

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**

**A Bill ACT 723 OF 1991**  
**HOUSE BILL 1792**

4 **By: Representatives D. Roberts and M. Wilson**

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**For An Act To Be Entitled**

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS  
9 INSURANCE CODE, THE SAME BEING ARKANSAS CODE ANNOTATED  
10 SECTIONS 23-61-101 THROUGH 23-63-1104; AND FOR OTHER  
11 PURPOSES."

12

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

14

15 SECTION 1. Arkansas Code 23-61-106(a) is hereby amended to read as  
16 follows:

17 "(a) (1) The commissioner or any deputy, examiner, assistant, or  
18 employee of the commissioner shall not be financially interested, directly or  
19 indirectly, in any insurer, insurance agency, or insurance transaction except  
20 as:

21 (A) A policyholder or claimant under a policy;

22 (B) A grantor of a mortgage or similar instrument on such person's  
23 residence to a regulated entity if done under customary terms and in the  
24 ordinary course of business; or

25 (C) A settlor or beneficiary of a 'blind trust' into which any  
26 otherwise impermissible holdings have been placed.

27 (2) Notwithstanding the requirements of subsection (a) (1), the  
28 commissioner may employ or retain, from time to time, insurance actuaries,  
29 technicians, or other professional personnel who are independently practicing  
30 their professions even though similarly employed or retained by insurers or  
31 others."

32

33 SECTION 2. Arkansas Code 23-61-201 is hereby amended to read as  
34 follows:

35 "23-61-201. Examination of insurers required.

36 (a) (1) The commissioner shall examine the affairs, transactions,

1 accounts, records, and assets of each authorized insurer as often as in his  
2 sole discretion he deems advisable.

3       (2) He shall so examine each authorized insurer not less frequently  
4 than every three (3) years.

5       (3) Examination of an alien insurer shall be limited to its insurance  
6 transactions and affairs in the United States.

7       (4) In scheduling and determining the nature, scope and frequency of  
8 the examinations, the Commissioner shall consider such matters as the results  
9 of financial statement analyses and ratios, changes in management or  
10 ownership, actuarial opinions, reports of independent Certified Public  
11 Accountants and other criteria as set forth in the Examiners' Handbook adopted  
12 by the National Association of Insurance Commissioners and in effect when the  
13 Commissioner exercises discretion to conduct an examination under subsection  
14 (a) (1).

15       (b) The commissioner may in like manner examine each insurer applying  
16 for an initial certificate of authority to transact insurance in this state.

17       (c) In lieu of making his own examination of any foreign or alien  
18 insurer authorized in this state, the commissioner may, in his discretion,  
19 accept a full report of the last recent examination of a foreign or alien  
20 insurer as prepared by the Insurance Department for the company's state of  
21 domicile or port-of-entry state.

22       (1) After January 1, 1994, such reports may only be accepted by the  
23 Commissioner if:

24       (A) The Insurance Department preparing such report was at the time of  
25 the examination accredited under the National Association of Insurance  
26 Commissioners' Financial Regulation Standards and Accreditation Program; or

27       (B) The examination was performed with the participation of one or more  
28 examiners employed by such an accredited State Insurance Department, who,  
29 after a review of the examination work papers and report, state under oath  
30 that the examination was performed in a manner consistent with the standards  
31 and procedures required by their accredited Insurance Department.

32       (d) As far as practical, the examination of a foreign or alien insurer  
33 shall be made in cooperation with the insurance supervisory officials of other  
34 states in which the insurer transacts business."

35

1       SECTION 3. Arkansas Code 23-61-202 is hereby amended to read as  
2 follows:

3       "23-61-202. Examination of managers and promoters required.

4       For the purposes of completing an examination of any company under this  
5 subchapter the commissioner may, as often as he deems advisable, examine or  
6 investigate any person, or the business of any person, in so far as such  
7 examination or investigation is, in the sole discretion of the Commissioner,  
8 necessary or material to the examination of the company."

9

10       SECTION 4. Arkansas Code 23-61-203 is hereby amended to read as  
11 follows:

12       "23-61-203. Examiners.

13       (a) Upon determining that an examination should be conducted, the  
14 Commissioner shall issue an examination certificate of authority appointing  
15 one or more examiners to perform the examination and instructing them as to  
16 the scope of the examination. In conducting the examination, the examiner  
17 shall observe those guidelines and procedures set forth in the Examiners'  
18 Handbook adopted by the National Association of Insurance Commissioners. The  
19 Commissioner may also employ such other guidelines or procedures as the  
20 Commissioner may deem appropriate.

21       (b) When making an examination under this subchapter, the Commissioner  
22 may retain attorneys, appraisers, independent actuaries, independent certified  
23 public accountants or other professionals and specialists as examiners, the  
24 cost of which shall be borne by the company which is the subject of the  
25 examination.

26       (c) (1) The commissioner may also accept as a part of the department's  
27 examination of any insurer or person:

28       (A) A report by an independent actuary deemed competent by the  
29 commissioner; or

30       (B) A report of an audit made by an independent certified public  
31 accountant.

32       (2) Neither those persons so designated nor any members of their  
33 immediate families shall be officers of, connected with, or financially  
34 interested in any insurer other than as policyholders; nor shall they be  
35 financially interested in any other corporation or person affected by the

1 examination, investigation, or hearing."

2

3 SECTION 5. Arkansas Code 23-61-204 is hereby amended to read as  
4 follows:

5 "23-61-204. Examination - Records and appraisals.

6 (a) Every company or person from whom information is sought, its  
7 officers, directors and agents must provide to the examiners appointed under  
8 23-61-203 timely, convenient and free access at all reasonable hours at its  
9 offices to all books, records, accounts, papers, documents and any or all  
10 computer or other recordings relating to the property, assets, business and  
11 affairs of the company being examined. The officers, directors, employees and  
12 agents of the company or person must facilitate such examination and aid in  
13 such examination so far as it is in their power to do so. The refusal of any  
14 company, by its officers, directors, employees or agents, to submit to  
15 examination or to comply with any reasonable written request of the examiners  
16 shall be grounds for suspension, revocation or refusal of, or nonrenewal of  
17 any license or authority held by the company to engage in an insurance or  
18 other business subject to the commissioner's jurisdiction. Any such  
19 proceedings for suspension, revocation or refusal of any license or authority  
20 shall be conducted pursuant to 23-63-213.

21 (b) If the commissioner finds the accounts to be inadequate or  
22 inadequately kept or posted, he may employ experts to rewrite, post, or  
23 balance them at the expense of the person being examined if the person has  
24 failed to complete or correct the accounting after the commissioner has given  
25 him notice and a reasonable opportunity to do so.

26 (c) If the commissioner deems it necessary to value any property  
27 involved in an examination, he may make written request of the person being  
28 examined to appoint one (1) or more competent appraisers, approved by the  
29 commissioner, for the purpose of appraising the property.

30 (1) If no appointment is made within ten (10) days after this request  
31 was delivered to the person, then the commissioner may appoint the appraiser  
32 or appraisers.

33 (2) Any such appraisal shall be promptly made, and a copy of the report  
34 shall be furnished to the commissioner.

35 (3) The reasonable expense of the appraisal shall be borne by the

1 person being examined.

2 (d) Nothing contained in this subchapter shall be construed to limit  
3 the commissioner's authority to terminate or suspend any examination in order  
4 to pursue other legal or regulatory action pursuant to the insurance laws of  
5 this state. Findings of fact and conclusions made pursuant to any examination  
6 shall be prima facie evidence in any legal or regulatory action.

7 (e) Nothing contained in this subchapter shall be construed to limit  
8 the commissioner's authority to use and, if appropriate, to make public any  
9 final or preliminary examination report, any examiner or company work papers  
10 or other documents, or any other information discovered or developed during  
11 the course of any examination in the furtherance of any legal or regulatory  
12 action which the commissioner may, in his sole discretion, deem appropriate."

13

14 SECTION 6. Arkansas Code 23-61-205 is hereby amended to read as  
15 follows:

16 "23-61-205. Examination reports.

17 (a) The commissioner or his examiner shall make a full and true written  
18 report of each examination, which shall comprise only facts appearing upon the  
19 books, records, or other documents of the insurer, its agents, or other  
20 persons examined, or as ascertained from the sworn testimony of its officers  
21 or agents or other persons examined concerning its affairs, and shall include  
22 such conclusions and recommendations as may reasonably be warranted from the  
23 facts.

24 (1) No later than sixty (60) days following completion of the  
25 examination, the examiner in charge shall file with the Department a verified  
26 written report of the examination under oath. Upon receipt of the verified  
27 report, the Department shall transmit the report to the company examined,  
28 together with a notice which shall afford such company examined a reasonable  
29 opportunity of not more than twenty (20) days to make a written submission or  
30 rebuttal with respect to any matters contained in the examination report.

