

Act 772 of the 1989 Regular Session.

Act 772

HB1818

By: Representatives Newman and Turner

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS INSURANCE CODE, THE SAME BEING ARKANSAS CODE ANNOTATED SECTIONS 23-63-504 THROUGH 23-86-116, AND RELATED LAWS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 23-63-504(b) is hereby amended to read as follows:

"(b) Therefore, notwithstanding other provisions in this subchapter to the contrary, this subchapter shall not apply, in any manner, to any domestic insurer or domestic holding company system authorized and doing business solely in this State and which is not affiliated with a foreign or alien insurer. However, such domestic insurers or domestic holding company systems which subsequently become authorized or approved to do business in other states or jurisdictions shall, not later than sixty (60) days from the effective date of such authorization or approval, register with the Arkansas Insurance Commissioner in compliance with Arkansas Code 23-63-514, and thereafter as provisions of this subchapter require."

SECTION 2. Arkansas Code 23-63-514(a) is hereby amended to read as follows:

"(a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the Insurance Commissioner, except: (1) foreign insurers subject to disclosure requirements and standards adopted by code or statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section; and (2) domestic insurers or domestic holding company systems authorized and doing business solely within this State and which are not affiliated with a foreign or alien insurer. However, such domestic insurers or domestic holding company systems which subsequently become authorized or approved to do business in other states or jurisdictions shall, not later than sixty (60) days after admission or approval to transact business in such other states or jurisdictions, register with the Arkansas Insurance Commissioner in compliance with this Section, and thereafter as the provisions of this subchapter require."

SECTION 3. Subsection (a) of Arkansas Code 23-63-701 is hereby amended to read as follows:

"(a) No insurer shall retain any risk on any one (1) subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders; provided, with the prior approval of the Commissioner, such limitation shall not apply to a subject of insurance controlled by the insurer or owned by an affiliate of the insurer."

SECTION 4. Subchapter 8 of Chapter 63 of Title 23 of the Arkansas Code is hereby amended by adding the following new sections at the end of the existing subchapter:

"23-63-839. Bankers Acceptances. An insurer may invest in negotiable bills of exchange or time drafts issued and unconditionally guaranteed by any bank, bank and trust company, national bank association or domestic branch or agency of a foreign bank subject to reserve requirements under Section 7 of the National Banking Act of 1978, as amended; provided that:

(1) the underlying transaction involves a trade financing and has a maturity no longer than six (6) months sight to run exclusive of days of grace; and

(2) the insurer invests not more than twenty-five percent (25%) of its assets in bankers acceptances; and

(3) the insurer invests not more than ten percent (10%) of its assets in any one (1) bankers acceptance in any one (1) financial institution.

23-63-840. Collateralized Mortgage Obligations. (a) An insurer may invest in collateralized mortgage obligations without investment limitation provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States of America, or by any agency or instrumentality of the United States of America; and provided that the specific investment right within that collateralized mortgage obligation is not a zero coupon class, residual interest or a class designated as principal or interest only.

(b) An insurer may invest up to ten percent (10%) of its assets in zero coupon, residual interest, or principal or interest only classes of collateralized mortgage obligations provided that the underlying mortgages pledged to the repayment of principal and interest of the collateralized mortgage obligation are in themselves unconditionally guaranteed as to timely repayment of principal and interest by the United States of America, or any agency or instrumentality of the United States of America."

SECTION 5. Subsection(c) of Arkansas Code 23-64-202 is hereby amended to read as follows:

"(c) Except as provided in this section and in 23-64-227, no agent shall place any business with any insurer as to which he does not then hold an appointment as agent under this chapter. Unless otherwise provided by contract an insurance agent may, subject to the approval of an insurer with which the agent does not hold an appointment, place an application for group life or disability insurance with such insurer, provided that upon receipt of such application the insurer:

(1) Promptly files an appointment form for such agent with the Commissioner before issuing the group policy and certificates of insurance; and

(2) Pays no commission to the agent until such appointment is issued by the Commissioner and received by the insurer."

