

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

# A Bill

Act 881 of 1999  
SENATE BILL 785

4  
5 By: Senator Edwards  
6  
7

## For An Act To Be Entitled

9 "AN OMNIBUS ACT TO AMEND THE ARKANSAS INSURANCE CODE  
10 AND OTHER LAWS REQUIRING ENFORCEMENT BY THE INSURANCE  
11 COMMISSIONER; TO AMEND ARK. CODE ANN. 11-9-106 AS TO  
12 FRAUD DIVISION PERSONNEL JOB DUTIES; TO AMEND ARK.  
13 CODE ANN. 23-40-113 (c) TO REQUIRE THE COMMISSIONER'S  
14 'WRITTEN AUTHORIZATION' RATHER THAN FORMAL 'ORDERS' IN  
15 CHANGE OF OWNERSHIP OF FUNERAL PRE-NEED CONTRACT  
16 ISSUERS; TO AMEND ARK. CODE ANN. 23-40-120(b)(2) ON  
17 FUNERAL PRE-NEED CONTRACTS TO OMIT DUPLICATIVE FEES;  
18 TO REPEAL ARK. CODE ANN. 23-40-121 ON FUNERAL PRE-NEED  
19 FEES OR EXAM COSTS; TO AMEND ARK. CODE ANN. 23-61-  
20 206(c) TO CREDIT AUDIT EXPENSE PAYMENTS TO 'THE STATE  
21 INSURANCE DEPARTMENT TRUST FUND'; TO AMEND ARK. CODE  
22 ANN. 23-61-402 TO ALLOW DEPOSIT OF MISCELLANEOUS FEES  
23 INTO 'THE STATE INSURANCE DEPARTMENT TRUST FUND'; TO  
24 AMEND ARK. CODE ANN. 23-61-707 TO REPLACE OBSOLETE  
25 FEES WITH FEES FOR ELECTRONIC AND FACSIMILE COPIES; TO  
26 AMEND ARK. CODE ANN. 23-66-205 TO REQUIRE COMPLIANCE  
27 BY SURPLUS LINE INSURERS & BROKERS WITH TRADE PRACTICE  
28 LAWS; TO AMEND ARK. CODE ANN. 23-66-603(a) TO CORRECT  
29 A REFERENCE TO LENDING INSTITUTION AGENCIES; TO AMEND  
30 ARK. CODE ANN. 23-76-103 TO REQUIRE HMO SUBSCRIBER  
31 CONTRACTS TO ADHERE TO CONTINUATION & CONVERSION LAWS  
32 ON & AFTER JULY 1, 1999; TO AMEND ARK. CODE ANN. 23-  
33 76-109(a) TO ALLOW HMO'S TO CONTRACT WITH OUT-OF-STATE  
34 MEDICAL PROVIDERS; TO AMEND ARK. CODE ANN. 23-76-131  
35 TO CLARIFY THE 2.5% PREMIUM TAX IMPOSED ON PATIENT  
36 COPAYMENT AMOUNTS PAID TO DOCTORS & HOSPITALS; TO ADD

1 NEW (c) TO ARK. CODE ANN. 23-79-119 TO MANDATE  
 2 GUARANTEED RENEWABILITY OF INDIVIDUAL HEALTH POLICIES  
 3 PROVIDING MAJOR MEDICAL COVERAGES PER FEDERAL HIPAA  
 4 LAW; TO AMEND ARK. CODE ANN. 23-79-301 TO EXEMPT  
 5 SURPLUS LINE POLICIES FROM MINIMUM STANDARDS ACT FOR  
 6 COMMERCIAL PROPERTY AND CASUALTY INSURANCE; TO CORRECT  
 7 ARK. CODE ANN. 23-90-103(2)(C) ON SUBROGATION  
 8 RECOVERIES IN GUARANTY FUND CLAIMS; TO DELETE OBSOLETE  
 9 SUBSECTION (b) OF THE PROPERTY & CASUALTY GUARANTY ACT  
 10 IN ARK. CODE ANN. 23-90-119; TO AMEND ARK. CODE ANN.  
 11 23-92-307 TO DELETE FILING OF CPA PAYROLL TAX  
 12 CERTIFICATIONS BY EMPLOYEE LEASING FIRMS & TO EXEMPT  
 13 SUCH FIRMS WITH NO SUBSTANTIAL PRESENCE IN ARKANSAS  
 14 FROM BOND REQUIREMENTS; TO AMEND ARK. CODE ANN. 23-92-  
 15 311(a) TO SET A JULY 1ST ANNUAL RENEWAL FOR EMPLOYEE  
 16 LEASING FIRMS; TO AMEND ARK. CODE ANN. 23-100-102--107  
 17 TO CHANGE 'FEE' TO 'ASSESSMENT' TO REDUCE IMPACT OF  
 18 INSURANCE RETALIATORY LAWS; TO AMEND 26-57-604, AS TO  
 19 EMPLOYEE SALARY CREDITS; TO AMEND ARK. CODE ANN. 27-  
 20 22-106 TO ALLOW INSURERS TO NON-RENEW AUTO POLICIES  
 21 WHOSE DRIVERS HAVE LICENSES UNDER ADMINISTRATIVE  
 22 REVOCATION OR SUSPENSION; AND FOR OTHER PURPOSES."

