commissioner may waive written examination of an applicant

for license as nonresident agent, if such official certifies that the applicant is licensed as a resident agent or broker of such state, and has complied with its qualification standards therefor.

(c) A nonresident life or disability agent shall have one (1) appointment for each such insurer to be so represented, and the same appointment may include both life and disability insurance.

(d) As part of the application for any such license, the Commissioner shall require the applicant to file his written agreement, acknowledged under the oath of the applicant, that he will not during the period of the license directly or indirectly place insurance upon subjects resident, located or to be performed in this State, except by policies or contracts in insurers authorized to transact insurance in this State and countersigned by Arkansas resident agents, where countersignature is required under this code.

(e) The fee for any such license shall be as stated in section 68, as amended.

(3)(a) Upon the nonresident broker's or nonresident agent's change of residence to the State of Arkansas, each such licensee shall apply for and obtain a resident agent's license within ninety (90) days of such change of residence to this State. The nonresident broker or nonresident agent license of such person shall cease to be valid ninety (90) days after such change of residence to this State.

(b) If any nonresident broker or nonresident agent fails to obtain a resident agent's license within such time period, the Commissioner in his discretion may refuse to issue a resident agent's license to such person; or upon issuance of such license, may suspend such license for up to twelve (12) months; and may impose an administrative penalty upon such person in the amount of three hundred dollars (\$300), or if the Commissioner has found willful misconduct or willful violation on the part of such person, one thousand dollars (\$1,000). This administrative penalty may, in the Commissioner's discretion, be augmented by an amount equal to any commissions received by or accruing to the credit of such person with regard to any transactions occurring after the expiration of such ninety (90) day period as provided in subsection (3) (a) of this Section.

(4) A nonresident broker's license or a non resident agent's license may be suspended or revoked for violation of the agreement referred to in subsections (1)(d) and (2)(d) of this Section or for any other cause for which the license of a resident agent or broker may be revoked."

SECTION 13. Section 170 of Act 148 of 1959, the same being Arkansas Statute 66-2827, is hereby amended to read as follows:

"(1) Application for an acceptance of a license as a nonresident broker or a nonresident agent under section 169, as amended, or as an agent pursuant to the provisions of Sections 153 or 154, as amended for the licensing of individuals who are not actual residents of this State, shall thereby be deemed to constitute irrevocable appointment of the Commissioner as the agent of such licensee for the acceptance of service of process issued in this State

in any action or proceeding against the licensee arising out of such licensing or at any time out of transactions under the license.

(2) Duplicate copies of such process shall be served upon the Commissioner or upon his deputy, assistant, or other person in charge of his office during his absence. Upon receiving such service the Commissioner shall promptly forward a copy thereof by registered mail, return receipt requested, to the nonresident licensee at his business address last of record with the Commissioner. Where process is served upon the Commissioner as a nonresident's process agent, the licensee shall be required to appear, answer, or plead within thirty (30) days after date of the mailing of the copy of such process by the Commissioner.

(3) Process served upon the Commissioner and a copy forwarded shall for all purposes constitute service upon the person licensed."

SECTION 14. Section 173 of Act 148 of 1959, the same being Arkansas Statute 66-2830, is hereby amended to read as follows:

"(1) No insurer shall directly or indirectly pay, and no person shall so receive any fee, commission or other compensation for services as agent, broker, or solicitor in connection with any insurance of a subject resident, located or to be performed in this State, or for obtaining any such insurance, unless at the time of the service to which such compensation is related such person was licensed as such agent, broker, or solicitor, or as a nonresident broker or nonresident agent.

(2) No such licensee shall directly or indirectly share his commission or other compensation received or to be received on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transaction. This provision shall not affect payment of the regular salaries due employees of the licensee, or the distribution in regular course of business of compensation and profits among members of stockholders if the licensee is a firm or corporation.

(3) If a licensed nonresident broker or nonresident agent resides in a state which requires its resident agents to retain all or a stipulated percentage of the commission on coverages placed in such state by nonresident agents or brokers, the Arkansas agent shall retain not less than a like percentage of the commission for his services for like coverage placed in Arkansas by residents of such other state.

(4) This Section shall not apply as to those transactions with surplus line brokers which are lawful under Section 196, nor as to life or disability insurance placed as provided in Section 175."

SECTION 15. Section 176(1) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2833(1), is hereby amended to read as follows:

"(1) No person shall in this State act as or hold himself out to be an adjuster unless then licensed therefor under this chapter. Application for license shall be made to the Commissioner according to forms as prescribed and furnished by him. The Commissioner shall issue the adjuster's license for property insurance, or for casualty insurance, or for workers compensation insurance, or for any combination thereof as to individuals qualified therefor upon payment of the nonrefundable license fee stated in Section 68, as amended."

SECTION 16. Section 176(2)(c) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2833(2)(c), is hereby amended to read as follows:

"(c) Must be a full-time salaried employee of a licensed adjuster, or a graduate of a recognized law school, or must have had experience or a special education or training as to the handling of property, casualty, or workers com-

pensation loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster."

