

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

A Bill

ACT 901 OF 1993
HOUSE BILL 1998

5
6

For An Act To Be Entitled

7
8 "AN OMNIBUS ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
9 CODE AS TO THE INSURANCE LAWS OF THIS STATE; AND IN
10 PARTICULAR TO AMEND PROVISIONS OF TITLE 23 OF THE STATE
11 INSURANCE CODE, INCLUDING AGENT LICENSURE SECTIONS OF THE
12 INSURANCE CODE AT CHAPTER 64; AND FOR OTHER PURPOSES."

13

Subtitle

14
15 "INSURANCE DEPARTMENT OMNIBUS ACT."

16

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

18

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

28

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

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

34

35 SECTION 3. Arkansas Code 14-60-101 is hereby amended by adding new
36 Subsection (c), to read as follows:

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

5

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

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

16

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

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

31

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

34 "(a) The commissioner may utilize, develop, or cause to be developed a
35 consumer information system which will provide and disseminate price and other

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

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

21

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

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

30 (2) Commencing on and after April 1, 1994, as to all insurers
31 referred to in subdivisions (a) (1) and (a) (2) of this section, after
32 issuance of its original certificate of authority, all stock insurers shall at
33 all times maintain the special surplus contemplated by this section at a level
34 of not less than fifteen percent (15%) of the then effective requirements of
35 23-63-205 as to the amount of minimum paid-in capital for new issuance of an

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

7

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

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

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

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

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

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

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

34

35 SECTION 9. Repealer. Arkansas Code Sections 23-63-401, 23-63-402,

1 23-63-403, and 23-63-404, concerning Arkansas resident agent countersignatures
2 of insurance policies, are hereby repealed.

3

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

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

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

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

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

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

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

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

32

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

34 "(d) For purposes of this section, an extraordinary dividend or
35 distribution means any dividend or distribution of cash or other property,

1 whose fair market value together with that of the other dividends or
2 distributions made within the preceding twelve (12) months exceeds the larger
3 of:

4 (1) the lesser of:

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

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

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

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

17 (3) the lesser of:

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

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

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

28

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

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

1 For purposes of this section, final judgment means any judgment issued by a
2 court of record and the enforcement or execution of which has not been stayed
3 by a court of competent jurisdiction.

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

7

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

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

16

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

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

25

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

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

30

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

33 "(C) The provisions of subdivision (a)(9)(A) of this section shall not
34 apply to persons making application for license as agent, broker, or solicitor
35 for crop hail insurance, mobile home physical damage insurance, mortgagor's

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

7

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

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

15

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

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

20

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

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

32

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

35 "(1) No person shall be licensed to sell life or disability insurance in

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

12

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

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

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

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

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

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

35

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

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

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

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

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

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

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

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

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

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

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

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

33

34 SECTION 23. Subsection (b) of Arkansas Code 23-64-216 is hereby amended
35 to read as follows:

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

5

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

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

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

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

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

1 license for failure to comply with the provisions of this section.

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

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

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

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

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

1 regulations of the Commissioner impose on a resident agent, or their licenses
2 shall be cancelled or expired.

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

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

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

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

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

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

13

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

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

18

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

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

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

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

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

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

35 (5) Conviction of a felony;

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

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

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

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

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

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

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

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

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

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

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

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

16

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

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

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

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

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

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

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

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

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

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

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

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

23

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

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

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

35 (c) Biennially, prior to June 1 of each even-numbered year, each

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

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

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

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

29

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

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

1

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

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

7

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

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

32 (c) The Insurance Commissioner may in his discretion grant an extension
33 for filing of the report and/or fees for good cause shown upon timely written
34 request. Absent an extension for good cause shown, each licensed professional
35 bail bond company failing to report and/or pay these fees shall be liable to

1 The State Insurance Department Trust Fund for a monetary penalty of one
2 hundred dollars (\$100) per day for each day of delinquency. The Insurance
3 Commissioner may pursue any appropriate legal remedies on behalf of The State
4 Insurance Department Trust Fund to collect any delinquent fees and penalties
5 owed as special revenues.

