

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/11/99 S4/6/99

A Bill

Act 1343 of 1999
HOUSE BILL 1835

5 By: Representatives Bookout, Luker, Simmons, T. Smith, Hendren, Horn, Pappas, Ammons, Ferrell,
6 Laverty, Courtway, Wilkinson, Booker, Hausam, Magnus, Teague, Gillespie, Glover, House, Ferguson,
7 Seawel, Trammell, Allison, Biggs, Taylor, Gipson, Broadway, Wood, Willis, Davis, M. Steele, Jones, Lynn,
8 Files, Bevis, Angel, P. Malone, Napper, French, Elliott, R. Smith, Lendall, T. Thomas
9 *By: Senators Russ, Bradford, Wilson, Roebuck, Wooldridge, Critcher, Mahony, Edwards, Walters,*
10 *B. Lewellen, K. Smith, Webb, Ross, Kennedy, Bearden, Hopkins, Riggs, Brown, Canada, Hill, Scott,*
11 *Argue, DeLay, Everett, Hoofman, B. Walker*

For An Act To Be Entitled

15 "AN ACT TO ESTABLISH THE ARKANSAS EARTHQUAKE
16 AUTHORITY. "

Subtitle

19 "THE ARKANSAS EARTHQUAKE AUTHORITY ACT. "

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

SECTION 1. Short title.

25 This act shall be known and may be cited as the "Arkansas Earthquake
26 Authority Act".

SECTION 2. Legislative findings and intent.

29 (a) The threat of or the actual occurrence of a major earthquake poses
30 serious consequences for the State of Arkansas and its citizens. Of
31 particular concern is the magnitude of damage to residential homeowner and
32 farmowner dwellings and whether or not these structures are adequately
33 insured.

34 (b) The market for residential earthquake insurance within the State of
35 Arkansas is currently characterized by the following:

36 (1) Potential for unavailability of earthquake insurance coverage

1 or inadequate coverage;

2 (2) Potential lack of capacity and desire of insurers to write
3 residential earthquake coverage due to pressure from rating agencies;

4 (3) Low percentage of Arkansans with earthquake insurance;

5 (4) Lack of awareness on the part of residential homeowners and
6 farmowners regarding the consequences of a major earthquake; and

7 (5) Lack of awareness on the part of residential homeowners and
8 farmowners that earthquake is not a covered peril under a basic homeowner or
9 farmowner policy unless affirmatively added by endorsement.

10 (c) The General Assembly hereby declares there is a compelling state
11 interest in maintaining a viable and orderly private sector market for
12 residential earthquake insurance in this state. To the extent that private
13 sector insurers are unable to maintain a viable and orderly market for
14 residential earthquake insurance in this state, state actions to maintain such
15 a viable and orderly market are appropriate.

16
17 SECTION 3. Definitions.

18 As used in this act, the following definitions apply:

19 (1) "Authority" means the Arkansas Earthquake Authority;

20 (2) "Board" means the governing board of the Arkansas Earthquake
21 Authority;

22 (3) "Commissioner" means the Insurance Commissioner for the State of
23 Arkansas;

24 (4) "Event" means an earthquake and all subsequent earthquakes
25 occurring within the following seventy-two (72) hour period;

26 (5) "Insurer" means all property insurers, as defined in § 23-62-104,
27 and includes farmers' mutual aid associations (FMAA's) and all casualty
28 insurers, as defined in § 23-62-105;

29 (6) "MAP" means the Market Assistance Program; and

30 (7) "Net direct written premium" is the gross amount of premiums
31 received from policies of insurance issued in this state, less return premiums
32 and dividends paid or credited to policyholders. The term does not include
33 premiums for indemnity reinsurance accepted from other licensed insurers, and
34 there shall be no deductions for premiums for indemnity reinsurance ceded to
35 other insurers.

36

1 SECTION 4. Establishment of Arkansas Earthquake Authority.

2 (a) There is hereby created a nonprofit legal entity to be known as the
3 Arkansas Earthquake Authority. The authority shall operate subject to the
4 supervision and control of the board. The authority is created as a political
5 subdivision, instrumentality and body politic of the State of Arkansas, and,
6 as such, is not a state agency.

7 (b) The authority shall be exempt from all state, county and local
8 taxes, including insurance premium taxes, the Arkansas Purchasing Law,
9 beginning at §19-11-201, and the Arkansas Administrative Procedure Act,
10 beginning at §25-15-201, except to the extent defined in this act.