23  
 24 **Subtitle**

25 "THE INSURANCE DEPARTMENT OMNIBUS ACT."  
 26  
 27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
 29

30 SECTION 1. Paragraph (B) of Subdivision (1) of Subsection (d) of  
 31 Arkansas Code 11-9-106 is hereby amended to read as follows:

32 "(B) The Workers' Compensation Fraud Investigation Unit herein  
 33 designated will ~~deal only with~~ investigate workers' compensation fraud, ~~and~~  
 34 ~~other~~ additional criminal violations that may be related thereto, ~~and such~~  
 35 other insurance fraud matters as may be assigned at the discretion of the  
 36 director. ~~Employees hired to pursue the purposes of the unit will be utilized~~

1 ~~solely to investigate workers' compensation fraud and those criminal~~  
 2 ~~violations that may be related thereto."~~

3  
 4 SECTION 2. Subsection (c) of Arkansas Code 23-40-113 is hereby amended  
 5 to read as follows:

6 "(c) The Insurance Commissioner shall approve the seller's application  
 7 for change of ownership ~~by order~~ by written authorization if:

8 (1) The transferee(s) set forth in the application holds a valid,  
 9 current permit pursuant to the provisions of this chapter;

10 (2) The accounting required is complete, accurate, and reflects  
 11 the trust fund whole and intact; and

12 (3) All required information and documents are filed with and  
 13 approved by the Insurance Commissioner."

14  
 15 SECTION 3. Subdivision (2) of Subsection (b) of Arkansas Code 23-40-120  
 16 is hereby amended to read as follows:

17 "(2) Each permittee examined shall pay ~~a fee for each examination not~~  
 18 ~~to exceed one hundred dollars (\$100) per day, or fifty dollars (\$50.00) per~~  
 19 ~~half day, or fraction thereof, that any examiner is absent from the office of~~  
 20 ~~the Insurance Commissioner for the purpose of making the examination. In~~  
 21 ~~addition, the permittee shall pay~~ the actual meals, hotel, and traveling  
 22 expenses of each authorized examiner from Little Rock and return. The ~~fee and~~  
 23 expenses shall be prorated if more than one (1) examination is made on an  
 24 examination trip."

25  
 26 SECTION 4. Arkansas Code 23-40-121, on Department deposits of funeral  
 27 pre-need fees and exam costs, is hereby repealed.

28 ~~23-40-121. State General Services Fund Account.~~

29 ~~All filing fees and examination costs collected under this chapter shall~~  
 30 ~~be deposited as special revenues into the State General Services Fund Account~~  
 31 ~~of the State General Government Fund.~~

32  
 33 SECTION 5. Subsection (c) of Arkansas Code 23-61-206 is hereby amended  
 34 to read as follows:

35 "(c) Payments for employee compensation received by the department shall  
 36 be deposited by the commissioner in the State Treasury to be credited to ~~the~~

1 ~~General Revenue Fund~~ The State Insurance Department Trust Fund Account used  
 2 for the maintenance, operation and support of the State Insurance Department."

3  
 4 SECTION 6. Arkansas Code 23-61-402 is hereby amended to read as  
 5 follows:

6 "23-61-402. Disposition.

7 (a) The commissioner shall deposit all fees collected under §23-61-401  
 8 in the State Treasury as special revenues. Unless specifically authorized by  
 9 law, order or consent decree for collection and deposit into other accounts or  
 10 other trust funds as general or special revenues, including, but not limited  
 11 to, the State Insurance Department Trust Fund under the State Insurance  
 12 Department Trust Fund Act, and the Insurance Continuing Education Trust Fund  
 13 under § 23-64-307, and the Insurance Fraud Investigation Division Trust Fund  
 14 under § 23-100-103, all fees, penalties and fines, gifts, grants and  
 15 endowments and awards, restitution payments, interest and investment income,  
 16 and dividends paid or payable to and/or collected by the commissioner and not  
 17 otherwise appropriated shall be deposited into the State Insurance Department  
 18 Trust Fund as special revenues for the maintenance, operation, support of and  
 19 improvements to the Arkansas Insurance Department.

20 (b) On the last business day of each month, the State Treasury shall  
 21 credit the net amount of the fees collected under § 23-61-401 to the  
 22 Constitutional Officers Fund and the State Central Services Fund to be used  
 23 for the maintenance, operation, and improvement of the respective agencies and  
 24 services receiving support from the Constitutional Officers Fund and the State  
 25 Central Services Fund as authorized by law."

