

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H3/17/97

A Bill

HOUSE BILL 1861

4
5 By: Representative McGee
6
7

For An Act To Be Entitled

9 "AN OMNIBUS ACT TO AMEND THE ARKANSAS INSURANCE CODE; TO
10 ADD A DEFINITION OF `REINSURANCE' THEREIN FOR PURPOSES OF
11 CLARIFYING THE ARKANSAS COMPREHENSIVE HEALTH INSURANCE
12 POOL ACT OF 1995; TO EXPAND THEREIN FROM 3 TO 5 YEARS
13 INSURER COMPLIANCE AUDITS AND EXAMINATIONS IN CONFORMITY
14 WITH RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF
15 INSURANCE COMMISSIONERS (NAIC); TO AMEND §23-63-302 TO
16 CLARIFY THE COMMISSIONER'S SERVICE OF LEGAL PROCESS DUTIES
17 ON INSURERS AND OTHERS; TO AMEND §23-66-206 TO DEFINE AS AN
18 UNFAIR TRADE PRACTICE FAILURE OF DOMESTIC INSURERS AND
19 HMO'S AND OTHERS TO ESTABLISH AND MAINTAIN WRITTEN
20 CONFLICT OF INTEREST PROCEDURES FOR OFFICERS, DIRECTORS
21 AND MANAGERS; TO AMEND §§23-67-212 AND 23-67-219 TO EXEMPT
22 FROM PUBLIC INSPECTION INFORMATION WHICH IS A TRADE SECRET
23 OR OF A PROPRIETARY NATURE IN PROPERTY & CASUALTY &
24 WORKERS' COMPENSATION INSURANCE RATE FILINGS; TO AMEND
25 ARKANSAS CODE 23-68-103 TO PROVIDE FOR THE INSURANCE
26 COMMISSIONER'S ORIGINAL JURISDICTION OF DELINQUENCY
27 PROCEEDINGS AGAINST INSURERS; TO AMEND ARKANSAS CODE
28 23-68-108 TO AUTHORIZE THE INSURANCE COMMISSIONER TO
29 COMMENCE CONSERVATION PROCEEDINGS AGAINST DOMESTIC
30 INSURERS IN ARKANSAS STATE COURTS; TO AMEND ARKANSAS CODE
31 23-68-126 TO CONFORM THE PRIORITY OF DISTRIBUTION UNDER
32 THE ARKANSAS UNIFORM INSURERS LIQUIDATION ACT WITH FEDERAL
33 SUPER-PRIORITY LAW; TO INCREASE THE SURETY BOND AMOUNT OF
34 EMPLOYEE LEASING FIRMS TO NOT LESS THAN \$100,000 IN
35 CONFORMITY WITH THE CURRENT COMPANION RULE & REGULATION
36 58; TO AMEND §17-19-301 (d) TO DELETE INCORRECT REFERENCES

1 TO `COMMISSIONER' AND AS APPROPRIATE SUBSTITUTE THE WORD
2 BOARD THEREIN; TO AMEND THE STATE INCOME TAX CODE SECTIONS
3 26-51-423 AND 26-51-436 IN ORDER TO RECONCILE ARKANSAS
4 INCOME TAX TREATMENT OF MEDICAL & DENTAL EXPENSES &
5 MEDICAL SAVINGS ACCOUNTS WITH THE INTERNAL REVENUE CODE;
6 TO EXEMPT THE STATE COMPREHENSIVE HEALTH INSURANCE POOL
7 ACT & THE ARKANSAS PROPERTY & CASUALTY GUARANTY FUND &
8 ARKANSAS LIFE & DISABILITY INSURANCE GUARANTY ASSOCIATION
9 LAWS FROM THE STATE CASH FUND LAWS IN §§19-4-801, ET SEQ.;
10 TO CONFORM THE STATE SMALL EMPLOYER HEALTH INSURANCE
11 AVAILABILITY & PREMIUM RATING LAW UNDER §§23-86-201, ET
12 SEQ., TO THE HEALTH INSURANCE PORTABILITY AND
13 ACCOUNTABILITY ACT OF 1996 OF THE U.S. CONGRESS, EFFECTIVE
14 ON & AFTER JULY 1, 1997; TO AMEND SECTION 3 (m) OF
15 UNCODIFIED ACT 292 OF 1997 IN ORDER TO EXCLUDE LONG TERM
16 CARE & DISABILITY INCOME POLICIES FROM THE DEFINITION OF
17 `HEALTH INSURANCE' THEREIN SO AS TO EXEMPT THEM FROM
18 INCLUSION IN THE STATE COMPREHENSIVE HEALTH INSURANCE POOL
19 ACT; TO AMEND SECTION 13 OF UNCODIFIED ACT 292 OF 1997 TO
20 DELETE SUBSECTION (b) AND REFORM SUBSECTION (a)
21 ACCORDINGLY, IN ORDER TO APPLY THE UNFAIR TRADE PRACTICE
22 REFERRAL LAW IN THE STATE COMPREHENSIVE HEALTH INSURANCE
23 POOL ACT TO APPLICANT GROUPS OF FEWER THAN FIFTEEN
24 MEMBERS; TO ADD A NEW SECTION ON REINSURER'S LIABILITY TO
25 THE UNIFORM INSURERS' LIQUIDATION ACT IN §§23-68-101, ET
26 SEQ., FOR CONFORMITY TO THE MODEL ACT OF THE NATIONAL
27 ASSOCIATION OF INSURANCE COMMISSIONERS; AND FOR OTHER
28 PURPOSES."