11
12 SECTION 5. Governing board.

13 (a) The authority shall operate subject to the supervision and control
14 of the board. There shall be a governing board of seven (7) members to be
15 appointed by the commissioner, which shall meet at least annually to review
16 and prescribe operating rules. The commissioner shall apportion the number of
17 positions into three classes which shall consist of the following members:

18 (1) Three (3) members shall be representatives of foreign
19 insurance companies;

20 (2) Two (2) members shall be representatives of domestic
21 insurance companies.

22 (3) One (1) member shall be a licensed insurance agent; and

23 (4) One (1) member shall be a consumer.

24 (b) The commissioner shall appoint members by class of one, two and
25 three year terms. Thereafter, at each annual meeting, members appointed to
26 succeed those whose terms expire shall be appointed to three (3) year terms.

27 (c) The board shall elect one (1) of its members as chairman.

28 (d) Any vacancy in the board occurring for any reason other than the
29 expiration of a term shall be filled for the unexpired term in the same manner
30 as the original appointment.

31 (e) Members of the board may be reimbursed from moneys of the authority
32 for actual and necessary expenses incurred by them to attend board meetings,
33 but shall not otherwise be compensated for their services.

34
35 SECTION 6. Immunity and limitations on liability.

36 There is no liability on the part of, and no cause of action of any

1 nature may arise against, any participating insurer, the authority's agents or
2 employees, the governing board, or the commissioner or his representatives for
3 any act or omission in the performance of their powers and duties under this
4 act.

5
6 SECTION 7. Plan of operation, suspension of operation and dissolution.

7 (a) The board shall adopt a plan of operation pursuant to this act and
8 shall submit to the commissioner for approval such plan of operation including
9 the authority's bylaws and operating rules and any amendments thereto
10 necessary or suitable to assure the fair, reasonable and equitable
11 administration of the authority. The plan of operation shall become effective
12 upon approval in writing by the commissioner. If the board fails to submit a
13 suitable plan of operation within one hundred and eighty (180) days after the
14 appointment of the governing board, or at any time thereafter fails to submit
15 suitable amendments to the plan of operation, the commissioner shall adopt and
16 promulgate such rules as are necessary or advisable to effectuate the
17 provisions of this section. Such rules shall continue in force until modified
18 by the commissioner or superseded by a plan of operation submitted by the
19 board and approved by commissioner.

20 (b) The plan of operation shall:

- 21 (1) Establish procedures for operation of the authority;
22 (2) Create a fund, under management of the board, to pay
23 administrative costs, claims and other expenses of the authority;
24 (3) Develop and implement a MAP to assist insureds in procuring
25 residential earthquake coverage in the voluntary market;
26 (4) Develop and implement a program to publicize the existence of
27 the MAP and authority, the eligibility requirements, and procedures for
28 enrollment, and to maintain public awareness of the MAP and authority;
29 (5) Establish procedures for the handling, accounting and auditing
30 of assets, moneys and claims of the authority and the executive director or
31 plan administrator;
32 (6) Establish procedures for selecting either an executive
33 director or a plan administrator in accordance with section 11 of this act;
34 (7) Establish procedures for issuance of policies;
35 (8) Establish procedures under which applicants and participants
36 may have written grievances reviewed by a grievance committee appointed by the

1 board. The grievances shall be reported to the board after completion of the
2 review. The board shall retain all written complaints regarding the plan for
3 at least three (3) years;

4 (9) Establish procedures to conduct necessary analysis at
5 reasonable intervals to appropriately evaluate the Arkansas earthquake
6 insurance market;

7 (10) Establish procedures and guidelines to prevent a company from
8 transferring and causing to be transferred substantially all of its earthquake
9 exposure to the authority, unless the commissioner finds, after notice and
10 hearing, that it is in the best interests of Arkansas citizens to allow such a
11 practice; and

12 (11) Provide for other matters as may be necessary and proper for
13 the execution of the board's powers, duties and obligations under this act.

14 (c) If the board finds, after investigation conducted pursuant to
15 section 7(b)(9) that there is sufficient availability and competition in the
16 marketplace, the board shall request that the commissioner hold a public
17 hearing to determine if it is in the best interest of Arkansas citizens to
18 suspend operation of or dissolve the MAP or authority. If after the hearing,
19 the commissioner determines there is sufficient availability and competition
20 in the voluntary earthquake market and it is in the best interest of Arkansas
21 citizens, the commissioner may suspend operations of the MAP or authority,
22 suspend policy issuance by the authority or any other operational component of
23 the MAP or authority, or dissolve the MAP or authority.

