

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

A Bill

HOUSE BILL 2155

4
5 By: Representatives Newman, Miller, and Young

For An Act To Be Entitled

9 "AN ACT TO REVISE AND SIMPLIFY CHAPTER 64 OF TITLE 23,
10 FOR THE PROVISION AND REGULATION OF LICENSEES AS
11 AGENTS, BROKERS, ADJUSTERS AND CONSULTANTS; AND
12 FOR OTHER PURPOSES."

Subtitle

15 "THE LICENSEE CODE REVISION AND
16 SIMPLIFICATION ACT."

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Chapter 64 of Title 23 is hereby amended as follows:

21 " Chapter 64 -- LICENSEES, AGENTS, BROKERS, ~~SOLICITORS~~,
22 ADJUSTERS, AND CONSULTANTS

23
24 SUBCHAPTER 1. GENERAL PROVISIONS

25 23-64-101. ~~Applicability~~ Scope of provisions.

26 This chapter shall apply with respect to any insurer all stock, ~~mutual~~
27 ~~and reciprocal insurers~~ and as to all insurances other than wet marine, and
28 foreign trade insurance and title insurance.

29
30 23-64-102. Definitions.

31 As used in this chapter, unless the context otherwise requires:

32 (1) An agent is an individual, firm, limited liability company or
33 corporation licensed as an agent by the commissioner. Acting as an agent
34 without proper licensure is a violation of this chapter. An agent shall
35 conduct business only after being appointed by an insurer to solicit
36 applications for insurance or annuities or to negotiate insurance on its

1 behalf, ~~and~~ . Exceptions to the appointment provision are specifically provided
 2 in this chapter. ~~if~~ If authorized to do so by the insurer, an appointed agent
 3 may ~~to~~ effectuate and countersign insurance contracts. An agent shall be
 4 deemed to be the agent of the appointing insurer.

5 (2)(A) A resident agent is an agent ~~of a property, marine, other than~~
 6 ~~wet marine and foreign trade insurance as defined in § 23-60-102(14),~~
 7 ~~casualty, life, disability, or surety insurer who resides~~ whose residence is
 8 in or who may vote in this state, or who is licensed as a resident agent by
 9 the commissioner in accordance with subdivision (2)(B) of this section. Every
 10 reference herein to an agent, a resident of this state and to a licensed
 11 agent, a resident of this state shall include any duly licensed resident
 12 agent as defined in this section.

13 (B) By reciprocal arrangements with another state under which
 14 residents of Arkansas may be licensed and operate as resident agents of the
 15 other state, the commissioner may license, as resident agents of Arkansas,
 16 residents of the other state who, in cities or towns through which passes the
 17 Arkansas boundary, or border communities or border trade areas, maintain their
 18 principal place of business in any such city, town, community, or trade area;
 19 who conduct all or a substantial portion of their insurance business in
 20 Arkansas; who are employed to sell insurance by Arkansas resident firms or
 21 corporations licensed as agents; and are otherwise qualified for the license.
 22 The terms border communities or border trade areas shall mean communities
 23 and trade areas situated within five (5) miles of the Arkansas boundary.
 24 Firms and corporations of which all the members and persons exercising the
 25 license power qualify individually as to residence under the above definition
 26 may be licensed as resident agents;

27 ~~— (3) Life insurance agent includes also an agent of a life insurer who~~
 28 ~~is or proposes to be also licensed as to the same insurer for disability~~
 29 ~~insurance in addition to life insurance and annuities;~~

30 ~~(4)~~ (3) A broker is an individual, firm, limited liability company or
 31 corporation who for compensation as an independent contractor in any manner
 32 solicits, negotiates, or procures insurance or the renewal or continuance
 33 thereof on behalf of insureds or prospective insureds other than himself and
 34 not on behalf of an insurer or agent; has posted the required bond; and may
 35 not effectuate or countersign insurance contracts. A broker shall be deemed
 36 to be the agent of the insured;

1 ~~_____ (5) A solicitor is an individual appointed and authorized by an agent~~
 2 ~~or broker to solicit applications for insurance, other than life insurance or~~
 3 ~~disability insurance, as a representative of that agent or broker and who~~
 4 ~~offices with the agent or broker;~~

5 ~~(6)~~ (4) (A) An adjuster is ~~any person~~ an individual, firm, limited
 6 liability company or corporation who, for compensation as an independent
 7 contractor or as the employee of an independent contractor or for fee or
 8 commission investigates and negotiates, on behalf of the insurer, settlement
 9 of claims arising under insurance contracts.