Subtitle

31 "OMNIBUS ACT TO AMEND THE ARKANSAS
32 INSURANCE CODE."

33
34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

35
36 SECTION 1. Subsection (1) of Arkansas Code 23-60-102 is hereby amended

1 by adding new subdivision (C) immediately following current subdivision (B) at
2 the end of the existing section to read as follows:

3 "(C) 'Reinsurance' is a contract under which an originating insurer
4 (called the 'ceding' insurer) procures insurance for itself in another insurer
5 (called the 'assuming' insurer or reinsurer) with respect to part or all of an
6 insurance risk of the originating insurer;"

7
8 SECTION 2. Subdivision (2) of subsection (a) of Arkansas Code 23-61-201
9 is hereby amended to read as follows:

10 "(2) He shall so examine each authorized insurer not less frequently
11 than every five (5) ~~three (3)~~ years."

12
13 SECTION 3. Arkansas Code §23-63-302 is hereby amended to read as
14 follows:

15 "23-63-302. Commissioner as process agent - Procedures.

16 (a)(1) Service of process upon the commissioner as process agent of an
17 insurer, under § 23-63-301, shall be made by serving copies in duplicate of
18 the process upon the commissioner or upon his assistant, deputy, or other
19 person in charge of his office.

20 (2) Upon being served with such process, the commissioner shall
21 promptly forward a copy thereof by certified or registered mail to the person
22 last designated by the insurer to receive it, as provided by § 23-63-301, and
23 send a copy of his letter of transmittal of the process to the clerk of the
24 issuing court and the same shall be entered in the file of the cause.

25 (b) Where process is served upon the commissioner as an insurer's
26 process agent, the insurer must answer or plead within thirty (30) days after
27 the date upon which ~~the commissioner mailed a copy of the process served upon~~
28 ~~him as required by subsection (a) of this section~~ service is perfected.

29 Service is perfected under this section at the earliest of:

30 (1) The date the insurer receives the mail;

31 (2) The date shown on the return receipt, if signed on behalf of
32 the insurer; or

33 (3) Five (5) days after it is deposited in the United States
34 mail, as evidenced by the postmark, if mailed postpaid and correctly
35 addressed.

36 ~~_____ (c) Service shall not be deemed completed until the commissioner has~~

1 ~~mailed a copy of the process, as provided in subsection (a) of this section.~~"

2

3 SECTION 4. Arkansas Code 23-66-206 is hereby amended by adding new
4 subsection (14), immediately following current subsection (13) at the end of
5 the existing section, to read as follows:

6 "(14) `Failure to maintain conflict of interest procedures' is failing
7 to adopt and implement on or before the next financial or market conduct
8 examination conducted by the commissioner on and after passage of this Act,
9 and thereafter maintain written conflict of interest procedures and
10 provisions, in form and format satisfactory to the commissioner, designed to
11 identify and resolve promptly any general or pecuniary conflicts of interest
12 as to officers, directors, managers, supervisors and other key personnel of
13 domestic insurers, including but not limited to domestic stock and mutual
14 insurers, domestic stipulated premium insurers, domestic mutual assessment
15 life and disability insurers, domestic health maintenance organizations,
16 domestic farmers' mutual aid associations, domestic hospital or medical
17 service corporations, and domestic fraternal benefit societies."

18

19 SECTION 5. Subsection (b) of Arkansas Code 23-67-212 is hereby amended
20 to read as follows:

21 "(b) Each filing and supporting non proprietary information filed under
22 this chapter shall, as soon as filed, be open to public inspection.
23 Notwithstanding the provisions of A.C.A. §§25-19-101, et seq., information
24 which is a Trade Secret and/or of a proprietary nature shall not be open to
25 public inspection."

