Act 959 of the 1987 Regular Session

Act 959 SB509

"AN ACT TO REPEAL CERTAIN PROVISIONS OF ACT 732 OF 1979, AS AMENDED, AND TO PROVIDE FOR THE REGULATION OF INSURANCE RATES, OTHER THAN LIFE AND DISABILITY, FOR ADVISORY ORGANIZATIONS; AND FOR OTHER PURPOSES."

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

SECTION 1. Sections 2 through 20 of Act 732 of 1979, as amended, the same being Arkansas Statutes 66-3101 through 66-3119, are hereby repealed.

SECTION 2. PURPOSE.
(a) This Act shall be liberally construed to achieve the purposes stated in subsection (b) of this Section, which shall constitute an aid and guide to interpretation but not an independent source of power.
(b) The purposes of this Act are:
(i) To promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory;
(ii) To prohibit price fixing agreements and other anticompetitive behavior by insurers;
(iii) To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;
(iv) To provide regulatory controls in the absence of competition;
(v) To improve availability, fairness and reliability of insurance;
(vi) To authorize essential cooperative action among insurers in the ratemaking process and to regulate such activity to prevent practices that tend to lessen substantially competition or to create a monopoly;
(vii) To encourage the most efficient and economic marketing practices; and
(viii) To require the providing of price and other information to enable consumers to purchase insurance suitable for their needs and to foster competitive insurance markets.

SECTION 3. DEFINITIONS.
As used in this Act, the following terms have the respective meanings hereinafter set forth, unless the context shall otherwise require:
(a) "Advisory organization" or "rate service organization" means any entity which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers, and which is licensed under Section 10 of this Act, and which assists insurers in rate-making related activities such as those enumerated in Section 13 of this Act. Two or more insurers having a common ownership or operating in this State under common management or control constitute a single insurer for purpose of this definition. The term "advisory organization" shall not include a joint underwriting association prescribed by law, any actuarial or legal consultant, or any employee of an insurer.
(b) "Competitive market" means a market in which a reasonable degree of competition exists and which has not been found to be noncompetitive pursuant to Section 5 of this Act.
(c) "Commercial risk" means any kind of risk which is not a personal risk, as defined in subsection (h) of this Section.
(d) "Loss Development" means the adjustment of losses as of some particular date to an ultimate settlement basis based on past maturity patterns.
(e) "Loss trending" means any procedure for projecting developed losses

for the cost level adjustment to the average date of loss for the period during which the policies are to be effective.

(f) "Noncompetitive market" means a market in which a reasonable degree of competition does not exist pursuant to the provisions of this Act.

(g) "Personal risks" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes and other property and casualty insurance for personal, family or household needs.

(h) "Pool" means a voluntary arrangement, established on an on-going basis, pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate or other pooling agreement.

(i) "Pure premium" means that part of the premium which is sufficient to pay losses and loss adjustment expenses only.

(j) "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded to applicants who are unable to obtain insurance through ordinary methods.

(k) "Rates" or "Supplementary rate information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, and any other similar information needed to determine the applicable rate in effect or to be in effect.

(l) "Supporting information" means (i) the experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer, (ii) the interpretation of any statistical data relied upon by the filer, (iii) descriptions of methods used in making the rates, and (iv) other information required by the Commissioner to be filed.

SECTION 4. SCOPE.

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

(a) Life insurance;
(b) Annuities;
(c) Disability, including accident and health insurance;
(d) Ocean marine insurance;
(e) Reinsurance;
(f) Surety insurance;
(g) Aircraft insurance;
(h) Title insurance; or
(i) Workers' compensation and employers' liability insurance; except that the following provisions of this Act shall apply to these lines: Section 3(a), (d), (e), (f), (i), (j), (k), (l) and (m); Section 6; Section 7(f) and (g); Section 10; Section 11; Section 12(b); Section 13; Section 15; Section 16; Section 18; Section 19; Section 20; and Section 21.

SECTION 5. NON-COMPETITIVE MARKET.