10 (B) A licensed attorney at law who is qualified to practice law in
 11 this state; ~~or~~ is not deemed to be an adjuster for the purposes of this
 12 chapter;

13 (C) ~~a~~ A salaried employee of an insurer or of a managing general
 14 agent or of any adjustment bureau or association owned and maintained by
 15 insurers to adjust losses of member insurers is not deemed to be an adjuster
 16 for the purposes of this chapter; ~~or a~~

17 (D) A resident agent; ~~or~~ marine average ~~adjusters~~ adjuster or ~~a~~
 18 ~~licensed~~ an agent or broker who adjusts or assists in adjustment of losses
 19 arising under policies procured through the broker or issued by the insurer
 20 represented by the agent that is appointed by the insurer shall ~~is~~ not be
 21 deemed to be an adjuster for the purposes of this chapter;

22 (E) The commissioner may issue limited adjusters' licenses to
 23 persons who are sponsored and are employees of self-insured (self-funded)
 24 entities for purposes of the adjustment of claims for or on the behalf of that
 25 self-insured sponsoring entity. Such limited license shall be valid only
 26 while the employee is employed by the sponsoring self-insured entity.
 27 Qualifications, fees, and other aspects of licensure for limited adjusters'
 28 licenses shall be as established by regulation.

29 ~~(7)~~ (5) (A) ~~Insurance~~ An insurance consultant ~~is an individual, means~~
 30 ~~any person, who, or~~ firm, partnership, limited liability company or
 31 corporation which, for a fee, in any manner advises or counsels ~~any person~~
 32 anyone as to ~~his~~ their insurance needs and coverages under any insurance
 33 policy or contract.

34 (B) The term insurance consultant shall not be deemed to include
 35 licensed attorneys, actuaries, certified public accountants, medical bill
 36 analysts, or any other person who gives or offers incidental advice to the

1 public in the normal course of a business or professional activity other than
 2 insurance consulting.

3

4 23-64-103. Exceptions to definitions.

5 The definitions of ~~agent, broker, and solicitor~~ contained in § 23-64-102
 6 shall not be deemed to include:

7 (1) Individuals employed by agents, brokers, consultants, adjusters, or
 8 insurers solely for the performance of clerical, stenographic, secretarial and
 9 similar office duties; ~~incidental taking of an application for insurance in~~
 10 ~~the office of the employing agent or broker shall not constitute an employee~~
 11 ~~as an agent, broker, or solicitor if the employee's compensation is not~~
 12 ~~contingent upon or related to the volume of the applications, insurance, or~~
 13 ~~premiums;~~

14 ~~_____ (2) The supervising general, state, or special agent, or other~~
 15 ~~supervising officer or supervising salaried employee of an insurer who~~
 16 ~~solicits only with or in conjunction with licensed agents;~~

17 ~~(2)(3) The attorney in fact or salaried traveling representative of a~~
 18 ~~mutual or reciprocal insurer or of a surety insurer.~~

19

20 SUBCHAPTER 2. LICENSING AND APPOINTMENT

21 ~~_____ 23-64-201. Insurance Advisory Examining Board - Creation.~~

22 ~~_____ (a) In order to aid the Insurance Commissioner in the implementation and~~
 23 ~~regulation of the educational requirements and standards provided in §§ 23-64-~~
 24 ~~203 and 23-64-204 there is created an Insurance Advisory Examining Board. The~~
 25 ~~board shall consist of seven (7) members, including the commissioner as ex~~
 26 ~~officio, who shall act as chairman, and six (6) members appointed by the~~
 27 ~~commissioner fairly representative of the insurance industry.~~

