

*As Engrossed: 3/6/95 4/7/95*

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Representative Newman**

# A Bill

**ACT 1272 OF 1995**  
**HOUSE BILL 1892**

## For An Act To Be Entitled

8 "AN OMNIBUS ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS  
9 INSURANCE CODE, THE SAME BEING ARKANSAS CODE 23-60-102,  
10 AND FOLLOWING; TO AMEND THE MOTOR VEHICLE CODE TO  
11 AUTHORIZE NEW POWERS FOR THE ARKANSAS AUTOMOBILE ASSIGNED  
12 RISK PLAN; TO CLARIFY THE TYPE OF APPEAL FROM THAT AUTO  
13 PLAN TO THE STATE INSURANCE COMMISSIONER; AND FOR OTHER  
14 PURPOSES."

## Subtitle

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16  
17 "THE INSURANCE COMMISSIONER\_S OMNIBUS  
18 ACT TO AMEND THE INSURANCE CODE AND  
19 RELATED LAWS."

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21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
24 SECTION 1. Subsection (10) of Arkansas Code 23-60-102 is hereby  
25 amended to read as follows:

26 "(10) When used in a context signifying a jurisdiction other than the  
27 State of Arkansas, \_state\_ means any state, district, territory, commonwealth,  
28 or possession of the United States of America; and for purposes of conforming  
29 the Arkansas Insurance Code to comply with the provisions of the North  
30 American Free Trade Agreement (\_NAFTA\_), \_state\_ shall also be deemed to  
31 include Canada and the Republic of Mexico as appropriate;"

32  
33 SECTION 2. Arkansas Code 23-61-107(a) is amended by adding new  
34 subdivisions (4) and (5) at the end of the existing subsection (a) to read as  
35 follows:

36 "(4) The commissioner shall maintain as confidential, and not subject to

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1 subpoena, financial information regarding material transactions of insurers,  
2 as defined in statute or regulation.

3           (5) The commissioner shall maintain, as confidential, any documents or  
4 information received from the National Association of Insurance Commissioners  
5 or insurance departments of other states which is confidential in such other  
6 jurisdictions. It is within the power of the commissioner to share  
7 information, including otherwise confidential information, with the National  
8 Association of Insurance Commissioners or insurance departments of other  
9 states so long as such other jurisdictions agree to maintain the same level of  
10 confidentiality as is available in Arkansas."

11

12           SECTION 3. Arkansas Code 23-61-201(a)(4) is hereby amended to read as  
13 follows:

14           "(4) In scheduling and determining the nature, scope, and frequency of  
15 the examinations, the commissioner shall consider such matters as the results  
16 of financial statement analyses and ratios, changes in management or  
17 ownership, actuarial opinions, reports of independent certified public  
18 accountants, and other criteria as set forth in the most current edition of  
19 the Examiners\_ Handbook adopted by the National Association of Insurance  
20 Commissioners and in effect when the commissioner exercises discretion to  
21 conduct an examination under subdivision (a)(1) of this section."

22

23           SECTION 4. Arkansas Code 23-61-203(a) is hereby amended to read as  
24 follows:

25           "(a) Upon determining that an examination should be conducted, the  
26 commissioner shall issue an examination certificate of authority appointing  
27 one (1) or more examiners to perform the examination and instructing them as  
28 to the scope of the examination. In conducting the examination, the examiner  
29 shall observe those guidelines and procedures set forth in the most current  
30 edition of the Examiners\_ Handbook adopted by the National Association of  
31 Insurance Commissioners. The commissioner may also employ such other  
32 guidelines or procedures as the commissioner may deem appropriate."