24
25 SECTION 8. Powers.

26 (a) The board shall have the general powers and authority granted under
27 the laws of the State of Arkansas and in addition thereto, the specific
28 authority to:

29 (1) Enter into contracts as are necessary or proper to carry out
30 the provisions and purposes of this act;

31 (2) Assess insurers pursuant to section 12 regarding funding of
32 the authority;

33 (3) Set an appropriate policyholder surcharge for insurers
34 entering the residential homeowner, farmowner, fire and allied lines and/or
35 earthquake markets after an event. This surcharge shall be remitted to the
36 authority based on these insurers not having paid the post event assessments

1 contained in section 12. The board shall determine the period of time during
2 which this surcharge shall be applicable;

3 (4) Sue or be sued, including taking any legal actions necessary
4 or proper;

5 (5) Take such legal action as necessary, including but not
6 limited to:

7 (A) To avoid the payment of improper claims against the
8 authority or the coverage provided by or through the authority;

9 (B) To recover any amounts erroneously or improperly paid
10 by the authority;

11 (C) To recover any amounts paid by the authority as a
12 result of mistake of fact or law;

13 (D) To recover other amounts due the authority; or

14 (E) To coordinate legal action with the commissioner to
15 enforce the provisions of this act;

16 (6) Establish and modify from time to time as appropriate, rates,
17 rate schedules, expense allowances, agent fees, deductibles and any other
18 actuarial function appropriate to the operation of the authority;

19 (7) Issue policies of residential earthquake insurance or
20 reinsurance in accordance with the requirements of this act. All policy forms
21 shall be subject to the approval of the commissioner;

22 (8) Authorize the executive director or plan administrator to
23 prepare and distribute instruction and application forms to agents and to the
24 general public;

25 (9) Borrow money and issue, or contract with another state
26 authority, including the Arkansas Development Finance Authority, to be issued
27 on its behalf, negotiable evidences of debt including bonds payable from and
28 secured by a pledge of the authority of all or any part of the revenues of the
29 authority to finance the activities authorized by this act and sell those
30 bonds at public or private sale in the form and on those terms and conditions
31 as approved by the board;

32 (A) Proceeds of bonds, and the revenues pledged to secure
33 or pay bonds, shall be cash funds and shall not be deposited in the State
34 Treasury;

35 (B) Bonds shall be special obligations of the authority,
36 secured solely by and payable from the revenues of the authority. The funds,

1 credit, property, or taxing power of the state or political subdivisions of
2 the state shall not be pledged for the payment of such bonds. In the
3 discretion of the board and subject to approval by the commissioner, the
4 Arkansas Development Finance Authority shall be authorized and empowered to
5 issue negotiable evidences of debt on behalf of the authority for the purposes
6 of providing financing as set forth in subdivision (a)(9) and for all other
7 purposes consistent with and in furtherance of this act;

8 (C) The term of the bonds may not exceed thirty (30) years.
9 In addition, bonds may be issued for the purpose of refunding any bonds issued
10 under this act;

11 (D) Bonds issued by the authority are legal investments for
12 all trust funds, the funds of all insurance companies, banks, trust companies,
13 executors, administrators, trustees, and other fiduciaries. The bonds are
14 securities that may legally be deposited with, and received by, any state or
15 municipal officer or agency or political subdivision of the state for any
16 purpose for which the deposit of bonds or obligations of the state is now, or
17 may hereafter be, authorized by law, including deposits to secure public
18 funds;

19 (E) The state hereby pledges to and agrees with the holders
20 of bonds that the state will not limit, alter, or restrict the rights hereby
21 vested in the authority to fulfill each pledge of revenues and any other terms
22 of any agreement made with or for the benefit of the holders of bonds or in
23 any way impair the rights or remedies of the holders of the bonds; and

24 (F) Bonds issued by the authority, and the interest thereon
25 shall at all times be exempt from all state, county and municipal taxes. This
26 exemption shall include income, inheritance and estate taxes;

27 (10) Pledge, assign and grant a security interest in any of the
28 assessments authorized by this act or other assets of the authority in order
29 to secure any notes, bonds or other evidences of indebtedness of the
30 authority;

31 (11) Enter into one or more credit facilities, including but not
32 limited to lines of credit, permitting the authority to draw amounts as
33 approved by the board, with payment, interest rate, indemnity, compensation,
34 security, default, remedy, and other terms and conditions as approved by the
35 board. All drawings under these credit facilities shall be available to
36 finance the activities authorized by this act; and

1 (12) Purchase reinsurance, hedge, securitize or otherwise
2 mitigate the risks insured or reinsured by the authority by entering into such
3 commitments and undertakings and exercising such powers as may be appropriate
4 to accomplish the financings contemplated herein and thereby carry out the
5 purposes of this act.