28 ~~_____ (b) The commissioner may delegate to the board, subject to his approval,~~
 29 ~~the following duties and responsibilities:~~

30 ~~_____ (1) Establishing curricula for courses of instruction provided for~~
 31 ~~in §§ 23-64-203 and 23-64-204;~~

32 ~~_____ (2) Establishing criteria for approval of providers of the course of~~
 33 ~~instruction;~~

34 ~~_____ (3) Continuation or termination of the providers' certifications;~~

35 ~~_____ (4) Periodic examination and review of the performance and quality of~~
 36 ~~instruction and instructional materials; and~~

1 ~~_____ (5) Such other duties and responsibilities as he may deem appropriate.~~

2 ~~_____ (c) Appointed members of the board shall serve without pay and shall not~~
 3 ~~be reimbursed for any expenses.~~

4 ~~_____ (d)(1) The term of each member of the board other than the commissioner~~
 5 ~~shall be for one (1) year.~~

6 ~~_____ (2) Any member may be reappointed for successive terms.~~

7

8 23-64-202 201. ~~Agents, brokers, and solicitors~~ License required,
 9 general

10 (a) No person shall in this state act as or hold himself out to be an
 11 agent, broker, ~~or solicitor~~, consultant, or adjuster, as to subjects of
 12 insurance located, resident, or to be performed in this state, ~~or receive~~
 13 ~~compensation for obtaining insurance~~, unless then licensed for that purpose
 14 pursuant to this chapter.

15 (b) No agent, or broker, ~~or solicitor~~ shall solicit or take application
 16 for, procure, or place for others any kind of insurance as to which he is not
 17 then licensed.

18 (c) Except as provided specifically excepted in this ~~section and in~~
 19 ~~§23-64-227~~ chapter, no agent shall place any business with any insurer as to
 20 which he does not then hold an appointment as agent ~~under this chapter~~. ~~Unless~~
 21 ~~otherwise provided by contract~~, an insurance agent may, subject to the
 22 ~~approval of an insurer with which the agent does not hold an appointment~~,
 23 ~~place an application for group life or disability insurance with such insurer~~,
 24 ~~provided that upon receipt of such application the insurer:~~

25 ~~_____ (1) Promptly files an appointment form for such agent with the~~
 26 ~~commissioner before issuing the group policy and certificates of insurance;~~
 27 ~~and~~

28 ~~_____ (2) Pays no commission to the agent until such appointment is issued by~~
 29 ~~the commissioner and received by the insurer.~~

30 ~~_____ (d) The commissioner shall prescribe and furnish forms required in~~
 31 ~~connection with application for, issuance, or termination of licenses and~~
 32 ~~appointments.~~

33 ~~(e)~~ (d) No agent, insurer, broker, consultant, or adjuster ~~or solicitor~~
 34 shall permit any person not so properly licensed as provided in this chapter
 35 to solicit, ~~or engage~~, consult, or adjust in the business of insurance on ~~in~~
 36 his its behalf ~~unless said person is exempted from the license requirements~~

1 ~~under §23-64-103.~~

2 ~~(f) (e) No person shall consult, counsel, or advise others on matters~~
 3 ~~of insurance needs or coverages under any insurance policy or contract of~~
 4 ~~related to life or disability or property or casualty risks for insurance for~~
 5 ~~a fee or any other thing of value unless licensed under this chapter.~~
 6 ~~§23-64-203 or 23-64-204; provided, however, that in no event shall this~~
 7 ~~section be construed as to require licensure Licensure of a consultant who is~~
 8 ~~an a salaried employee of the entity or entities for which he they may consult~~
 9 ~~or counsel on the matters of insurance to that entity or entities shall not be~~
 10 ~~required. aforesaid.~~

11 (f) No person may adjust claims as an adjuster without licensure under
 12 this chapter.