26  
 27 SECTION 7. Arkansas Code 23-61-707 is hereby amended to read as  
 28 follows:

29 "~~(a) In addition to all other fees assessed as general or special~~  
 30 ~~revenues in connection with agent licensure and renewal licensure under the~~  
 31 ~~provisions of §23-61-401, §23-64-101 et seq., §23-64-210 et seq., and other~~  
 32 ~~applicable provisions of Arkansas law, resident insurance agents, during any~~  
 33 ~~period for which their licenses have been placed on inactive status with the~~  
 34 ~~commissioner's approval, if and as required, shall pay to the State Insurance~~  
 35 ~~Department Trust Fund as special revenues a nonrefundable administrative and~~  
 36 ~~financial regulation fee for each year their resident licenses remain on~~

~~inactive status. Effective on and after July 1, 1999, the commissioner shall collect in advance the following fees and miscellaneous charges:~~

- ~~(1) Facsimile copies, per page \$0.50~~
- ~~(2) Hard copy printout of one Microfiche page 1.00~~
- ~~(3) Electronic copies, per page .25~~

~~(b)(1) The initial administrative and financial regulation fee shall be payable by the resident agent to the State Insurance Department Trust Fund and filed with the Insurance Commissioner not later than thirty (30) days after approval of inactive agent license status is granted.~~

~~(2) Thereafter, until the license is reactivated, cancelled, or revoked, the administrative and financial regulation fee shall be paid by the resident agent to the State Insurance Department Trust Fund through the commissioner not later than July 1 annually.~~

~~(3) The fee shall be in an amount as required by §23-61-706 for current licensees.~~

~~(4) Upon the inactive resident agent's failure to pay the regulation fee on a timely basis, absent an extension granted for good cause by the commissioner upon written request, his Arkansas license shall be immediately cancelled or expired by the commissioner.~~

~~(c)(b) The commissioner shall deposit all such fees required by this section directly into the State Insurance Department Trust Fund as special revenues."~~

SECTION 8. Arkansas Code 23-66-205 is hereby amended to read as follows:

"23-66-205. Unfair competition or unfair or deceptive acts or practices prohibited.

No person shall engage in this state in any trade practice which is defined in this subchapter as being, or determined pursuant to this subchapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. This subchapter shall apply to policies and contracts of surplus line insurers, as appropriate and unless the context requires otherwise."

SECTION 9. Subsection (a) of Arkansas Code 23-66-603 is hereby amended to read as follows:

1           “(a) The terms ‘lending institution, subsidiary and affiliate’ shall  
2 have the meanings ascribed to them in ~~§23-64-203(b)(4)~~. § 23-64-202(b)(4).”

3  
4           SECTION 10. Arkansas Code 23-76-103 is hereby amended to read as  
5 follows:

6           “23-76-103. Applicability of §§ 23-75-101 – 23-75-110 and 23-75-112 –  
7 23-75-120.

8           Sections 23-75-101 - 23-75-110 and 23-75-112 - 23-75-120 shall be  
9 construed to apply to health maintenance organizations, health care plans, and  
10 evidences of coverage except to the extent that the commissioner determines  
11 that the nature of health maintenance organizations, health care plans, and  
12 evidences of coverage render such sections clearly inappropriate.

13 On and after July 1, 1999, the provisions of §§ 23-86-111 -- 23-86-116 as to  
14 continuation and conversion privileges shall apply to the subscriber policies  
15 and contracts of authorized health maintenance organizations.”

16  
17           SECTION 11. Subsection (a) of Arkansas Code 23-76-109 is hereby amended  
18 to read as follows:

19           “(a) The powers of a health maintenance organization include, but are  
20 not limited to, the following:

21                   (1) The purchase, lease, construction, renovation, operation, or  
22 maintenance of hospitals, medical facilities, or both, and their ancillary  
23 equipment, and the property as may reasonably be required for its principal  
24 office or for other purposes as may be necessary in the transaction of the  
25 business of the organization;

26                   (2) The making of loans to a medical group under contract with it  
27 in furtherance of its program or the making of loans to a corporation or  
28 corporations under its control for the purpose of acquiring or constructing  
29 medical facilities and hospitals or in furtherance of a program providing  
30 health care services to enrollees;

31                   (3) The furnishing of health care services through providers which  
32 are under contract with the health maintenance organization;

33                   (4) The contracting with any person for the performance on its  
34 behalf of certain functions such as marketing, enrollment, and administration;

35                   (5) The contracting with an insurance company licensed in this  
36 state, or with a hospital or medical service corporation authorized to do

1 business in this state, for the provision of insurance, indemnity, or  
 2 reimbursement against the cost of health care services provided by the health  
 3 maintenance organization;

4 (6) The offering, in addition to basic health care services, of:

5 (A) Additional health care services;

6 (B) Indemnity benefits covering out-of-area or emergency  
 7 services, and special services not provided on a direct service basis;

8 (C)(i) Indemnity benefits on a point-of-service basis  
 9 within such limits as may be prescribed by the commissioner.

10 (ii) As used herein, the term "point-of-service"  
 11 means indemnifying or paying on behalf of an enrollee for covered health care  
 12 services on a nonemergency, self-referred basis obtained from providers who  
 13 are not employed by, under contract with, or otherwise affiliated with, the  
 14 health maintenance organization, or services obtained from providers  
 15 affiliated with the health maintenance organization without proper referrals;

16 (7) The contracting with providers located out of state who are  
 17 properly licensed to render medical care in the jurisdiction in which such  
 18 provider is located."

