

1 **State of Arkansas**

2 **78th General Assembly**

3 **Regular Session, 1991**

4 **By: Representatives D. Roberts and M. Wilson**

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7

For An Act To Be Entitled

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"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS

9

INSURANCE CODE, THE SAME BEING ARKANSAS CODE ANNOTATED

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SECTIONS 23-61-101 THROUGH 23-63-1104; AND FOR OTHER

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PURPOSES."

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

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15 SECTION 1. Arkansas Code 23-61-106(a) is hereby amended to read as

16 follows:

17

"(a) (1) The commissioner or any deputy, examiner, assistant, or

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employee of the commissioner shall not be financially interested, directly or

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indirectly, in any insurer, insurance agency, or insurance transaction except

20 as:

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(A) A policyholder or claimant under a policy;

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(B) A grantor of a mortgage or similar instrument on such person's

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residence to a regulated entity if done under customary terms and in the

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ordinary course of business; or

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(C) A settlor or beneficiary of a 'blind trust' into which any

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otherwise impermissible holdings have been placed.

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(2) Notwithstanding the requirements of subsection (a) (1), the

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commissioner may employ or retain, from time to time, insurance actuaries,

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technicians, or other professional personnel who are independently practicing

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their professions even though similarly employed or retained by insurers or

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others."

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33 SECTION 2. Arkansas Code 23-61-201 is hereby amended to read as

34 follows:

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"23-61-201. Examination of insurers required.

1 (a)(1) The commissioner shall examine the affairs, transactions,
2 accounts, records, and assets of each authorized insurer as often as in his
3 sole discretion he deems advisable.

4 (2) He shall so examine each authorized insurer not less frequently
5 than every three (3) years.

6 (3) Examination of an alien insurer shall be limited to its insurance
7 transactions and affairs in the United States.

8 (4) In scheduling and determining the nature, scope and frequency of
9 the examinations, the Commissioner shall consider such matters as the results
10 of financial statement analyses and ratios, changes in management or
11 ownership, actuarial opinions, reports of independent Certified Public
12 Accountants and other criteria as set forth in the Examiners' Handbook adopted
13 by the National Association of Insurance Commissioners and in effect when the
14 Commissioner exercises discretion to conduct an examination under subsection
15 (a)(1).

16 (b) The commissioner may in like manner examine each insurer applying
17 for an initial certificate of authority to transact insurance in this state.

18 (c) In lieu of making his own examination of any foreign or alien
19 insurer authorized in this state, the commissioner may, in his discretion,
20 accept a full report of the last recent examination of a foreign or alien
21 insurer as prepared by the Insurance Department for the company's state of
22 domicile or port-of-entry state.

23 (1) After January 1, 1994, such reports may only be accepted by the
24 Commissioner if:

25 (A) The Insurance Department preparing such report was at the time of
26 the examination accredited under the National Association of Insurance
27 Commissioners' Financial Regulation Standards and Accreditation Program; or

28 (B) The examination was performed with the participation of one or more
29 examiners employed by such an accredited State Insurance Department, who,
30 after a review of the examination work papers and report, state under oath
31 that the examination was performed in a manner consistent with the standards
32 and procedures required by their accredited Insurance Department.

33 (d) As far as practical, the examination of a foreign or alien insurer
34 shall be made in cooperation with the insurance supervisory officials of other
35 states in which the insurer transacts business."

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2 SECTION 3. Arkansas Code 23-61-202 is hereby amended to read as
3 follows:

4 "23-61-202. Examination of managers and promoters required.

5 For the purposes of completing an examination of any company under this
6 subchapter the commissioner may, as often as he deems advisable, examine or
7 investigate any person, or the business of any person, in so far as such
8 examination or investigation is, in the sole discretion of the Commissioner,
9 necessary or material to the examination of the company."

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11 SECTION 4. Arkansas Code 23-61-203 is hereby amended to read as
12 follows:

13 "23-61-203. Examiners.

14 (a) Upon determining that an examination should be conducted, the
15 Commissioner shall issue an examination certificate of authority appointing
16 one or more examiners to perform the examination and instructing them as to
17 the scope of the examination. In conducting the examination, the examiner
18 shall observe those guidelines and procedures set forth in the Examiners'
19 Handbook adopted by the National Association of Insurance Commissioners. The
20 Commissioner may also employ such other guidelines or procedures as the
21 Commissioner may deem appropriate.

22 (b) When making an examination under this subchapter, the Commissioner
23 may retain attorneys, appraisers, independent actuaries, independent certified
24 public accountants or other professionals and specialists as examiners, the
25 cost of which shall be borne by the company which is the subject of the
26 examination.

27 (c)(1) The commissioner may also accept as a part of the department's
28 examination of any insurer or person:

29 (A) A report by an independent actuary deemed competent by the
30 commissioner; or

31 (B) A report of an audit made by an independent certified public
32 accountant.

33 (2) Neither those persons so designated nor any members of their
34 immediate families shall be officers of, connected with, or financially
35 interested in any insurer other than as policyholders; nor shall they be

1 financially interested in any other corporation or person affected by the
2 examination, investigation, or hearing."

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4 SECTION 5. Arkansas Code 23-61-204 is hereby amended to read as
5 follows:

6 "23-61-204. Examination - Records and appraisals.

7 (a) Every company or person from whom information is sought, its
8 officers, directors and agents must provide to the examiners appointed under
9 23-61-203 timely, convenient and free access at all reasonable hours at its
10 offices to all books, records, accounts, papers, documents and any or all
11 computer or other recordings relating to the property, assets, business and
12 affairs of the company being examined. The officers, directors, employees and
13 agents of the company or person must facilitate such examination and aid in
14 such examination so far as it is in their power to do so. The refusal of any
15 company, by its officers, directors, employees or agents, to submit to
16 examination or to comply with any reasonable written request of the examiners
17 shall be grounds for suspension, revocation or refusal of, or nonrenewal of
18 any license or authority held by the company to engage in an insurance or
19 other business subject to the commissioner's jurisdiction. Any such
20 proceedings for suspension, revocation or refusal of any license or authority
21 shall be conducted pursuant to 23-63-213.

22 (b) If the commissioner finds the accounts to be inadequate or
23 inadequately kept or posted, he may employ experts to rewrite, post, or
24 balance them at the expense of the person being examined if the person has
25 failed to complete or correct the accounting after the commissioner has given
26 him notice and a reasonable opportunity to do so.

27 (c) If the commissioner deems it necessary to value any property
28 involved in an examination, he may make written request of the person being
29 examined to appoint one (1) or more competent appraisers, approved by the
30 commissioner, for the purpose of appraising the property.

31 (1) If no appointment is made within ten (10) days after this request
32 was delivered to the person, then the commissioner may appoint the appraiser
33 or appraisers.

34 (2) Any such appraisal shall be promptly made, and a copy of the report
35 shall be furnished to the commissioner.

1 (3) The reasonable expense of the appraisal shall be borne by the
2 person being examined.

3 (d) Nothing contained in this subchapter shall be construed to limit
4 the commissioner's authority to terminate or suspend any examination in order
5 to pursue other legal or regulatory action pursuant to the insurance laws of
6 this state. Findings of fact and conclusions made pursuant to any examination
7 shall be prima facie evidence in any legal or regulatory action.

8 (e) Nothing contained in this subchapter shall be construed to limit
9 the commissioner's authority to use and, if appropriate, to make public any
10 final or preliminary examination report, any examiner or company work papers
11 or other documents, or any other information discovered or developed during
12 the course of any examination in the furtherance of any legal or regulatory
13 action which the commissioner may, in his sole discretion, deem appropriate."
14

15 SECTION 6. Arkansas Code 23-61-205 is hereby amended to read as
16 follows:

17 "23-61-205. Examination reports.

18 (a) The commissioner or his examiner shall make a full and true written
19 report of each examination, which shall comprise only facts appearing upon the
20 books, records, or other documents of the insurer, its agents, or other
21 persons examined, or as ascertained from the sworn testimony of its officers
22 or agents or other persons examined concerning its affairs, and shall include
23 such conclusions and recommendations as may reasonably be warranted from the
24 facts.

25 (1) No later than sixty (60) days following completion of the
26 examination, the examiner in charge shall file with the Department a verified
27 written report of the examination under oath. Upon receipt of the verified
28 report, the Department shall transmit the report to the company examined,
29 together with a notice which shall afford such company examined a reasonable
30 opportunity of not more than twenty (20) days to make a written submission or
31 rebuttal with respect to any matters contained in the examination report.