6 (b) In addition to the other powers granted by the Arkansas Insurance
7 Code, the commissioner may, after notice and hearing in accordance with the
8 provisions of the Arkansas Insurance Code, impose a monetary penalty upon any
9 insurer, or suspend or revoke the certificate of authority to transact
10 insurance in the State of Arkansas of any insurer, who fails to pay an
11 assessment or otherwise file any report or furnish information required to be
12 filed with the board pursuant to the board's direction that the board believes
13 to be necessary in order for the board to perform its duties under this act.

14
15 SECTION 9. Market Assistance Program.

16 (a) The board shall develop and implement a Market Assistance Program
17 to assist insureds in procuring residential earthquake coverage in the
18 voluntary market. This shall be accomplished by providing those seeking
19 residential earthquake coverage with a list of insurers participating in the
20 MAP.

21 (b) Insurers may participate in the MAP only after approval by the
22 board. The board shall establish criteria which must be met by each MAP
23 applicant for approval, including but not limited to the following minimum
24 requirements:

25 (1) All applicants for earthquake coverage which have underlying
26 homeowner, farmowner or dwelling fire insurance coverage, or meet other
27 criteria as determined by the board and approved by the commissioner, shall be
28 accepted;

29 (2) Residential earthquake coverage must be offered as monoline
30 coverage;

31 (3) The insurer applicant is in sound financial condition; and

32 (4) The insurer applicant has retained or contracted with
33 appropriate skilled personnel to service insureds.

34 (c) By rule and regulation, the commissioner may restructure the MAP
35 criteria set forth in subsection (b) or any other component of the MAP if the
36 commissioner finds that the MAP is not substantially accomplishing its

1 objective of assisting residential insureds in procuring earthquake coverage
2 in the voluntary market and that the restructuring will be in the best
3 interests of Arkansas citizens.

4 (d) MAP insurers shall give ninety (90) days' notice in writing to the
5 board and commissioner of its withdrawal from the MAP.

6 (e) Notwithstanding any provision in Title 23, Chapter 64, Subchapter 2
7 of the Arkansas Code regarding agent appointments, all licensed property and
8 casualty agents shall be authorized to access and place coverage through a MAP
9 insurer.

10
11 SECTION 10. Coverages accessible through the authority.

12 (a) As long as the MAP has at least one approved insurer, no
13 residential earthquake coverage shall be issued by the authority, except as
14 provided in subsection (b).

15 (b) If there are no approved insurers in the MAP or if after notice and
16 hearing, the board or commissioner find that the MAP rates substantially
17 exceed rates that could be offered by the authority, and the board or
18 commissioner find after a hearing that it is in the best interests of Arkansas
19 citizens to issue coverage directly through the authority, and with the
20 concurrence of the House and Senate Insurance and Commerce Committees (if the
21 General Assembly is in session) or the concurrence of the House and Senate
22 Interim Committees on Insurance and Commerce (if the General Assembly is not
23 in session) the board shall proceed to offer coverage through the authority to
24 potential insureds.

25
26 SECTION 11. Administration of the authority.

27 (a) The board may either appoint an executive director or may select a
28 plan administrator. If an executive director is chosen, he shall hire all
29 staff necessary to enable him to discharge the duties imposed under this act
30 and as may be authorized by law. If a plan administrator is chosen, the board
31 may utilize a competitive bidding process to evaluate applicants and bids
32 submitted under this section, based upon criteria established by the board
33 which shall include, but not be limited to, the following:

34 (1) An estimate of total charges for administering the plan;

35 (2) The financial condition and stability of the plan
36 administrator; and

1 (3) The technical expertise and qualifications of personnel.

2 (b) The plan administrator shall serve for a period of three (3) years
3 subject to removal for cause and subject to the terms, conditions and
4 limitations of the contract between the board and the plan administrator. The
5 board may advertise for and accept bids to serve as the plan administrator for
6 the succeeding three-year periods.