19  
 20 SECTION 12. Subdivision (1) of Subsection (a) of Arkansas Code 23-76-  
 21 131 is hereby amended to read as follows:

22 "(a)(1) Each health maintenance organization shall pay a tax on the  
 23 premiums ~~and copayments~~ for coverages provided during the calendar year. The  
 24 tax shall be paid on an annual basis, and on a quarterly estimate basis as  
 25 prescribed by the commissioner and reconciled at the time of filing the annual  
 26 statement; The taxes due from licensed health maintenance organizations  
 27 (HMO's) under this section shall be computed on net direct written premiums at  
 28 the rate described in this section and in §§ 26-57-603 and 26-57-604; further,  
 29 the premium taxes at the same rate due under this section for HMO copayments  
 30 shall only be computed, reported and paid on the copayments actually received  
 31 and collected by the health maintenance organization; copayments paid by the  
 32 patient directly to the doctor, hospital or other medical providers shall not  
 33 be subject to taxation."

34  
 35 SECTION 13. Arkansas Code 23-79-119 is hereby amended by adding a new  
 36 subsection to read as follows:

1           "(c)(1) Except as provided in this subsection, a health insurance  
2 issuer that provides individual health insurance coverage for major medical  
3 benefits to an individual shall renew or continue in force such coverage at  
4 the option of the individual.

5           (2) General Exceptions – A health insurance issuer may nonrenew or  
6 discontinue health insurance coverage providing major medical benefits for an  
7 individual in the individual market based only on one or more of the  
8 following:

9                   (A) Nonpayment of the premium – The individual has failed to  
10 pay premiums or contributions in accordance with the terms of the health  
11 insurance coverage or the issuer has not received timely premium payments.

12                   (B) Fraud – The individual has performed an act or practice  
13 that constitutes fraud or made an intentional misrepresentation of material  
14 fact under the terms of the coverage.

15                   (C) Termination of the Plan - The issuer is ceasing to offer  
16 major medical coverage in the individual market in accordance with applicable  
17 state or federal law.

18                   (D) Movement Outside the Service Area – In the case of a  
19 health insurance issuer that offers health insurance for major medical  
20 coverage in the market through a network plan, the individual no longer  
21 resides, lives, or works in the service area (or in an area for which the  
22 issuer is authorized to do business), but only if such individual major  
23 medical coverage is terminated under this paragraph uniformly without regard  
24 to any health-status related factor of covered individuals.

25                   (E) Association Membership Ceases – In the case of health  
26 insurance for major medical coverage that is made available in the individual  
27 market only through one or more bona fide associations, the membership of the  
28 individual in the association (as the basis on which the coverage is provided)  
29 ceases but only if such major medical coverage is terminated under this  
30 paragraph uniformly without regard to any health status-related factor of  
31 covered individuals.

32                   (3) Requirements for Uniform Termination of Coverage.  
33 Particular Type of Coverage Not Offered - In the case in which an insurer  
34 decides to discontinue offering a particular type of health insurance  
35 providing major medical coverage offered to the individual market, coverage of  
36 such type may be discontinued by the issuer only if:



1           (A) The issuer provides to each covered individual with  
2 coverage of this type in such market notice of such discontinuation at least  
3 ninety (90) days prior to the date of the discontinuation of such coverage;

4           (B) The issuer offers to each individual in the individual  
5 market with coverage of this type the option to purchase any other individual  
6 health issuance coverage currently being offered by the issuer for individuals  
7 in such market; and

8           (C) In exercising the option to discontinue coverage of this  
9 type, and in offering the option of coverage under paragraph (ii) above, the  
10 issuer acts uniformly without regard to any health status-related factor of  
11 enrolled individuals or individuals who may become eligible for such coverage.

12           (4) Discontinuance of Such Coverage. In General – Subject to the  
13 provisions of this subsection, in any case in which a health insurance issuer  
14 elects to discontinue offering all health insurance providing major medical  
15 coverage in the individual market in this state, health insurance coverage may  
16 be discontinued by the issuer only if the issuer provides to the Insurance  
17 Commissioner and to each individual notice of such discontinuance at least one  
18 hundred and eighty (180) days prior to the date of expiration of such  
19 coverage.

20           (5) Prohibition on Market Reentry - In the case of a  
21 discontinuation in the individual market under this subsection, the issuer may  
22 not provide for the issuance of any health insurance providing major medical  
23 coverage in the market and state involved during the five (5) year period  
24 beginning on the date of the discontinuation of the last health insurance  
25 coverage not so renewed.

26           (6) Exception for Uniform Modification of Coverage - At the time  
27 of coverage renewal, a health insurance issuer may modify the health insurance  
28 providing major medical coverage for a policy form offered to individuals in  
29 the individual market so long as such modification is consistent with state  
30 law and effective on a uniform basis among all individuals with that policy  
31 form.

32           (7) Application to Coverage Offered only Through Associations - In  
33 applying this subsection in the case of health insurance providing major  
34 medical coverage that is made available by a health insurance issuer in the  
35 individual market only through one or more associations, a reference to an  
36 'individual' is deemed to include a reference to such an association of which

1 the individual is a member.