32 (2) Within thirty (30) days after the end of the period allowed for the
33 receipt of written submissions or rebuttals, the commissioner shall fully
34 consider and review the report, together with any written submissions or
35 rebuttals and any relevant portions of the examiners work papers and enter an

1 order:

2 (A) Adopting the examination report as filed or with modification or
3 corrections. If the examination report reveals that the company is operating
4 in violation of any law, regulation or prior order of the commissioner, the
5 commissioner may order the company to take any action the commissioner
6 considers necessary and appropriate to cure such violation; or

7 (B) Rejecting the examination report with directions to the examiners
8 to reopen the examination for purposes of obtaining additional data,
9 documentation or information, and refiling pursuant to subsection (a) (1); or

10 (C) Calling for an investigatory hearing with no less than twenty (20)
11 days notice to the company for purposes of obtaining additional documentation,
12 data, information and testimony.

13 (b) (1) All orders entered pursuant to subdivision (a) (2) (A) shall be
14 accompanied by findings and conclusions resulting from the commissioner's
15 consideration and review of the examination report, relevant examiner work
16 papers and any written submissions or rebuttals. Any such order shall be
17 considered a final administrative decision and may be appealed pursuant to
18 23-61-307, and shall be served upon the company by certified mail, together
19 with a copy of the adopted examination report. Within twenty (20) days of the
20 issuance of the adopted report, the company shall file affidavits executed by
21 each of its directors stating under oath that they have received a copy of the
22 adopted report and related orders.

23 (2) Any hearing conducted under subdivision (a) (2) (C) by the
24 commissioner or authorized representative shall be conducted as a
25 nonadversarial confidential investigatory proceeding as necessary for the
26 resolution of any inconsistencies, discrepancies or disputed issues apparent
27 upon the face of the filed examination report or raised by or as a result of
28 the commissioner's review of relevant work papers or by the written submission
29 or rebuttal of the company. Within thirty (30) days of the conclusion of any
30 such hearing, the commissioner shall enter an order pursuant to subdivision
31 (a) (2) (A) .

32 (A) The hearing shall proceed expeditiously with discovery by the
33 company limited to the examiner's work papers which tend to substantiate any
34 assertions set forth in any written submission or rebuttal. The commissioner
35 may issue subpoenas for the attendance of any witnesses or the production of

1 any documents deemed relevant to the investigation whether under the control
2 of the Department, the company or other persons. The documents produced shall
3 be included in the record, and testimony taken by the commissioner or his
4 representative shall be under oath and preserved for the record at the cost of
5 the company. Nothing contained herein shall require the Department to
6 disclose any information or records which would indicate or show the existence
7 or content of any investigation or activity of a criminal justice agency.

8 (c) Upon the adoption of the examination report under subdivision
9 (a) (2) (A), the commissioner shall continue to hold the content of the
10 examination report as private and confidential information for a period of
11 thirty (30) days except to the extent provided in subsection (a) (1).
12 Thereafter, the commissioner may open the report for public inspection so
13 long as no court of competent jurisdiction has stayed its publication.

14 (d) Nothing contained in this subchapter shall prevent or be construed
15 as prohibiting the commissioner from disclosing the content of an examination
16 report, preliminary examination report or results, or any matter relating
17 thereto, to the insurance department of this or any other state or country, or
18 to law enforcement officials of this or any other state or agency of the
19 federal government at any time, so long as such agency or office receiving the
20 report or matters relating thereto agrees in writing to hold it confidential
21 and in a manner consistent with this subchapter."

22

23 SECTION 7. Arkansas Code 23-61-206, Subsections (a) and (b), are hereby
24 amended to read as follows:

25 "(a) Each person so examined shall pay to the State Insurance
26 Department the actual travel expenses, reasonable living expense allowance,
27 and compensation for examiners and other persons assisting in the examination
28 on a basis not to exceed the total of the Geographical Expense Reimbursement
29 Plan set forth in the Examiners' Handbook adopted by the National Association
30 of Insurance Commissioners, upon presentation of a detailed account of the
31 charges and expenses.

32 (b) Payments for travel expenses and living expense allowance received
33 by the State Insurance Department for each examination shall be deposited as
34 cash funds.

35 (1) Reimbursement shall be made from these funds to examiners and

1 others assisting in the examination.

2 (2) Per diem charges of examiners and others assisting in the
3 examination shall be computed beginning at the time of reporting for duty at
4 the office of the company to be examined and terminating upon completion of
5 the examination or the examiner's active participation therein and to include
6 actual days for travel as certified by the commissioner. If air travel is
7 used, only one day's travel time will be authorized. If an automobile is
8 used, travel time allowed shall be computed at the rate of not less than four
9 hundred (400) miles per day as determined by the Rand McNally Road Map, with
10 the actual mileage traveled compensated at the most current rate per mile
11 approved for state employees.

12 (3) Examiners and others assisting in the examination shall not be
13 reimbursed for travel time or travel expenses not actually incurred in
14 connection with an assignment, nor shall they be reimbursed for dual living
15 expenses while on branch office assignments.

16 (4) Examiners and others assisting in the examination, when
17 participating in or conducting an examination of a foreign company, shall be
18 authorized to return to their state of domicile every other weekend. Their
19 expenses will be paid based upon the lesser of airfare or mileage. Such
20 reimbursement shall be made in lieu of the per diem allowance. Such travel
21 shall be accomplished with a minimum amount of work time lost."

22

23 SECTION 8. Subchapter 2 of Chapter 61 of Title 23 of the Arkansas Code
24 is hereby amended by adding the following new sections at the end of the
25 existing subchapter:

26 "23-61-207. Confidentiality of ancillary information.
27 All working papers, recorded information, documents and copies thereof
28 produced by, obtained by or disclosed to the commissioner or any other person
29 in the course of an examination made under this subchapter must be given
30 confidential treatment and are not subject to subpoena and may not be made
31 public by the commissioner or any other person, except to the extent provided
32 in 23-61-205. Access may also be granted to the National Association of
33 Insurance Commissioners. Such parties must agree in writing prior to
34 receiving the information to provide to it the same confidential treatment as
35 required by this section, unless the prior written consent of the company to

1 which it pertains has been obtained.

2

3 23-61-208. Immunity from liability.

4 (a) No cause of action shall arise nor shall any liability be imposed
5 against the Commissioner, the commissioner's authorized representatives or any
6 examiner appointed by the commissioner for any statements made or conduct
7 performed in good faith while carrying out the provisions of this subchapter.

8 (b) No cause of action shall arise, nor shall any liability be imposed
9 against any person for the act of communicating or delivering information or
10 data to the commissioner or the commissioner's authorized representative or
11 examiner pursuant to an examination made under this subchapter, if such act of
12 communication or delivery was performed in good faith and without fraudulent
13 intent or the intent to deceive.

14 (c) This section does not abrogate or modify in any way any common law
15 or statutory privilege or immunity heretofore enjoyed by any person identified
16 in subsection (a).

17 (d) A person identified in subsection (a) shall be entitled to an award
18 of attorney's fees and costs if they are the prevailing party in a civil cause
19 of action for libel, slander or any other relevant tort arising out of their
20 activities in carrying out the provisions of this subchapter, and the party
21 bringing the action was not substantially justified in doing so. For purposes
22 of this section, a proceeding is 'substantially justified' if it had a
23 reasonable basis in law or fact at the time it was initiated."

24

25 SECTION 9. Effective Date.

26 Compliance with Sections 1 through 8 of this Act shall be required for
27 all examinations commenced on and after January 1, 1992.

28

29 SECTION 10. Arkansas Code 23-62-303 is hereby amended to read as
30 follows:

31 "23-62-303. Report of funds withheld under reinsurance treaties.

32 Deposits and funds withheld under reinsurance treaties shall be reported
33 in the annual statement in the exhibit entitled 'Special Deposits Not for the
34 Protection of All Policyholders'."

35

1 SECTION 11. Arkansas Code 23-62-304 is hereby amended to read as
2 follows:

3 "23-62-304. Agreement Examination.

4 The Insurance Commissioner shall have the right to examine any of the
5 reinsurance agreements or deposit arrangements of the ceding insurer at any
6 time."