7 (c) The executive director or plan administrator shall perform
8 functions related to the plan as may be assigned to it including:

9 (1) Determination of eligibility for coverage under the MAP or
10 authority;

11 (2) Payment and processing of claims;

12 (3) Establishment of a premium billing procedure for collection
13 of premiums. Billings shall be made on a periodic basis as determined by the
14 board;

15 (4) Other necessary functions to assure timely payment of
16 benefits to covered persons under the plan, including:

17 (A) Making available information relating to the proper
18 manner of submitting a claim for benefits under the plan and distributing
19 forms upon which submissions shall be made; and

20 (B) Evaluating the eligibility of each claim for payment
21 under the plan; and

22 (5) Conduct necessary analysis at reasonable intervals to
23 appropriately evaluate the Arkansas earthquake insurance market and take
24 action necessary to accomplish the purposes of this act.

25 (d) The executive director or plan administrator shall submit regular
26 reports to the board regarding the operation of the plan. Frequency, content
27 and form of the report shall be determined by the board.

28 (e) The executive director or plan administrator shall pay claim
29 expenses from the premium payments or other income received from or on behalf
30 of plan participants and allocated by the board for claim expenses. If the
31 total amount available at any time to the authority is insufficient to make
32 all necessary claims payments, the monies available shall be pro-rated and the
33 unpaid portion shall be paid as soon thereafter as monies become available.

34 (f) The executive director or plan administrator shall be governed by
35 the requirements of this act.

36 (g) The plan administrator shall be compensated as provided in the

1 contract between the board and the plan administrator.

2
3 SECTION 12. Funding.

4 (a) Rates.

5 (1) The authority shall establish rates for plan coverage. These
6 rates and rating schedules may be adjusted for appropriate factors such as
7 geographical variation in claim costs, retrofitting and other mitigation
8 efforts and shall take into consideration appropriate factors in accordance
9 with established actuarial and underwriting practices; and

10 (2) The rates charged by the authority shall not compete with
11 voluntary market rates so that the authority functions as a residual market
12 mechanism to provide insurance when insurance cannot be procured in the
13 voluntary market. Rates and schedules shall be submitted to the commissioner
14 for approval prior to use.

15 (b) Initial assessment.

16 Initial operating capital shall be contributed based on the following:

17 (1) All authorized insurers reporting one million dollars
18 (\$1,000,000) or more in premium on their most recent annual statement shall
19 pay a maximum initial assessment of up to one thousand dollars (\$1,000), plus
20 .025 percent of their net direct written premium in the State of Arkansas as
21 reported in their most recent annual statement. This assessment may be
22 collected in incremental amounts or as one single assessment; and

23 (2) All authorized insurers reporting less than one million
24 dollars (\$1,000,000) in premium on their most recent annual statement shall
25 pay a maximum initial assessment of up to five hundred dollars (\$500), plus
26 .025 percent of their net direct written premium in the State of Arkansas as
27 reported in their most recent annual statement. This assessment may be
28 collected in incremental amounts or as one single assessment.

29 (c) Administrative assessments.

30 (1) Insurers shall contribute additional assessments as may be
31 reasonable and necessary to meet the authority's annual projected
32 administrative expenses. For the purposes of this section, administrative
33 expenses shall include all reasonable and necessary operating expenses
34 incurred or to be incurred by the authority and may be up to but not exceeding
35 an aggregate total of one million dollars (\$1,000,000) for all authorized
36 insurers identified in subsection (c)(2);

1 (2) These assessments shall be made as the actual need for
2 additional administrative funds arises to ensure that the authority incurs no
3 deficit spending. Assessments shall be apportioned by the board among
4 authorized insurers writing homeowner, farmowner, fire and allied lines,
5 excluding commercial policies and crop hail, in proportion to the ratio that
6 the total net direct written premium collected in the State of Arkansas by the
7 insurer on its homeowner, farmowner, fire and allied lines during the
8 preceding calendar year bears to the total net direct written premium
9 collected by all insurers on their homeowner, farmowner, fire and allied
10 lines, in the State of Arkansas for the preceding calendar year. Each
11 insurer's assessment shall be determined by the board based on annual
12 statements and other reports deemed necessary by the board and filed by the
13 insurer with the board or the commissioner;

