

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 3/13/87

HOUSE BILL 1573

By: Rep. Hawkins

"AN ACT TO AMEND THE ARKANSAS PROPERTY AND CASUALTY INSURANCE  
GUARANTY ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 3 of Act 871 of 1977, the same being Arkansas Statute 66-5503, is hereby amended to read as follows:

"Section 3. This Act, Act 871 of 1977, as amended, shall apply to all kinds of direct insurance written by insurers licensed to transact insurance in this State, but shall not be applicable to the following:

- (1) Life, annuity, health or disability insurance;
- (2) Mortgage guaranty, financial guaranty or other form of insurance offering protection against investment risks;
- (3) Bail bonds or appearance bonds as defined in or otherwise referenced in Act 400 of 1971, as amended;
- (4) Credit insurance;
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance; and
- (8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk."

SECTION 2. Subsection (2) of Section 5 of Act 871 of 1977, the same being Arkansas Statute 66-5505(2), is hereby amended to read as follows:

"(2) 'Covered claim' is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act

applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an 'insolvent insurer' and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. 'Covered claims' shall also include one hundred percent (100%) of unearned premiums up to an amount not exceeding Twenty-five Thousand Dollars (\$25,000) per policy. Individual 'covered claims' shall be limited to Three Hundred Thousand Dollars (\$300,000) and shall not include any amount in excess of Three Hundred Thousand Dollars (\$300,000). 'Covered claim' shall not include any amount awarded as punitive or exemplary damages, sought a return of premium under any retrospective rating plan or due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. 'Covered claim' shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an 'insolvent insurer' under this Act. With respect to a 'covered claim' for unearned premiums, persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an 'insolvent insurer' shall be considered to have 'covered claims' under this Act."

SECTION 3. Section 6 of Act 871 of 1977, the same being Arkansas Statute 66-5506, is hereby amended to read as follows:

"Section 6. This Act, Act 871 of 1977, as amended, shall apply to covered claims existing prior to the determination that an insurer is an insolvent insurer and to covered claims arising within thirty (30) days after the determination of insolvency or before the policy expiration date if less than thirty (30) days after the determination of insolvency or before the insured replaces the policy or effects its cancellation, if he does so within thirty (30) days of the determination of insolvency.

Upon the determination by a court of competent jurisdiction that an insurer is an insolvent insurer, the Commissioner shall notify the insureds of the insolvent insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's last known address, where

available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient.

Notwithstanding any other provisions of this Act, a covered claim shall not include any claim filed with the Guaranty Fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer."

SECTION 4. Section 8 of 871 of 1977, the same being Arkansas Statute 66-5508, is hereby amended to read as follows:

"Section 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due.

As an alternative, the Commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed one hundred dollars (\$100) per day.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender."

SECTION 5. Section 12 of Act 871 of 1977, the same being Arkansas Statute 66-5512, is hereby amended to read as follows:

"Section 12. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under Act 871 of 1977, as amended, shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to exhaust first his right under such program. Any amount payable on a covered claim under Act 871 of 1977, as amended, shall be reduced by the amount of any recovery under such program.

(3) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first, from the Association of the place of residence of the insured except that if

it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the Association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the Association of the residence of the claimant. Any recovery under Act 871 of 1977, as amended, shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent."

SECTION 6. Section 14 of Act 871 of 1977, as amended, the same being Arkansas Statute 66-5514, is hereby amended to read as follows:

"Section 14. There is created by this Act, Act 871 of 1977, as amended, an advisory association to be known as the 'Arkansas Property and Casualty Advisory Association', herein called the 'advisory association' to be composed of eight (8) insurers. The Commissioner shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, two (2) shall be appointed to serve for a one (1) year term of office, two (2) shall be appointed to serve for a two (2) year term of office, two (2) shall be appointed to serve for a three (3) year term of office, and (2) shall be appointed to serve for a four (4) year term of office. Subsequent members of the advisory association shall serve for terms of office of four (4) years and shall be appointed by the Commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this Act giving due consideration to the various categories of premium income, geographical location and segments of the industry represented in Arkansas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner of the initial appointments.

The advisory association shall conduct its meetings in Little Rock, Arkansas, in the Office of the Commissioner. Meetings shall be held upon call by the Commissioner or upon written request of a majority of the members. Meetings shall not be open to the public and only members of the advisory association, the Commissioner and persons authorized by the Commissioner shall attend such meetings.

The advisory association shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner may call a meeting of the advisory association when a court of competent jurisdiction determines that an insurer is insolvent and may call a meeting of the advisory

association when he determines that a danger of insolvency of an insurer exists. The advisory association shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings, the Commissioner may divulge to the advisory association any information in his possession and any records of the Arkansas Insurance Department, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent insurer (or an insurer the Commissioner considers to be in danger of insolvency) to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or when required as witness in court.

The advisory association shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner and his representatives on matters relating to the affairs of an insolvent insurer and relating to action that may be taken by the Commissioner and his representatives to best protect the interests of persons holding covered claims against an insolvent insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the Commissioner and his representatives shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the Commissioner or his representatives.

Members shall serve without pay or reimbursement of expenses in attending meetings. Members shall serve until their successors are appointed.

Any insurer that has an officer, director or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver of an insolvent insurer. The entering into any such contract shall not be deemed as conflict of interest.

The advisory association or any insurer assessed under this Act shall be an interested party under Section 655 of Act 148 of 1959.

The Arkansas Insurance Department shall within ninety (90) days after March 30, 1977 promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members."

SECTION 7. Section 15 of Act 871 of 1977, as amended, the same being Arkansas Statute 66-5515, is hereby amended to read as follows:

"Section 15. Any assessment paid by a foreign insurer under this Act, Act 871 of 1977, as amended, shall be allowed to such insurer as a credit against its premium tax payable under Section 69 of Act 148 of 1959, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment. The balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements. However, any insurer that neglects to take such twenty percent (20%) credit during the year allowable will not be allowed to carry over such credit for the following year or years.

Any assessment paid by a domestic insurer prior to June 17, 1981, under Act 871 of 1977, as amended, shall be allowed to such insurer as a credit against its premium tax payable under Section 69 of Act 148 of 1959, as amended, subject to a reduction of such credit by the amount of credit previously claimed against its Arkansas corporate income tax. Allowable premium tax credits of domestic insurers for any assessment paid prior to June 17, 1981 must be taken by such insurers no later than March 1, 1987, or upon the expiration of such time extension as the Commissioner for good cause may grant. Such credits will not be allowed after this date and credits not taken will not be allowed to be reflected in the books and records of these insurers."

SECTION 8. Section 19 of Act 871 of 1977, as amended, the same being Arkansas Statute 66-5519, is hereby amended to read as follows:

"Section 19. Any order of the Commissioner under this Act, Act 871 of

1977, as amended, may be appealed as provided by Section 42 of Act 148 of 1959, as amended."

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