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

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

1 penalties owed thereon, up to the limit of any such security deposit.

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

8

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

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

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

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

35 (C) No person shall act as a third-party administrator for

1 multiple employer trusts, multiple employer welfare arrangements,
2 collectively-bargained trusts or self-insurance plans providing disability
3 insurance benefits to the citizens of this state without first obtaining
4 appropriate registration as required by §23-92-201 et seq.

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

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

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

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

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

30

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

33 "(14) The term 'Hazardous Financially' as used in this chapter means the
34 existence of any condition or the omission or commission of any act which
35 would, in the reasonable discretion of the Commissioner, seriously affect the

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

8

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

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

15 (1) The insurer is impaired or insolvent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29

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

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

35

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

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

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

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

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

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

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

15

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

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

32

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

35 "(a) Each licensed automobile club or association shall annually on or

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

6

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

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

29

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

32 "23-79-119. Construction of policies.

33 (a) Every insurance contract shall be construed according to the
34 entirety of its terms and conditions as set forth in the policy and as
35 amplified, extended, or modified by any rider, endorsement, or application

1 made a part of the policy.

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

10

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

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

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

24 (2) Except as may be provided with respect to reserves for guaranteed
25 benefits and funds referred to in subdivision (3) of this section, amounts
26 allocated to any separate account and accumulations thereon may be invested
27 and reinvested without regard to any requirements or limitations prescribed by
28 the laws of this state governing the investments of life insurance companies.

29 The investments in the separate accounts shall not be considered when
30 applying the investment limitations otherwise applicable to the investments of
31 the company;

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

1 to principal amount or stated rate of interest shall not be maintained in a
2 separate account;

3 (4) Unless otherwise approved by the commissioner, assets allocated to
4 a separate account shall be valued at their market value on the date of
5 valuation, with the exception of separate accounts supporting modified
6 guaranteed annuities which shall be valued as provided in such rules and
7 regulations as the commissioner shall adopt, or if there is no readily
8 available market, then as provided under the terms of the contract or the
9 rules or other written agreement applicable to such separate account.

10 However, unless approved by the commissioner, the portion if any of the assets
11 of the separate account equal to the company's reserve liability with regard
12 to the guaranteed benefits and funds referred to in subdivision (3) of this
13 section shall be valued in accordance with the rules otherwise applicable to
14 the company's assets;

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

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

1 the transfers would not be inequitable;

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

12

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

16

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

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

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

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

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

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

1 (c) A long-term care insurance policy or certificate:
2 (1) Containing a benefit advertised, marketed, or offered as a
3 home health care or home care benefit may not condition receipt of benefits on
4 a prior institutionalization requirement;
5 (2) Which conditions eligibility of noninstitutional benefits on
6 the prior receipt of institutional care shall not require a prior
7 institutional stay of more than thirty (30) days for which benefits are paid;
8 (3) Which provides for waiver of premium, post-confinement,
9 post-acute care, or recuperative benefits only following institutionalization
10 shall not condition such benefits upon admission to a facility for the same or
11 related conditions within a period of less than thirty (30) days after
12 discharge from the institution."

13

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

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

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

17

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

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

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

17

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

25

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

28 "23-92-309. License Fees.

29 An applicant shall pay as an annual fee for a license a sum to be
30 established by the commissioner, but not to exceed five thousand dollars
31 (\$5,000) per year. All such license fees shall be collected by the
32 commissioner and shall be deposited directly into The State Insurance
33 Department Trust Fund as special revenues, for the operation, personnel,
34 support and maintenance of the Arkansas Insurance Department, as provided in
35 The State Insurance Department Trust Fund Act of 1993, as it is popularly

1 known."

2

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

5 "23-61-301. Examination, investigation, or hearing - Witnesses and
6 evidence.

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

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

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

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

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

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

35 (2) Any failure to obey the order of the court may be punished by

1 the court as a contempt thereof.

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

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

13

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

17

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

23

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

26

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

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/s/Rep. Newman

APPROVED: 4/6/93