14 (3) An insurer may petition the commissioner for an abatement or
15 deferment of all or part of an assessment imposed by the authority. The
16 commissioner may abate or defer, in whole or in part, such assessment if, in
17 the opinion of the commissioner, payment of the assessment would cause the
18 insurer to be deemed in hazardous financial condition, as defined in §23-68-
19 102(14). In the event an assessment against an insurer is abated or deferred
20 in whole or in part, the amount by which such assessment is abated or deferred
21 shall be assessed against the other insurers in a manner consistent with the
22 basis for assessments set forth in subsection (a). The insurer receiving such
23 abatement or deferment shall remain liable to the plan for the deficiency for
24 four (4) years;

25 (4) Insurers determined to be insolvent insurers by a court of
26 competent jurisdiction shall be exempt from assessment from and after the date
27 of that determination and until the commissioner determines that the insurer
28 is no longer an insolvent insurer; and

29 (5) All assessments shall be due and payable upon receipt and
30 shall be delinquent if not paid within thirty (30) days of the receipt of the
31 notice by the insurer. Failure to timely pay the assessment will
32 automatically subject the insurer to a ten percent (10%) penalty, which will
33 be due and payable within the next thirty-day period. The board and the
34 commissioner shall have the authority to enforce the collection of the
35 assessment and penalty in accordance with the provisions of this act and the
36 Arkansas Insurance Code. The board may waive the penalty authorized by this

1 subsection if it determines that compelling circumstances exist which justify
2 such waiver.

3 (d) Post event assessments.

4 (1) If loss from an event occurs, the authority, in addition to
5 any assessments in subsections (a) and (b), shall assess all authorized
6 insurers writing homeowner, farmowner, fire and allied lines, excluding
7 commercial policies and crop hail, as may be necessary to produce the
8 additional funds needed to make payment of all covered claims and expenses of
9 the authority;

10 (2) Assessments during a calendar year may be made up to, but not
11 in excess of, five percent (5%) of each insurer's net direct homeowner,
12 farmowner, fire and allied lines, excluding commercial policies and crop hail,
13 written premium in the State of Arkansas for the preceding calendar year;

14 (3) Insurers shall recover the post event assessment through a
15 surcharge on homeowner, farmowner, fire and allied lines policyholder,
16 excluding crop hail policyholders, equal to the percentage identified by the
17 board for the insurers' post event assessment. This surcharge shall be exempt
18 from insurance premium taxes;

19 (4) Pursuant to section 8, the board shall establish surcharge
20 policies and guidelines for insurers entering the residential homeowner,
21 farmowner, fire and allied lines and/or earthquake markets, excluding
22 commercial policies and crop hail, after an event to ensure a fair and
23 competitive market;

24 (5) If the maximum assessment in any calendar year does not
25 provide an amount sufficient for payment of covered claims, the monies
26 available shall be pro-rated with the unpaid portion being paid as soon
27 thereafter as monies become available, with assessments being made in the next
28 and successive calendar years. However, in no event shall the total
29 assessment exceed two hundred fifty million dollars (\$250,000,000) in the
30 aggregate, regardless of the frequency or severity of earthquake losses at any
31 and all times subsequent to the creation of the authority;

32 (6) The authority may exempt or defer, in whole or in part, the
33 assessment of any insurer if the assessment would cause the insurer to be
34 deemed in hazardous financial condition, as defined in §23-68-102(14);

35 (7) Insurers determined to be insolvent insurers by a court of
36 competent jurisdiction shall be exempt from assessment from and after the date

1 of that determination and until the commissioner determines that the insurer
2 is no longer an insolvent insurer; and

3 (8) It shall be the duty of each insurer to pay the amount of its
4 assessment to the authority within thirty (30) days after it gives notice of
5 the assessment.

6 (e) Failure to pay assessments.

7 (1) The commissioner may suspend or revoke, after notice and
8 hearing, the certificate of authority to transact business in this state of
9 any insurer who fails to pay an assessment when due;

10 (2) As an alternative, the commissioner may levy a fine on any
11 insurer which fails to pay an assessment when due. The fine shall not exceed
12 one thousand dollars (\$1,000) per day and shall be payable to the authority
13 for use in its operations;

14 (3) In addition, assessments may be collected by the authority
15 through suits brought for that purpose. Venue for suits shall lie in Pulaski
16 County, Arkansas and the authority shall not be required to give an appeal
17 bond in any cause arising hereunder; and

18 (4) Any insurer whose certificate of authority to do business in
19 this state is cancelled or surrendered shall be liable for any unpaid
20 assessments made prior to the date of such cancellation or surrender.