33

34           SECTION 5. Subsection (e) of Arkansas Code 23-61-307 is hereby amended  
35 to read as follows:

1           "(e) Within thirty (30) days after filing of the copy of notice of  
2 appeal in his office, or within such further time as the court may allow, the  
3 commissioner shall make, certify, and deposit in the office of the clerk of  
4 the court in which the appeal is pending a full and complete transcript of all  
5 proceedings had before him and all evidence before him in the matter,  
6 including all his files therein."  
7

8           SECTION 6. Arkansas Code 23-61-703 is hereby amended to read as  
9 follows:

10           "23-61-703. Insurers\_ administrative and financial regulation fees.

11           (a) Notwithstanding the provisions of § 26-57-602 and other  
12 provisions of Arkansas law, all licensed insurers, including, but not limited  
13 to, all licensed stock and mutual insurance companies, health maintenance  
14 organizations, fraternal benefit societies, hospital and medical service  
15 corporations, stipulated premium insurers, reinsurers, and farmers\_ mutual aid  
16 associations shall annually on or before June 30 at the time and in the manner  
17 as the Insurance Commissioner shall prescribe or at times alternate from June  
18 30 annually as the Insurance Commissioner shall prescribe, pay to the State  
19 Insurance Department Trust Fund a nonrefundable administrative and financial  
20 regulation fee.

21           (b) This fee shall be based upon the insurer\_s direct premiums and  
22 copayments written in the State of Arkansas during the preceding calendar  
23 year, as evidenced by the insurer\_s annual statement filed March 1 annually  
24 with the State Insurance Department pursuant to the Arkansas Insurance Code.  
25 Insurers and reinsurers with no annual direct written Arkansas premiums shall  
26 pay the minimum fee of \$500.

27           (c) Such administrative and financial regulation fees shall be paid in  
28 the following amounts based upon the following schedule:

29

30 ARKANSAS DIRECT WRITTEN PREMIUMS AND	ANNUAL ADMINISTRATIVE AND
31 COPAYMENTS OF INSURERS, HMO_S,	FINANCIAL REGULATION FEE DUE
32 FMAA_S, AND OTHERS	STATE OF ARKANSAS

33

34 (total for preceding calendar year)

35           \$0	\$ 500
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1	01-- 499,999	750
2	500,000-- 2,499,999	1,000
3	2,500,000-- 4,999,999	2,500
4	5,000,000-- 7,499,999	5,000
5	7,500,000-- 9,999,999	7,500
6	10,000,000--19,999,999	10,000
7	20,000,000--29,999,999	12,000
8	30,000,000--49,999,999	15,000
9	50,000,000--74,999,999	17,500
10	75,000,000--99,999,999	20,000
11	100,000,000 AND UP	25,000

12

13 (d) In no event shall the annual financial regulation fee imposed in  
14 this section and assessed to support the maintenance and operation of the  
15 State Insurance Department exceed twenty-five thousand dollars (\$25,000) for  
16 any one (1) insurer or reinsurer in any one (1) year."

17

18 SECTION 7. Arkansas Code 23-62-305(f)(1) is hereby amended to read as  
19 follows:

20 "(f)(1) Credit shall be allowed when the reinsurance is ceded to an  
21 assuming insurer which maintains a trust fund in a qualified United States  
22 financial institution, as defined in §23-62-307(b), for the payment of the  
23 valid claims of its United States policyholders and ceding insurers, their  
24 assigns and successors in interest. The assuming insurer shall report  
25 annually to the commissioner information substantially the same as that  
26 required to be reported on the National Association of Insurance Commissioners  
27 annual statement form by licensed insurers to enable the commissioner to  
28 determine the sufficiency of the trust fund. In the case of a single assuming  
29 insurer, the trust shall consist of a trusteed account representing the  
30 assuming insurer\_s liabilities attributable to business written in the United  
31 States and, in addition, the assuming insurer shall maintain a trusteed  
32 surplus of not less that twenty million dollars (\$20,000,000). In the case of  
33 a group of incorporated and/or individual unincorporated underwriters, the  
34 trust shall consist of a trusteed account representing the group\_s liabilities  
35 attributable to business written in the United States and, in addition, the

1 group shall maintain a trusteed surplus of which one hundred million dollars  
2 (\$100,000,000) shall be held jointly for the benefit of United States ceding  
3 insurers of any member of the group; the incorporated members of the group  
4 shall not be engaged in any business other than underwriting as a member of  
5 the group and shall be subject to the same level of solvency regulation and  
6 control by the group\_s domiciliary regulator as are the unincorporated  
7 members; and the group shall make available to the commissioner an annual  
8 certification of the solvency of each underwriter by the group\_s domiciliary  
9 regulator and its independent public accountants."