26

27 SECTION 6. Paragraph (iii) of Subdivision (C) of Subsection (1) of
28 Arkansas Code 23-67-219 is hereby amended to read as follows:

29 "(iii) Each filing shall, as soon as submitted, be open to public
30 inspection-, except information which is a Trade Secret and/or of a
31 proprietary nature. Notwithstanding the provisions of A.C.A. §§25-19-101, et
32 seq., information which is a Trade Secret and/or of a proprietary nature shall
33 not be open to public inspection."

34

35 SECTION 7. Arkansas Code 23-68-103 is hereby amended to read as
36 follows:

1 "23-68-103. Delinquency proceedings generally.

2 (a) The ~~circuit~~ Circuit Court ~~court~~ Court of Pulaski County shall have
3 original jurisdiction of delinquency proceedings under this chapter, and ~~any~~
4 ~~court with jurisdiction~~ that court is authorized to make all necessary or
5 proper orders to carry out the purposes of this chapter.

6 (b) The venue of delinquency proceedings against a domestic, foreign,
7 or alien insurer shall be in the Circuit Court of Pulaski County.

8 (c) Delinquency proceedings pursuant to this chapter shall constitute
9 the sole and exclusive method of liquidating, rehabilitating, reorganizing, or
10 conserving an insurer, and no court shall entertain a petition for the
11 commencement of such proceedings unless the petition has been filed in the
12 name of the state on the relation of the commissioner.

13 (d) An appeal shall lie to the Supreme Court from an order granting or
14 refusing rehabilitation, liquidation, or conservation, and from every other
15 order in delinquency proceedings having the character of a final order as to
16 the particular portion of the proceedings embraced therein."

17

18 SECTION 8. Arkansas Code 23-68-108 is hereby amended to read as
19 follows:

20 "23-68-108. Grounds for conservation - Domestic, Foreign ~~foreign~~ and
21 alien insurers.

22 (a) The commissioner may apply to the court for an order appointing him
23 as receiver and directing him to conserve the assets of a domestic insurer
24 upon any of the grounds specified in §23-68-106 or §23-68-107.

25 ~~—(a)(b)~~ The commissioner may apply to the court for an order appointing
26 him as receiver or ancillary receiver and directing him to conserve the assets
27 within this state of a foreign insurer upon any of the following grounds:

28 (1) Upon any of the grounds specified in §23-68-106 or
29 §23-68-107; or

30 (2) Upon the ground that its property has been sequestered in its
31 domiciliary sovereignty or in any other sovereignty.

32 ~~—(b)(c)~~ The commissioner may apply to the court for an order appointing
33 him as receiver or ancillary receiver, and directing him to conserve the
34 assets within this state, of any alien insurer upon any of the following
35 grounds:

36 (1) Upon any of the grounds specified in §23-68-106 or

1 §23-68-107;

2 (2) Upon the ground that the insurer has failed to comply, within
3 the time designated by the commissioner, with an order made by him to make
4 good an impairment of its trustee funds; or

5 (3) Upon the ground that the property of the insurer has been
6 sequestered in its domiciliary sovereignty or elsewhere."

7

8 SECTION 9. Arkansas Code 23-68-126 is amended to read as follows:

9 "23-68-126. Priority of distribution of general assets.

10 (a)(1) The priority of distribution of claims from the general assets
11 of the insurer's estate shall be in accordance with the order in which each
12 class of claims is set forth in this section.

13 (2) Every claim in each class shall be paid in full, or adequate
14 funds retained for the payment, before the members of the next class receive
15 any payment.

16 (3) No subclasses shall be established within any class.

17 (b) The order of distribution of claims shall be:

18 (1) Class 1. The costs and expenses of administration,
19 including, but not limited to, the following:

20 (A) The actual and necessary costs of preserving or
21 recovering the assets of the insurer;

22 (B) Compensation for all services rendered in the
23 liquidation;

24 (C) Any necessary filing fees from which the receiver is
25 not exempt under §23-68-122;

26 (D) The fees and mileage payable to witnesses;

27 (E) Reasonable attorney's fees;

28 (F) The reasonable expenses of the Arkansas Property and
29 Casualty Insurance Guaranty Fund, or any other domestic or foreign guaranty
30 fund or guaranty association, for the handling of claims;

31 (2) Class 2. ~~Debts due to employees for services performed to the~~
32 ~~extent that they do not exceed one thousand dollars (\$1,000) and represent~~
33 ~~payment for services performed within one (1) year before the filing of the~~
34 ~~petition for liquidation. Officers and directors shall not be entitled to the~~
35 ~~benefit of this priority. The priority shall be in lieu of any similar~~
36 ~~priority which may be authorized by law as to wages or compensation of~~