31 (2) Within thirty (30) days after the end of the period allowed for the  
32 receipt of written submissions or rebuttals, the commissioner shall fully  
33 consider and review the report, together with any written submissions or  
34 rebuttals and any relevant portions of the examiners work papers and enter an  
35 order:

1           (A) Adopting the examination report as filed or with modification or  
2 corrections. If the examination report reveals that the company is operating  
3 in violation of any law, regulation or prior order of the commissioner, the  
4 commissioner may order the company to take any action the commissioner  
5 considers necessary and appropriate to cure such violation; or

6           (B) Rejecting the examination report with directions to the examiners  
7 to reopen the examination for purposes of obtaining additional data,  
8 documentation or information, and refiling pursuant to subsection (a) (1); or

9           (C) Calling for an investigatory hearing with no less than twenty (20)  
10 days notice to the company for purposes of obtaining additional documentation,  
11 data, information and testimony.

12           (b) (1) All orders entered pursuant to subdivision (a) (2) (A) shall be  
13 accompanied by findings and conclusions resulting from the commissioner's  
14 consideration and review of the examination report, relevant examiner work  
15 papers and any written submissions or rebuttals. Any such order shall be  
16 considered a final administrative decision and may be appealed pursuant to  
17 23-61-307, and shall be served upon the company by certified mail, together  
18 with a copy of the adopted examination report. Within twenty (20) days of the  
19 issuance of the adopted report, the company shall file affidavits executed by  
20 each of its directors stating under oath that they have received a copy of the  
21 adopted report and related orders.

22           (2) Any hearing conducted under subdivision (a) (2) (C) by the  
23 commissioner or authorized representative shall be conducted as a  
24 nonadversarial confidential investigatory proceeding as necessary for the  
25 resolution of any inconsistencies, discrepancies or disputed issues apparent  
26 upon the face of the filed examination report or raised by or as a result of  
27 the commissioner's review of relevant work papers or by the written submission  
28 or rebuttal of the company. Within thirty (30) days of the conclusion of any  
29 such hearing, the commissioner shall enter an order pursuant to subdivision  
30 (a) (2) (A) .

31           (A) The hearing shall proceed expeditiously with discovery by the  
32 company limited to the examiner's work papers which tend to substantiate any  
33 assertions set forth in any written submission or rebuttal. The commissioner  
34 may issue subpoenas for the attendance of any witnesses or the production of  
35 any documents deemed relevant to the investigation whether under the control

1 of the Department, the company or other persons. The documents produced shall  
2 be included in the record, and testimony taken by the commissioner or his  
3 representative shall be under oath and preserved for the record at the cost of  
4 the company. Nothing contained herein shall require the Department to  
5 disclose any information or records which would indicate or show the existence  
6 or content of any investigation or activity of a criminal justice agency.

7 (c) Upon the adoption of the examination report under subdivision  
8 (a) (2) (A), the commissioner shall continue to hold the content of the  
9 examination report as private and confidential information for a period of  
10 thirty (30) days except to the extent provided in subsection (a) (1).

11 Thereafter, the commissioner may open the report for public inspection so  
12 long as no court of competent jurisdiction has stayed its publication.

13 (d) Nothing contained in this subchapter shall prevent or be construed  
14 as prohibiting the commissioner from disclosing the content of an examination  
15 report, preliminary examination report or results, or any matter relating  
16 thereto, to the insurance department of this or any other state or country, or  
17 to law enforcement officials of this or any other state or agency of the  
18 federal government at any time, so long as such agency or office receiving the  
19 report or matters relating thereto agrees in writing to hold it confidential  
20 and in a manner consistent with this subchapter."

21

22 SECTION 7. Arkansas Code 23-61-206, Subsections (a) and (b), are hereby  
23 amended to read as follows:

24 "(a) Each person so examined shall pay to the State Insurance  
25 Department the actual travel expenses, reasonable living expense allowance,  
26 and compensation for examiners and other persons assisting in the examination  
27 on a basis not to exceed the total of the Geographical Expense Reimbursement  
28 Plan set forth in the Examiners' Handbook adopted by the National Association  
29 of Insurance Commissioners, upon presentation of a detailed account of the  
30 charges and expenses.

31 (b) Payments for travel expenses and living expense allowance received  
32 by the State Insurance Department for each examination shall be deposited as  
33 cash funds.

34 (1) Reimbursement shall be made from these funds to examiners and  
35 others assisting in the examination.

1           (2) Per diem charges of examiners and others assisting in the  
2 examination shall be computed beginning at the time of reporting for duty at  
3 the office of the company to be examined and terminating upon completion of  
4 the examination or the examiner's active participation therein and to include  
5 actual days for travel as certified by the commissioner. If air travel is  
6 used, only one day's travel time will be authorized. If an automobile is  
7 used, travel time allowed shall be computed at the rate of not less than four  
8 hundred (400) miles per day as determined by the Rand McNally Road Map, with  
9 the actual mileage traveled compensated at the most current rate per mile  
10 approved for state employees.

11           (3) Examiners and others assisting in the examination shall not be  
12 reimbursed for travel time or travel expenses not actually incurred in  
13 connection with an assignment, nor shall they be reimbursed for dual living  
14 expenses while on branch office assignments.

15           (4) Examiners and others assisting in the examination, when  
16 participating in or conducting an examination of a foreign company, shall be  
17 authorized to return to their state of domicile every other weekend. Their  
18 expenses will be paid based upon the lesser of airfare or mileage. Such  
19 reimbursement shall be made in lieu of the per diem allowance. Such travel  
20 shall be accomplished with a minimum amount of work time lost."  
21

22           SECTION 8. Subchapter 2 of Chapter 61 of Title 23 of the Arkansas Code  
23 is hereby amended by adding the following new sections at the end of the  
24 existing subchapter:

25           "23-61-207. Confidentiality of ancillary information.  
26 All working papers, recorded information, documents and copies thereof  
27 produced by, obtained by or disclosed to the commissioner or any other person  
28 in the course of an examination made under this subchapter must be given  
29 confidential treatment and are not subject to subpoena and may not be made  
30 public by the commissioner or any other person, except to the extent provided  
31 in 23-61-205. Access may also be granted to the National Association of  
32 Insurance Commissioners. Such parties must agree in writing prior to  
33 receiving the information to provide to it the same confidential treatment as  
34 required by this section, unless the prior written consent of the company to  
35 which it pertains has been obtained.



1

2       23-61-208. Immunity from liability.

3       (a) No cause of action shall arise nor shall any liability be imposed  
4 against the Commissioner, the commissioner's authorized representatives or any  
5 examiner appointed by the commissioner for any statements made or conduct  
6 performed in good faith while carrying out the provisions of this subchapter.

7       (b) No cause of action shall arise, nor shall any liability be imposed  
8 against any person for the act of communicating or delivering information or  
9 data to the commissioner or the commissioner's authorized representative or  
10 examiner pursuant to an examination made under this subchapter, if such act of  
11 communication or delivery was performed in good faith and without fraudulent  
12 intent or the intent to deceive.

13       (c) This section does not abrogate or modify in any way any common law  
14 or statutory privilege or immunity heretofore enjoyed by any person identified  
15 in subsection (a).

16       (d) A person identified in subsection (a) shall be entitled to an award  
17 of attorney's fees and costs if they are the prevailing party in a civil cause  
18 of action for libel, slander or any other relevant tort arising out of their  
19 activities in carrying out the provisions of this subchapter, and the party  
20 bringing the action was not substantially justified in doing so. For purposes  
21 of this section, a proceeding is 'substantially justified' if it had a  
22 reasonable basis in law or fact at the time it was initiated."

23

24       SECTION 9. Effective Date.

25       Compliance with Sections 1 through 8 of this Act shall be required for  
26 all examinations commenced on and after January 1, 1992.

27

28       SECTION 10. Arkansas Code 23-62-303 is hereby amended to read as  
29 follows:

30       "23-62-303. Report of funds withheld under reinsurance treaties.

31       Deposits and funds withheld under reinsurance treaties shall be reported  
32 in the annual statement in the exhibit entitled 'Special Deposits Not for the  
33 Protection of All Policyholders'."

34

35       SECTION 11. Arkansas Code 23-62-304 is hereby amended to read as

1 follows:

2 "23-62-304. Agreement Examination.

3 The Insurance Commissioner shall have the right to examine any of the  
4 reinsurance agreements or deposit arrangements of the ceding insurer at any  
5 time."