2 (8) For purposes of this subsection, the terms or phrases 'health  
 3 'insurance issuer', 'health insurance coverage' or 'coverage', 'Insurance  
 4 Commissioner', 'network plan', 'health status-related factor', 'bona fide  
 5 association', 'individual market', and 'eligible individual' shall be defined  
 6 pursuant to the definitions contained in § 23-86-303."

7  
 8 SECTION 14. Arkansas Code 23-79-301 is hereby amended to read as  
 9 follows:

10 "23-79-301. Purpose.

11 The purpose of this subchapter is to provide minimum standards for  
 12 commercial lines property and casualty insurance policies or contracts. These  
 13 minimum standards are designed to minimize restrictions in coverage and to  
 14 assure minimum standards for these commercial policies or contracts for the  
 15 protection of the public. This subchapter is not intended to impede  
 16 flexibility and innovation in the development of commercial property and  
 17 casualty insurance policy or contract form or content. This subchapter is not  
 18 intended to conflict with the provisions concerning insurance contracts in the  
 19 Arkansas Insurance Code, § 23-60-101 et seq., and, in particular, the  
 20 provisions of § 23-60-105. This subchapter is not intended to conflict with  
 21 nor apply to insurance policies and contracts of surplus line insurers  
 22 operating in this state in compliance with §23-65-310."

23  
 24 SECTION 15. Subdivision (C) of Subsection (2) of Arkansas Code 23-90-  
 25 103 is hereby amended to read as follows:

26 "(C) A 'covered claim' shall not include any of the following amounts:

- 27 (i) Any amount awarded as punitive or exemplary damages;
- 28 (ii) Any amount sought as return of premium under any  
 29 retrospective rating plan; or
- 30 (iii) Any amount due to any reinsurer, insurer, insurance pool or  
 31 underwriting association ~~;~~ as subrogation recoveries or otherwise. This  
 32 subsection shall not prevent the reinsurer, insurer, insurance pool, or  
 33 underwriting association from presenting the excluded claim to the insolvent  
 34 insurer or the liquidator, but the claim shall not be asserted against any  
 35 other person, including the person to whom benefits were paid or the insured  
 36 of the insolvent insurer, except to the extent that the claim is outside the

1 coverage provided herein or is in excess of the limits of the policy issued by  
 2 the insolvent insurer.

3 ~~(iv) Any amount sought as subrogation recoveries."~~

4  
 5 SECTION 16. Arkansas Code 23-90-119 is hereby amended to read as  
 6 follows:

7 "23-90-119. Assessment as credit against taxes.

8 (a) Any assessment paid by a ~~foreign~~ an insurer under this chapter  
 9 shall be allowed to an insurer as a credit against its premium tax payable  
 10 under §§ 26-57-601--~~603~~604, 26-57-605, and 26-57-607.

11 ~~(1)(b)~~ (b) The tax credit referred to in this section shall be allowed at a  
 12 rate of twenty percent (20%) per year for five (5) successive years following  
 13 the date of assessment.

14 ~~(2)(c)~~ (c) The balance of any assessment paid by the insurer and not  
 15 claimed as a tax credit may be reflected in the books and records of the  
 16 insurer as an admitted asset of the insurer for all purposes, including  
 17 exhibition in the annual statements.

18 ~~(3)(d)~~ (d) However, any insurer which neglects to take the twenty percent  
 19 (20 %) credit during the year allowable will not be allowed to carry over the  
 20 credit for the following year or years.

21 ~~(b) Any assessment paid by a domestic insurer prior to June 17, 1981,~~  
 22 ~~under this chapter shall be allowed to the insurer as a credit against its~~  
 23 ~~premium tax payable under §§26-57-601--26-57-603, 26-57-605, and 26-57-607,~~  
 24 ~~subject to a reduction of the credit by the amount of credit previously~~  
 25 ~~claimed against its Arkansas corporate income tax.~~

26 ~~(1) Allowable premium tax credits of domestic insurers for any~~  
 27 ~~assessment paid prior to June 17, 1981, must be taken by such insurers no~~  
 28 ~~later than March 1, 1987, or upon the expiration of the time extension as the~~  
 29 ~~commissioner for good cause may grant.~~

30 ~~(2) Credits will not be allowed after this date.~~

31 ~~(3) Credits not taken will not be allowed to be reflected in the~~  
 32 ~~books and records of these insurers."~~

33  
 34 SECTION 17. Arkansas Code 23-92-307 is hereby amended to read as  
 35 follows:

36 "23-92-307. Employee leasing firm license - Financial assurance

1 required.

2 (a) Every application for issuance or renewal of a license as a class  
3 or classes of employee leasing firm pursuant to the provisions of this  
4 subchapter shall be accompanied by a surety bond issued by a corporate surety  
5 in the amount of not less than one hundred thousand dollars (\$100,000).

6 (1) The terms and conditions of the bond shall be approved by  
7 the commissioner.