7

8 SECTION 12. Arkansas Code 23-62-305 is hereby amended to read as
9 follows:

10 "23-62-305. Credit Allowed a Domestic Ceding Insurer.

11 (a) Credit for reinsurance shall be allowed a domestic ceding insurer as
12 either an asset or a deduction from liability on account of reinsurance ceded
13 only when the reinsurer meets the requirements of this subchapter.

14 (b) Credit shall be allowed when the reinsurance is ceded to an
15 assuming insurer which is licensed to transact insurance or reinsurance in
16 this state.

17 (c) Credit shall be allowed when the reinsurance is ceded to an
18 assuming insurer which is accredited as a reinsurer in this state. An
19 accredited reinsurer is one which:

20 (1) Files with the Commissioner evidence of its submission to this
21 state's jurisdiction;

22 (2) Submits to this state's authority to examine its books and records;

23 (3) Is licensed to transact insurance or reinsurance in at least one
24 state, or, in the case of a U.S. branch of an alien assuming insurer, is
25 entered through and licensed to transact insurance or reinsurance in at least
26 one state; and

27 (4) Files annually with the commissioner a copy of its annual statement
28 filed with the insurance department of its state of
29 domicile and a copy of its most recent audited financial statement; and either

30 (A) Maintains a surplus as regards policyholders in an amount which is
31 not less than \$20,000,000 and whose accreditation has not been denied by the
32 commissioner within ninety (90) days of its submission; or

33 (B) Maintains a surplus as regards policyholders in an amount less than
34 \$20,000,000 and whose accreditation has been approved by the commissioner.

35 (d) No credit shall be allowed a domestic ceding insurer, if the

1 assuming insurer's accreditation has been revoked by the commissioner after
2 notice and hearing.

3 (e) Credit shall be allowed when the reinsurance is ceded to an
4 assuming insurer which is domiciled and licensed in, or in the case of a U.S.
5 branch of an alien assuming insurer is entered through, a state which employs
6 standards regarding credit for reinsurance substantially similar to those
7 applicable under this statute and the assuming insurer or U.S. branch of an
8 alien assuming insurer:

9 (1) Maintains a surplus as regards policyholders in an amount not less
10 than \$20,000,000; and

11 (2) Submits to the authority of this state to examine its books and
12 records.

13 Provided, however, that the requirement of subsection (c)(1) does not
14 apply to reinsurance ceded and assumed pursuant to pooling arrangements among
15 insurers in the same holding company system.

16 (f)(1) Credit shall be allowed when the reinsurance is ceded to an
17 assuming insurer which maintains a trust fund in a qualified United States
18 financial institution, as defined in 23-62-307(b), for the payment of the
19 valid claims of its United States policyholders and ceding insurers, their
20 assigns and successors in interest. The assuming insurer shall report
21 annually to the commissioner information substantially the same as that
22 required to be reported on the NAIC Annual Statement form by licensed insurers
23 to enable the commissioner to determine the sufficiency of the trust fund.
24 In the case of a single assuming insurer, the trust shall consist of a
25 trusteed account representing the assuming insurer's liabilities attributable
26 to business written in the United States and, in addition, the assuming
27 insurer shall maintain a trusteed surplus of not less than \$20,000,000. In
28 the case of a group of individual unincorporated underwriters, the trust shall
29 consist of a trusteed account representing the group's liabilities
30 attributable to business written in the United States and, in addition, the
31 group shall maintain a trusteed surplus of which \$100,000,000 shall be held
32 jointly for the benefit of United States ceding insurers of any member of the
33 group; and the group shall make available to the commissioner an annual
34 certification of the solvency of each underwriter by the group's domiciliary
35 regulator and its independent public accountants.

1 (2) In the case of a group of incorporated insurers under common
2 administration which complies with the filing requirements contained in the
3 previous paragraph, and which has continuously transacted an insurance
4 business outside the United States for at least three (3) years immediately
5 prior to making application for accreditation; and submits to this state's
6 authority to examine its books and records and bears the expense of the
7 examination, and which has aggregate policyholders' surplus of
8 \$10,000,000,000; the trust shall be in an amount equal to the group's several
9 liabilities attributable to business ceded by United States ceding insurers to
10 any member of the group pursuant to reinsurance contracts issued in the name
11 of such group; plus the group shall maintain a joint trusteed surplus of which
12 \$100,000,000 shall be held jointly for the benefit of United States ceding
13 insurers of any member of the group as additional security for any such
14 liabilities, and each member of the group shall make available to the
15 commissioner an annual certification of the member's solvency by the member's
16 domiciliary regulator and its independent public accountant.

17 (3) Such trust shall be established in a form approved by the
18 Commissioner of Insurance. The trust instrument shall provide that contested
19 claims shall be valid and enforceable upon the final order of any court of
20 competent jurisdiction in the United States. The trust shall vest legal title
21 to its assets in the trustees of the trust for its United States policyholders
22 and ceding insurers, their assigns and successors in interest. The trust and
23 the assuming insurer shall be subject to examination as determined by the
24 commissioner. The trust described herein must remain in effect for as long as
25 the assuming insurer shall have outstanding obligations due under the
26 reinsurance agreements subject to the trust.

27 (4) No later than February 28 of each year the trustees of the trust
28 shall report to the commissioner in writing setting forth the balance of the
29 trust and listing the trust's investments at the preceding year end and shall
30 certify the date of termination of the trust, if so planned, or certify that
31 the trust shall not expire prior to the next following December 31.

32 (g) Credit shall be allowed when the reinsurance is ceded to an
33 assuming insurer not meeting the requirements of subsections (a), (b), (c), or
34 (d), but only with respect to the insurance of risks located in jurisdictions
35 where such reinsurance is required by applicable law or regulation of that

1 jurisdiction.

2 (h) If the assuming insurer is not licensed or accredited to transact
3 insurance or reinsurance in this state, the credit permitted by subsections
4 (e) and (g) of this section shall not be allowed unless the assuming insurer
5 agrees in the reinsurance agreements:

6 (1) That in the event of the failure of the assuming insurer to perform
7 its obligations under the terms of the reinsurance agreement, the assuming
8 insurer, at the request of the ceding insurer, shall submit to the
9 jurisdiction of any court of competent jurisdiction in any state of the United
10 States, will comply with all requirements necessary to give such court
11 jurisdiction, and will abide by the final decision of such court or of any
12 Appellate Court in the event of an appeal; and

13 (2) To designate the Commissioner or a designated attorney as its true
14 and lawful attorney upon whom may be served any lawful process in any action,
15 suit or proceeding instituted by or on behalf of the ceding company.

16 (3) This provision is not intended to conflict with or override the
17 obligation of the parties to a reinsurance agreement to arbitrate their
18 disputes, if such an obligation is created in the agreement."

19

20 SECTION 13. Subchapter 3 of Chapter 62 of Title 23 of the Arkansas Code
21 is hereby amended by adding the following new sections at the end of the
22 existing subchapter:

23 "23-62-306. Reduction from Liability for Reinsurance Ceded by a
24 Domestic Insurer to an Assuming Insurer.

25 (a) A reduction from liability for the reinsurance ceded by a domestic
26 insurer to an assuming insurer not meeting the requirements of 23-62-305 shall
27 be allowed in an amount not exceeding the liabilities carried by the ceding
28 insurer and such reduction shall be in the amount of funds held by or on
29 behalf of the ceding insurer, including funds held in trust for the ceding
30 insurer, under a reinsurance contract with such assuming insurer as security
31 for the payment of obligations thereunder, if such security is held in the
32 United States subject to withdrawal solely by, and under the exclusive control
33 of, the ceding insurer; or, in the case of a trust, held in a qualified United
34 States financial institution, as defined in 23-62-307. This security may be
35 in the form of:

1 (1) Cash;

2 (2) Securities listed by the Securities Valuation Office of the
3 National Association of Insurance Commissioners and qualifying as admitted
4 assets;

5 (3) Clean, irrevocable, unconditional letters of credit, issued or
6 confirmed by a qualified United States institution, as defined in
7 23-62-307(a), no later than December 31st in respect of the year for which
8 filing is being made, and in the possession of the ceding company on or before
9 the filing date of its annual statement. Letters of credit meeting applicable
10 standards of issuer acceptability as of the dates of their issuance or
11 confirmation shall, notwithstanding the issuing or confirming institution's
12 subsequent failure to meet applicable standards of issuer acceptability,
13 continue to be acceptable as security until their expiration, extension,
14 renewal, modification or amendment, whichever first occurs; or

15 (4) Any other form of security acceptable to the commissioner.
16

17 23-62-307. Qualified United States Financial Institutions.