6

7 SECTION 12. Arkansas Code 23-62-305 is hereby amended to read as  
8 follows:

9 "23-62-305. Credit Allowed a Domestic Ceding Insurer.

10 (a) Credit for reinsurance shall be allowed a domestic ceding insurer as  
11 either an asset or a deduction from liability on account of reinsurance ceded  
12 only when the reinsurer meets the requirements of this subchapter.

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

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

19 (1) Files with the Commissioner evidence of its submission to this  
20 state's jurisdiction;

21 (2) Submits to this state's authority to examine its books and records;

22 (3) Is licensed to transact insurance or reinsurance in at least one  
23 state, or, in the case of a U.S. branch of an alien assuming insurer, is  
24 entered through and licensed to transact insurance or reinsurance in at least  
25 one state; and

26 (4) Files annually with the commissioner a copy of its annual statement  
27 filed with the insurance department of its state of  
28 domicile and a copy of its most recent audited financial statement; and either

29 (A) Maintains a surplus as regards policyholders in an amount which is  
30 not less than \$20,000,000 and whose accreditation has not been denied by the  
31 commissioner within ninety (90) days of its submission; or

32 (B) Maintains a surplus as regards policyholders in an amount less than  
33 \$20,000,000 and whose accreditation has been approved by the commissioner.

34 (d) No credit shall be allowed a domestic ceding insurer, if the  
35 assuming insurer's accreditation has been revoked by the commissioner after

1 notice and hearing.

2       (e) Credit shall be allowed when the reinsurance is ceded to an  
3 assuming insurer which is domiciled and licensed in, or in the case of a U.S.  
4 branch of an alien assuming insurer is entered through, a state which employs  
5 standards regarding credit for reinsurance substantially similar to those  
6 applicable under this statute and the assuming insurer or U.S. branch of an  
7 alien assuming insurer:

8       (1) Maintains a surplus as regards policyholders in an amount not less  
9 than \$20,000,000; and

10       (2) Submits to the authority of this state to examine its books and  
11 records.

12       Provided, however, that the requirement of subsection (c)(1) does not  
13 apply to reinsurance ceded and assumed pursuant to pooling arrangements among  
14 insurers in the same holding company system.

15       (f)(1) Credit shall be allowed when the reinsurance is ceded to an  
16 assuming insurer which maintains a trust fund in a qualified United States  
17 financial institution, as defined in 23-62-307(b), for the payment of the  
18 valid claims of its United States policyholders and ceding insurers, their  
19 assigns and successors in interest. The assuming insurer shall report  
20 annually to the commissioner information substantially the same as that  
21 required to be reported on the NAIC Annual Statement form by licensed insurers  
22 to enable the commissioner to determine the sufficiency of the trust fund.  
23 In the case of a single assuming insurer, the trust shall consist of a  
24 trusteed account representing the assuming insurer's liabilities attributable  
25 to business written in the United States and, in addition, the assuming  
26 insurer shall maintain a trusteed surplus of not less than \$20,000,000. In  
27 the case of a group of individual unincorporated underwriters, the trust shall  
28 consist of a trusteed account representing the group's liabilities  
29 attributable to business written in the United States and, in addition, the  
30 group shall maintain a trusteed surplus of which \$100,000,000 shall be held  
31 jointly for the benefit of United States ceding insurers of any member of the  
32 group; and the group shall make available to the commissioner an annual  
33 certification of the solvency of each underwriter by the group's domiciliary  
34 regulator and its independent public accountants.

35       (2) In the case of a group of incorporated insurers under common

1 administration which complies with the filing requirements contained in the  
2 previous paragraph, and which has continuously transacted an insurance  
3 business outside the United States for at least three (3) years immediately  
4 prior to making application for accreditation; and submits to this state's  
5 authority to examine its books and records and bears the expense of the  
6 examination, and which has aggregate policyholders' surplus of  
7 \$10,000,000,000; the trust shall be in an amount equal to the group's several  
8 liabilities attributable to business ceded by United States ceding insurers to  
9 any member of the group pursuant to reinsurance contracts issued in the name  
10 of such group; plus the group shall maintain a joint trusteed surplus of which  
11 \$100,000,000 shall be held jointly for the benefit of United States ceding  
12 insurers of any member of the group as additional security for any such  
13 liabilities, and each member of the group shall make available to the  
14 commissioner an annual certification of the member's solvency by the member's  
15 domiciliary regulator and its independent public accountant.

16       (3) Such trust shall be established in a form approved by the  
17 Commissioner of Insurance. The trust instrument shall provide that contested  
18 claims shall be valid and enforceable upon the final order of any court of  
19 competent jurisdiction in the United States. The trust shall vest legal title  
20 to its assets in the trustees of the trust for its United States policyholders  
21 and ceding insurers, their assigns and successors in interest. The trust and  
22 the assuming insurer shall be subject to examination as determined by the  
23 commissioner. The trust described herein must remain in effect for as long as  
24 the assuming insurer shall have outstanding obligations due under the  
25 reinsurance agreements subject to the trust.

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

31       (g) Credit shall be allowed when the reinsurance is ceded to an  
32 assuming insurer not meeting the requirements of subsections (a), (b), (c), or  
33 (d), but only with respect to the insurance of risks located in jurisdictions  
34 where such reinsurance is required by applicable law or regulation of that  
35 jurisdiction.

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

5 (1) That in the event of the failure of the assuming insurer to perform  
6 its obligations under the terms of the reinsurance agreement, the assuming  
7 insurer, at the request of the ceding insurer, shall submit to the  
8 jurisdiction of any court of competent jurisdiction in any state of the United  
9 States, will comply with all requirements necessary to give such court  
10 jurisdiction, and will abide by the final decision of such court or of any  
11 Appellate Court in the event of an appeal; and

12 (2) To designate the Commissioner or a designated attorney as its true  
13 and lawful attorney upon whom may be served any lawful process in any action,  
14 suit or proceeding instituted by or on behalf of the ceding company.

15 (3) This provision is not intended to conflict with or override the  
16 obligation of the parties to a reinsurance agreement to arbitrate their  
17 disputes, if such an obligation is created in the agreement."

18

19 SECTION 13. Subchapter 3 of Chapter 62 of Title 23 of the Arkansas Code  
20 is hereby amended by adding the following new sections at the end of the  
21 existing subchapter:

22 "23-62-306. Reduction from Liability for Reinsurance Ceded by a  
23 Domestic Insurer to an Assuming Insurer.

24 (a) A reduction from liability for the reinsurance ceded by a domestic  
25 insurer to an assuming insurer not meeting the requirements of 23-62-305 shall  
26 be allowed in an amount not exceeding the liabilities carried by the ceding  
27 insurer and such reduction shall be in the amount of funds held by or on  
28 behalf of the ceding insurer, including funds held in trust for the ceding  
29 insurer, under a reinsurance contract with such assuming insurer as security  
30 for the payment of obligations thereunder, if such security is held in the  
31 United States subject to withdrawal solely by, and under the exclusive control  
32 of, the ceding insurer; or, in the case of a trust, held in a qualified United  
33 States financial institution, as defined in 23-62-307. This security may be  
34 in the form of:

35 (1) Cash;

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

4           (3) Clean, irrevocable, unconditional letters of credit, issued or  
5 confirmed by a qualified United States institution, as defined in  
6 23-62-307(a), no later than December 31st in respect of the year for which  
7 filing is being made, and in the possession of the ceding company on or before  
8 the filing date of its annual statement. Letters of credit meeting applicable  
9 standards of issuer acceptability as of the dates of their issuance or  
10 confirmation shall, notwithstanding the issuing or confirming institution's  
11 subsequent failure to meet applicable standards of issuer acceptability,  
12 continue to be acceptable as security until their expiration, extension,  
13 renewal, modification or amendment, whichever first occurs; or

14           (4) Any other form of security acceptable to the commissioner.  
15

16           23-62-307. Qualified United States Financial Institutions.

17           (a) For purposes of this subchapter, a 'qualified United States  
18 financial institution' means an institution that:

19           (1) Is organized or, in the case of a U.S. office of a foreign banking  
20 organization, licensed under the laws of the United States or any state  
21 thereof;

22           (2) Is regulated, supervised and examined by U.S. federal or state  
23 authorities having regulatory authority over banks and trust companies; and

24           (3) Has been determined by either the commissioner, or the Securities  
25 Valuation Office of the National Association of Insurance Commissioners, to  
26 meet such standards of financial condition and standing as are considered  
27 necessary and appropriate to regulate the quality of financial institutions  
28 whose letters of credit will be acceptable to the commissioner.