8 (2) The bond shall be conditioned that the licensee and each  
9 member, employee, shareholder, ~~commissioner~~, or officer of a person, firm,  
10 partnership, corporation, or association operating as an agent of the licensee  
11 will not violate the provisions of this subchapter or violate rules,  
12 regulations, or orders lawfully promulgated by the commissioner pursuant to  
13 this subchapter or fail to pay any wages due under any contract made by the  
14 licensee in the conduct of its business subject to this subchapter.

15 (3) The bond shall secure the performance of an employee leasing  
16 firm's responsibilities to its leased employees for payment of wages.

17 (4)(A) The bond required by this section shall be a surety bond  
18 issued by a corporate surety or insurer authorized to do business in the State  
19 of Arkansas.

20 (B) In lieu of ~~the~~ a surety bond, the employee leasing  
21 firm may deposit in a depository designated by the commissioner securities  
22 with ~~marketable~~ a market value equivalent to the amount required for a surety  
23 bond. The securities so deposited shall include authorization to the  
24 commissioner to sell any such securities in an amount sufficient to pay any  
25 amounts secured by the bond or securities.

26 (b)(1) If any person shall be aggrieved by the misconduct of any  
27 licensee, that person may maintain an action in his own name upon the bond or  
28 policy of the employee leasing firm in any court of competent jurisdiction in  
29 this state or in the circuit court of Pulaski County.

30 (2) All claims shall be assignable, and the assignee shall be  
31 entitled to the same remedies upon the bond of the licensee as the person  
32 aggrieved would have been entitled ~~to~~ if the claim had not been assigned.

33 (3) Any claim so assigned may be enforced in the name of the  
34 assignee. Any remedies given by this section shall not be exclusive of any  
35 other remedy which would otherwise exist.

36 (c) Action on the bond required by this section may be maintained by

1 the commissioner in the name of the ~~State of Arkansas~~ State of Arkansas in any court of  
 2 competent jurisdiction, ~~in this state,~~ or in the circuit court of Pulaski  
 3 County, for the benefit of any person or persons aggrieved by the misconduct  
 4 of the licensee.

5 (d) If any licensee fails to file a new bond with the commissioner  
 6 within thirty (30) days after notice of cancellation by the surety of the bond  
 7 required by this section, the license issued to the licensee or the principal  
 8 under the bond ~~is~~ shall be deemed suspended until such time as a new surety  
 9 bond is filed with and approved by the commissioner. A person whose license  
 10 is suspended pursuant to this section shall not carry on the business of an  
 11 employee leasing firm during the period of the suspension.

12 (e) In lieu of the bond requirement ~~otherwise~~ set forth in subsection  
 13 (a) of this section, an employee leasing firm may provide a financial  
 14 statement prepared by an independent certified public accountant in  
 15 accordance with generally accepted accounting principles as of a date within  
 16 the six (6) months prior to the date of application or renewal, which  
 17 statement shows a minimum net worth of at least one hundred thousand dollars  
 18 (\$100,000).

19 ~~(f) In addition to the bond requirement otherwise set forth in~~  
 20 ~~subdivision (a)(1) of this section, or alternatively, the financial assurance~~  
 21 ~~requirement set forth in subdivision (e) above, an employee leasing firm shall~~  
 22 ~~submit to the commissioner within sixty (60) days at the end of each calendar~~  
 23 ~~quarter, the last day of which the employee leasing firm was subject to the~~  
 24 ~~provisions of this subchapter, a certification by an independent certified~~  
 25 ~~public accountant to the effect that for such quarter all applicable payroll~~  
 26 ~~taxes otherwise due have been paid on a timely basis. The commissioner may by~~  
 27 rule and regulation exempt from all requirements of this section employee  
 28 leasing firms or groups without substantial presence in this state which hold  
 29 restricted licenses in good standing."

30  
 31 SECTION 18. Subsection (a) of Arkansas Code 23-92-311 is hereby amended  
 32 to read as follows;

33 "(a) Every license issued pursuant to this subchapter shall remain in  
 34 force for one (1) year from the date of issue, unless the license has been  
 35 revoked pursuant to the provisions of this subchapter. Commencing on and  
 36 after June 1, 1999, annual renewal applications shall be filed with the

1 commissioner by the employee leasing firms or groups no later than July 1<sup>st</sup>  
 2 annually."

3  
 4 SECTION 19. Arkansas Code 23-100-102 is hereby amended to read as  
 5 follows:

6 "23-100-102. Insurers' payment extensions – Penalties for non-  
 7 compliance – Insurance Commissioner's waiver for impaired or insolvent  
 8 insurers.