18 (a) For purposes of this subchapter, a 'qualified United States
19 financial institution' means an institution that:

20 (1) Is organized or, in the case of a U.S. office of a foreign banking
21 organization, licensed under the laws of the United States or any state
22 thereof;

23 (2) Is regulated, supervised and examined by U.S. federal or state
24 authorities having regulatory authority over banks and trust companies; and

25 (3) Has been determined by either the commissioner, or the Securities
26 Valuation Office of the National Association of Insurance Commissioners, to
27 meet such standards of financial condition and standing as are considered
28 necessary and appropriate to regulate the quality of financial institutions
29 whose letters of credit will be acceptable to the commissioner.

30 (b) A 'qualified United States financial institution' means, for
31 purposes of those provisions of this law specifying those institutions that
32 are eligible to act as a fiduciary of a trust, an institution that:

33 (1) Is organized, or, in the case of a U.S. branch or agency office of
34 a foreign banking organization, licensed under the laws of the United States
35 or any state thereof and has been granted authority to operate with fiduciary

1 powers; and

2 (2) Is regulated, supervised and examined by federal or state
3 authorities having regulatory authority over banks and trust companies."

4 SECTION 14. Subchapter 3 of Chapter 62 of Title 23 is hereby amended by
5 adding the following new section at the end of the existing subchapter:

6 "23-62-308. Rules and Regulations.

7 The commissioner may adopt rules and regulations implementing the
8 provisions of Sections 10 through 13."

9

10 SECTION 15. Effective Date.

11 Section 12 through Section 13 of this Act shall apply to all cessions
12 after the effective date of this Act under reinsurance agreements which have
13 had an inception, anniversary, or renewal date not less than six (6) months
14 after the September 30, 1991.

15

16 SECTION 16. Arkansas Code 23-63-205, Subsection (a), is hereby amended
17 to read as follows:

18 "(a) (1) To qualify for and maintain authority to transact any one (1)
19 kind of insurance, as defined in 23-62-101 - 23-62-108, or combinations of
20 kinds of insurance as shown in this subsection, an insurer applying for its
21 original certificate of authority in Arkansas after March 30, 1987, shall
22 possess and maintain in cash and marketable securities unimpaired paid-in
23 capital if the insurer is a stock insurer or surplus if the insurer is a
24 foreign or alien mutual, or domestic mutual legal reserve life insurer, or
25 foreign or alien reciprocal insurer, in an amount not less than is applicable
26 under the schedule below, and shall possess when first so authorized such
27 additional funds as surplus as are required under 23-63-207:

28 Kind or Kinds of Minimum Capital or Surplus Required

29 INSURANCE

30 Life.....	\$500,000
31 Disability.....	500,000
32 Life and Disability.....	500,000
33 Property.....	250,000
34 Casualty.....	500,000
35 Surety.....	500,000

1 Marine..... 250,000
 2 Title..... 100,000
 3 Title and Abstractor's Professional Liability..... 125,000
 4 Property, Casualty, and Marine..... 750,000

5 (2) As to any combination of kinds of insurance, other than
 6 combinations of kinds of insurance specifically listed in this subsection, the
 7 insurer shall possess the sum of the minimum capital or surplus required by
 8 this subsection for the kinds of insurance it proposes to transact.

9 (3) The commissioner may require reinsurance on terms and in amounts as
 10 are reasonable under the circumstances for abstractor's professional liability
 11 insurance when written by title insurers.

12 (4) In his discretion, the commissioner may require the insurer to
 13 possess and maintain additional capital and surplus, in addition to that
 14 required by this subchapter, based on the types, volume or nature of the
 15 business transacted by the insurer."

16

17 SECTION 17. Arkansas Code 23-63-216, Subsection (a), is hereby amended
 18 to read as follows:

19 "(a) Annually on or before March 1 or within any extension of time
 20 which the commissioner for good cause may have granted, each authorized
 21 insurer shall file with the commissioner a full and true statement of its
 22 financial condition, transactions, and affairs as of the December 31
 23 preceding.

24 (1) The statement shall be in the form and context as set out in the
 25 National Association of Insurance Commissioners (NAIC) annual statement
 26 convention blank and shall be completed in accordance with the instructions
 27 accompanying the NAIC annual statement convention blank.

28 (2) The insurer shall furnish all information as called for by the
 29 applicable portions of the NAIC annual statement convention blank, and
 30 casualty and surety insurance companies shall include a report on income
 31 derived from investment of unearned premiums.

32 (3) The NAIC annual statement convention blank shall be verified by the
 33 oath of the insurer's president or vice president and secretary or actuary as
 34 applicable or, if a reciprocal insurer, by the oath of its attorney in fact or
 35 its like officers if a corporation."

1

2 SECTION 18. Arkansas Code 23-63-216 is hereby amended, by adding new
3 Subsection (h), to read as follows:

4 "(h) On or before March 1, 1992, and annually on or before March 1 of
5 each year thereafter, each domestic, foreign and alien insurer authorized to
6 transact business in this state shall file with the NAIC a copy of its annual
7 statement convention blank, along with such additional filings as prescribed
8 by the commissioner as of the December 31 preceding. The information filed
9 with the NAIC shall be in the same format and scope as that required by the
10 commissioner and shall include the signed jurat page and the actuarial
11 certification. Any amendments and addendums to the annual statement filing
12 subsequently filed with the commissioner shall also be filed with the NAIC.

13 (1) Foreign insurers that are domiciled in a state which has a law
14 substantially similar to this subsection shall be deemed in compliance with
15 these requirements.

16 (2) In the absence of actual malice, members of the NAIC, their duly
17 authorized committees, subcommittees, and task forces, their delegates, NAIC
18 employees, and all others charged with the responsibility of collecting,
19 reviewing, analyzing and disseminating the information developed from the
20 filing of the annual statement convention blanks shall be acting as agents of
21 the commissioner under the authority of this subsection and shall not be
22 subject to civil liability for libel, slander or any other cause of action by
23 virtue of their collection, review, and analysis or dissemination of the data
24 and information collected from the filings required hereunder.

25 (3) The commissioner may impose the sanctions set out in subsection (e)
26 on any insurer failing to file its annual statement with the NAIC when due or
27 within any extension of time which the commissioner for good cause may have
28 granted."

29

30 SECTION 19. Effective Date.

31 Compliance by insurers with Sections 16 through 18 shall be required on
32 or before March 1, 1992.

33

34 SECTION 20. Arkansas Code 23-63-503 is hereby amended by adding new
35 Subsections (7) and (8) to read as follows:

1 "(7) A 'security holder' of a specified person is one who owns any
2 security of such person, including common stock, preferred stock, debt
3 obligations and any other security convertible into or evidencing the right to
4 acquire any of the foregoing;

5 (8) The term 'voting security' shall include any security convertible
6 into or evidencing a right to acquire a voting security."

7

8 SECTION 21. Arkansas Code 23-63-506 is hereby amended to read as
9 follows:

10 "23-63-506. Control of or merger with domestic insurer - Filing
11 requirements.

12 (a) No person other than the issuer shall make a tender offer for or a
13 request or invitation for tenders of, or enter into any agreement to exchange
14 securities for, seek to acquire, or acquire, in the open market or otherwise,
15 any voting security of a domestic insurer if, after the consummation thereof,
16 the person would, directly or indirectly, or by conversion or by exercise of
17 any right to acquire, be in control of the insurer. No person shall enter
18 into an agreement to merge with or otherwise to acquire control of a domestic
19 insurer or any person controlling a domestic insurer unless, at the time any
20 offer, request, or invitation is made or any agreement is entered into, or
21 prior to the acquisition of the securities if no offer or agreement is
22 involved, the person has filed with the commissioner and has sent to the
23 insurer, and the insurer has sent to its shareholders, a statement containing
24 the information required by 23-63-506 - 23-63-513 and such offer, request,
25 invitation, agreement, or acquisition has been approved by the commissioner in
26 the manner prescribed in 23-63-506 - 23-63-513.