29           (b) A 'qualified United States financial institution' means, for  
30 purposes of those provisions of this law specifying those institutions that  
31 are eligible to act as a fiduciary of a trust, an institution that:

32           (1) Is organized, or, in the case of a U.S. branch or agency office of  
33 a foreign banking organization, licensed under the laws of the United States  
34 or any state thereof and has been granted authority to operate with fiduciary  
35 powers; and

1 (2) Is regulated, supervised and examined by federal or state  
2 authorities having regulatory authority over banks and trust companies."

3 SECTION 14. Subchapter 3 of Chapter 62 of Title 23 is hereby amended by  
4 adding the following new section at the end of the existing subchapter:

5 "23-62-308. Rules and Regulations.

6 The commissioner may adopt rules and regulations implementing the  
7 provisions of Sections 10 through 13."

8

9 SECTION 15. Effective Date.

10 Section 12 through Section 13 of this Act shall apply to all cessions  
11 after the effective date of this Act under reinsurance agreements which have  
12 had an inception, anniversary, or renewal date not less than six (6) months  
13 after the September 30, 1991.

14

15 SECTION 16. Arkansas Code 23-63-205, Subsection (a), is hereby amended  
16 to read as follows:

17 "(a) (1) To qualify for and maintain authority to transact any one (1)  
18 kind of insurance, as defined in 23-62-101 - 23-62-108, or combinations of  
19 kinds of insurance as shown in this subsection, an insurer applying for its  
20 original certificate of authority in Arkansas after March 30, 1987, shall  
21 possess and maintain in cash and marketable securities unimpaired paid-in  
22 capital if the insurer is a stock insurer or surplus if the insurer is a  
23 foreign or alien mutual, or domestic mutual legal reserve life insurer, or  
24 foreign or alien reciprocal insurer, in an amount not less than is applicable  
25 under the schedule below, and shall possess when first so authorized such  
26 additional funds as surplus as are required under 23-63-207:

27 Kind or Kinds of Minimum Capital or Surplus Required

28 INSURANCE

29 Life..... \$500,000

30 Disability..... 500,000

31 Life and Disability..... 500,000

32 Property..... 250,000

33 Casualty..... 500,000

34 Surety..... 500,000

35 Marine..... 250,000

1 Title..... 100,000  
 2 Title and Abstractor's Professional Liability..... 125,000  
 3 Property, Casualty, and Marine..... 750,000

4 (2) As to any combination of kinds of insurance, other than  
 5 combinations of kinds of insurance specifically listed in this subsection, the  
 6 insurer shall possess the sum of the minimum capital or surplus required by  
 7 this subsection for the kinds of insurance it proposes to transact.

8 (3) The commissioner may require reinsurance on terms and in amounts as  
 9 are reasonable under the circumstances for abstractor's professional liability  
 10 insurance when written by title insurers.

11 (4) In his discretion, the commissioner may require the insurer to  
 12 possess and maintain additional capital and surplus, in addition to that  
 13 required by this subchapter, based on the types, volume or nature of the  
 14 business transacted by the insurer."

15

16 SECTION 17. Arkansas Code 23-63-216, Subsection (a), is hereby amended  
 17 to read as follows:

18 "(a) Annually on or before March 1 or within any extension of time  
 19 which the commissioner for good cause may have granted, each authorized  
 20 insurer shall file with the commissioner a full and true statement of its  
 21 financial condition, transactions, and affairs as of the December 31  
 22 preceding.

23 (1) The statement shall be in the form and context as set out in the  
 24 National Association of Insurance Commissioners (NAIC) annual statement  
 25 convention blank and shall be completed in accordance with the instructions  
 26 accompanying the NAIC annual statement convention blank.

27 (2) The insurer shall furnish all information as called for by the  
 28 applicable portions of the NAIC annual statement convention blank, and  
 29 casualty and surety insurance companies shall include a report on income  
 30 derived from investment of unearned premiums.

31 (3) The NAIC annual statement convention blank shall be verified by the  
 32 oath of the insurer's president or vice president and secretary or actuary as  
 33 applicable or, if a reciprocal insurer, by the oath of its attorney in fact or  
 34 its like officers if a corporation."

35



1       SECTION 18. Arkansas Code 23-63-216 is hereby amended, by adding new  
2 Subsection (h), to read as follows:

3       "(h) On or before March 1, 1992, and annually on or before March 1 of  
4 each year thereafter, each domestic, foreign and alien insurer authorized to  
5 transact business in this state shall file with the NAIC a copy of its annual  
6 statement convention blank, along with such additional filings as prescribed  
7 by the commissioner as of the December 31 preceding. The information filed  
8 with the NAIC shall be in the same format and scope as that required by the  
9 commissioner and shall include the signed jurat page and the actuarial  
10 certification. Any amendments and addendums to the annual statement filing  
11 subsequently filed with the commissioner shall also be filed with the NAIC.

12       (1) Foreign insurers that are domiciled in a state which has a law  
13 substantially similar to this subsection shall be deemed in compliance with  
14 these requirements.

15       (2) In the absence of actual malice, members of the NAIC, their duly  
16 authorized committees, subcommittees, and task forces, their delegates, NAIC  
17 employees, and all others charged with the responsibility of collecting,  
18 reviewing, analyzing and disseminating the information developed from the  
19 filing of the annual statement convention blanks shall be acting as agents of  
20 the commissioner under the authority of this subsection and shall not be  
21 subject to civil liability for libel, slander or any other cause of action by  
22 virtue of their collection, review, and analysis or dissemination of the data  
23 and information collected from the filings required hereunder.

24       (3) The commissioner may impose the sanctions set out in subsection (e)  
25 on any insurer failing to file its annual statement with the NAIC when due or  
26 within any extension of time which the commissioner for good cause may have  
27 granted."

28

29       SECTION 19. Effective Date.

30       Compliance by insurers with Sections 16 through 18 shall be required on  
31 or before March 1, 1992.

32

33       SECTION 20. Arkansas Code 23-63-503 is hereby amended by adding new  
34 Subsections (7) and (8) to read as follows:

35       "(7) A 'security holder' of a specified person is one who owns any

1 security of such person, including common stock, preferred stock, debt  
2 obligations and any other security convertible into or evidencing the right to  
3 acquire any of the foregoing;

4 (8) The term 'voting security' shall include any security convertible  
5 into or evidencing a right to acquire a voting security."

6

7 SECTION 21. Arkansas Code 23-63-506 is hereby amended to read as  
8 follows:

9 "23-63-506. Control of or merger with domestic insurer - Filing  
10 requirements.

11 (a) No person other than the issuer shall make a tender offer for or a  
12 request or invitation for tenders of, or enter into any agreement to exchange  
13 securities for, seek to acquire, or acquire, in the open market or otherwise,  
14 any voting security of a domestic insurer if, after the consummation thereof,  
15 the person would, directly or indirectly, or by conversion or by exercise of  
16 any right to acquire, be in control of the insurer. No person shall enter  
17 into an agreement to merge with or otherwise to acquire control of a domestic  
18 insurer or any person controlling a domestic insurer unless, at the time any  
19 offer, request, or invitation is made or any agreement is entered into, or  
20 prior to the acquisition of the securities if no offer or agreement is  
21 involved, the person has filed with the commissioner and has sent to the  
22 insurer, and the insurer has sent to its shareholders, a statement containing  
23 the information required by 23-63-506 - 23-63-513 and such offer, request,  
24 invitation, agreement, or acquisition has been approved by the commissioner in  
25 the manner prescribed in 23-63-506 - 23-63-513.

26 (b) For purposes of 23-63-506 - 23-63-513, a domestic insurer shall  
27 include any person controlling a domestic insurer unless such person as  
28 determined by the commissioner is either directly or through its affiliates  
29 primarily engaged in business other than the business of insurance. However,  
30 such person shall file a pre-acquisition notification with the commissioner  
31 containing the information set forth in 23-63-527(b) thirty (30) days prior to  
32 the proposed effective date of the acquisition. Failure to file subjects such  
33 person to the penalty specified in 23-63-529(c). For purposes of this  
34 section, 'person' shall not include any securities broker holding, in the  
35 usual and customary brokers' function, less than twenty percent (20%) of the

1 voting securities of an insurance company or of any person which controls an  
2 insurance company."

3

4 SECTION 22. Arkansas Code 23-63-508, Subsection (a)(3), is hereby  
5 amended to read as follows:

6 "(3) Fully audited financial information as to the earnings and  
7 financial condition of each acquiring party for the preceding five (5) fiscal  
8 years of each acquiring party, or for such lesser period as the acquiring  
9 party and any predecessors thereof shall have been in existence, and similar  
10 unaudited information as of a date not earlier than ninety (90) days prior to  
11 the filing of the statement;"

12

13 SECTION 23. Arkansas Code 23-63-514 is hereby amended to read as  
14 follows:

15 "23-63-514. Registration of insurers.