1 ~~employees;~~ All claims under policies for losses incurred, including third
2 party claims, and all claims of a domestic or foreign guaranty fund or
3 guaranty association. All claims under life insurance and annuity policies,
4 whether for death proceeds, annuity proceeds, or investment values shall be
5 treated as loss claims. That portion of any loss, indemnification for which
6 is provided by other benefits or advantages recovered by the claimant, shall
7 not be included in this class, other than benefits or advantages recovered or
8 recoverable in discharge of familial obligations of support or by way of
9 succession at death or as proceeds of life insurance, or as gratuities. No
10 payment by an employer to his employee shall be treated as a gratuity;

11 (3) ~~Class 3. All claims under policies for losses incurred,~~
12 ~~including third-party claims, all claims against the insurer for liability for~~
13 ~~bodily injury to or destruction of tangible property which are not under~~
14 ~~policies, and all claims of a domestic or foreign guaranty fund or guaranty~~
15 ~~association. All claims under life insurance and annuity policies, whether for~~
16 ~~death proceeds, annuity proceeds, or investment values shall be treated as~~
17 ~~loss claims. That portion of any loss, indemnification for which is provided~~
18 ~~by other benefits or advantages recovered by the claimant, shall not be~~
19 ~~included in this class, other than benefits or advantages recovered or~~
20 ~~recoverable in discharge of familial obligations of support or by way of~~
21 ~~succession at death or as proceeds of life insurance, or as gratuities. No~~
22 ~~payment by an employer to his employee shall be treated as a gratuity;~~ Claims
23 under nonassessable policies for unearned premium or other premium refunds;

24 (4) ~~Class 4. Claims under nonassessable policies for unearned~~
25 ~~premium or other premium refunds and claims of general creditors;~~ Claims of
26 the federal government not included in Class 2 or 3 above;

27 (5) ~~Class 5. Claims of the federal or any state or local~~
28 ~~government. Claims, including those of any governmental body for a penalty or~~
29 ~~forfeiture, shall be allowed in this class only to the extent of the pecuniary~~
30 ~~loss sustained from the act, transaction, or proceeding out of which the~~
31 ~~penalty or forfeiture arose, with reasonable and actual costs occasioned~~
32 ~~thereby. The remainder of the claims shall be postponed to the class of claims~~
33 ~~under subdivision (b)(8) of this section;~~ Debts due to employees for services
34 performed to the extent that they do not exceed one thousand dollars (\$1,000)
35 and represent payment for services performed within one (1) year before the
36 filing of the petition for liquidation. Officers and directors shall not be

1 entitled to the benefit of this priority. The priority shall be in lieu of
2 any similar priority which may be authorized by law as to wages or
3 compensation of employees;

4 (6) Class 6. All claims against the insurer for liability for
5 bodily injury to or destruction of tangible property which are not under
6 policies, and claims of general creditors;

7 (7) Class 7. Claims of any state or local government. Claims,
8 including those of any state or local governmental body for a penalty or
9 forfeiture, shall be allowed in this class only to the extent of the pecuniary
10 loss sustained from the act, transaction, or proceeding out of which the
11 penalty or forfeiture arose, with reasonable and actual costs occasioned
12 thereby. The remainder of the claim shall be postponed to the class of claims
13 under subdivision (b)(10) of this section;

14 ~~_____ (6)(8)~~ Class 8. Claims filed late or any other claims other
15 than claims under subdivisions (b)~~(7)~~ (9) and ~~(8)~~ (10) of this section;

16 ~~_____ (7)(9)~~ Class 9. Surplus notes, or similar obligations, and
17 premium refunds on assessable policies. Payments to members of domestic
18 mutual insurance companies shall be limited in accordance with law;

19 ~~_____ (8)(10)~~ Class 10. The claims of shareholders or other owners.

20 (c) Every claim under a separate account established under the
21 provisions of $\text{\textcircled{H}}23-81-402$, providing that the income, gains, and losses,
22 realized and unrealized, from assets allocated to the separate account shall
23 be credited to or charged against the account without regard to other income,
24 gains, or losses of the life insurance company and, to the extent provided
25 under the applicable contracts, that that portion of the assets of any such
26 separate account equal to the reserves and other contract liabilities with
27 respect to the separate account shall not be chargeable with liabilities
28 arising out of any other business the company may conduct, shall be satisfied
29 out of the assets in the separate account equal to the reserves maintained in
30 such account for such contracts. To the extent, if any, reserves maintained in
31 such separate account are in excess of the amounts needed to satisfy claims
32 under such separate account contracts, the excess shall be treated as general
33 assets of the life insurance company."