13 (g) Any license issued by the Commissioner may be immediately suspended
 14 as per A.C.A. §9-14-239, for failure to pay child support.

15 (h) All licensees or applicants for licensure must notify the
 16 commissioner in writing within ten (10) days of any filing of a criminal
 17 charge or conviction or plea of a criminal charge or the filing of any
 18 bankruptcy proceeding by or against them. Failure to so notify the
 19 commissioner may result in the immediate suspension of the license.

20

21 ~~23-64-203 202. Agents, brokers, and solicitors - Qualifications for~~
 22 ~~license for insurance other than life and disability General qualifications~~
 23 ~~for licensure; exemptions.~~

24 (a) For the protection of the people of this state, the commissioner
 25 shall not, at or before completion of application processing, issue, continue,
 26 or permit to exist any ~~agent's, broker's, or consultant's, or solicitor's~~
 27 ~~license as to insurance other than life and/or disability, except unless the~~
 28 licensee is in compliance with this chapter and other applicable laws of this
 29 state or , and as to any individual who does not also meet the following
 30 qualifications: not qualified therefor as follows:

31 (1) ~~He must~~ Must be of legal age of majority, or must have had
 32 disabilities of minority removed for all general purposes and provide evidence
 33 of same. The age requirement may be waived by the commissioner, in his
 34 discretion, as to an applicant for a solicitor's license who is found by the
 35 commissioner to be otherwise qualified for the license;

36 (2) ~~He must~~ Must be a resident of this state, or of a city or town

1 through which passes the boundary of this state, qualified as to residence
 2 under §2-64-102(2)(B) and, ~~if for an agent or broker license,~~ must have been a
 3 resident for not less than the thirty (30) ~~ninety (90)~~ days immediately prior
 4 to date of application for the license. However, the commissioner may, in his
 5 discretion, upon written request by applicant waive the thirty ~~ninety~~-day
 6 residence requirement as to any applicant for license who is a bona fide
 7 resident of this state, and who furnishes proof satisfactory to the
 8 commissioner that he is, and intends to be, a permanent resident of Arkansas;

9 ~~_____ (3) If for an agent's license, must have been appointed agent by~~
 10 ~~an authorized insurer before solicitation or sale of any product;~~

11 ~~_____ (4) If for a solicitor's license, must have been appointed as~~
 12 ~~solicitor by a licensed resident agent or broker and make and intend to make~~
 13 ~~soliciting insurance a principal vocation;~~

14 ~~(5) (3) He must~~ Must be deemed by the commissioner to be competent,
 15 trustworthy, financially responsible, and of good personal and business
 16 reputation; and such qualifications must continue in order to remain
 17 licensed;

18 ~~_____ (6) He must have had experience or training or be otherwise qualified in~~
 19 ~~the kinds of insurance as to which he is to be licensed, be reasonably~~
 20 ~~familiar with the insurance laws of this state, and with the provisions of the~~
 21 ~~insurance policies and contracts he proposes to solicit, negotiate, or effect~~
 22 ~~under the license;~~

23 ~~(7) (4) He must~~ Must pass a any written examination for the license if
 24 required under this subchapter, and attest that they are familiar with the
 25 insurance laws of this state and will keep themselves familiar despite changes
 26 in the law;

27 ~~_____ (8) He must intend in good faith to act as, and hold himself out to be,~~
 28 ~~an agent, broker, or solicitor in the active solicitation and negotiation of~~
 29 ~~insurance with the general public and not seek or use the license principally~~
 30 ~~for the purpose of negotiating or effecting insurance on his own property or~~
 31 ~~interests or those of his relatives or those of his employer. The license~~
 32 ~~shall be deemed to have been or intended to be used principally for the~~
 33 ~~purpose of negotiating or effecting insurance on his own property or interests~~
 34 ~~or those of his relatives or of his employer if the commissioner finds that~~
 35 ~~during any twelve-month period the aggregate commissions earned from that~~
 36 ~~business have exceeded twenty-five percent (25%) of the aggregate commissions~~