16 (a) Registration.

17 (1) Every insurer which is authorized to do business in this state and  
18 which is a member of an insurance holding company system shall register with  
19 the commissioner, except:

20 (A) Foreign insurers subject to disclosure requirements and standards  
21 adopted by code or statute or regulation in the jurisdiction of its domicile  
22 which are substantially similar to those contained in this section; and

23 (B) Domestic insurers or domestic holding company systems authorized  
24 and doing business solely within this state and which are not affiliated with  
25 a foreign or alien insurer.

26 (2) However, such domestic insurers or domestic holding company systems  
27 which subsequently become authorized or approved to do business in other  
28 states or jurisdictions shall, not later than sixty (60) days after admission  
29 or approval to transact business in such other states or jurisdictions,  
30 register with the commissioner in compliance with this section, and thereafter  
31 as the provisions of this subchapter require.

32 (b) Information and Form Required. Every insurer subject to  
33 registration shall file a registration statement on a form prescribed by the  
34 NAIC, which shall contain current information about:

35 (1) The capital structure, general financial condition, and ownership

1 and management of the insurer and any person controlling the insurer;

2       (2) The identity of every member of the insurance holding company

3 system;

4       (3) The following agreements in force, relationships subsisting, and

5 transactions currently outstanding between the insurer and its affiliates:

6       (A) Loans, other investments, purchases, sales, or exchanges of

7 securities of the affiliates by the insurer or of the insurer by its

8 affiliates;

9       (B) Purchases, sales, or exchanges of assets;

10       (C) Transactions not in the ordinary course of business;

11       (D) Guarantees or undertakings for the benefit of an affiliate which

12 result in an actual contingent exposure of the insurer's assets to liability,

13 other than insurance contracts entered into in the ordinary course of the

14 insurer's business;

15       (E) All management and service contracts and all cost-sharing

16 arrangements;

17       (F) Reinsurance agreements covering all or substantially all of one (1)

18 or more lines of insurance of the ceding company;

19       (G) Dividends and other distributions to shareholders; and

20       (H) Consolidated tax allocation agreements;

21       (4) Any pledge of the insurer's stock, including stock of any

22 subsidiary or controlling affiliate, for a loan made to any member of the

23 insurance holding company system; and

24       (5) Other matters concerning transactions between registered insurers

25 and any affiliates as may be included from time to time in any registration

26 forms adopted or approved by the commissioner.

27       (c) Materiality. No information need be disclosed on the registration

28 statement filed pursuant to subsection (b) of this section if the information

29 is not material for the purposes of this section. Unless the commissioner by

30 rule, regulation, or order provides otherwise, sales, purchases, exchanges,

31 loans, or extensions of credit, or investments, involving one-half of one

32 percent (1/2 of 1%) or less of an insurer's admitted assets as of the December

33 31 next preceding shall not be deemed material for purposes of this section.

34       (d) Amendments to Registration Statements. Each registered insurer

35 shall keep current the information required to be disclosed in its

1 registration statement by reporting all material changes or additions on  
2 amendment forms provided by the commissioner within fifteen (15) days after  
3 the end of the month in which it learns of each material change or addition.  
4 However, subject to 23-63-515(c), each registered insurer shall so report all  
5 dividends and other distributions to shareholders within two (2) business days  
6 following the declaration thereof.

7 (e) Termination of Registration. The commissioner shall terminate the  
8 registration of any insurer which demonstrates that it no longer is a member  
9 of an insurance holding company system.

10 (f) Consolidated Filing. The commissioner may require or allow two (2)  
11 or more affiliated insurers subject to registration hereunder to file a  
12 consolidated registration statement or consolidated reports amending their  
13 consolidated registration statement or their individual registration  
14 statements.

15 (g) Alternative Registration. The commissioner may allow an insurer  
16 which is authorized to do business in this state and which is part of an  
17 insurance holding company system to register on behalf of any affiliated  
18 insurer which is required to register under subsection (a) of this section and  
19 to file all information and material required to be filed under this section.

20 (h) Exemptions. The provisions of this section shall not apply to any  
21 insurer, information, or transaction if, and to the extent that, the  
22 commissioner by rule, regulation, or order shall exempt it from the provisions  
23 of this section.

24 (i) Disclaimer. Any person may file with the commissioner a disclaimer  
25 of affiliation with any authorized insurer or the disclaimer may be filed by  
26 the insurer or any member of an insurance holding company system.

27 (1) The disclaimer shall fully disclose all material relationships and  
28 bases for affiliation between the person and the insurer as well as the basis  
29 for disclaiming the affiliation.

30 (2) After a disclaimer has been filed, the insurer shall be relieved of  
31 any duty to register or report under this section which may arise out of the  
32 insurer's relationship with the person unless and until the commissioner  
33 disallows the disclaimer.

34 (3) The commissioner shall disallow a disclaimer only after furnishing  
35 all parties in interest with notice and opportunity to be heard and after

1 making specific findings of fact to support the disallowance.

2 (j) Information of Insurers. Any person within an insurance holding  
3 company system subject to registration shall be required to provide complete  
4 and accurate information to an insurer, where such information is reasonably  
5 necessary to enable the insurer to comply with the provisions of this  
6 subchapter.

7 (k) Violations. The failure to file a registration statement or any  
8 amendment thereto required by this section within the time specified for the  
9 filing shall be a violation of this section."

10

11 SECTION 24. Arkansas Code 23-63-515 is hereby amended to read as  
12 follows:

13 "23-63-515. Standards.

14 (a) (1) Material transactions by insurers registered with the  
15 commissioner under 23-63-514 with their affiliates shall be subject to the  
16 following standards:

17 (A) The terms shall be fair and reasonable;

18 (B) The books, accounts, and records of every party shall be so  
19 maintained as to clearly and accurately disclose the precise nature and  
20 details of the transactions including such accounting information as is  
21 necessary to support the reasonableness of the charges or fees to the  
22 respective parties;

23 (C) The insurer's surplus as regards policyholders following any  
24 dividends or distributions to shareholder affiliates shall be reasonable in  
25 relation to the insurer's outstanding liabilities and adequate to its  
26 financial needs;

27 (D) The charges or fees for services performed shall be reasonable; and

28 (E) The expenses incurred and payment received shall be allocated to  
29 the insurer in conformity with customary insurance accounting practices  
30 consistently applied.

31 (2) The following transactions involving a domestic insurer subject to  
32 this subchapter and any person in its holding company system may not be  
33 entered into unless the insurer has notified the commissioner in writing of  
34 its intention to enter into such transaction at least thirty (30) days prior  
35 thereto, or such shorter period as the commissioner may permit, and the

1 commissioner has not disapproved it within such period:

2       (A) Sales, purchases, exchanges, loans or extensions of credit,  
3 guarantees, or investments provided such transactions are equal to or exceed  
4 as of December 31st next preceding: (i) with respect to nonlife insurers, the  
5 lesser of three percent (3%) of the insurer's admitted assets or twenty-five  
6 percent (25%) of surplus as regards policyholders; (ii) with respect to life  
7 insurers, three percent (3%) of the insurer's admitted assets;

8       (B) Loans or extensions of credit to any person who is not an  
9 affiliate, where the insurer makes such loans or extensions of credit with the  
10 agreement or understanding that the proceeds of such transactions, in whole or  
11 in substantial part, are to be used to make loans or extensions of credit to,  
12 to purchase assets of, or to make investments in, any affiliate of the insurer  
13 making such loans or extensions of credit provided such transactions are equal  
14 to or exceed as of December 31st next preceding: (i) with respect to nonlife  
15 insurers, the lesser of three percent (3%) of the insurer's admitted assets or  
16 twenty-five percent (25%) of surplus as regards policyholders; (ii) with  
17 respect to life insurers, three percent (3%) of the insurer's admitted assets;

18       (C) Reinsurance agreements or modifications thereto in which the  
19 reinsurance premium or a change in the insurer's liabilities equals or exceeds  
20 five percent (5%) of the insurer's surplus as regards policyholders, as of  
21 December 31st next preceding, including those agreements which may require as  
22 consideration the transfer of assets from an insurer to a non-affiliate, if an  
23 agreement or understanding exists between the insurer and non-affiliate that  
24 any portion of such assets will be transferred to one or more affiliates of  
25 the insurer;

26       (D) All management agreements, service contracts and all cost sharing  
27 arrangements; and

28       (E) Any material transactions, specified by regulation, which the  
29 commissioner determines may adversely affect the interests of the insurer's  
30 policyholders.