21
22 SECTION 13. Policy standards.

23 (a) The authority shall offer a residential earthquake policy with
24 dwelling coverage in amounts up to one hundred thousand dollars (\$100,000).

25 (b) Coverage for personal property and additional living expenses shall
26 be provided as determined by the board in the plan of operation.

27 (c) The applicable deductible for this coverage shall be determined by
28 the board in the plan of operation.

29
30 SECTION 14. Notice and declination.

31 (a) Existing policyholders.

32 (1) Insurers writing homeowner, farmowner, fire and allied lines,
33 excluding commercial policies and crop hail, shall notify policyholders that
34 do not maintain residential earthquake insurance or who maintain residential
35 earthquake insurance at amounts less than one hundred percent (100%) of the
36 insured value of the dwelling, of their potential eligibility for residential

1 earthquake insurance through the MAP or authority. Such notice shall be on a
2 form adopted by the board and approved by the commissioner, and insurers shall
3 verify to the board compliance with this provision. This notice shall be
4 provided at such intervals and frequency to be determined by the board, but
5 notice shall be given at a minimum of three (3) different times over a four
6 (4) year interval; and

7 (2) This notice from insurers shall not be deemed to provide
8 earthquake coverage to existing policyholders who do not maintain a policy of
9 residential earthquake insurance, nor shall the notice be deemed to increase
10 the amounts of earthquake insurance for those policyholders who maintain
11 coverage at less than one hundred percent (100%) of the insured value of the
12 dwelling.

13 (b) New policyholders.

14 Insurers writing homeowner, farmowner, fire and allied lines, excluding
15 commercial policies and crop hail, shall advise new applicants for these types
16 of coverages of the availability of residential earthquake insurance through
17 the MAP or authority, if coverage is unavailable from the insurer. If an
18 applicant chooses not to purchase residential earthquake coverage through an
19 insurer, including MAP participants, or the authority, the applicant shall
20 reject this coverage in writing on the application or any addendum thereto.
21 Insurers shall maintain the application containing the rejection as part of
22 their files.

23
24 SECTION 15. Appeal.

25 Any applicant for a policy, any persons insured under the MAP or
26 authority, and any agency or insurer affected by the MAP or authority may
27 appeal to the commissioner any ruling or decision of the governing board, and
28 the commissioner may consider the appeal under a de novo standard of review.

29
30 SECTION 16. Rules and regulations.

31 The commissioner is authorized to promulgate such reasonable rules and
32 regulations as are necessary to carry out the provisions of this act.

33
34 SECTION 17. Federal or multistate catastrophic funds.

35 In the event a federal or multistate catastrophic insurance or
36 reinsurance program intended to serve purposes similar to the purposes of the

1 MAP or authority is created, the board shall promptly take appropriate actions
 2 to coordinate with the federal or multistate program to the extent consistent
 3 with this act and if such actions are in the best interest of Arkansas
 4 citizens. The board shall also make recommendations to the Legislature for
 5 coordination with the federal or multistate program, or for termination of the
 6 MAP or authority, if it is in the best interest of Arkansas citizens, or take
 7 such other actions as the board finds appropriate.

8
 9 SECTION 18. Exemption from property and casualty insurance guaranty
 10 fund.

11 Notwithstanding any other provision of law to the contrary, neither the
 12 authority nor its policyholders shall be subject to the provisions of, or be
 13 eligible for, the benefits provided by the Arkansas Property and Casualty
 14 Insurance Guaranty Act, beginning at §23-90-101.

15
 16 SECTION 19. Termination of the authority.

17 Upon termination of the authority by the Legislature or the
 18 commissioner, its remaining funds shall be transferred to the State Insurance
 19 Department Trust Fund unless otherwise directed by the Legislature.

20
 21 SECTION 20. All provisions of this Act of a general and permanent
 22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 23 Code Revision Commission shall incorporate the same in the Code.

24
 25 SECTION 21. If any provision of this Act or the application thereof to
 26 any person or circumstance is held invalid, such invalidity shall not affect
 27 other provisions or applications of the Act which can be given effect without
 28 the invalid provision or application, and to this end the provisions of this
 29 Act are declared to be severable.

30
 31 SECTION 22. All laws and parts of laws in conflict with this Act are
 32 hereby repealed.

33 */s/ Bookout, et al*

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 35
 36 APPROVED: 4/12/1999