(a) If the Commissioner has cause to believe that a reasonable degree of competition does not exist in a market, he shall hold a hearing. In determining whether a reasonable degree of competition exists, insurers operating within such market shall have the burden of establishing that a reasonable degree of competition exists within that market. The Commissioner shall consider relevant tests of competition pertaining to market structure, market performance and market conduct, and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers. Such tests may include, but are not limited to, the following: size and number of insurers actively engaged in the market; market shares and changes in market shares of insurers; ease of

entry into and exit from a given market; underwriting restrictions; and whether long term profitability for insurers generally in the market is unreasonably high.

(b) After the hearing, the Commissioner shall issue an order as to his findings,
and such order shall expire no later than one (1) year after it is effective as provided in the order.

SECTION 6. RATE STANDARDS.

(a) General. Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Excessive.

A rate in a competitive market is assumed not to be excessive. A rate is excessive in a competitive or non-competitive market if it is likely to produce a profit from Arkansas business that is unreasonably high in relation to past and prospective loss experience for that class of business which the filing affects, or if expenses are unreasonably high in relation to services rendered.

(c) Inadequate.

A rate is clearly inadequate if, together with the investment income attributable to it, it fails to satisfy projected losses and expenses in the class of business to which it applies.

(d) Unfairly Discriminatory.

(1) A rate is not unfairly discriminatory in relation to another in the same class of business if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or with like expense factors but different loss exposures, if the rates reflect the differences with reasonable accuracy.

(2) A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(e) Rating Plans.

Rates may be modified to produce premiums for individual risks in accordance with filed rating plans which establish standards for measuring variations in hazards or expense provisions. Such standards may measure differences among risks that can be demonstrated to have a probable effect upon losses or expenses. Such modification shall apply to all risks under the same or substantially the same circumstances or conditions. This provision does not apply to filed modification plans which may be offered to an insured, including but not limited to retrospective rating plans and composite rating plans.

(f) Rating Criteria.

(1) Basic factors in rates. Due consideration must be given to past and prospective loss and expense experience within and outside this State, to catastrophe hazards and contingencies, to events or trends within and outside this State, to loadings for leveling rates over a period of time, to dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors. All submissions for rate changes or supplementary rate changes must include this information with Arkansas experience shown as well as companywide experience for the past five (5) years for the class of business which this filing affects. The determination of the weighting of credibility assigned to Arkansas must be fully explained. If, within a particular class, the data is not sufficiently credible for Arkansas or companywide, and common classes are

grouped together for rate making purposes, all class codes utilized in developing credibility shall be shown as an exhibit in the filing, with Arkansas experience for each class affected shown separately. If significant trends within the state are utilized, a narrative describing the basis of the trend must be included.

(2) Classification. Risks may be classified in any reasonable way for the establishment of rates except that no risks may be grouped by classifications based in whole or in part on race, color, creed or national origin of the risk.

(3) Expenses. The expense provisions included in the rates to be used by any insurer shall reflect the operating methods of the insurer and its actual and anticipated expense experience.

(4) Profits. The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration must be given to all investment income attributable to premiums and to the reserves associated with those premiums and to loss reserve funds.

SECTION 7. FILING OF RATES AND OTHER RATING INFORMATION.

(a) Filings as to Competitive Markets.

(1) In a competitive market, every insurer shall file with the Commissioner all rates, supplementary rate information, and supporting information for risks which are to be written in this State. Such rates and information shall be filed twenty (20) days prior to the effective date. A filing shall be deemed to meet the requirements of this Act and to become effective upon the expiration of the waiting period.

(2) In a competitive market, if the Commissioner determines after a hearing or by agreement, that an insurer's rates require closer supervision because of the insurer's financial condition or its rating practices, the insurer shall file with the Commissioner at least sixty (60) days prior to the effective date all such rates and such supplementary rate information and supporting information as prescribed by the Commissioner. Upon application by the filer, the Commissioner may authorize an earlier effective date. A filing shall be deemed to meet the requirements of this Act and to become effective upon the expiration of the waiting period.