31       (3) A domestic insurer subject to this subchapter may not enter into  
32 transactions, which are part of a plan or series of like transactions with  
33 persons within the holding company system, if the purpose of those separate  
34 transactions is to avoid the threshold amount and thus avoid the review that  
35 would otherwise occur. If the commissioner determines that such separate

1 transactions were entered into over any twelve month period for such purpose,  
2 he may exercise his authority under 23-63-522.

3 (4) The commissioner, in reviewing transactions pursuant to subdivision  
4 (a)(2), shall consider whether the transactions comply with the standards set  
5 forth in subdivision (a)(1) and whether they may adversely affect the  
6 interests of policyholders.

7 (5) The commissioner shall be notified within thirty (30) days of any  
8 investment of a domestic insurer subject to this subchapter in any one  
9 corporation if the total investment in such corporation by the insurance  
10 holding company system exceeds ten percent (10%) of such corporation's voting  
11 securities.

12 (b) For purposes of this subchapter, in determining whether an  
13 insurer's surplus as regards policyholders is reasonable in relation to the  
14 insurer's outstanding liabilities and adequate to its financial needs, the  
15 following factors, among others, shall be considered:

16 (1) The size of the insurer as measured by its assets, capital and  
17 surplus, reserves, premium writings, insurance in force, and other appropriate  
18 criteria;

19 (2) The extent to which the insurer's business is diversified among the  
20 several lines of insurance;

21 (3) The number and size of risks insured in each line of business;

22 (4) The extent of the geographical dispersion of the insurer's insured  
23 risks;

24 (5) The nature and extent of the insurer's reinsurance program;

25 (6) The quality, diversification, and liquidity of the insurer's  
26 investment portfolio;

27 (7) The recent, past, and projected future trend in the size of the  
28 insurer's surplus as regards policyholders;

29 (8) The surplus as regards policyholders maintained by other comparable  
30 insurers;

31 (9) The adequacy of the insurer's reserves; and

32 (10) The quality and liquidity of investments in subsidiaries made  
33 pursuant to 23-63-505. The commissioner may treat any investment as a  
34 disallowed asset for purposes of determining the adequacy of surplus as  
35 regards policyholders whenever in his judgment the investment so warrants.



1 (c) No insurer subject to registration under 23-63-514 shall pay any  
2 extraordinary dividend or make any other extraordinary distribution to its  
3 stockholders until:

4 (1) Thirty (30) days after the commissioner has received notice of the  
5 declaration thereof and within that period has not disapproved the payment; or

6 (2) The commissioner shall have approved the payment within the thirty-  
7 day period.

8 (d) For purposes of this section, an extraordinary dividend or  
9 distribution means:

10 (1) Any dividend or distribution of cash or other property, regardless  
11 of value, when declared from the gross paid-in and contributed surplus of the  
12 insurer; or

13 (2) Any other dividend or distribution of cash or other property whose  
14 fair market value, together with that of any dividends or distributions made  
15 within the preceding twelve (12) months, exceeds the greater of:

16 (A) Ten percent (10%) of the insurer's surplus as regards policyholders  
17 as of December 31 next preceding; or

18 (B) The net gain from operations of the insurer, if the insurer is a  
19 life insurer, or the net investment income, if the insurer is not a life  
20 insurer, for the twelve-month period ending December 31 next preceding, but  
21 pro rata distribution of any class of the insurer's own securities shall not  
22 be considered to be extraordinary dividends. In determining whether a  
23 dividend or distribution is extraordinary, an insurer may carry forward income  
24 from the previous two (2) calendar years that has not already been paid out as  
25 dividends.

26 (e) Notwithstanding any other provisions of law, an insurer may declare  
27 an extraordinary dividend or distribution which is conditional upon the  
28 commissioner's approval, and the declaration shall confer no rights upon  
29 stockholders until:

30 (1) The commissioner has approved the payment of the dividend or  
31 distribution; or

32 (2) The commissioner has not disapproved the payment within the thirty-  
33 day period referred to above.

34 (f) Notwithstanding any other provisions of law, an insurer may declare  
35 and pay, subject to the provisions of this section, an extraordinary dividend

1 or distribution from its gross paid-in and contributed surplus, provided that:

2       (1) The dividend or distribution shall be made only upon a  
3 determination by the board of directors of the insurer that the assets of the  
4 insurer are in excess of the needs of its business; and

5       (2) Each dividend or distribution, when made, shall be identified as a  
6 distribution from gross paid-in and contributed surplus; and the amount per  
7 share shall be disclosed to the shareholders receiving the dividend or  
8 distribution concurrently with its distribution."  
9

10       SECTION 25. Arkansas Code 23-63-516 is hereby amended to read as  
11 follows:

12       "23-63-516. Examination.

13       (a) Power of Commissioner. Subject to the limitation contained in this  
14 section and in addition to the powers which the commissioner has under  
15 subchapters 1-3 of chapter 61 of this title relating to the examination of  
16 insurers, the commissioner shall also have the power to order any insurer  
17 registered under 23-63-514 to produce the records, books, or other information  
18 papers in the possession of the insurer or its affiliates as shall be  
19 necessary to ascertain the financial condition or legality of conduct of the  
20 insurer. In the event the insurer fails to comply with the order, the  
21 commissioner shall have the power to examine the affiliates to obtain the  
22 information.

23       (b) Use of Consultants. The commissioner may retain at the insurer's  
24 expense such attorney's, actuaries, accountants and other experts not  
25 otherwise a part of the commissioner's staff as shall be reasonably necessary  
26 to assist in the conduct of the examination under subsection (a) of this  
27 section. Any person so retained shall be under the direction and control of  
28 the commissioner and shall act in an advisory capacity.

29       (c) Expenses. Each registered insurer producing for examination  
30 records, books, and papers pursuant to subsection (a) of this section shall be  
31 liable for and shall pay the expense of the examination in accordance with  
32 subchapters 1-3 of chapter 61 of this title."  
33

34       SECTION 26. Arkansas Code 23-63-517 is hereby amended to read as  
35 follows:

1 "23-63-517. Confidential treatment.

2 All information, documents, and copies thereof obtained by or disclosed  
3 to the commissioner or any other person in the course of an examination or  
4 investigation made pursuant to 23-63-516 and all information reported pursuant  
5 to 23-63-514 shall be given confidential treatment and shall not be subject to  
6 subpoena and shall not be made public by the commissioner, the National  
7 Association of Insurance Commissioners, or any other person, except to  
8 insurance departments of other states. The information, documents, and copies  
9 thereof shall not be subject to subpoena or be made public without the prior  
10 written consent of the insurer to which it pertains unless the commissioner,  
11 after giving notice and opportunity to be heard to the insurer and its  
12 affiliates who would be affected thereby, determines that the interests of  
13 policyholders, shareholders, or the public will be served by the publication  
14 thereof. In that event, he may publish all or any part thereof in such manner  
15 as he may deem appropriate."

16

17 SECTION 27. Arkansas Code 23-63-522 is hereby amended to read as  
18 follows:

19 "23-63-522. Criminal and civil proceedings.

20 (a) Whenever it appears to the Insurance Commissioner that any insurer  
21 or any director, officer, employee, or agent of the insurer has committed a  
22 willful violation of this subchapter, the commissioner may cause criminal  
23 proceedings to be instituted in the circuit court for the county in which the  
24 principal office of the insurer is located or, if the insurer has no office in  
25 the state, then by the Circuit Court of Pulaski County, against the insurer or  
26 the responsible director, officer, employee, or agent of the insurer.

27 (b)(1) Any insurer which willfully violates this subchapter shall be  
28 fined not more than ten thousand dollars (\$10,000).

29 (2) Any individual who willfully violates this subchapter shall be  
30 fined not more than three thousand dollars (\$3,000) or, if the willful  
31 violation involves the deliberate perpetration of a fraud upon the  
32 commissioner, imprisoned not more than two (2) years, or both.

33 (c) Any officer, director, or employee of an insurance holding company  
34 system who willfully and knowingly subscribes to or makes or causes to be made  
35 any false statements or false reports or false filings with the intent to

1 deceive the commissioner in the performance of his duties under this  
 2 subchapter, upon conviction thereof, shall be fined not more than three  
 3 thousand dollars (\$3,000), or imprisoned for not more than two (2) years, or  
 4 both. Any fines imposed shall be paid by the officer, director, or employee  
 5 in his/her individual capacity.