9 (a) The Insurance Commissioner may grant any licensed insurer an  
 10 extension for payment of the ~~annual administrative and regulatory fee~~  
 11 antifraud assessment for good cause shown, upon written application of the  
 12 licensed insurer received at the Insurance Department on or before each annual  
 13 due date. Absent the Insurance Commissioner's approval of such ~~time~~ extensions  
 14 for good cause, licensed insurers failing timely to pay the ~~administrative and~~  
 15 ~~regulatory fee~~ antifraud assessment shall be ~~subjected~~ subject to a penalty of  
 16 one hundred dollars (\$100) per day for each day of delinquency, payable to the  
 17 Insurance Fraud Investigation Division Trust Fund. The Insurance Commissioner  
 18 may pursue any appropriate legal remedies to collect the ~~administrative and~~  
 19 ~~regulatory fees~~ antifraud assessments and penalties due and unpaid from any  
 20 insurer. Further, the Insurance Commissioner may in his discretion order  
 21 suspension of the delinquent insurer's Arkansas certificate of authority after  
 22 notice and hearing until the payment of all such ~~fees~~ antifraud assessments  
 23 and penalties is remitted to the Insurance Fraud Investigation Division Trust  
 24 Fund. Absent grant of his waiver for good cause shown, the Insurance  
 25 Commissioner may revoke the Arkansas certificate of authority of any  
 26 delinquent insurer consistently refusing and failing without good cause to  
 27 remit payment of these ~~fees~~ antifraud assessments and penalties to the fund  
 28 pursuant to this section.

29 (b) The Insurance Commissioner may in his discretion waive all or any  
 30 part of the ~~administrative and regulatory fee~~ antifraud assessment due  
 31 annually from a licensed insurer upon the suspension or revocation of the  
 32 insurer's Arkansas certificate of authority, or upon issuance of a court order  
 33 placing the company into conservation, rehabilitation or liquidation in any  
 34 state, or upon the Insurance Commissioner's finding that the insurer is  
 35 impaired or insolvent. Upon the reinstatement or activation of the insurer's  
 36 certificate of authority in good standing, the Insurance Commissioner's waiver

1 automatically terminates and the insurer shall be liable for payment of the  
 2 ~~administrative and regulatory fee~~ assessment on the next succeeding March 1st,  
 3 without retroactive reimbursement for the amount of the ~~fees~~ antifraud  
 4 assessments which would normally have accrued during the waiver period."

5  
 6 SECTION 20. Arkansas Code 23-100-104 is hereby amended to read as  
 7 follows:

8 "~~23-100-104 Administrative and regulatory fee.~~ Antifraud Assessment.

9 (a) Notwithstanding the provisions of §26-57-601, et seq., §23-61-701,  
 10 et- seq., and other provisions of Arkansas law, all licensed insurers,  
 11 including but not limited to all licensed stock and mutual insurance  
 12 companies, reinsurers, health maintenance organizations, fraternal benefit  
 13 societies, hospital and medical service corporations, stipulated premium  
 14 insurers, farmers' mutual aid associations, and prepaid legal insurers, shall  
 15 not later than June 30, 1997 for the 1996-1997 fiscal year, and thereafter  
 16 annually on or before June 30th for all subsequent years at the time and in  
 17 the manner as the Insurance Commissioner shall prescribe or at times alternate  
 18 from June 30th annually as the Insurance Commissioner shall prescribe, pay to  
 19 the Insurance Fraud Investigation Division Trust Fund, in addition to the  
 20 premium taxes and fees now required under existing law, a nonrefundable  
 21 ~~administrative and regulatory fee~~ antifraud assessment as directed by the  
 22 Insurance Commissioner for the reasonable and necessary expenses and operation  
 23 of the Insurance Fraud Investigation Division. Effective for the 1996-1997  
 24 fiscal year, all licensed insurers described in subsection (a) of this section  
 25 shall pay a one-time ~~administrative and regulatory fee~~ antifraud assessment to  
 26 the Insurance Fraud Investigation Division Trust Fund of four hundred dollars  
 27 (\$400). The Insurance Commissioner may, by rule or regulation, reduce the  
 28 ~~administrative and regulatory fee~~ antifraud assessment to the Insurance Fraud  
 29 Investigation Division Trust Fund or adjust the ~~fee~~ antifraud assessment to a  
 30 maximum of no more than one thousand dollars (\$1,000) per each fiscal year  
 31 following the 1996-1997 fiscal year.

32 (b) Approved but nonadmitted surplus line insurers and registered risk  
 33 retention groups are exempt from payment of the above ~~fee~~ antifraud  
 34 assessment."

35  
 36 SECTION 21. Arkansas Code 23-100-105, including its section title, is

1 hereby amended to read as follows:

2 "23-100-105. Insurers' ~~administrative and regulatory fees~~ Anti fraud  
 3 Fees -- Deposit into the Insurance Fraud Investigation Division Trust Fund.  
 4 The Insurance Commissioner shall deposit all ~~administrative and financial-~~  
 5 ~~regulatory fees~~ antifraud assessments and any penalties assessed under this  
 6 chapter, as well as any other income received for purposes set out in §23-100-  
 7 103(a), into the Insurance Fraud Investigation Division Trust Fund as special  
 8 revenues."

9

10 SECTION 22. Arkansas Code 23-100-107 is hereby amended to read as  
 11 follows:

12 "23-100-107. The Insurance Fraud Investigation Division Trust Fund -  
 13 Department vouchers and State Auditor warrants.