34

35 SECTION 10. PRIORITY OF DISTRIBUTION OF CLAIMS - LEGISLATIVE INTENT.

36 It is the intent of the General Assembly that $\text{\textcircled{H}}23-68-126$ as amended by

1 this Act apply to pending and future claims in existing delinquency
 2 proceedings as well as to claims in delinquency proceedings arising after the
 3 effective date of this Act; that, in light of the ruling of the United States
 4 Supreme Court in U.S. Department of the Treasury v. Fabe, 113 S.Ct. 2202
 5 (1993), the General Assembly considers this Act to be curative, remedial and
 6 not affecting substantive rights in the distribution of assets in delinquency
 7 proceedings; that this Act is necessary to cure any potential defect in the
 8 present priority of distribution scheme that may result from the Fabe decision
 9 and to preserve the original intent of the General Assembly with regard to the
 10 priorities of payment in delinquency proceedings.

11

12 SECTION 11. Subsection (a) of Arkansas Code 23-92-307 in the preface
 13 language in subsection (a) preceding subsections (1) through (4) is hereby
 14 amended to read as follows:

15 "(a) Every application for issuance or renewal of a license as a class
 16 or classes of employee leasing firm pursuant to the provisions of this
 17 subchapter shall be accompanied by a surety bond issued by a corporate surety
 18 in the amount of ~~fifty thousand dollars (\$50,000)~~ not less than one hundred
 19 thousand dollars (\$100,000)."

20

21 SECTION 12. Paragraph (D) of subdivision (1) of subsection (d) of
 22 Arkansas Code 17-19-301 is hereby amended to read as follows:

23 "(D) The commissioner may in his discretion grant an extension for good
 24 cause shown upon timely written request. ~~The commissioner may in his~~
 25 ~~discretion waive or excuse such fee payments:~~

26 ~~_____ (i) For professional bail bond companies under department~~
 27 ~~examination for financial instability; or~~

28 ~~_____ (ii) For companies whose licenses are suspended due to the~~
 29 ~~impaired or insolvent condition of the company; or~~

30 ~~_____ (iii) If the professional bail bond company is seriously and~~
 31 ~~severely undercapitalized in the view of the commissioner."~~

32

33 SECTION 13. Paragraph (B) of subdivision (4) of subsection (d) of
 34 Arkansas Code 17-19-301 is hereby amended to read as follows:

35 "(B) In ~~his~~ its discretion, the ~~Insurance Commissioner board~~ may also
 36 fine, or suspend or revoke the license of, any professional bail bond company

1 failing to remit or pay timely the fees required by this section."

2

3 SECTION 14. Paragraph (C) of subdivision (4) of subsection (d) of
4 Arkansas Code 17-19-301 is hereby amended to read as follows:

5 "(C) Further, upon criminal conviction of the individual bondsman for
6 theft of property in connection with fraudulent conversion of those premium
7 amounts due the State Insurance Department Trust Fund, the ~~Insurance~~
8 ~~Commissioner~~ board shall revoke the individual's license, and in ~~his~~ its
9 discretion fine, or suspend or revoke the license of, the employing
10 professional bail bond company if it assisted the individual in such
11 fraudulent conduct."

12

13 SECTION 15. Subdivision (2) of subsection (a) of Arkansas Code
14 26-51-423 is hereby amended to read as follows:

15 "(2) MEDICAL AND DENTAL EXPENSES. Section 213 of the Internal Revenue
16 Code of 1986, in effect on January 1, ~~1995~~, 1997 is adopted in computing the
17 medical and dental expense deduction under the state income tax law;"

18

19 SECTION 16. Arkansas Code 26-51-436 is hereby amended by adding new
20 subsection (5), commencing immediately following current subsection (4), to
21 read as follows:

22 "(5) Section 220 of the Internal Revenue Code of 1986, as in effect on
23 January 1, 1997, regarding the deductibility from income of contributions made
24 to a Medical Savings Account (MSA) by the taxpayer or the taxpayer's
25 employer, is hereby adopted for the purpose of computing Arkansas income tax
26 liability."

27

28 SECTION 17. Arkansas Code 19-4-803 is hereby amended by adding new
29 subsection (d) to commence immediately following current subsection (c), to
30 read as follows:

31 "(d) The State Comprehensive Health Insurance Pool, created under
32 Uncodified Act 292 of 1997, and its Board of Directors, and The Arkansas
33 Property and Casualty Guaranty Fund and its Advisory Association, referenced
34 under Arkansas Code 23-90-101, et seq., and The Arkansas Life and Disability
35 Insurance Guaranty Association and its Board of Directors, referenced under
36 Arkansas Code 23-96-101, et seq., are hereby exempt from the provisions of

1 this subchapter."

2

3 SECTION 18 . Arkansas Code 23-86-201 is hereby amended to read as
4 follows:

5 "§23-86-201. Purpose.