6 (d) Any insurer failing, without just cause, to file any registration  
 7 statement as required in this subchapter shall be required, after notice and  
 8 hearing, to pay a penalty of two hundred dollars (\$200) for each day's delay,  
 9 to be recovered by the commissioner, if necessary, by a civil suit therefor  
 10 brought by the commissioner in the Circuit Court of Pulaski County. The  
 11 commissioner may reduce the penalty hereunder if the insurer demonstrates to  
 12 the commissioner that the imposition of the penalty would constitute a  
 13 financial hardship to the insurer.

14 (e) Every director or officer of an insurance holding company system  
 15 who knowingly violates, participates in, or assents to, or who knowingly shall  
 16 permit any of the officers or agents of the insurer to engage in transactions  
 17 or make investments which have not been properly reported or submitted  
 18 pursuant to 23-63-506 - 23-63-513, or which violate this subchapter, shall  
 19 pay, in their individual capacity, a civil penalty of not more than five  
 20 thousand dollars (\$5,000) per violation, after notice and hearing before the  
 21 commissioner. In determining the amount of the civil penalty, the  
 22 commissioner shall take into account the appropriateness of the forfeiture  
 23 with respect to the gravity of the violation, the history of previous  
 24 violations, and such other matters as justice may require.

25 (f) Whenever it appears to the commissioner that any insurer subject to  
 26 this subchapter or any director, officer, employee or agent thereof has  
 27 engaged in any transaction or entered into a contract which is subject to  
 28 23-63-515 and which would not have been approved had such approval been  
 29 requested, the commissioner may order the insurer to cease and desist  
 30 immediately any further activity under that transaction or contract. After  
 31 notice and hearing the commissioner may also order the insurer to void any  
 32 such contracts and restore the status quo if such action is in the best  
 33 interest of the policyholders, creditors or the public."

34

35 SECTION 28. Arkansas Code 23-63-523 is hereby amended to read as

1 follows:

2 "23-63-523. Receivership.

3 (a) Whenever it appears to the commissioner that any person has  
4 committed a violation of this subchapter which so impairs the financial  
5 condition of a domestic insurer as to threaten insolvency or make the further  
6 transaction of business by it hazardous to its policyholders, creditors,  
7 shareholders, or the public, then the commissioner may proceed as provided in  
8 23-68-101 et seq. to take possession of the property of the domestic insurer  
9 and to conduct the business thereof.

10 (b) If an order for liquidation or rehabilitation of the domestic  
11 insurer is entered, the receiver appointed under such order shall have the  
12 right to recover on behalf of the insurer *such distributions and payments made*  
13 during the one (1) year preceding the petition for liquidation, conservation  
14 or rehabilitation:

15 (1) The amount of distributions (other than distributions of shares of  
16 the same class of stock) paid by the insurer on its capital stock to any  
17 parent corporation or holding company or person or affiliate who otherwise  
18 controlled the insurer; or

19 (2) Any payment in the form of a bonus, termination settlement or  
20 extraordinary lump sum salary adjustment made by the insurer or its  
21 subsidiary(s) to a director, officer or employee.

22 (c) No such distribution shall be recoverable if the parent or  
23 affiliate shows that when paid such distribution was lawful and reasonable,  
24 and that the insurer did not know and could not reasonably have known that  
25 such distribution might adversely affect the ability of the insurer to fulfill  
26 its contractual obligations.

27 (d) Any person who was a parent corporation or holding company or a  
28 person who otherwise controlled the insurer or affiliate at the time such  
29 distributions were paid shall be liable up to the amount of the distributions  
30 or payments under subsection (b) such person received. Any person who  
31 otherwise controlled the insurer at the time such distributions were declared  
32 shall be liable up to the amount of distributions he/she would have received  
33 if they had been paid immediately. If two or more persons are liable with  
34 respect to the same distributions, they shall be jointly and severally liable.

35 (e) The maximum amount recoverable under this section shall be the

1 amount needed in excess of all other available assets of the impaired or  
2 insolvent insurer to pay the contractual obligations of the impaired or  
3 insolvent insurer and to reimburse any guaranty funds.

4 (f) To the extent that any person liable under subsection (d) of this  
5 section is insolvent or otherwise fails to pay claims due from it pursuant to  
6 that subsection, its parent corporation or holding company or person who  
7 otherwise controlled it at the time the distribution was paid, shall be  
8 jointly and severally liable for any resulting deficiency in the amount  
9 recovered from such parent corporation or holding company or person who  
10 otherwise controlled it."

11

12 SECTION 29. Subchapter 5 of Chapter 63 of Title 23 of the Arkansas Code  
13 is hereby amended to add the following new sections at the end of the existing  
14 subchapter:

15 "23-63-525. Acquisitions involving insurers not otherwise covered -  
16 Definitions.

17 The following definitions shall apply for the purposes of 23-63-525 -  
18 23-63-530 only:

19 (a) 'Acquisition' means any agreement, arrangement or activity the  
20 consummation of which results in a person acquiring directly or indirectly the  
21 control of another person, and includes but is not limited to the acquisition  
22 of voting securities, the acquisition of assets, bulk reinsurance and mergers.

23 (b) An 'involved insurer' includes an insurer which either acquires or  
24 is acquired, is affiliated with an acquirer or acquired, or is the result of a  
25 merger.

26

27 23-63-526. Acquisitions involving insurers not otherwise covered -  
28 Scope.

29 (a) Except as exempted in subdivision (b) of this section, 23-65-525 -  
30 23-63-528 applies to any acquisition in which there is a change in control of  
31 an insurer authorized to do business in this state.

32 (b) 23-65-525 - 23-65-528 shall not apply to the following:

33 (1) An acquisition subject to approval or disapproval by the  
34 commissioner pursuant to 23-65-506 - 23-65-513;

35 (2) A purchase of securities solely for investment purposes so long as

1 such securities are not used by voting or otherwise to cause or attempt to  
 2 cause the substantial lessening of competition in any insurance market in this  
 3 state. If a purchase of securities results in a presumption of control under  
 4 23-63-503(2), it is not solely for investment purposes unless the commissioner  
 5 of the insurer's state of domicile accepts a disclaimer of control or  
 6 affirmatively finds that control does not exist and such disclaimer action or  
 7 affirmative finding is communicated by the domiciliary commissioner to the  
 8 commissioner of this state;

9 (3) The acquisition of a person by another person when both persons are  
 10 neither directly nor through affiliates primarily engaged in the business of  
 11 insurance, if pre-acquisition notification is filed with the commissioner in  
 12 accordance with 23-63-527(b) thirty (30) days prior to the proposed effective  
 13 date of the acquisition. However, such pre-acquisition notification is not  
 14 required for exclusion if the acquisition would otherwise be excluded from  
 15 23-63-525 - 23-63-530 by any other subdivision herein;

16 (4) The acquisition of already affiliated persons;

17 (5) An acquisition if, as an immediate result of the acquisition:

18 (A) In no market would the combined market share of the involved  
 19 insurers exceed five percent (5%) of the total market;

20 (B) There would be no increase in any market share; or

21 (C) In no market would the combined market share of the involved  
 22 insurers exceed twelve percent (12%) of the total market, and the market share  
 23 increases by more than two percent (2%) of the total market.

24 For purposes of subdivision (5), a market share means direct written  
 25 insurance premium in this state for a line of business as contained in the  
 26 annual statement required to be filed by insurers licensed to do business in  
 27 this state;

28 (6) An acquisition for which a pre-acquisition notification would be  
 29 required pursuant to 23-63-527 due solely to the resulting effect on the ocean  
 30 marine insurance line of business; or

31 (7) An acquisition of an insurer whose domiciliary commissioner  
 32 affirmatively finds that such insurer is in failing condition, and there is a  
 33 lack of a feasible alternative to improving such condition, and the public  
 34 benefits of improving such insurer's condition through acquisition exceed the  
 35 public benefits that would arise from not lessening competition. Such

1 findings must be communicated by the domiciliary commissioner to the  
2 commissioner of this state.

3

4 23-63-527. Acquisition involving insurers not otherwise covered - Pre-  
5 acquisition notification, waiting period.

6 (a) An acquisition covered by 23-63-526 may be subject to an order  
7 pursuant to 23-63-529 unless the acquiring person files a pre-acquisition  
8 notification and the waiting period has expired. The acquired person may file  
9 a pre-acquisition notification. The commissioner shall give confidential  
10 treatment to information submitted under this section in the same manner as  
11 provided in 23-63-517.

12 (b) The pre-acquisition notification shall be in such form and contain  
13 such information as prescribed by the National Association of Insurance  
14 Commissioners relating to those markets which, under 23-63-526(b)(5), cause  
15 the acquisition not to be exempted from the provisions of 23-63-525 -  
16 23-63-528. The commissioner may require such additional material and  
17 information as he deems necessary to determine whether the proposed  
18 acquisition, if consummated, would violate the competitive standards of  
19 23-63-528. The required information may include an opinion of an economist as  
20 to the competitive impact of the acquisition in this state accompanied by a  
21 summary of the education and experience of such person indicating his or her  
22 ability to render an informed opinion.