14 All ~~fees~~ antifraud assessments, penalties, and revenues provided in this  
 15 chapter received as special revenues for the Insurance Fraud Investigation  
 16 Division Trust Fund and deposited therein shall be deemed for all purposes  
 17 special revenues of the Insurance Fraud Investigation Division Trust Fund and  
 18 of the Arkansas Insurance Department for the sole support, operation and  
 19 maintenance of the Insurance Fraud Investigation Division of the Arkansas  
 20 Insurance Department, and, when paid into the State Treasury by the Insurance  
 21 Commissioner, shall be maintained by the State Treasury as the Insurance Fraud  
 22 Investigation Division Trust Fund, separate from all other funds, and  
 23 available only for the payment of the expenses of the Insurance Fraud  
 24 Investigation Division of the Arkansas Insurance Department pursuant to the  
 25 appropriations ~~therefor~~ therefor. The State Auditor shall, upon proper  
 26 voucher from the Insurance Commissioner, issue his warrant on the State  
 27 Treasurer in payment of all salaries and other expenses incurred in the  
 28 administration of this chapter."

29

30 SECTION 23. Arkansas Code 26-57-604 is hereby amended to read as  
 31 follows:

32 "26-57-604. Remittance of tax.

33 (a) Coincident with the filing of the tax report, each authorized life  
 34 or disability insurer, including licensed health maintenance organizations,  
 35 may apply for a credit for the noncommissioned salaries and wages of the  
 36 insurer's Arkansas employees which are paid in connection with its insurance



1 operations. The credit may be applied as an offset against the premium tax  
2 imposed in 26-57-603(d) on life and disability insurance.

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

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

12 (3) ~~(A) On~~ Except as provided in subdivision (a)(3)(B) of this  
13 section, on or before March 1 of each year, any such authorized life or  
14 disability insurer, including health maintenance organizations, desiring to  
15 qualify under this provision shall furnish the appropriate data and request on  
16 forms prescribed by the commissioner. For purposes of calculating the taxes  
17 under 23-63-101 -- 23-63-104, an insurer qualifying for a credit under this  
18 section shall compute the tax due under 23-63-101 -- 23-63-104, if any, by  
19 using an Arkansas premium tax rate of two and one-half percent (2 ½%);

20 (B) Subdivision (a)(3)(A) of this section shall only apply  
21 to tax years beginning prior to January 1, 2000. On or before March 1 of 2000  
22 and each year thereafter, any such authorized life or disability insurer,  
23 including health maintenance organizations, desiring to qualify under this  
24 provision shall furnish the appropriate data and request on forms prescribed  
25 by the commissioner. However, for purposes of calculating the taxes under §§  
26 23-63-101 -- 23-63-104, an insurer qualifying for a credit under this section  
27 shall compute the tax due under §§ 23-63-101 -- 23-63-104, if any, by using an  
28 Arkansas premium tax rate of two and one-half percent (2 1/2%), without regard  
29 to the credit specified in this section.

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

1 filing the annual report required in § 26-57-603(a) -- (c)."

2  
3 SECTION 24. Arkansas Code 27-22-106 is amended to read as follows:

4 "27-22-106. Cancellation of policy or contract – Administrative  
5 revocation or suspension of license.

6 No policy or contract of insurance covering a motor vehicle may be  
7 cancelled ~~nor the renewal thereof refused~~ solely because of the administrative  
8 revocation or suspension of the driver's license of the owner or operator of  
9 the motor vehicle under §5-65-104."

10  
11 SECTION 25. All provisions of this Act of a general and permanent  
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
13 Code Revision Commission shall incorporate the same in the Code.

14  
15 SECTION 26. If any provision of this Act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the Act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 Act are declared to be severable.

20  
21 SECTION 27. All laws and parts of laws in conflict with this Act are  
22 hereby repealed.

23  
24 SECTION 28. EMERGENCY. It is hereby found and determined by the  
25 Eighty-second General Assembly of the State of Arkansas that the present  
26 funeral pre-need laws, employee leasing firm laws, and other insurance laws  
27 are inadequate to protect the public. In pertinent part, the changes to the  
28 Insurance Code needed to assure the [stability of funding for the Fraud](#)  
29 [Investigation Division of the Department must be enacted in the laws of this](#)  
30 [state well before the new fiscal year beginning July 1, 1999. The changes to](#)  
31 [authorized appropriations, as well as changes to the disability \(health\)](#)  
32 [insurance laws on individuals to conform to the federal laws on group policies](#)  
33 [with guaranteed renewability require immediate adoption; and unless this](#)  
34 [emergency clause is adopted, this act might not become effective until after](#)  
35 [the beginning of the next fiscal year. Therefore, an emergency is hereby](#)  
36 [declared to exist and this act being necessary for the immediate preservation](#)

1 of the public peace, health and safety shall be in full force and effect from  
2 and after the date of its passage and approval. If the bill is neither  
3 approved nor vetoed by the Governor, it shall become effective on the  
4 expiration of the period of time during which the Governor may veto the bill.  
5 If the bill is vetoed by the Governor and the veto is overridden, it shall  
6 become effective on the date the last house overrides the veto.

7  
8  
9 APPROVED: 3/25/1999  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36