6 The intent of this subchapter is to promote the availability of health
7 insurance coverage to small employers, to prevent abusive rating practices, ~~to~~
8 ~~require disclosure of rating practices to purchasers, to establish rules for~~
9 ~~continuity of coverage for employers and covered individuals,~~ and to improve
10 the efficiency and fairness of the small group health insurance marketplace."

11

12 SECTION 19. Subsection (1) of Arkansas Code 23-86-202 is hereby amended
13 to read as follows:

14 "§23-86-202. Definitions.

15 (1) `Small employer' means any person, firm, corporation, partnership,
16 or association actively engaged in business who, on at least fifty percent
17 (50%) of its working days during the preceding year, employed no more than
18 twenty-five (25) eligible employees. In determining the number of eligible
19 employees, companies which are affiliated companies or which are eligible to
20 file a combined tax return for purposes of state taxation shall be considered
21 one (1) employer;

22 (2) `Carrier' means health insurance issuer, i.e. an insurance company,
23 insurance service, or insurance organization including a health maintenance
24 organization which is licensed to engage in the business of insurance in a
25 State and which is subject to Arkansas law which regulates insurance, but such
26 term does not include a group health plan; ~~any person who provides health~~
27 ~~insurance in this state. For the purposes of this subchapter, carrier~~
28 ~~includes a licensed insurance company, a prepaid hospital or medical service~~
29 ~~plan, a health maintenance organization, a multiple employer welfare~~
30 ~~arrangement, or any other person providing a plan of health insurance subject~~
31 ~~to state insurance regulation;~~

32 (3)(A) `Health benefit plan' or `plan' means health insurance coverage,
33 i.e. benefits consisting of medical care, provided directly, through insurance
34 or reimbursement or otherwise and including items and services paid for as
35 medical care, under any hospital or medical service policy or certificate,
36 hospital or medical service plan contract, or health maintenance organization

1 ~~contract offered by a health insurance issuer;—any hospital or medical~~
2 ~~expense incurred policy or certificate, hospital or medical service plan~~
3 ~~contract, or health maintenance organization subscriber contract.~~

4 (B) `Health benefit plan' does not include accident-only, credit,
5 dental, or disability income insurance; coverage issued as a supplement to
6 liability insurance; worker's compensation or similar insurance; or automobile
7 medical-payment insurance;

8 (4) `Small employer carrier' means health insurance issuer as defined
9 in Subsection (2) of this section;~~any carrier which offers health benefit~~
10 ~~plans covering the employees of a small employer;~~

11 (5) `Case characteristics' means demographic or other relevant
12 characteristics of a small employer, as determined by a small employer
13 carrier, which are considered by the carrier in the determination of premium
14 rates for the small employer. Claim experience, health status, and duration
15 of coverage since issue are not case characteristics for the purposes of this
16 subchapter;

17 (6) `Commissioner' means the State Insurance Commissioner;

18 (7) `Department' means the State Insurance Department;

19 (8) `Base premium rate' means, for each class of business as to a
20 rating period, the lowest premium rate charged or which could have been
21 charged under a rating system for that class of business, by the small
22 employer carrier to small employers with similar case characteristics for
23 health benefit plans with the same or similar coverage;

24 (9) `New business premium rate' means, for each class of business as to
25 a rating period, the premium rate charged or offered by the small employer
26 carrier to small employers with similar case characteristics for newly issued
27 health benefit plans with the same or similar coverage;

28 (10) `Index rate' means, for each class of business for small employers
29 with similar case characteristics, the arithmetic average of the applicable
30 base premium rate and the corresponding highest premium rate;

31 (11) `Class of business' means all or a distinct grouping of small
32 employers as shown on the records of the small employer carrier;

33 (A) A distinct grouping may only be established by the small
34 employer carrier on the basis that the applicable health benefit plans:

35 (i) Are marketed and sold through individuals and
36 organizations which are not participating in the marketing or sale of other

1 distinct groupings of small employers for such small employer carrier;

2 (ii) Have been acquired from another small employer carrier
3 as a distinct grouping of plans;

4 (iii) Are provided through an association with membership
5 of not less than two (2) or more small employers which has been formed for
6 purposes other than obtaining insurance; or

7 (iv) Are in a class of business that meets the requirements
8 for exception to the restrictions related to premium rates provided in
9 subparagraph (A)(1)(a) of §23-86-204 of this subchapter;

10 (B) A small employer carrier may establish no more than two (2)
11 additional groupings under each of the subparagraphs in subdivision (11)(A) of
12 this subsection on the basis of underwriting criteria which are expected to
13 produce substantial variation in the health care costs;

14 (C) The commissioner may approve the establishment of additional
15 distinct groupings upon application to the commissioner and a finding by the
16 commissioner that such action would enhance the efficiency and fairness of the
17 small employer insurance marketplace;