SECTION 6. Arkansas Code 23-65-308(3) is hereby amended to read as follows:

"(3) Prior to issuance of the license, the applicant shall file with the Commissioner, and thereafter for as long as the license remains in effect, he shall keep in force and unimpaired a bond or other securities in favor of the State of Arkansas in the penal sum of fifty thousand dollars (\$50,000), aggregate liability, with unaffiliated entities approved by the Commissioner. The securities shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by the law. No securities shall be terminated unless not less than sixty (60) days prior written notice thereof is filed with the Commissioner."

SECTION 7. Arkansas Code 23-65-310(a)(4) is hereby amended to read as follows:

"(4) An alien insurer unless the insurer shall have an established and effective trust fund within the United States administered by a recognized financial institution and held for the benefit of all its policyholders wherever located in the United States, the trust fund to be in the amount of not less than one million dollars (\$1,000,000). However, the broker may place casualty insurance with an alien insurer or a pool of alien insurers having combined capital and surplus of five million dollars (\$5,000,000) or more, so long as the insured signs an affidavit accepting the insurance. The affidavit shall include a statement that the insurance is not available to him elsewhere. The alien insurer shall annually report the location and balance of the trust fund to the Commissioner as he prescribes, and shall promptly report to the Commissioner any change in the location of the trust fund;"

SECTION 8, Subsection (a)(6) of Arkansas Code 23-65-310 is hereby amended to read as follows:

"(6) Any insurer which does not maintain on deposit in accordance with 23-63-901 - 23-63-912 eligible securities having a market value at all times of not less than one hundred thousand dollars (\$100,000) conditioned on the payment of creditors, or obligees, of the insurer in this state and the prompt payment of all claims arising and accruing to any persons during the term of the securities under any policy issued by the insurer."

SECTION 9. Arkansas Code 23-66-310(c) is hereby amended to read as follows:

"(c) Any fee charged by a licensed insurance agent for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance contract shall not be deemed to be a premium or a charge for insurance, and therefore the charging of the fee shall not be deemed prohibited by the provisions of subsection (b) of this section if all the following conditions are met:

(1) The fee must be based upon a written agreement which is signed by the party to be charged in advance of the performance of services under the agreement, and a copy of the agreement must be provided at that time to the party to be charged;

(2) The services for which the fee is to be charged must be specifically stated in the agreement, and services for which the fee is charged must be other than those which are customarily associated with the solicitation, negotiation, or servicing of an insurance contract;

(3) The amount of the fee to be charged must be specifically stated in the agreement;

(4) The agreement must contain a statement that if an insurance product is purchased through the agent, the agent will receive a commission in connection with the sale, that the fee charged is unrelated to any compensation received by the agent for the sale of any insurance product, and that the fee may not be waived under any circumstance; and

(5) The agent must retain a copy of the agreement for not less than three (3) years after completion of the services, and the copy shall be available to the Commissioner upon request.

SECTION 10. Arkansas Code 23-66-310 is hereby amended by adding a new subsection (d) as follows:

"(d) Nothing shall prohibit a duly licensed property or casualty agent or broker from charging a fee to the insured in addition to the premium properly charged for a policy or contract according to the insurer's rate and rule filings with this Department provided that:

(1) Each such fee is separately disclosed on the invoice or billing statement mailed or delivered to the insured; and

(2) The aggregate sum of such fees and all producers' commissions or other compensation due and owing for that policy or contract does not exceed twenty percent (20%) of the total gross premium charged the insured by the insurer for that policy or contract."

SECTION 11. Arkansas Code 23-67-103 is hereby amended to read as follows:

"23-67-103. Scope.