10

11 SECTION 8. Subdivision (2) of subsection (a) of Arkansas Code 23-62-404  
12 is hereby amended to read as follows:

13 "(2) In another state, unless such reinsurance intermediary broker is a  
14 licensed producer in this state or such reinsurance intermediary broker is  
15 licensed in this state as a nonresident reinsurance intermediary."

16

17 SECTION 9. Subdivision (3) of subsection (b) of Arkansas Code 23-62-404  
18 is hereby amended to read as follows:

19 "(3) In another state for a nondomestic insurer, unless such reinsurance  
20 intermediary manager is a licensed producer in this state or such person is  
21 licensed in this state as a nonresident reinsurance intermediary."

22

23 SECTION 10. Subsection (c) of Arkansas Code 23-63-207 is hereby amended  
24 to read as follows:

25 "*(c) On and after January 1, 1996, as to all domestic stock and*  
26 *domestic mutual and domestic reciprocal insurers currently licensed or*  
27 *obtaining original licensure on and after January 1, 1996, the insurer shall*  
28 *maintain a minimum special surplus of not less than fifteen percent (15%) of*  
29 *the paid-in capital, if a stock insurer, or fifteen percent (15%) of surplus,*  
30 *if a mutual or reciprocal insurer, as reported in its last preceding annual*  
31 *statement. The commissioner in his discretion may allow domestic insurers to*  
32 *augment special surplus in increments over a period of up to five (5) years to*  
33 *achieve compliance with the minimum amounts required herein, if immediate*  
34 *compliance with this Act would cause the domestic insurer to be impaired or*  
35 *insolvent."*

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SECTION 11. COMPLIANCE WITH SURPLUS AMOUNTS. Insurers should be granted sufficient preparation time to allow them to increase their new additional surplus to the required minimum, and accordingly insurers\_ compliance with the provisions of this Act as to minimum special surplus required in addition to minimum capital and surplus shall not be required until on and after January 1, 1996 pursuant to Arkansas Code 23-63-207(c), as amended by this act.

SECTION 12. Arkansas Code 23-63-216 is amended by adding new subsection (j) following existing subsection (i) to read as follows:

"(j) (1) The National Association of Insurance Commissioners Annual Statement Diskette Filing Specifications are hereby adopted and incorporated by reference.

(2) Each authorized insurer shall submit its annual and quarterly statement information in manual and computer readable form using the diskette medium; however, Arkansas domiciled insurers that only do business in Arkansas are required to submit only a manual filing."

SECTION 13. Arkansas Code 23-63-611(b) is amended to read as follows:

"(b) (1) Securities other than those referred to in subsection (a) of this section held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by the commissioner as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

(3) If any valuation method stated in this section shall be inconsistent with any applicable valuation or method then currently approved or formulated by the Securities Valuation office Guidelines of the National Association of Insurance Commissioners or its successor organization, then the valuation or method currently approved or formulated by the Securities Valuation Office Guidelines of the National Association of Insurance Commissioners or its successor organization shall govern."

1 SECTION 14. Arkansas Code 23-63-612 is amended to read as follows:

2 "(a) Real property acquired under a mortgaged loan or pursuant to a  
3 contract of sale shall be valued according to the accounting procedures and  
4 practices prescribed by the National Association of Insurance Commissioners\_  
5 Accounting Practices and Procedures Manual.