18 (12) 'Actuarial certification' means a written statement by a member of
19 the American Academy of Actuaries or other individuals acceptable to the
20 commissioner that a small employer carrier is in compliance with the
21 provisions of §23-86-204 of this subchapter based upon the person's
22 examination, including a review of the appropriate records and of the
23 actuarial assumptions and methods utilized by the carrier in establishing
24 premium rates for applicable health benefit plans;

25 (13) 'Rating period' means the calendar period for which premium rates
26 established by a small employer carrier are assumed to be in effect, as
27 determined by the small employer carrier."
28

29 SECTION 20. Arkansas Code 23-86-205 is hereby repealed.

30 ~~"23-86-205. Provisions on renewability of coverage.~~

31 ~~— (a) Except as provided in subsection (b) of this section, a health~~
32 ~~benefit plan subject to this subchapter shall be renewable to all eligible~~
33 ~~employees and dependents at the option of the small employer, except for the~~
34 ~~following reasons:~~

35 ~~— (1) Nonpayment of required premiums;~~

36 ~~— (2) Fraud or misrepresentation of the small employer, or, with~~

1 ~~respect to coverage of an insured individual, fraud or misrepresentation by~~
2 ~~the insured individual or such individual's representative;~~
3 ~~_____ (3) Noncompliance with plan provisions;~~
4 ~~_____ (4) The number of individuals covered under the plan is less than~~
5 ~~the number or percentage of eligible individuals required by percentage~~
6 ~~requirements under the plan; or~~
7 ~~_____ (5) The small employer is no longer actively engaged in the~~
8 ~~business in which it was engaged on the effective date of the plan.~~
9 ~~_____ (b) A small employer carrier may cease to renew all plans under a class~~
10 ~~of business. The carrier shall provide notice to all affected health benefit~~
11 ~~plans and to the commissioner in each state in which an affected insured~~
12 ~~individual is known to reside at least ninety (90) days prior to termination~~
13 ~~of coverage. Any carrier which exercises its right to cease to renew all~~
14 ~~plans in a class of business shall not:~~
15 ~~_____ (1) Establish a new class of business for a period of five (5)~~
16 ~~years after the nonrenewal of the plans without prior approval of the~~
17 ~~commissioner; or~~
18 ~~_____ (2) Transfer or otherwise provide coverage to any of the~~
19 ~~employers from the nonrenewed class of business unless the carrier offers to~~
20 ~~transfer or provide coverage to all affected employers and eligible employees~~
21 ~~and dependents without regard to case characteristics, claim experience,~~
22 ~~health status, or duration of coverage."~~

23

24 SECTION 21. Arkansas Code 23-86-206 is hereby repealed.

25 ~~"23-86-206. Disclosure of rating practices and renewability~~
26 ~~provisions.~~

27 ~~_____ Each small employer carrier shall make reasonable disclosure in~~
28 ~~solicitation and sales materials provided to small employers of the following:~~

29 ~~_____ (1) The extent to which premium rates for specific small employers are~~
30 ~~established or adjusted due to the claim experience, health status, or~~
31 ~~duration of coverage of the small employer's employees or their dependents;~~

32 ~~_____ (2) The provisions concerning the carrier's right to change premium~~
33 ~~rates and the factors, including case characteristics, which affect changes in~~
34 ~~premium rates;~~

35 ~~_____ (3) A description of the class of business in which the small employer~~
36 ~~is or will be included, including the applicable grouping of plans; and~~

1 ~~_____ (4) The provisions relating to renewability of coverage."~~

2

3 SECTION 22. Arkansas Code 23-86-208 is hereby amended to read as
4 follows:

5 "~~(a) The commissioner may suspend all or any part of §23-86-204 as to~~
6 ~~the premium rates applicable to one (1) or more small employers for one (1) or~~
7 ~~more rating periods upon a filing by the small employer carrier and a finding~~
8 ~~by the commissioner that either the suspension is reasonable in light of the~~
9 ~~financial condition of the carrier or that the suspension would enhance the~~
10 ~~efficiency and fairness of the marketplace for small employer health~~
11 ~~insurance.~~

12 ~~_____ (b) The commissioner may suspend all or any part of §23-86-205 as to~~
13 ~~renewability of coverage upon a filing by the small employer carrier and a~~
14 ~~finding by the commissioner that either the suspension is reasonable in light~~
15 ~~of the financial condition of the carrier or that the suspension would enhance~~
16 ~~the efficiency and fairness of the market place for small employer health~~
17 ~~insurance."~~

18

19 SECTION 23. Arkansas Code 23-86-209 is hereby amended to read as
20 follows:

21 "23-86-209. Effective date.