27 (b) For purposes of 23-63-506 - 23-63-513, a domestic insurer shall
28 include any person controlling a domestic insurer unless such person as
29 determined by the commissioner is either directly or through its affiliates
30 primarily engaged in business other than the business of insurance. However,
31 such person shall file a pre-acquisition notification with the commissioner
32 containing the information set forth in 23-63-527(b) thirty (30) days prior to
33 the proposed effective date of the acquisition. Failure to file subjects such
34 person to the penalty specified in 23-63-529(c). For purposes of this
35 section, 'person' shall not include any securities broker holding, in the

1 usual and customary brokers' function, less than twenty percent (20%) of the
2 voting securities of an insurance company or of any person which controls an
3 insurance company."

4

5 SECTION 22. Arkansas Code 23-63-508, Subsection (a)(3), is hereby
6 amended to read as follows:

7 "(3) Fully audited financial information as to the earnings and
8 financial condition of each acquiring party for the preceding five (5) fiscal
9 years of each acquiring party, or for such lesser period as the acquiring
10 party and any predecessors thereof shall have been in existence, and similar
11 unaudited information as of a date not earlier than ninety (90) days prior to
12 the filing of the statement;"

13

14 SECTION 23. Arkansas Code 23-63-514 is hereby amended to read as
15 follows:

16 "23-63-514. Registration of insurers.

17 (a) Registration.

18 (1) Every insurer which is authorized to do business in this state and
19 which is a member of an insurance holding company system shall register with
20 the commissioner, except:

21 (A) Foreign insurers subject to disclosure requirements and standards
22 adopted by code or statute or regulation in the jurisdiction of its domicile
23 which are substantially similar to those contained in this section; and

24 (B) Domestic insurers or domestic holding company systems authorized
25 and doing business solely within this state and which are not affiliated with
26 a foreign or alien insurer.

27 (2) However, such domestic insurers or domestic holding company systems
28 which subsequently become authorized or approved to do business in other
29 states or jurisdictions shall, not later than sixty (60) days after admission
30 or approval to transact business in such other states or jurisdictions,
31 register with the commissioner in compliance with this section, and thereafter
32 as the provisions of this subchapter require.

33 (b) Information and Form Required. Every insurer subject to
34 registration shall file a registration statement on a form prescribed by the
35 NAIC, which shall contain current information about:

1 (1) The capital structure, general financial condition, and ownership
2 and management of the insurer and any person controlling the insurer;
3 (2) The identity of every member of the insurance holding company
4 system;
5 (3) The following agreements in force, relationships subsisting, and
6 transactions currently outstanding between the insurer and its affiliates:
7 (A) Loans, other investments, purchases, sales, or exchanges of
8 securities of the affiliates by the insurer or of the insurer by its
9 affiliates;
10 (B) Purchases, sales, or exchanges of assets;
11 (C) Transactions not in the ordinary course of business;
12 (D) Guarantees or undertakings for the benefit of an affiliate which
13 result in an actual contingent exposure of the insurer's assets to liability,
14 other than insurance contracts entered into in the ordinary course of the
15 insurer's business;
16 (E) All management and service contracts and all cost-sharing
17 arrangements;
18 (F) Reinsurance agreements covering all or substantially all of one (1)
19 or more lines of insurance of the ceding company;
20 (G) Dividends and other distributions to shareholders; and
21 (H) Consolidated tax allocation agreements;
22 (4) Any pledge of the insurer's stock, including stock of any
23 subsidiary or controlling affiliate, for a loan made to any member of the
24 insurance holding company system; and
25 (5) Other matters concerning transactions between registered insurers
26 and any affiliates as may be included from time to time in any registration
27 forms adopted or approved by the commissioner.
28 (c) Materiality. No information need be disclosed on the registration
29 statement filed pursuant to subsection (b) of this section if the information
30 is not material for the purposes of this section. Unless the commissioner by
31 rule, regulation, or order provides otherwise, sales, purchases, exchanges,
32 loans, or extensions of credit, or investments, involving one-half of one
33 percent (1/2 of 1%) or less of an insurer's admitted assets as of the December
34 31 next preceding shall not be deemed material for purposes of this section.
35 (d) Amendments to Registration Statements. Each registered insurer

1 shall keep current the information required to be disclosed in its
 2 registration statement by reporting all material changes or additions on
 3 amendment forms provided by the commissioner within fifteen (15) days after
 4 the end of the month in which it learns of each material change or addition.
 5 However, subject to 23-63-515(c), each registered insurer shall so report all
 6 dividends and other distributions to shareholders within two (2) business days
 7 following the declaration thereof.

8 (e) Termination of Registration. The commissioner shall terminate the
 9 registration of any insurer which demonstrates that it no longer is a member
 10 of an insurance holding company system.

11 (f) Consolidated Filing. The commissioner may require or allow two (2)
 12 or more affiliated insurers subject to registration hereunder to file a
 13 consolidated registration statement or consolidated reports amending their
 14 consolidated registration statement or their individual registration
 15 statements.

16 (g) Alternative Registration. The commissioner may allow an insurer
 17 which is authorized to do business in this state and which is part of an
 18 insurance holding company system to register on behalf of any affiliated
 19 insurer which is required to register under subsection (a) of this section and
 20 to file all information and material required to be filed under this section.

21 (h) Exemptions. The provisions of this section shall not apply to any
 22 insurer, information, or transaction if, and to the extent that, the
 23 commissioner by rule, regulation, or order shall exempt it from the provisions
 24 of this section.

25 (i) Disclaimer. Any person may file with the commissioner a disclaimer
 26 of affiliation with any authorized insurer or the disclaimer may be filed by
 27 the insurer or any member of an insurance holding company system.

28 (1) The disclaimer shall fully disclose all material relationships and
 29 bases for affiliation between the person and the insurer as well as the basis
 30 for disclaiming the affiliation.

31 (2) After a disclaimer has been filed, the insurer shall be relieved of
 32 any duty to register or report under this section which may arise out of the
 33 insurer's relationship with the person unless and until the commissioner
 34 disallows the disclaimer.

35 (3) The commissioner shall disallow a disclaimer only after furnishing

1 all parties in interest with notice and opportunity to be heard and after
2 making specific findings of fact to support the disallowance.

3 (j) Information of Insurers. Any person within an insurance holding
4 company system subject to registration shall be required to provide complete
5 and accurate information to an insurer, where such information is reasonably
6 necessary to enable the insurer to comply with the provisions of this
7 subchapter.

8 (k) Violations. The failure to file a registration statement or any
9 amendment thereto required by this section within the time specified for the
10 filing shall be a violation of this section."

11

12 SECTION 24. Arkansas Code 23-63-515 is hereby amended to read as
13 follows:

14 "23-63-515. Standards.

15 (a) (1) Material transactions by insurers registered with the
16 commissioner under 23-63-514 with their affiliates shall be subject to the
17 following standards:

18 (A) The terms shall be fair and reasonable;

19 (B) The books, accounts, and records of every party shall be so
20 maintained as to clearly and accurately disclose the precise nature and
21 details of the transactions including such accounting information as is
22 necessary to support the reasonableness of the charges or fees to the
23 respective parties;

24 (C) The insurer's surplus as regards policyholders following any
25 dividends or distributions to shareholder affiliates shall be reasonable in
26 relation to the insurer's outstanding liabilities and adequate to its
27 financial needs;

28 (D) The charges or fees for services performed shall be reasonable; and

29 (E) The expenses incurred and payment received shall be allocated to
30 the insurer in conformity with customary insurance accounting practices
31 consistently applied.