(b) Filings as to Noncompetitive Markets.

In a noncompetitive market every insurer shall file with the Commissioner all rates for that market. Such rates, supplementary rate information, and supporting information required by the Commissioner shall be filed at least sixty (60) days prior to the effective date. Upon application by the filer, the Commissioner may authorize an earlier effective date. A filing shall be deemed to meet the requirements of this Act and to become effective upon the expiration of the waiting period unless disapproved by the Commissioner.

(c) Insurers must adhere to filings made pursuant to this Section until such filings are amended or withdrawn.

(d) Procedural Requirements.

(1) Rates filed pursuant to this Section shall be filed in such form and manner as prescribed by the Commissioner.

(2) An insurer may satisfy its obligation to file supplementary rate information or supporting information by filing a reference to a filing made by an advisory organization, with or without deviation.

(e) Filings Open To Inspection.

Each filing and supporting information filed under this Act shall, as soon as filed, be open to public inspection.

(f) Payment of Dividends.

Nothing in this Act shall be construed to prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to

their policyholders, members or subscribers.

SECTION 8. DISAPPROVAL OF RATES.

(a) Basis of Disapproval.

(1) The Commissioner may disapprove a rate without a hearing if the insurer fails to file the information required pursuant to this Act.

(2) The Commissioner may disapprove a rate without a hearing if he finds that the rate is excessive, inadequate, or unfairly discriminatory under Section 6 (b), (c), or (d) respectively.

(b) Disapproval Procedure.

(1) If the Commissioner disapproves a rate without a hearing he shall send a notice to the insurer or rating organization stating wherein the filing is deficient in terms of the criteria in Section 6 of this Act. An insurer or rating organization aggrieved by any order or decision of the Commissioner made without a hearing may, within thirty (30) days after notice to the insurer or organization, make written request to the Commissioner for a hearing thereon. The Commissioner shall hear such party or parties within twenty (20) days after receipt of such request, and shall give not less than ten (10) days written notice of the time and place of the hearing. The hearing shall be concluded within fifteen (15) days from the commencement thereof, except that the Commissioner, for good cause shown and with notice to the interested parties, may grant additional time, not to exceed thirty (30) days. Within fifteen (15) days after such hearing the Commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon, the Commissioner may suspend or postpone the effective date of his previous action.

(2) For rates in effect pursuant to Section 7, if the Commissioner finds after a hearing that a rate is not in compliance with Section 6, he shall issue an order specifying in what respects it so fails, and stating when, within a reasonable period thereafter, such rates shall be deemed no longer effective.

(c) Upon written consent of the insured stating his reasons therefor, a rate in excess of that provided by an otherwise applicable filing may be used on a specific risk. Such "consent-to-rate" filing shall be on a form, signed by the insured, that includes a statement that the insured consents to a rate in excess of the filed rate. The form must be filed with the Commissioner within thirty (30) days following the end of the month in which the insurance was procured.

SECTION 9. CONSUMER INFORMATION.

(a) The Commissioner may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger nonfleet automobile, or property insurance for personal, family or household needs. The Commissioner may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks. Such activity may be conducted within the Insurance Department, in cooperation with other state insurance departments, through outside contractors or in any other appropriate manner. To the extent deemed necessary and appropriate by the Commissioner, insurers, advisory organizations, and other persons or organiations involved in conducting the business of insurance in this State to which this Section applies shall cooperate in the development and utilization of a consumer information system.

(b) The cost of complying with this Section may be assessed against insurers subject to this Act and authorized to write types of business subject

to a consumer information system. The assessment to any one insurer shall not exceed $100 for any calendar year.

SECTION 10. LICENSING OF ADVISORY ORGANIZATIONS.

(a) License Required. No advisory organization shall provide any service relating to the rates of any insurance subject to this Act, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license from the Commissioner.

(b) Availability of Services. No advisory organization shall refuse to supply any services for which it is licensed in this State to any insurer authorized to do business in this State and offering to pay the fair and usual compensation for the services.