This chapter applies to all kinds of insurance written on risks in this state by any insurers authorized to do business in this state, except:

- (1) Life insurance;
- (2) Annuities;
- (3) Disability, including accident and health insurance;
- (4) Ocean marine insurance;
- (5) Reinsurance;
- (6) Aircraft insurance;
- (7) Title insurance; or
- (8) Workers' compensation and employers' liability insurance; except

that the following provisions of this chapter shall apply to these lines:

23-66-206; 23-67-102(1), (4), (5), (6), (9), (10), (11), and (12); 23-67-104; 23-67-105; 23-67-108; 23-67-114; 23-67-115(a); 23-67-115(c); 23-67-116; 23-67-118; 23-67-119; 23-67-121; and the publisher's note to Title 23, chapter 67."

SECTION 12. Subsection (b) of Arkansas Code 23-69-134 is hereby amended by adding a new subdivision (3) as follows:

"(3) Such securities of the insurer that are readily marketable and have a maturity of one (1) year or less from the date of purchase and that are kept in safekeeping in a federally chartered bank, bank and trust company or national bank association domiciled outside the State of Arkansas, provided that:

(A) the insurer shall maintain in its possession a safekeeping receipt for those securities evidencing uncontestable ownership; and

(B) at no time shall the insurer hold pursuant to this subdivision securities in an aggregate amount in excess of the greater of:

- (1) ten percent (10%) of its assets; or
- (2) forty percent (40%) of its surplus if a life or disability insurer, or of its surplus to policyholders if other than a life or disability insurer."

SECTION 13. Subsection (d) of Arkansas Code 23-69-156 is hereby amended to read as follows:

"(d) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of the merged or consolidated domestic insurer shall automatically be extinguished and nullified.

SECTION 14. Arkansas Code 23-69-156 is hereby amended by adding new subsection (3) as follows:

"(e) In the event a domestic insurer reinsures in bulk in another insurer all of the ceding domestic insurer's business in force, or all except a token amount of the ceding domestic insurer's business, the Commissioner shall, after notice and a hearing, make a determination and order that the ceding domestic insurer's corporate charter is extinguished or is continued in full force and effect. In making such determination and

order, the Commissioner shall fully consider the equities to the stockholders, or members if the ceding domestic insurer is a mutual, and the policyholders of the ceding domestic insurer."

SECTION 15. Arkansas Code 23-74-129(4) (A) is hereby amended to read as follows:

"(A) The commissioner may issue a license to any person who has paid a biennial license fee of ten dollars (\$10.00) and who has complied with the requirements of this section, authorizing the licensee to act as an insurance agent on behalf of any society named in the license which is authorized to do business in this state."

SECTION 16. Arkansas Code 23-76-113 is hereby amended by adding new subsection (c) as follows:

"(c) Any health maintenance organization that fails to file the report when due shall be subject to a penalty of one hundred dollars (\$100.00) for each day of delinquency, unless the penalty is waived by the Commissioner upon a showing of good cause by the organization."

SECTION 17. Arkansas Code 23-79-112 is hereby amended by adding new subsection (h) to read as follows:

"(h) On and after January 1, 1990, every property and casualty policy shall contain a provision stating the method to be utilized in computing premium refunds in the event of cancellation of the policy by the insured or the insurer."

SECTION 18. Subsection (a) of Arkansas Code 23-86-116 is hereby amended to read as follows:

"(a) Every group disability insurance policy, contract, or certificate that provides coverage for hospital or medical services or expenses shall provide that the insurer shall continue its obligation for benefits under the policy or contract for any person insured under the policy or contract who is hospitalized on the date of termination if the policy or contract is terminated and replaced by a group health insurance policy or contract issued by another insurer or by a self-funded health care plan."

SECTION 19. Arkansas Code 26-57-603 is hereby amended to read as follows:

"26-57-603. Tax reports generally.