32 (2) The following transactions involving a domestic insurer subject to
33 this subchapter and any person in its holding company system may not be
34 entered into unless the insurer has notified the commissioner in writing of
35 its intention to enter into such transaction at least thirty (30) days prior

1 thereto, or such shorter period as the commissioner may permit, and the
2 commissioner has not disapproved it within such period:

3 (A) Sales, purchases, exchanges, loans or extensions of credit,
4 guarantees, or investments provided such transactions are equal to or exceed
5 as of December 31st next preceding: (i) with respect to nonlife insurers, the
6 lesser of three percent (3%) of the insurer's admitted assets or twenty-five
7 percent (25%) of surplus as regards policyholders; (ii) with respect to life
8 insurers, three percent (3%) of the insurer's admitted assets;

9 (B) Loans or extensions of credit to any person who is not an
10 affiliate, where the insurer makes such loans or extensions of credit with the
11 agreement or understanding that the proceeds of such transactions, in whole or
12 in substantial part, are to be used to make loans or extensions of credit to,
13 to purchase assets of, or to make investments in, any affiliate of the insurer
14 making such loans or extensions of credit provided such transactions are equal
15 to or exceed as of December 31st next preceding: (i) with respect to nonlife
16 insurers, the lesser of three percent (3%) of the insurer's admitted assets or
17 twenty-five percent (25%) of surplus as regards policyholders; (ii) with
18 respect to life insurers, three percent (3%) of the insurer's admitted assets;

19 (C) Reinsurance agreements or modifications thereto in which the
20 reinsurance premium or a change in the insurer's liabilities equals or exceeds
21 five percent (5%) of the insurer's surplus as regards policyholders, as of
22 December 31st next preceding, including those agreements which may require as
23 consideration the transfer of assets from an insurer to a non-affiliate, if an
24 agreement or understanding exists between the insurer and non-affiliate that
25 any portion of such assets will be transferred to one or more affiliates of
26 the insurer;

27 (D) All management agreements, service contracts and all cost sharing
28 arrangements; and

29 (E) Any material transactions, specified by regulation, which the
30 commissioner determines may adversely affect the interests of the insurer's
31 policyholders.

32 (3) A domestic insurer subject to this subchapter may not enter into
33 transactions, which are part of a plan or series of like transactions with
34 persons within the holding company system, if the purpose of those separate
35 transactions is to avoid the threshold amount and thus avoid the review that

1 would otherwise occur. If the commissioner determines that such separate
2 transactions were entered into over any twelve month period for such purpose,
3 he may exercise his authority under 23-63-522.

4 (4) The commissioner, in reviewing transactions pursuant to subdivision
5 (a)(2), shall consider whether the transactions comply with the standards set
6 forth in subdivision (a)(1) and whether they may adversely affect the
7 interests of policyholders.

8 (5) The commissioner shall be notified within thirty (30) days of any
9 investment of a domestic insurer subject to this subchapter in any one
10 corporation if the total investment in such corporation by the insurance
11 holding company system exceeds ten percent (10%) of such corporation's voting
12 securities.

13 (b) For purposes of this subchapter, in determining whether an
14 insurer's surplus as regards policyholders is reasonable in relation to the
15 insurer's outstanding liabilities and adequate to its financial needs, the
16 following factors, among others, shall be considered:

17 (1) The size of the insurer as measured by its assets, capital and
18 surplus, reserves, premium writings, insurance in force, and other appropriate
19 criteria;

20 (2) The extent to which the insurer's business is diversified among the
21 several lines of insurance;

22 (3) The number and size of risks insured in each line of business;

23 (4) The extent of the geographical dispersion of the insurer's insured
24 risks;

25 (5) The nature and extent of the insurer's reinsurance program;

26 (6) The quality, diversification, and liquidity of the insurer's
27 investment portfolio;

28 (7) The recent, past, and projected future trend in the size of the
29 insurer's surplus as regards policyholders;

30 (8) The surplus as regards policyholders maintained by other comparable
31 insurers;

32 (9) The adequacy of the insurer's reserves; and

33 (10) The quality and liquidity of investments in subsidiaries made
34 pursuant to 23-63-505. The commissioner may treat any investment as a
35 disallowed asset for purposes of determining the adequacy of surplus as

1 regards policyholders whenever in his judgment the investment so warrants.

2 (c) No insurer subject to registration under 23-63-514 shall pay any
3 extraordinary dividend or make any other extraordinary distribution to its
4 stockholders until:

5 (1) Thirty (30) days after the commissioner has received notice of the
6 declaration thereof and within that period has not disapproved the payment; or

7 (2) The commissioner shall have approved the payment within the thirty-
8 day period.

9 (d) For purposes of this section, an extraordinary dividend or
10 distribution means:

11 (1) Any dividend or distribution of cash or other property, regardless
12 of value, when declared from the gross paid-in and contributed surplus of the
13 insurer; or

14 (2) Any other dividend or distribution of cash or other property whose
15 fair market value, together with that of any dividends or distributions made
16 within the preceding twelve (12) months, exceeds the greater of:

17 (A) Ten percent (10%) of the insurer's surplus as regards policyholders
18 as of December 31 next preceding; or

19 (B) The net gain from operations of the insurer, if the insurer is a
20 life insurer, or the net investment income, if the insurer is not a life
21 insurer, for the twelve-month period ending December 31 next preceding, but
22 pro rata distribution of any class of the insurer's own securities shall not
23 be considered to be extraordinary dividends. In determining whether a
24 dividend or distribution is extraordinary, an insurer may carry forward income
25 from the previous two (2) calendar years that has not already been paid out as
26 dividends.

27 (e) Notwithstanding any other provisions of law, an insurer may declare
28 an extraordinary dividend or distribution which is conditional upon the
29 commissioner's approval, and the declaration shall confer no rights upon
30 stockholders until:

31 (1) The commissioner has approved the payment of the dividend or
32 distribution; or

33 (2) The commissioner has not disapproved the payment within the thirty-
34 day period referred to above.

35 (f) Notwithstanding any other provisions of law, an insurer may declare

1 and pay, subject to the provisions of this section, an extraordinary dividend
2 or distribution from its gross paid-in and contributed surplus, provided that:

3 (1) The dividend or distribution shall be made only upon a
4 determination by the board of directors of the insurer that the assets of the
5 insurer are in excess of the needs of its business; and

6 (2) Each dividend or distribution, when made, shall be identified as a
7 distribution from gross paid-in and contributed surplus; and the amount per
8 share shall be disclosed to the shareholders receiving the dividend or
9 distribution concurrently with its distribution."

10

11 SECTION 25. Arkansas Code 23-63-516 is hereby amended to read as
12 follows:

13 "23-63-516. Examination.

14 (a) Power of Commissioner. Subject to the limitation contained in this
15 section and in addition to the powers which the commissioner has under
16 subchapters 1-3 of chapter 61 of this title relating to the examination of
17 insurers, the commissioner shall also have the power to order any insurer
18 registered under 23-63-514 to produce the records, books, or other information
19 papers in the possession of the insurer or its affiliates as shall be
20 necessary to ascertain the financial condition or legality of conduct of the
21 insurer. In the event the insurer fails to comply with the order, the
22 commissioner shall have the power to examine the affiliates to obtain the
23 information.

24 (b) Use of Consultants. The commissioner may retain at the insurer's
25 expense such attorney's, actuaries, accountants and other experts not
26 otherwise a part of the commissioner's staff as shall be reasonably necessary
27 to assist in the conduct of the examination under subsection (a) of this
28 section. Any person so retained shall be under the direction and control of
29 the commissioner and shall act in an advisory capacity.

30 (c) Expenses. Each registered insurer producing for examination
31 records, books, and papers pursuant to subsection (a) of this section shall be
32 liable for and shall pay the expense of the examination in accordance with
33 subchapters 1-3 of chapter 61 of this title."

34

35 SECTION 26. Arkansas Code 23-63-517 is hereby amended to read as

1 follows:

2 "23-63-517. Confidential treatment.

3 All information, documents, and copies thereof obtained by or disclosed
4 to the commissioner or any other person in the course of an examination or
5 investigation made pursuant to 23-63-516 and all information reported pursuant
6 to 23-63-514 shall be given confidential treatment and shall not be subject to
7 subpoena and shall not be made public by the commissioner, the National
8 Association of Insurance Commissioners, or any other person, except to
9 insurance departments of other states. The information, documents, and copies
10 thereof shall not be subject to subpoena or be made public without the prior
11 written consent of the insurer to which it pertains unless the commissioner,
12 after giving notice and opportunity to be heard to the insurer and its
13 affiliates who would be affected thereby, determines that the interests of
14 policyholders, shareholders, or the public will be served by the publication
15 thereof. In that event, he may publish all or any part thereof in such manner
16 as he may deem appropriate."

17

18 SECTION 27. Arkansas Code 23-63-522 is hereby amended to read as
19 follows:

20 "23-63-522. Criminal and civil proceedings.