1 ~~earned for all business written by the licensee during the same period;~~
 2 ~~(9) (5)(A) He shall~~ Shall, before licensure or examination if
 3 examination is required, not later than sixty (60) days after the license is
 4 ~~issued or continued,~~ complete specific courses of instruction in the field of
 5 insurance as the commissioner shall by regulation prescribe for the license
 6 ~~when initially issued.~~ Proof of completion must be presented before testing
 7 is administered. The courses of instruction shall in the aggregate consist of
 8 not less than thirty-six (36) hours of classroom instruction administered by
 9 or under the supervision of persons qualifying with and approved by the
 10 commissioner for that purpose. Successful completion of the courses of
 11 instruction shall be certified to the commissioner, on forms prescribed by
 12 him, by the person under whose supervision the instruction was administered.
 13 The courses of instruction shall provide the applicant with basic knowledge of
 14 the broad principles of insurance, licensing and regulatory laws of this
 15 state, and the obligations and duties of an agent, broker, or consultant
 16 ~~solicitor licensed as such to transact insurance other than life or disability~~
 17 ~~insurance.~~ Programs of instruction may be provided by any authorized insurer,
 18 agents' association, or trade association recognized by the commissioner or by
 19 any university, college, or any other institution in this state having a
 20 comprehensive course of instruction approved and certified by the
 21 commissioner. The commissioner shall issue appropriate regulations to
 22 implement the educational requirements and standards prescribed in this
 23 subdivision and to prescribe the general curriculum of courses of instruction.
 24 The curriculum shall include not less than five (5) hours of instruction
 25 relative to the licensing of agents and insurance regulatory laws of this
 26 state, criteria for approval of the providers of the courses of instruction,
 27 and certifications contemplated hereunder.

28 (B) None of the provisions of this subdivision shall apply to, and
 29 no examination or educational requirements contained in this subdivision shall
 30 be required of, any applicant for a license presently exempted by law from an
 31 examination. This subdivision shall also not apply and no educational
 32 requirements shall be required as to any person licensed as of March 18, 1983,
 33 as an insurance agent, broker, or consultant-~~solicitor~~ under the laws of this
 34 state.

35 (C) The provisions of subdivision (a)~~(5)(9)~~(A) of this section
 36 shall not apply to persons making application for license as an agent or ~~or~~

1 broker, ~~or solicitor~~ for crop hail insurance, mobile home physical damage
 2 insurance, mortgagor's decreasing term life and disability insurance, pre-paid
 3 legal insurance, and fire and marine insurance written in connection with
 4 credit transactions, or any line exempted by law, for which only a limited
 5 license is issued, nor any other insurance for which only a limited license
 6 may be issued and the commissioner, by order or regulation, exempts from the
 7 educational requirements of subdivision (a)(5)(9)(A) of this section.

8 (b)(1) The commissioner shall not issue, permit to continue, or renew
 9 any ~~agent's, broker's, or solicitor's~~ license to any lending institution, or
 10 to any subsidiary or affiliate of any lending institution, or any officer or
 11 any employee of any of the foregoing, with the following exceptions:

12 (A)(i) ~~Such licenses may be issued, continued, and renewed~~
 13 ~~to lending institutions, their affiliates, branches, and subsidiaries, and~~
 14 ~~officers and employees of either, if such persons or entities are located or~~
 15 ~~reside in places municipalities which have a population which does not exceed~~
 16 ~~five thousand (5,000) according to the latest federal decennial census, and~~
 17 ~~provided that all insurance activities engaged in pursuant to such licenses,~~
 18 ~~including, but not limited to, policy sales, order taking, price quoting,~~
 19 ~~solicitation, marketing, processing, servicing, administering, and~~
 20 ~~advertising, are based in or conducted solely out of the offices, locations,~~
 21 ~~branches, or places of business of the licensees within the geographical~~
 22 ~~limits of such municipalities.~~