(c) Licensing.

(1) Application. An advisory organization applying for a license shall include with its application:

(i) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation and any other rules or regulations governing the conduct of its business;

(ii) A list of its members and subscribers;

(iii)The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;

(iv) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

(v) License fees as provided by Section 68 of Act 148 of 1959, as amended; and

(vi) Any other relevant information and documents that the Commissioner may require.

(2) Change of Circumstances. Every organization which has applied for a license shall notify the Commissioner of every material change in facts or in the documents on which its application was based. Any amendment to a document filed under this Section shall be filed at least thirty (30) days before it becomes effective.

(3) Granting of License. If the Commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen substantially the competition in any market.

(4) Duration. Licenses issued pursuant to this Section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked; subject, however, to continuance of the license by the advisory organization each calendar year by (i) payment on or before January 1 of a continuation fee as provided in Section 68 of Act 148 of 1959, as amended, (ii) due filing of a letter
requesting continuation of its license for the following calendar year; and (iii) submission of information which may be required by the Commissioner.

SECTION 11. INSURERS AND ADVISORY ORGANIZATIONS.

No insurer or advisory organization shall attempt to monopolize or to combine or conspire with any other person to monopolize an insurance market or make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of unreasonably restraining trade or of substantially lessening competition in the business of insurance.

SECTION 12. ADVISORY ORGANIZATIONS: PROHIBITED ACTIVITY.

(a) In addition to the other prohibitions contained in this Act, no advisory organization shall, except as specifically permitted under Sections 7 and 13 of this Act:

(i) Compile or distribute recommendations relating to rates that include expenses (other than loss adjustment expenses) or profit except in lines designated by the Commissioner; or

(ii) File any manual or plan of rates, policy fees, or supporting information on behalf of an insurer.

(b) An advisory organization may not have or adopt any rule, or exact any agreement, or formulate or engage in any program which would require any member, subscriber, or other insurer to:

(i) Interfere with the right of any insurer to develop its rates independent of that advisory organization; or

(ii) Utilize some or all of its services; or

(iii)Adhere to its rates, rating plan, rating systems, underwriting rules, or policy forms; or

(iv) Prevent any insurer from acting independently.

SECTION 13. ADVISORY ORGANIZATIONS: PERMITTED ACTIVITY.

Any advisory organization, in addition to other activities permitted, is authorized to:

(a) Develop statistical plans, including territorial and class definitions.

(b) Collect statistical data from members, subscribers or any other source.

(c) Prepare and distribute pure premium data, adjusted for loss development and loss trending, in accordance with its statistical plans.

(d) Prepare, distribute, and file rates and supplementary rate information except as prohibited by Section 12 of this Act. Such filings made by advisory organizations shall be for advisory purposes only and shall not be made on behalf of any insurer.

(e) Distribute information that is filed with the Commissioner and open to public inspection.

(f) Conduct research and on-site inspections in order to prepare classifications of public fire defenses.

(g) Consult with public officials regarding public fire protection as it would affect members, subscribers, and others.

(h) Conduct research and collect statistics in order to discover, identify, and classify information relating to cause or prevention of losses.

(i) Prepare and file policy forms and endorsements and consult with members, subscribers and others relative to their use and application.

(j) Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures.

(k) Collect, compile and distribute past and current prices of individual insurers if such information is made available to the general public.

(l) File rates, supplementary rate information, and supporting information for residual market mechanisms.

(m) Furnish any other services not prohibited by this Act.

SECTION 14. ADVISORY ORGANIZATIONS: FILINGS.

Every advisory organization shall file with the Commissioner every advisory document pursuant to Section 13 of this Act thirty (30) days prior to the effective date. The Commissioner may extend the review period an additional thirty (30) days by written notice to the filer before the thirty (30) day

period expires.

SECTION 15. RECORDS AND REPORTS.

(a) The Commissioner may adopt reasonable rules for use by companies to record and report to the Commissioner rates and other information determined by the Commissioner to be necessary or appropriate for the administration of this Act and for the effectuation of its purposes.