21 (a) Whenever it appears to the Insurance Commissioner that any insurer
22 or any director, officer, employee, or agent of the insurer has committed a
23 willful violation of this subchapter, the commissioner may cause criminal
24 proceedings to be instituted in the circuit court for the county in which the
25 principal office of the insurer is located or, if the insurer has no office in
26 the state, then by the Circuit Court of Pulaski County, against the insurer or
27 the responsible director, officer, employee, or agent of the insurer.

28 (b)(1) Any insurer which willfully violates this subchapter shall be
29 fined not more than ten thousand dollars (\$10,000).

30 (2) Any individual who willfully violates this subchapter shall be
31 fined not more than three thousand dollars (\$3,000) or, if the willful
32 violation involves the deliberate perpetration of a fraud upon the
33 commissioner, imprisoned not more than two (2) years, or both.

34 (c) Any officer, director, or employee of an insurance holding company
35 system who willfully and knowingly subscribes to or makes or causes to be made

1 any false statements or false reports or false filings with the intent to
 2 deceive the commissioner in the performance of his duties under this
 3 subchapter, upon conviction thereof, shall be fined not more than three
 4 thousand dollars (\$3,000), or imprisoned for not more than two (2) years, or
 5 both. Any fines imposed shall be paid by the officer, director, or employee
 6 in his/her individual capacity.

7 (d) Any insurer failing, without just cause, to file any registration
 8 statement as required in this subchapter shall be required, after notice and
 9 hearing, to pay a penalty of two hundred dollars (\$200) for each day's delay,
 10 to be recovered by the commissioner, if necessary, by a civil suit therefor
 11 brought by the commissioner in the Circuit Court of Pulaski County. The
 12 commissioner may reduce the penalty hereunder if the insurer demonstrates to
 13 the commissioner that the imposition of the penalty would constitute a
 14 financial hardship to the insurer.

15 (e) Every director or officer of an insurance holding company system
 16 who knowingly violates, participates in, or assents to, or who knowingly shall
 17 permit any of the officers or agents of the insurer to engage in transactions
 18 or make investments which have not been properly reported or submitted
 19 pursuant to 23-63-506 - 23-63-513, or which violate this subchapter, shall
 20 pay, in their individual capacity, a civil penalty of not more than five
 21 thousand dollars (\$5,000) per violation, after notice and hearing before the
 22 commissioner. In determining the amount of the civil penalty, the
 23 commissioner shall take into account the appropriateness of the forfeiture
 24 with respect to the gravity of the violation, the history of previous
 25 violations, and such other matters as justice may require.

26 (f) Whenever it appears to the commissioner that any insurer subject to
 27 this subchapter or any director, officer, employee or agent thereof has
 28 engaged in any transaction or entered into a contract which is subject to
 29 23-63-515 and which would not have been approved had such approval been
 30 requested, the commissioner may order the insurer to cease and desist
 31 immediately any further activity under that transaction or contract. After
 32 notice and hearing the commissioner may also order the insurer to void any
 33 such contracts and restore the status quo if such action is in the best
 34 interest of the policyholders, creditors or the public."

35

1 SECTION 28. Arkansas Code 23-63-523 is hereby amended to read as
2 follows:

3 "23-63-523. Receivership.

4 (a) Whenever it appears to the commissioner that any person has
5 committed a violation of this subchapter which so impairs the financial
6 condition of a domestic insurer as to threaten insolvency or make the further
7 transaction of business by it hazardous to its policyholders, creditors,
8 shareholders, or the public, then the commissioner may proceed as provided in
9 23-68-101 et seq. to take possession of the property of the domestic insurer
10 and to conduct the business thereof.

11 (b) If an order for liquidation or rehabilitation of the domestic
12 insurer is entered, the receiver appointed under such order shall have the
13 right to recover on behalf of the insurer *such distributions and payments made*
14 during the one (1) year preceding the petition for liquidation, conservation
15 or rehabilitation:

16 (1) The amount of distributions (other than distributions of shares of
17 the same class of stock) paid by the insurer on its capital stock to any
18 parent corporation or holding company or person or affiliate who otherwise
19 controlled the insurer; or

20 (2) Any payment in the form of a bonus, termination settlement or
21 extraordinary lump sum salary adjustment made by the insurer or its
22 subsidiary(s) to a director, officer or employee.

23 (c) No such distribution shall be recoverable if the parent or
24 affiliate shows that when paid such distribution was lawful and reasonable,
25 and that the insurer did not know and could not reasonably have known that
26 such distribution might adversely affect the ability of the insurer to fulfill
27 its contractual obligations.

28 (d) Any person who was a parent corporation or holding company or a
29 person who otherwise controlled the insurer or affiliate at the time such
30 distributions were paid shall be liable up to the amount of the distributions
31 or payments under subsection (b) such person received. Any person who
32 otherwise controlled the insurer at the time such distributions were declared
33 shall be liable up to the amount of distributions he/she would have received
34 if they had been paid immediately. If two or more persons are liable with
35 respect to the same distributions, they shall be jointly and severally liable.

1 (e) The maximum amount recoverable under this section shall be the
2 amount needed in excess of all other available assets of the impaired or
3 insolvent insurer to pay the contractual obligations of the impaired or
4 insolvent insurer and to reimburse any guaranty funds.

5 (f) To the extent that any person liable under subsection (d) of this
6 section is insolvent or otherwise fails to pay claims due from it pursuant to
7 that subsection, its parent corporation or holding company or person who
8 otherwise controlled it at the time the distribution was paid, shall be
9 jointly and severally liable for any resulting deficiency in the amount
10 recovered from such parent corporation or holding company or person who
11 otherwise controlled it."

12

13 SECTION 29. Subchapter 5 of Chapter 63 of Title 23 of the Arkansas Code
14 is hereby amended to add the following new sections at the end of the existing
15 subchapter:

16 "23-63-525. Acquisitions involving insurers not otherwise covered -
17 Definitions.

18 The following definitions shall apply for the purposes of 23-63-525 -
19 23-63-530 only:

20 (a) 'Acquisition' means any agreement, arrangement or activity the
21 consummation of which results in a person acquiring directly or indirectly the
22 control of another person, and includes but is not limited to the acquisition
23 of voting securities, the acquisition of assets, bulk reinsurance and mergers.

24 (b) An 'involved insurer' includes an insurer which either acquires or
25 is acquired, is affiliated with an acquirer or acquired, or is the result of a
26 merger.

27

28 23-63-526. Acquisitions involving insurers not otherwise covered -
29 Scope.

30 (a) Except as exempted in subdivision (b) of this section, 23-65-525 -
31 23-63-528 applies to any acquisition in which there is a change in control of
32 an insurer authorized to do business in this state.

33 (b) 23-65-525 - 23-65-528 shall not apply to the following:

34 (1) An acquisition subject to approval or disapproval by the
35 commissioner pursuant to 23-65-506 - 23-65-513;

1 (2) A purchase of securities solely for investment purposes so long as
2 such securities are not used by voting or otherwise to cause or attempt to
3 cause the substantial lessening of competition in any insurance market in this
4 state. If a purchase of securities results in a presumption of control under
5 23-63-503(2), it is not solely for investment purposes unless the commissioner
6 of the insurer's state of domicile accepts a disclaimer of control or
7 affirmatively finds that control does not exist and such disclaimer action or
8 affirmative finding is communicated by the domiciliary commissioner to the
9 commissioner of this state;

10 (3) The acquisition of a person by another person when both persons are
11 neither directly nor through affiliates primarily engaged in the business of
12 insurance, if pre-acquisition notification is filed with the commissioner in
13 accordance with 23-63-527(b) thirty (30) days prior to the proposed effective
14 date of the acquisition. However, such pre-acquisition notification is not
15 required for exclusion if the acquisition would otherwise be excluded from
16 23-63-525 - 23-63-530 by any other subdivision herein;

17 (4) The acquisition of already affiliated persons;

18 (5) An acquisition if, as an immediate result of the acquisition:

19 (A) In no market would the combined market share of the involved
20 insurers exceed five percent (5%) of the total market;

21 (B) There would be no increase in any market share; or

22 (C) In no market would the combined market share of the involved
23 insurers exceed twelve percent (12%) of the total market, and the market share
24 increases by more than two percent (2%) of the total market.