6 (b) Other real property held by an insurer shall be valued according to  
7 the accounting procedures and practices prescribed by the National Association  
8 of Insurance Commissioners' Accounting Practices and Procedures Manual.

9 (c) Personal property acquired under a chattel mortgage made in  
10 accordance with §23-63-827 shall be valued according to the accounting  
11 procedures and practices prescribed by the National Association of Insurance  
12 Commissioners\_ Accounting Practices and Procedures Manual."

13

14 SECTION 15. Arkansas Code 23-63-613 is amended to read as follows:

15 "Purchase money mortgages on real property referred to in §23-63-612  
16 shall be valued in accordance with the accounting procedures and practices  
17 prescribed by the National Association of Insurance Commissioners\_ Accounting  
18 Practices and Procedures Manual."

19

20 SECTION 16. Subdivision (6) of Subsection (a) of Arkansas Code  
21 23-76-109 is hereby amended by adding a new paragraph (C) following paragraph  
22 (B) at the end of the existing subdivision, to read as follows:

23 "(C) Indemnity benefits on a point-of-service basis within such limits  
24 as may be prescribed by the commissioner. As used herein, the term  
25 point-of-service means indemnifying or paying on behalf of an enrollee for  
26 covered health care services on a non-emergency, self-referred basis obtained  
27 from providers who are not employed by, under contract with or otherwise  
28 affiliated with the health maintenance organization, or services obtained from  
29 providers affiliated with the health maintenance organization without proper  
30 referrals."

31

32 SECTION 17. Arkansas Code 23-84-108 is amended to read as follows:

33 "(a) In no event shall an insurer\_s aggregate reserves for all life  
34 insurance policies, excluding disability and accidental death benefits, issued  
35 on or after June 17, 1981, be less than the aggregate reserves calculated in

1 accordance with the methods set forth in §§ 23-84-106, 23-84-107, 23-84-110,  
2 and 23-84-111 and the mortality tables and rates of interest used in  
3 calculating nonforfeiture benefits for the policies.

4 (b) In no event shall the aggregate reserves for all policies,  
5 contracts and benefits be less than the aggregate reserves determined by the  
6 qualified actuary to be necessary to render the opinion required by  
7 §23-84-112."

8

9 SECTION 18. Arkansas Code 23-84-109 (c) is amended to read as follows:

10 "(c) Any insurer which at any time shall have adopted any standard of  
11 valuation producing greater aggregate reserves than those calculated according  
12 to the minimum standard provided in this chapter may, with the approval of the  
13 commissioner, adopt any lower standard of valuation, but not lower than the  
14 minimum provided in this chapter; provided, however, that, for the purposes of  
15 this chapter, the holding of additional reserves previously determined by a  
16 qualified actuary to be necessary to render the opinion required by §23-84-112  
17 shall not be deemed to be the adoption of a higher standard of valuation."

18

19 SECTION 19. Chapter 84 of *Title 23* of the Arkansas Code is hereby  
20 amended to add the following at the end of the existing chapter to read as  
21 follows:

22 "The Commissioner shall have the authority to promulgate reasonable  
23 rules and regulations as may be appropriate to carry out the purposes and  
24 provisions of this chapter."

25

26 SECTION 20. Arkansas Code 23-85-138, as to group disability insurance  
27 policies and codified in a subchapter of the insurance laws on individual  
28 disability insurance policies after initial enactment, is hereby repealed.

29

30 SECTION 21. Arkansas Code 23-86-113 is hereby amended by adding new  
31 subsection (g) following subsection (f) at the end of the existing section to  
32 read as follows:

33 "(g) Every insurer or hospital and medical service corporation which  
34 issues a group disability insurance policy, contract, or agreement in this  
35 state which provides for mental health coverage shall offer coverage for the



1 payment of services rendered by licensed professional counselors. Such offer  
2 shall be made either at the time of application for, or upon the first renewal  
3 of such policy, contract, or agreement after April 1, 1995. If such offer is  
4 accepted, the amount paid for services provided by licensed professional  
5 counselors shall be subject to the same limitations as set forth in the policy  
6 for mental health coverage. Nothing in this section shall be deemed to expand  
7 the scope of the practice of licensed professional counselors currently  
8 licensed by the Arkansas Board of Examiners in Counseling and possessing the  
9 qualifications set forth in §17-24-301, et seq., or other applicable laws."