SECTION 17. Section 176(2)(f) of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2833(2)(f), is hereby amended to read as follows:

"(f)(i) Must pass such written examination as to his competence to act as a property, casualty, or workers compensation insurance adjuster as shall be required by the Commissioner. The Commissioner may give, conduct and grade all examinations or he may arrange to have examinations administered and graded by an independent testing service as specified by contract, in a fair and impartial manner, and without unfair discrimination as between individuals examined. The Commissioner may require a waiting period of eight (8) weeks before reexamination of an applicant who twice failed to pass previous similar examinations. The nonrefundable application fee shall be the same as that charged an applicant for license as an agent, broker, or solicitor under Section 68, as amended. Such examination requirement shall be effective only as to all resident applicants for license as an adjuster hereunder beginning January 1, 1986.

(ii) If the application is approved and if the nonrefundable application fee is paid, an examination permit will be issued to the applicant. The permit will be valid for a period of ninety (90) days from date of issuance. If the applicant does not schedule and appear for examination within that ninety (90) day period, the permit shall expire and the applicant may be required to file a new application and shall pay another nonrefundable application fee before issuance of another examination permit to the applicant. If the applicant appears for examination but fails to pass such examination, he shall be required to pay a nonrefundable reexamination fee before reexamination."

SECTION 18. Section 177 of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2834, is hereby amended to read as follows:

"(1)(a) All adjuster, and nonresident life and disability agent licenses, and all agent licenses as to life and/or disability insurance only, shall continue in force until expired, suspended, revoked or terminated but subject to payment to the Commissioner biennially on or before June 1 of even-numbered years of the applicable continuation fee as stated in Section 68, as amended, accompanied by written request for such continuation. As to a solicitor's license, such request shall be signed by the agent or broker by whom the licensee is employed.

(b) All other licenses or appointments, not previously set forth in this Section above, shall continue in force until expired, suspended, revoked, or terminated, but subject to payment to the Commissioner biennially on or before June 1 of odd-numbered years of the applicable continuation fee as stated in Section 68, as amended, accompanied by written request for such continuation.

(2)(a) Any license referred to in Subsection (1)(a) as to which such fee and request for continuation is not received by the Commissioner as required in Subsection (1)(a), shall be deemed to have expired as of midnight on June 30, next following. Request for continuation of any such license or appointment and/or payment of the continuation fee therefor which is received by the Commissioner after such June 1, and prior to the next following July 15, shall be accepted and effectuated by the Commissioner if accompanied by a biennial continuation fee in twice the amount otherwise required.

(b) Any license or appointment referred to in Subsection (1)(b) as to which such fee and request for continuation is not received by the Commissioner as required in Subsection (1)(b), shall be deemed to have expired as of midnight on June 30, next following. Request for continuation of any

such license or appointment and/or payment of the continuation fee therefor which is received by the Commissioner after such June 1, and prior to the next following July 15, shall be accepted and effectuated by the Commissioner, if accompanied by a biennial continuation fee in twice the amount otherwise required.

(3) The license of an agent shall continue in force as long as there is in effect as shown by the Commissioner's records an appointment or appointments, as agent of authorized insurer, covering collectively all of the kinds of insurance included in the agent's licenses.

(4) This Section shall not apply to temporary licenses issued under Section 167."

SECTION 19. Section 178 of Act 148 of 1959, as amended, the same being Arkansas Statute 66-2835, is hereby amended to read as follows:

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

(a) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner;

(b) Violation of or noncompliance with any applicable provision of this code, or for violation of any lawful rule, regulation, or order of the Commissioner;

(c) Obtaining or attempting to obtain any such license through misrepresentation or fraud;

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

(e) Conviction of a felony;

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

(g) Failing to provide a written response after receipt of a written inquiry from the Commissioner or his representative as to transactions under the license, within thirty (30) days after receipt thereof, unless such timely written response is waived by the Commissioner.

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

(3) If the Commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license or permit, the Commissioner may in his discretion impose upon the licensee or permittee an administrative penalty in the amount of Three Hundred Dollars (\$300.00), or if the Commissioner has found willful misconduct or willful violation on the part of the licensee or permittee, One Thousand Dollars (\$1,000.00). The administrative penalty may, in the Commissioner's discretion, be augmented by an amount equal to any commissions received by or accruing to the credit of the licensee for any transaction related to the proceeding against such licensee.

(4)(a) If the Commissioner finds upon notice and hearing that such licensee has violated a provision of the insurance laws of this State or any rule, regulation, or order of the Commissioner, and that such licensee previously has been found to have violated provisions of the insurance laws of this State or any rule, regulation or order of the Commissioner by an order of the Commissioner after a hearing or by an order entered with the consent and agreement of the parties, the Commissioner may take judicial notice of such previous orders against such licensee, and without an abuse of discretion may enhance or increase the penalties ordered in the current proceeding as to such licensee, and the Commissioner shall incorporate a finding to that

effect in his order.

(b) Statutory or regulatory violations for which an order has been entered as to such licensee by the insurance department in any other jurisdiction may be taken into consideration and included in assessing the enhanced or increased penalties provided in Subsection (4)(a) of this Section."

SECTION 20. Section 179(3) of Act 148 of 1959, the same being Arkansas Statute 66-2836(3), is hereby amended to read as follows:

"(3) The Commissioner may not again issue a license under this Code to any person whose license has been revoked, until after expiration of one (1) year, and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this Code."

SECTION 23. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 24. If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and for this purpose, the provisions of this Act are separable.

SECTION 25. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: 4/4/87

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