25 For purposes of subdivision (5), a market share means direct written
26 insurance premium in this state for a line of business as contained in the
27 annual statement required to be filed by insurers licensed to do business in
28 this state;

29 (6) An acquisition for which a pre-acquisition notification would be
30 required pursuant to 23-63-527 due solely to the resulting effect on the ocean
31 marine insurance line of business; or

32 (7) An acquisition of an insurer whose domiciliary commissioner
33 affirmatively finds that such insurer is in failing condition, and there is a
34 lack of a feasible alternative to improving such condition, and the public
35 benefits of improving such insurer's condition through acquisition exceed the

1 public benefits that would arise from not lessening competition. Such
2 findings must be communicated by the domiciliary commissioner to the
3 commissioner of this state.

4
5 23-63-527. Acquisition involving insurers not otherwise covered - Pre-
6 acquisition notification, waiting period.

7 (a) An acquisition covered by 23-63-526 may be subject to an order
8 pursuant to 23-63-529 unless the acquiring person files a pre-acquisition
9 notification and the waiting period has expired. The acquired person may file
10 a pre-acquisition notification. The commissioner shall give confidential
11 treatment to information submitted under this section in the same manner as
12 provided in 23-63-517.

13 (b) The pre-acquisition notification shall be in such form and contain
14 such information as prescribed by the National Association of Insurance
15 Commissioners relating to those markets which, under 23-63-526(b)(5), cause
16 the acquisition not to be exempted from the provisions of 23-63-525 -
17 23-63-528. The commissioner may require such additional material and
18 information as he deems necessary to determine whether the proposed
19 acquisition, if consummated, would violate the competitive standards of
20 23-63-528. The required information may include an opinion of an economist as
21 to the competitive impact of the acquisition in this state accompanied by a
22 summary of the education and experience of such person indicating his or her
23 ability to render an informed opinion.

24 (c) The waiting period required shall begin on the date of receipt of
25 the commissioner of a pre-acquisition notification and shall end on the
26 earlier of the thirtieth (30th) day after the date of such receipt, or
27 termination of the waiting period by the commissioner. Prior to the end of
28 the waiting period, the commissioner on a one-time basis may require the
29 submission of additional needed information relevant to the proposed
30 acquisition, in which event the waiting period shall end on the earlier of the
31 thirtieth (30th) day after receipt of such additional information by the
32 commissioner or termination of the waiting period by the commissioner.

33
34 23-63-528. Acquisitions involving insurers not otherwise covered -
35 Competitive Standard.

(a) The commissioner may enter an order under 23-63-529(a) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with 23-63-527.

(b) In determining whether a proposed acquisition would violate the competitive standards of subsection (a) of this section, the commissioner shall consider the following:

(1) Any acquisition covered under 23-63-526 involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(A) if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or;

(B) if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent (75%) or more of the market.

Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the totals of the two columns in the table is prima facie evidence of violation of the competitive standard in subsection (a) of this section. For the purpose of this subdivision, the insurer with the largest share of the market shall be deemed to be Insurer A.

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the

1 market from the two largest to the eight largest has increased by seven
2 percent (7%) or more of the market over a period of time extending from any
3 base year 5-10 years prior to the acquisition up to the time of the
4 acquisition. Any acquisition or merger covered under 23-63-526 involving two
5 or more insurers competing in the same market is prima facie evidence of
6 violation of the competitive standard in subsection (a) of this section if:

7 (A) There is a significant trend toward increased concentration in the
8 market;

9 (B) One of the insurers involved is one of the insurers in a grouping
10 of such large insurers showing the requisite increase in the market share; and

11 (C) Another involved insurer's market is two percent (2%) or more.

12 (3) For purposes of subsection (b):

13 (A) The term 'insurer' includes any company or group of companies under
14 common management ownership or control;

15 (B) The term 'market' means the relevant product and geographical
16 markets. In determining the relevant product and geographical markets, the
17 commissioner shall give due consideration to, among other things, the
18 definitions or guidelines, if any, promulgated by the National Association of
19 Insurance Commissioners and to information, if any, submitted by the parties
20 to the acquisition. In the absence of sufficient information to the contrary,
21 the relevant product market is assumed to be the direct written insurance
22 premium for a line of business with such line being that used in the annual
23 statement required to be filed by insurers doing business in this state and
24 the relevant geographical market is assumed to be this state.

25 (C) The burden of showing prima facie evidence of violation of the
26 competitive standard rests upon the commissioner.

27 (4) Even though an acquisition is not prima facie violative of the
28 competitive standard under subsection (b)(1) and (2) of this section, the
29 commissioner may establish the requisite *anticompetitive effect based upon*
30 *other substantial evidence*. Even though an acquisition is prima facie
31 violative of the competitive standard under subsection (b)(1) and (2) of this
32 section, a party may establish the absence of the requisite anticompetitive
33 effect based upon other substantial evidence. Relevant factors in making a
34 determination under this subsection include, but are not limited to, the
35 following: market shares, volatility of ranking of market leaders, number of

1 competitors, concentration, trend of concentration in the industry, and ease
2 of entry and exit into the market.

3 (c) An order may not be entered under 23-63-529(a) if:

4 (1) The acquisition will yield substantial economies of scale or
5 economies in resource utilization that cannot be feasibly achieved in any
6 other way, and the public benefits which would arise from such economies
7 exceed the public benefits which would arise from not lessening competition;
8 or

9 (2) The acquisition will substantially increase the availability of
10 insurance, and the public benefits of such increase exceed the public benefits
11 which would arise from not lessening competition.

12

13 23-63-529. Acquisitions involving insurers not otherwise covered -
14 Orders and penalties.

15 (a) (1) If an acquisition violates the standards of 23-63-525 -
16 23-63-528, the commissioner may enter an order:

17 (A) Requiring an involved insurer to cease and desist from doing
18 business in this state with respect to the line or lines of insurance involved
19 in the violation; or

20 (B) Denying the application of an acquired or acquiring insurer for a
21 license to do business in this state.

22 (2) Such order shall not be entered unless there is a hearing, and
23 notice of such hearing is issued prior to the end of the waiting period and
24 not less than ten (10) days prior to the hearing, and the hearing is concluded
25 and the order is issued no later than sixty (60) days after the end of the
26 waiting period. Every order shall be accompanied by a written decision of the
27 commissioner setting forth his findings of fact and conclusions of law.

28 (3) An order entered under this subsection shall not become final
29 earlier than thirty (30) days after it is issued during which time the
30 involved insurer may submit a plan to remedy the anticompetitive impact of the
31 acquisition within a reasonable time. Based upon such plan or other
32 information, the commissioner shall specify, if any, the conditions under the
33 time period during which the aspects of the acquisition causing a violation of
34 the standards of 23-63-525 - 23-63-528 would be remedied and the order vacated
35 and modified.

1 (4) An order pursuant to this subsection shall not apply if the
2 acquisition is not consummated.

3 (b) Any person who violates a cease and desist order of the
4 commissioner under subsection (a) and while such order is in effect may after
5 notice and hearing and upon order of the commissioner's be subject at the
6 discretion of the commissioner to any one or more of the following:

7 (1) A monetary penalty of not more than ten thousand dollars (\$10,000)
8 for every day of violation; and/or

9 (2) Suspension or revocation of such person's license.

10 (c) Any insurer or other person who fails to make any filing required
11 by 23-63-525 - 23-63-528 and who fails to demonstrate a good faith effort to
12 comply with any such filing requirement shall be subject to a fine of not more
13 than fifty thousand dollars (\$50,000).

14

15 23-63-530. Acquisitions involving insurers not otherwise covered -
16 Inapplicable provisions.

17 23-63-520 and 23-63-523 do not apply to acquisitions covered under
18 23-63-526."

19

20 SECTION 30. Effective Date.

21 Compliance with Sections 20 through 29 shall be required on and after
22 January 1, 1992.

23

24 SECTION 31. All provisions of this Act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.

27

28 SECTION 32. All laws and parts of laws in conflict with this Act are
29 hereby repealed.

30

31 SECTION 33. Emergency. It is hereby found and determined by the
32 General Assembly of the State of Arkansas that the laws of this State
33 concerning the insurance matters covered in the subject of this Act are
34 inadequate for the protection of the public and the immediate passage of this
35 Act is necessary in order to provide for the protection of the public.

1 Therefore, an emergency is hereby declared to exist and this Act being
2 immediately necessary for the preservation of the public peace, health and
3 safety shall be in full force and effect from and after its passage and
4 approval.

5 */s/ D. Roberts and M. Wilson*
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