(a) Each authorized, each formerly authorized, and each unauthorized insurer as defined in 23-60-102(12) shall file with the Insurance Commissioner on or before March 1 of each year a report in form as prescribed by the Insurance Commissioner showing, except as to wet marine and foreign trade insurance as defined in 26-57-605(d), total direct premium income including policy, membership, and other fees, and all other considerations for insurance, from all kinds and classes of insurance, whether designated as premium or otherwise, written by it during the preceding calendar year on account of policies and contracts covering property, subjects, or risks located, resident, or to be performed in this state, with proper proportionate allocation of premium as to such persons, property, subjects, or risks in this state insured under policies or contracts covering persons, property, subjects, or risks located or resident in more than one (1) state, after deducting from the total direct premium income dividends and similar returns paid or credited to policyholders other than as to life insurance, applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, and the amount of reduction in, or refund of, premiums allowed to industrial life policyholders for payment of premiums directly to an office of the insurer.

(b) No deduction shall be made of the cash surrender values of policies.

(c) Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(d) Each authorized, unauthorized, or formerly authorized domestic, foreign, and alien insurer shall pay to the State Treasurer through the Commissioner, as a tax imposed for the privilege of transacting business in this state, a tax upon the net premiums and net considerations, except as provided in 26-57-605. The tax shall be computed thereon at a rate of two and one-half percent (2-1/2%). The premiums written shall be reported at such times and in such form and context as prescribed by the Commissioner; and the taxes shall be paid on a quarterly estimate basis as prescribed by the Commissioner and shall be reconciled annually at the time of filing the annual report required in subsections (a)-(c) of this section.

(e) That portion of the tax paid by an insurer in accordance with 24-11-809 shall be separately specified in the report in such manner as may be prescribed by the Insurance Commissioner to enable the Commissioner to make a proper apportionment of the funds."

SECTION 20. Arkansas Code 26-57-604 is hereby amended to read as follows:

"26-57-604. Remittance of tax.

Coincident with the filing of the tax report, each authorized life or disability insurer, including licensed health maintenance organizations, may apply for a credit for the noncommissioned salaries and wages of the insurer's Arkansas employees which are paid in connection with its insurance operations. The credit may be applied as an offset against the premium tax imposed in 26-57-603(d) on life and disability insurance.

(1) In no event shall the offset reduce the disability premium tax due by more than eighty percent (80%). In no event shall the offset reduce the life premium tax due by more than seventy percent (70%). The taxes shall be reported and paid on a quarterly estimate basis as prescribed by the Commissioner and shall be reconciled annually at the time of filing the annual report required in 26-57-603(a)-(c).

(2) Further, an employee must be employed for six (6) months in the facilities for the salary or wages to be eligible to qualify for the life or disability premium tax credit.

(3) On or before March 1 of each year, any such authorized life or disability insurer, including health maintenance organizations, desiring to qualify under this provision shall furnish the appropriate data and request on forms prescribed by the Commissioner. For purposes of calculating the taxes under 23-63-101 - 23-63-104, an insurer qualifying for a credit under this section shall compute the tax due under 23-63-101 - 23-63-104, if any, by using an Arkansas premium tax rate of two and one-half percent (2 1/2%).

(b) Each insurer other than those in 23-57-603(d) and subsection (a) of this section shall pay to the State Treasurer through the Insurance Commissioner, as a tax imposed for the privilege of transacting business in this state, a tax at the rate of two and one-half percent (2 1/2%) upon the net premiums and net considerations on all kinds of insurance, except as provided in 23-57-605. The taxes shall be paid on a quarterly estimate basis as prescribed by the commissioner and shall be reconciled annually at the time of filing the annual report required in 26-57-603(a)-(c)."

SECTION 21. Arkansas Code 26-57-605(a) and (b) are hereby amended to read as follows:

"(a) As to wet marine and foreign trade insurance written in this state during the preceding calendar year, on or before March 1 of each

year, each authorized, unauthorized or formerly authorized insurer shall file its report with the Commissioner, on forms as prescribed by him, of its gross underwriting profit thereon.