(b) The Commissioner may designate one (1) or more advisory organizations to assist him in gathering, compiling and reporting such information. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system.

SECTION 16. EXAMINATIONS

(a) The Commissioner may examine any insurer, pool, advisory organization or residual market mechanism as he deems necessary to ascertain compliance with this Act.

(b) Every insurer, pool, advisory organization and residual market mechanism shall maintain reasonable records of the type and kind reasonably adapted to its method of operation containing its experience or the experience of its members including the data, statistics or information collected or used in its activities. These records shall be available at all reasonable times to enable the Commissioner to determine whether the activities of any advisory organization, insurer or association comply with the provisions of this Act. Such records shall be maintained in an office within this State or shall be made available to the Commissioner for examination or inspection at any time upon reasonable notice.

(c) The reasonable cost of an examination made pursuant to this Section shall be paid by the examined party upon presentation of a detailed account of such costs.

(d) In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

SECTION 17. EXEMPTIONS.

The Commissioner may upon his own initiative or upon request of any person, by order, exempt any market from any or all of the provisions of this Act, if and to the extent that he finds such exemption necessary to achieve the purposes of this Act.

SECTION 18. PENALTIES.

(a) Whenever the Commissioner shall have reason to believe that any person has violated any provision of this Act, he shall issue and serve upon such person a statement of the alleged violations and a notice of hearing as provided by Section 19 of this Act.

(b) If, after a hearing, the Commissioner determines that the person has violated a provision of this Act, he shall issue a written order, which, in his discretion, may do one (1) or more of the following: (1) revoke the Certificate of Authority of the insurer or the license of the advisory organization; (2) suspend the Certificate of Authority of the insurer or the license of the advisory organization; (3) require the payment of a monetary penalty of not more than one thousand dollars ($1,000.00) for each violation, or if the Commissioner has found willful violations, a penalty of not more than ten thousand dollars ($10,000.00) for each violation.

SECTION 19. ADMINISTRATIVE PROCEDURES.

(a) Administrative procedures exercised by the Commissioner under this Act shall be in accordance with Sections 38 through 41 of Act 148

of 1959, as amended.

(b) Appeals from orders of the Commissioner made under this Act shall be made in accordance with Section 42 of Act 148 of 1959, as amended.

SECTION 20. Subsection (11) of Section 212 of Act 148 of 1959, as added by Act 156 of 1987, the same being Ark. Stat. 66-3005(11), is hereby amended to read as follows:

"(11) POLICY CANCELLATIONS. (a) Cancellation of insurance coverage on a property or casualty risk which has been in force over sixty (60) days or after the effective date of a renewal policy or an annual anniversary date, unless such cancellation is based upon at least one (1) of the following reasons:

(1) Nonpayment of premium;

(2) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;

(3) The occurrence of a material change in the risk which substantially increases any hazard insured against after policy issuance;

(4) Violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against under the policy;

(5) Nonpayment of membership dues in those cases where the by-laws, agreements or other legal instruments of the insurer issuing the policy require payment thereof as a condition of the issuance and maintenance of the policy; or

(6) A material violation of a material provision of the policy.

(b) Cancellations of property and casualty policies shall only be effective when the notice of cancellation is mailed or delivered by the insurer to the named insured and to any lienholder or loss payee named in the policy at least twenty (20) days prior to the effective date of cancellation, provided, however, that where cancellation is for nonpayment of premium at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given.

(c) The provisions of this subsection (11) shall not be applicable to any policy providing coverage for workers compensation or employers liability, or to any policy providing coverage for personal automobile liability, automobile physical damage or automobile collision or any combination thereof."

SECTION 21. EFFECTIVE DATE.

The provisions of this Act shall become effective six (6) months after enactment. Rates and supplementary rate information lawfully in use on the effective date of this Act may be continued to be used thereafter, unless subsequently disapproved.

SECTION 22. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is declared to be invalid, such declaration shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and for this purpose, the provisions of this Act are declared to be severable.

APPROVED: April 14, 1987
