

"AN ACT TO AUTHORIZE THE INSURANCE COMMISSIONER OF THE STATE OF ARKANSAS TO CREATE RISK SHARING PLANS FOR PROPERTY AND/OR CASUALTY INSURANCE WHICH IS NOT REASONABLY AVAILABLE IN THE VOLUNTARY MARKET; AND FOR OTHER PURPOSES."

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

SECTION 1. The purpose of this Act is to provide for the establishment of risk sharing plans for property and/or casualty insurance if the Insurance Commissioner determines that such insurance is not reasonably available in the voluntary market for the citizens of this State. This Act is not intended to conflict with the provisions as to other risk sharing plans established under prior law or in the Arkansas Insurance Code and, in particular, the provisions of Section 9 of Initiated Act No. 4 of 1948, as amended, Section 86 of Act 347 of 1953, as amended, and of Act 25 of 1985 (First Extraordinary Session).

SECTION 2. If the Insurance Commissioner finds, after a hearing, that in all or in any part of this State, any amount or kind of insurance authorized by Sections 75 and 76 of Act 148 of 1959, as amended, is not reasonably available in the voluntary market and that the public interest requires the availability of that insurance, he shall direct insurers doing business within this State to prepare a voluntary plan which will provide such insurance coverage. The plan shall be submitted to the Commissioner within such time as he designates and, if approved by him, may be put into operation. If such plan is not approved by the Commissioner, or if such plan is not submitted as required, the Commissioner may promulgate a plan to provide insurance coverage for any risks in this State which are, based on reasonable underwriting standards, entitled to obtain coverage but are otherwise unable to obtain coverage in the voluntary market.

SECTION 3. (A) Each plan promulgated or prepared pursuant to Section 2 shall:

- (1) give consideration to:
 - (a) the need for adequate and readily accessible coverage;
 - (b) optional methods of improving the market affected;
 - (c) the inherent limitations of the insurance mechanism;
 - (d) the need for reasonable underwriting standards; and
 - (e) the requirement of reasonable loss prevention measures;
 - (2) establish procedures that will create minimum interference with the voluntary market;
 - (3) distribute the obligations imposed by the plan, and any profits or losses experienced by the plan, equitably and efficiently among the participating insurers; and
 - (4) establish procedures for applicants and participants to have their grievances reviewed by an impartial body. The filing and processing of a complaint or grievance pursuant to this subsection does not waive or stay the requirement for participation in the plan.
 - (5) establish a rating plan which shall be actuarially sound.
- (B) Each plan may, on behalf of its participants:
- (1) issue policies of insurance to eligible applicants;
 - (2) underwrite, adjust, and pay losses on insurance issued by the plan;
 - (3) appoint a service company or companies to perform the functions

enumerated in this subsection; and

- (4) obtain reinsurance for any part or all of its risks.

SECTION 4. Participation by insurer in the losses and expenses of the plan shall be in the proportion that the direct written premiums of the insurer written in this state bears to the total aggregate written premium written in this state. Premiums which serve as the basis for participation in other risk sharing plans established under prior law shall be excluded both from the insurers direct written premium and the total aggregate direct written premium in determining participation in the losses and expenses of the plan.

SECTION 5. Each plan shall provide for:

- (A) the method of classifying risks;
- (B) the making and filing of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the various risks insured by the plan;
- (C) the adjusting and processing of claims;
- (D) the commission rates to be paid to agents or brokers for coverages written by the plan; and
- (E) any other insurance of investment functions that are necessary for the purpose of providing adequate and readily accessible coverage.

SECTION 6. There is hereby created a Governing Board of seven (7) members to be appointed by the Insurance Commissioner, which shall meet as necessary to review and prescribe operating procedures and rules to implement any plan promulgated pursuant to this Act. The Governing Board shall be comprised of the following members:

- (1) The Insurance Commissioner, who shall serve as Chairman;
- (2) Two (2) representatives from insurers duly licensed to operate in this State;
- (3) Two (2) representatives who are licensed insurance agents in this State;
- (4) Two (2) consumer representatives.

SECTION 7. Every participating insurer and agent shall provide to any person seeking the insurance available in each plan, information about the services prescribed in the plan, including full information on the requirements and procedures for obtaining insurance under the plan.

SECTION 8. There shall be no liability on the part of, and no cause of action shall arise against the Commissioner, his representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this Act.

SECTION 9. The Commissioner shall have the authority to promulgate rules and regulations necessary to effectuate the purpose of this Act.

SECTION 10. All laws and parts of laws in conflict with this Act are hereby repealed. This Act shall be deemed cumulative of prior laws, and no prior law or part of a law shall be deemed to be in conflict with this Act unless failure to so determine would prevent giving effect to an explicit provision of this Act.

SECTION 11. EMERGENCY. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered

by this Act are inadequate for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: April 13, 1987