(b) As a tax imposed for the privilege of transacting such insurance in this state, a tax of three-quarters of one percent ($3/4$ of 1%) of the gross underwriting profit shall be reported and paid on a quarterly estimate basis at such times and upon forms as shall be prescribed by the Commissioner and reconciled annually at the time of filing the annual report."

SECTION 22. Arkansas Code 26-57-607 is hereby amended to read as follows:

"26-57-607. Revocation or suspension of Certificate of Authority.

(a) The Insurance Commissioner may, in his discretion, suspend or revoke the certificate of authority of any insurer or health maintenance organization that fails to report and pay the premium tax levied under 26-57-604 and 26-57-605 the laws of this State on the date due or during any reasonable extension of time which may have been expressly granted by the Insurance Commissioner for good cause upon the insurer's request.

(b) In addition, any insurer or health maintenance organization that fails to report and/or pay the tax when due shall be subject to a penalty of one hundred dollars (\$100.00) for each day of the delinquency. The penalty shall be collected by the Commissioner, if necessary, by a civil suit therefor brought by the Commissioner in the Circuit Court of Pulaski County, unless the penalty is waived by the Commissioner upon a showing by the insurer or organization of good cause for its failure to file its report and/or tax payment on or before the date due."

SECTION 23. Arkansas Code title 26, Chapter 57, Subchapter 6 is hereby amended by adding the following new sections at the end of the existing subchapter:

"26-57-612. Quarterly Premium Taxes. Any insurer, health maintenance organization, or other entity which is required by any section of the Arkansas Code to report and pay quarterly premium taxes, and has a total quarterly premium tax due of twenty-five dollars (\$25.00) or less may defer payment of such sum to the following quarter or quarters of that calendar year, provided such tax payment is remitted to the Insurance Department no later than March 1 of the following year coincident with the required filing of the annual statement.

26-57-613. Exceptions. The provisions of this subchapter shall not be applicable to surplus line insurers on the Commissioner's approved list."

SECTION 24. Subsection (a) of Arkansas Code 23-63-206 is hereby amended to read as follows:

"(a) All insurers authorized to transact insurance in this State shall make and maintain a deposit of securities as follows:

(1) All insurers authorized to transact only life or disability insurance, or both, shall deposit through the commissioner and subject to the conditions specified in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this State and the prompt payment of all claims arising and accruing to any person in this State; provided, insurers holding a valid certificate of authority to transact life or disability insurance, or both, in this State on July 20, 1987 shall not be required to make and maintain such deposit until January 1, 1990;

(2) In addition to the deposit required under the provisions of Subdivision (1) hereof, all insurers now or hereafter licensed to write disability insurance shall deposit through the Commissioner and subject to the conditions specified in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than an amount equal to four (4) percent of its disability insurance premiums written in Arkansas as stated in Schedule T of its annual financial report filed with the Commissioner, conditioned for the payment of policyholders and creditors of the insurer in this State and the prompt payment of any person in this State; provided, no such deposit shall be required if such premium is less than \$500,000;

(3) On and after the effective date of this Act, insurers applying for an original Certificate of Authority in Arkansas for kinds of insurance other than life, disability or surety, and insurers holding a valid Certificate of Authority who thereafter apply to transact any other or additional kinds of insurance excluding life, disability or surety shall deposit through the commissioner and subject to the conditions specified in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and the prompt payment of all claims arising and accruing to any person in this state;

(4) An insurer authorized to transact surety insurance, in addition to any deposit required as to any other kind of insurance it is authorized to transact in this state, shall deposit through the commissioner and subject to the conditions provided in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this state and prompt payment of all claims arising and accruing to any obligee in this state. Any authorized surety insurer also licensed as a professional bail bond company shall make and maintain an additional deposit as required in Title 17, Chapter 17, of the Arkansas Code applicable to bail bond transactions."

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

SECTION 26. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 27. Emergency. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediately passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 21, 1989