10

11 SECTION 22. Subdivision (1) of Subsection (b) of Arkansas Code  
12 27-19-106 on the automobile assigned risk plan is hereby amended to read as  
13 follows:

14 "(b) (1) Any applicant for such policy, any person insured under any  
15 such plan, and any insurance company affected, may appeal to the commissioner  
16 from any ruling or decision of the manager or committee designated to operate  
17 the plan. At the conclusion, the plan shall prepare a memorandum of decision  
18 and a written transcript of its proceedings and deliberations as to the  
19 applicant, insured or insurer. Upon any subsequent appeal to the  
20 commissioner, he shall be furnished the written transcript of the proceedings  
21 before the plan and the written memorandum of decision. The commissioner  
22 shall, within thirty (30) days after submission of the transcript and  
23 memorandum of decision, render his decision on the appeal, which decision  
24 shall be based on the transcript and memorandum of decision submitted. The  
25 commissioner shall promptly notify the plan, and the appellant applicant,  
26 insured or insurer in writing of his decision on appeal."

27

28 SECTION 23. Arkansas Code 27-19-106 is hereby amended by adding a new  
29 subsection (c) following subsection (b) at the end of the existing section to  
30 read as follows:

31 "(c) In the courts of this state, the plan may sue and be sued in its  
32 own name."

33

34 SECTION 24. Subchapter 2 of Chapter 62 of Title 23 is hereby amended by  
35 adding a new section at the end of the existing Subchapter 2, to read as

1 follows:

2       *"The commissioner may adopt reasonable rules and regulations to*  
3 *implement the provisions of this subchapter."*

4

5       SECTION 25. *Subdivision (C) of subsection (2) of Arkansas Code 23-90-*  
6 *103 is hereby amended to read as follows:*

7       *"(C) A 'Covered claim' shall not include any of the following amounts:*

8             *(i) any amount awarded as punitive or exemplary damages;*

9             *(ii) any amount sought as return of premium under any*  
10 *retrospective rating plan;*

11            *(iii) any amount due to any reinsurer, insurer, insurance pool,*  
12 *or underwriting association; or*

13            *(iv) any amount sought as subrogation recoveries."*

14

15       SECTION 26. *All provisions of this Act of a general and permanent*  
16 *nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas*  
17 *Code Revision Commission shall incorporate the same in the Code.*

18

19       SECTION 27. *If any provision of this Act or the application thereof to*  
20 *any person or circumstance is held invalid, such invalidity shall not affect*  
21 *other provisions or application of the Act which can be given effect without*  
22 *the invalid provision or application, and to this end the provisions of the*  
23 *Act are declared to be severable.*

24

25       SECTION 28. *All laws and parts of laws in conflict with this Act are*  
26 *hereby repealed.*

27

28       SECTION 29. *Emergency. It is hereby found and determined by the*  
29 *General Assembly of the State of Arkansas that the present insurance laws, and*  
30 *motor vehicle laws on the automobile assigned risk plan, are inadequate for*  
31 *the protection of the public; and the immediate passage of this Insurance*  
32 *Omnibus Act is necessary in order to provide for the protection of the public.*  
33 *Therefore, an emergency is hereby declared to exist and this Insurance*  
34 *Omnibus Act being immediately necessary for the preservation of the public*  
35 *peace, health and safety shall be in full force and effect from and after its*

1 passage and approval.

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*/s/Rep. Newman*

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APPROVED: 4-13-95

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