22 (a) The provisions of this subchapter shall apply to each health
23 benefit plan for a small employer that is delivered, issued for delivery,
24 renewed, or continued in this state after July 1, 1997. ~~January 1, 1992.~~

25 (b) For purposes of this section, the date a plan is continued is the
26 first rating period which commences after July 1, 1997. ~~January 1, 1992."~~

27

28 SECTION 24. Subsection (m) of Section 3 of Uncodified Act 292 of 1997
29 is hereby amended to read as follows:

30 "(m) 'Health insurance' means any hospital and medical expense incurred
31 policy, certificate, or contract, provided by an insurer, hospital or medical
32 service corporation, health maintenance organization, or any other health care
33 plan or arrangement that pays for or furnishes medical or health care services
34 whether by insurance or otherwise. The term does not include long term care,
35 disability income, short term, accident, dental-only, vision-only, fixed
36 indemnity, limited benefit or credit insurance, coverage issued as a

1 supplement to liability insurance, insurance arising out of workers'
2 compensation or similar law, automobile medical-payment insurance, or
3 insurance under which benefits are payable with or without regard to fault and
4 which is statutorily required to be contained in any liability insurance
5 policy or equivalent self-insurance;"

6

7 SECTION 25. Section 13 of Uncodified Act 292 of 1997 is hereby amended
8 to read as follows:

9 "Unfair Referral to Plan.

10 ~~—— (a) Except as provided in Subsection (b), It shall constitute an unfair~~
11 ~~trade practice for the purposes of A.C.A. § 23-66-201, et seq., for an~~
12 ~~insurer, agent, broker or third-party administrator to refer an individual to~~
13 ~~the pool, or arrange for an individual to apply to the pool, for the purpose~~
14 ~~of separating that individual from group health insurance coverage provided in~~
15 ~~connection with any group health insurance coverage.~~

16 ~~—— (b) The provisions of Subsection (a) shall not apply with respect to~~
17 ~~group health insurance coverage provided to groups with fewer than fifteen~~
18 ~~(15) members."~~

19

20 SECTION 26. Subchapter 1 of Chapter 68 is hereby amended by adding a
21 new section at the end of the existing subchapter to read as follows:

22 "REINSURER'S LIABILITY.

23 (a) The amount recoverable by the liquidator from reinsurers shall not
24 be reduced as a result of the delinquency proceedings, regardless of any
25 provision in the reinsurance contract or other agreement.

26 (b) All reinsurance contracts to which an insurer domiciled in this
27 state is a party that do not contain the provisions required with respect to
28 the obligation of reinsurers in the event of insolvency of the reinsured in
29 order to obtain credit for reinsurance or other applicable statutes, shall be
30 construed to contain the following provisions:

31 (1) In the event of insolvency and the appointment of a receiver,
32 the reinsurance obligation shall be payable to the receiver upon demand, with
33 reasonable provision for verification, on the basis of claims allowed pursuant
34 to this subchapter, without diminution because of the insolvency or because
35 the receiver has failed to pay all or a portion of any claims. Payments by
36 the reinsurer as set forth above shall be made directly to the ceding insurer

1 or to its receiver; and

2 (2) The receiver of a reinsured company shall give written notice
3 of the pendency of a claim against the reinsured company indicating the policy
4 or bond reinsured, within a reasonable time after the claim is filed. The
5 receiver of a reinsured company may arrange for the giving of notice of the
6 pendency of claims on reinsured policies by guaranty funds or by other persons
7 responsible for the adjustment and settlement of the reinsured company's
8 claims. Failure to give notice shall not excuse the obligation of the
9 reinsurer unless it is substantially prejudiced thereby. The reinsurer may
10 interpose, at its own expense, in the proceeding where the claim is to be
11 adjudicated, any defense or defenses which it may deem available to the
12 reinsured company or its receiver.

13 (c) Payments by the reinsurer as set forth shall be made directly to
14 the ceding insurer or its receiver, except where the contract of insurance or
15 reinsurance specifically provides for another payee in the event of insolvency
16 of the ceding insurer in accordance with any applicable requirements of
17 statutes, rules or orders of the domiciliary state of the ceding insurer. The
18 receiver shall be entitled to recover from any person, who unsuccessfully
19 makes a claim directly against the reinsurer, the receiver's attorneys' fees
20 and expenses incurred in preventing any collection by such person.

21 (d) This section shall become effective on and after January 1, 1998
22 and shall apply to all contracts entered into, renewed, extended or amended on
23 or after that date, and to obligations arising from any business written or
24 transaction occurring covered by reinsurance after that effective date
25 pursuant to any contract including those in existence prior to the effective
26 date."

27

28 SECTION 27. All provisions of this Act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31

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

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

SECTION 30. EMERGENCY. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/Rep. McGee