

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

A Bill

HOUSE BILL 1892

For An Act To Be Entitled

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

Subtitle

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17 "THE INSURANCE COMMISSIONER_S OMNIBUS
18 ACT TO AMEND THE INSURANCE CODE AND
19 RELATED LAWS."

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

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

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

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

1 "(4) The commissioner shall maintain as confidential, and not subject
2 to subpoena, financial information regarding material transactions of
3 insurers, as defined in statute or regulation.

4 (5) The commissioner shall maintain, as confidential, any documents or
5 information received from the National Association of Insurance Commissioners
6 or insurance departments of other states which is confidential in such other
7 jurisdictions. It is within the power of the commissioner to share
8 information, including otherwise confidential information, with the National
9 Association of Insurance Commissioners or insurance departments of other
10 states so long as such other jurisdictions agree to maintain the same level
11 of confidentiality as is available in Arkansas."
12

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

15 "(4) In scheduling and determining the nature, scope, and frequency of
16 the examinations, the commissioner shall consider such matters as the results
17 of financial statement analyses and ratios, changes in management or
18 ownership, actuarial opinions, reports of independent certified public
19 accountants, and other criteria as set forth in the most current edition of
20 the Examiners_ Handbook adopted by the National Association of Insurance
21 Commissioners and in effect when the commissioner exercises discretion to
22 conduct an examination under subdivision (a)(1) of this section."
23

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

26 "(a) Upon determining that an examination should be conducted, the
27 commissioner shall issue an examination certificate of authority appointing
28 one (1) or more examiners to perform the examination and instructing them as
29 to the scope of the examination. In conducting the examination, the examiner
30 shall observe those guidelines and procedures set forth in the most current
31 edition of the Examiners_ Handbook adopted by the National Association of
32 Insurance Commissioners. The commissioner may also employ such other
33 guidelines or procedures as the commissioner may deem appropriate."
34

35 SECTION 5. Subsection (e) of Arkansas Code 23-61-307 is hereby amended

1 to read as follows:

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

8

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

11 "23-61-703. Insurers_ administrative and financial regulation fees.

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

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

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

30

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

34

35 (total for preceding calendar year)

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

13

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

18

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

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

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

11

12 SECTION 8. Subdivision (2) of subsection (a) of Arkansas Code
13 23-62-404 is hereby amended to read as follows:

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

17

18 SECTION 9. Subdivision (3) of subsection (b) of Arkansas Code
19 23-62-404 is hereby amended to read as follows:

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

23

24

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

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

1 compliance with this Act would cause the domestic insurer to be impaired or
2 insolvent."

3

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

11

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

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

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

21

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

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

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

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

1 *the valuation or method currently approved or formulated by the Securities*
2 *Valuation Office Guidelines of the National Association of Insurance*
3 *Commissioners or its successor organization shall govern."*

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

6 "(a) Real property acquired under a mortgaged loan or pursuant to a
7 contract of sale shall be valued according to the accounting procedures and
8 practices prescribed by the National Association of Insurance Commissioners_
9 Accounting Practices and Procedures Manual.

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

14 (c) Personal property acquired under a chattel mortgage made in
15 accordance with §23-63-827 shall be valued according to the accounting
16 procedures and practices prescribed by the National Association of Insurance
17 Commissioners_ Accounting Practices and Procedures Manual."

18

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

20 "Purchase money mortgages on real property referred to in §23-63-612
21 shall be valued in accordance with the accounting procedures and practices
22 prescribed by the National Association of Insurance Commissioners_ Accounting
23 Practices and Procedures Manual."

24

25 SECTION 16. Subdivision (6) of Subsection (a) of Arkansas Code
26 23-76-109 is hereby amended by adding a new paragraph (C) following paragraph
27 (B) at the end of the existing subdivision, to read as follows:

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

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

"(a) In no event shall an insurer_s aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after June 17, 1981, be less than the aggregate reserves calculated in accordance with the methods set forth in §§ 23-84-106, 23-84-107, 23-84-110, and 23-84-111 and the mortality tables and rates of interest used in calculating nonforfeiture benefits for the policies.

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

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

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

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

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

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

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

4 "(g) Every insurer or hospital and medical service corporation which
5 issues a group disability insurance policy, contract, or agreement in this
6 state which provides for mental health coverage shall offer coverage for the
7 payment of services rendered by licensed professional counselors. Such offer
8 shall be made either at the time of application for, or upon the first
9 renewal of such policy, contract, or agreement after April 1, 1995. If such
10 offer is accepted, the amount paid for services provided by licensed
11 professional counselors shall be subject to the same limitations as set forth
12 in the policy for mental health coverage. Nothing in this section shall be
13 deemed to expand the scope of the practice of licensed professional
14 counselors currently licensed by the Arkansas Board of Examiners in
15 Counseling and possessing the qualifications set forth in §17-24-301, et
16 seq., or other applicable laws."

17

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

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

34

35 SECTION 23. Arkansas Code 27-19-106 is hereby amended by adding a new

1 subsection (c) following subsection (b) at the end of the existing section to
2 read as follows:

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

5

6 SECTION 24. Subchapter 2 of Chapter 62 of Title 23 is hereby amended
7 by adding a new section at the end of the existing Subchapter 2, to read as
8 follows:

9 "The commissioner may adopt reasonable rules and regulations to
10 implement the provisions of this subchapter."

11

12 SECTION 25. Subdivision (C) of subsection (2) of Arkansas Code 23-90-
13 103 is hereby amended to read as follows:

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

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

16 (ii) any amount sought as return of premium under any
17 retrospective rating plan;

18 (iii) any amount due to any reinsurer, insurer, insurance pool,
19 or underwriting association; or

20 (iv) any amount sought as subrogation recoveries."

21

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

25

26 SECTION 27. If any provision of this Act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or application of the Act which can be given effect without
29 the invalid provision or application, and to this end the provisions of the
30 Act are declared to be severable.

31

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

34

35 SECTION 29. Emergency. It is hereby found and determined by the

1 General Assembly of the State of Arkansas that the present insurance laws,
2 and motor vehicle laws on the automobile assigned risk plan, are inadequate
3 for the protection of the public; and the immediate passage of this Insurance
4 Omnibus Act is necessary in order to provide for the protection of the
5 public. Therefore, an emergency is hereby declared to exist and this
6 Insurance Omnibus Act being immediately necessary for the preservation of the
7 public peace, health and safety shall be in full force and effect from and
8 after its passage and approval.

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/s/Rep. Newman

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