23 (c) The waiting period required shall begin on the date of receipt of  
24 the commissioner of a pre-acquisition notification and shall end on the  
25 earlier of the thirtieth (30th) day after the date of such receipt, or  
26 termination of the waiting period by the commissioner. Prior to the end of  
27 the waiting period, the commissioner on a one-time basis may require the  
28 submission of additional needed information relevant to the proposed  
29 acquisition, in which event the waiting period shall end on the earlier of the  
30 thirtieth (30th) day after receipt of such additional information by the  
31 commissioner or termination of the waiting period by the commissioner.

32

33 23-63-528. Acquisitions involving insurers not otherwise covered -  
34 Competitive Standard.

35 (a) The commissioner may enter an order under 23-63-529(a) with respect



1 to an acquisition if there is substantial evidence that the effect of the  
2 acquisition may be substantially to lessen competition in any line of  
3 insurance in this state or tend to create a monopoly therein or if the insurer  
4 fails to file adequate information in compliance with 23-63-527.

5 (b) In determining whether a proposed acquisition would violate the  
6 competitive standards of subsection (a) of this section, the commissioner  
7 shall consider the following:

8 (1) Any acquisition covered under 23-63-526 involving two or more  
9 insurers competing in the same market is prima facie evidence of violation of  
10 the competitive standards:

11 (A) if the market is highly concentrated and the involved insurers  
12 possess the following shares of the market:

| 13 | Insurer A | Insurer B  |
|----|-----------|------------|
| 14 | 4%        | 4% or more |
| 15 | 10%       | 2% or more |
| 16 | 15%       | 1% or more |

17 or;

18 (B) if the market is not highly concentrated and the involved insurers  
19 possess the following shares of the market:

| 20 | Insurer A | Insurer B  |
|----|-----------|------------|
| 21 | 5%        | 5% or more |
| 22 | 10%       | 4% or more |
| 23 | 15%       | 3% or more |
| 24 | 19%       | 1% or more |

25 A highly concentrated market is one in which the share of the four  
26 largest insurers is seventy-five percent (75%) or more of the market.

27 Percentages not shown in the tables are interpolated proportionately to the  
28 percentages that are shown. If more than two insurers are involved, exceeding  
29 the totals of the two columns in the table is prima facie evidence of  
30 violation of the competitive standard in subsection (a) of this section. For  
31 the purpose of this subdivision, the insurer with the largest share of the  
32 market shall be deemed to be Insurer A.

33 (2) There is a significant trend toward increased concentration when  
34 the aggregate market share of any grouping of the largest insurers in the  
35 market from the two largest to the eight largest has increased by seven

1 percent (7%) or more of the market over a period of time extending from any  
2 base year 5-10 years prior to the acquisition up to the time of the  
3 acquisition. Any acquisition or merger covered under 23-63-526 involving two  
4 or more insurers competing in the same market is prima facie evidence of  
5 violation of the competitive standard in subsection (a) of this section if:

6 (A) There is a significant trend toward increased concentration in the  
7 market;

8 (B) One of the insurers involved is one of the insurers in a grouping  
9 of such large insurers showing the requisite increase in the market share; and

10 (C) Another involved insurer's market is two percent (2%) or more.

11 (3) For purposes of subsection (b):

12 (A) The term 'insurer' includes any company or group of companies under  
13 common management ownership or control;

14 (B) The term 'market' means the relevant product and geographical  
15 markets. In determining the relevant product and geographical markets, the  
16 commissioner shall give due consideration to, among other things, the  
17 definitions or guidelines, if any, promulgated by the National Association of  
18 Insurance Commissioners and to information, if any, submitted by the parties  
19 to the acquisition. In the absence of sufficient information to the contrary,  
20 the relevant product market is assumed to be the direct written insurance  
21 premium for a line of business with such line being that used in the annual  
22 statement required to be filed by insurers doing business in this state and  
23 the relevant geographical market is assumed to be this state.

24 (C) The burden of showing prima facie evidence of violation of the  
25 competitive standard rests upon the commissioner.

26 (4) Even though an acquisition is not prima facie violative of the  
27 competitive standard under subsection (b)(1) and (2) of this section, the  
28 commissioner may establish the requisite *anticompetitive effect based upon*  
29 *other substantial evidence*. Even though an acquisition is prima facie  
30 violative of the competitive standard under subsection (b)(1) and (2) of this  
31 section, a party may establish the absence of the requisite anticompetitive  
32 effect based upon other substantial evidence. Relevant factors in making a  
33 determination under this subsection include, but are not limited to, the  
34 following: market shares, volatility of ranking of market leaders, number of  
35 competitors, concentration, trend of concentration in the industry, and ease

1 of entry and exit into the market.

2 (c) An order may not be entered under 23-63-529(a) if:

3 (1) The acquisition will yield substantial economies of scale or  
 4 economies in resource utilization that cannot be feasibly achieved in any  
 5 other way, and the public benefits which would arise from such economies  
 6 exceed the public benefits which would arise from not lessening competition;  
 7 or

8 (2) The acquisition will substantially increase the availability of  
 9 insurance, and the public benefits of such increase exceed the public benefits  
 10 which would arise from not lessening competition.

11

12 23-63-529. Acquisitions involving insurers not otherwise covered -  
 13 Orders and penalties.

14 (a) (1) If an acquisition violates the standards of 23-63-525 -  
 15 23-63-528, the commissioner may enter an order:

16 (A) Requiring an involved insurer to cease and desist from doing  
 17 business in this state with respect to the line or lines of insurance involved  
 18 in the violation; or

19 (B) Denying the application of an acquired or acquiring insurer for a  
 20 license to do business in this state.

21 (2) Such order shall not be entered unless there is a hearing, and  
 22 notice of such hearing is issued prior to the end of the waiting period and  
 23 not less than ten (10) days prior to the hearing, and the hearing is concluded  
 24 and the order is issued no later than sixty (60) days after the end of the  
 25 waiting period. Every order shall be accompanied by a written decision of the  
 26 commissioner setting forth his findings of fact and conclusions of law.

27 (3) An order entered under this subsection shall not become final  
 28 earlier than thirty (30) days after it is issued during which time the  
 29 involved insurer may submit a plan to remedy the anticompetitive impact of the  
 30 acquisition within a reasonable time. Based upon such plan or other  
 31 information, the commissioner shall specify, if any, the conditions under the  
 32 time period during which the aspects of the acquisition causing a violation of  
 33 the standards of 23-63-525 - 23-63-528 would be remedied and the order vacated  
 34 and modified.

35 (4) An order pursuant to this subsection shall not apply if the

1 acquisition is not consummated.

2 (b) Any person who violates a cease and desist order of the  
3 commissioner under subsection (a) and while such order is in effect may after  
4 notice and hearing and upon order of the commissioner's be subject at the  
5 discretion of the commissioner to any one or more of the following:

6 (1) A monetary penalty of not more than ten thousand dollars (\$10,000)  
7 for every day of violation; and/or

8 (2) Suspension or revocation of such person's license.

9 (c) Any insurer or other person who fails to make any filing required  
10 by 23-63-525 - 23-63-528 and who fails to demonstrate a good faith effort to  
11 comply with any such filing requirement shall be subject to a fine of not more  
12 than fifty thousand dollars (\$50,000).

13

14 23-63-530. Acquisitions involving insurers not otherwise covered -  
15 Inapplicable provisions.

16 23-63-520 and 23-63-523 do not apply to acquisitions covered under  
17 23-63-526."

18

19 SECTION 30. Effective Date.

20 Compliance with Sections 20 through 29 shall be required on and after  
21 January 1, 1992.

22

23 SECTION 31. All provisions of this Act of a general and permanent  
24 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
25 Code Revision Commission shall incorporate the same in the Code.

26

27 SECTION 32. All laws and parts of laws in conflict with this Act are  
28 hereby repealed.

29

30 SECTION 33. Emergency. It is hereby found and determined by the  
31 General Assembly of the State of Arkansas that the laws of this State  
32 concerning the insurance matters covered in the subject of this Act are  
33 inadequate for the protection of the public and the immediate passage of this  
34 Act is necessary in order to provide for the protection of the public.  
35 Therefore, an emergency is hereby declared to exist and this Act being

1 immediately necessary for the preservation of the public peace, health and  
2 safety shall be in full force and effect from and after its passage and  
3 approval.

4                               */s/ D. Roberts and M. Wilson*

5  
6                               APPROVED: 3-25-91