23 ~~(ii) The conduct of insurance activities pursuant to such~~
 24 ~~licenses out of or through locations, branches, offices, or places of business~~
 25 ~~of the licensees or by any person or entity associated or affiliated with the~~
 26 ~~licensees in municipalities which exceed the five thousand (5,000) population~~
 27 ~~limitation shall result in the suspension of such license for so long as~~
 28 ~~insurance activities are conducted or attempted to be conducted, as determined~~
 29 ~~by the commissioner, at or through such nonqualifying locations; or~~

30 (B) If an application or licensee is permitted to be
 31 licensed or continued by any other provision ~~of subsection (b) or (c)~~ of this
 32 section.

33 (2)(A) Notwithstanding any other provision of subdivision (b)(1)
 34 of this section and with the exception of the effect of population growth upon
 35 the licenses of lending institutions, their affiliates, subsidiaries, offices,
 36 and employees, the commissioner shall permit to continue and shall renew the

1 licenses of licensees who may operate in part at or through nonqualifying
 2 locations and who do not meet the foregoing requirements, if such licensees ~~is~~
 3 are actively conducting insurance activities under its license at such
 4 locations on March 16, 1993, and for so long as such ~~licensee continues~~
 5 licensees continue to function in the manner ~~they were~~ it was constituted on
 6 such date; provided, however, that if any ownership interest in or any right
 7 to participate in the profits of a licensee operating through what might
 8 otherwise be nonqualifying locations is transferred to a new or different
 9 lending institution or to an affiliate or subsidiary of such new or different
 10 lending institution, the commissioner shall not allow ~~be allowed~~ to continue
 11 or renew the license of such licensee.

12 (B) However, a lending institution, an officer or employee
 13 of a lending institution, a subsidiary or affiliate of a lending institution,
 14 or an officer or employee of a subsidiary or affiliate of a lending
 15 institution, otherwise qualified therefor, may be issued a license to sell
 16 mortgagor's decreasing term life insurance, mortgagor's accident and health
 17 and sickness insurance, credit life insurance, credit accident, credit
 18 property, and credit health and accident insurance and to sell fixed or
 19 variable annuities.

20 (3) The commissioner may renew or continue a license issued to a
 21 lending institution, an officer or employee of a lending institution, a
 22 subsidiary or affiliate of a lending institution, or an officer or employee of
 23 a subsidiary or affiliate of a lending institution, where such license was
 24 lawfully outstanding on March 25, 1975; and where such licensee was on that
 25 date, and continues to be at the time of renewal or continuance of such
 26 license, actively engaged in conducting insurance activities authorized under
 27 such license.

28 (A)(i) The commissioner may issue to and renew or continue
 29 ~~agent's, broker's, and solicitor's~~ licenses of successors ~~successor agents,~~
 30 ~~brokers, and solicitors~~ who are otherwise qualified therefor, who are
 31 associated with or employed by licensees whose licenses are renewed or
 32 continued pursuant to this subdivision (b)(3) for so long as the licensee
 33 renewed or continued pursuant to this subdivision (b)(3) continues to function
 34 as it was constituted on March 25, 1975.

35 (ii) Such successor licensees ~~agents, brokers, or~~
 36 ~~solicitors~~ may be employed or controlled directly or indirectly only by the

1 licensee whose license is renewed or continued pursuant to this subdivision
 2 ~~(b)(3)~~.

3 (iii) The term successor, as used herein, means
 4 individuals who replace in an identical capacity other individuals who have
 5 left or ceased to be employed by or associated with a lending institution
 6 agency or its subsidiary or affiliate.

7 (B)(i) The subsequent transfer of ownership or control of a
 8 licensee whose license is renewed or continued pursuant to this subdivision
 9 (b)(3) to other subsidiaries or affiliates of such licensee with which such
 10 licensee was associated on March 25, 1975, shall not prohibit the commissioner
 11 from granting renewals of or ~~licenses license~~ to successor ~~licensees agents,~~
 12 ~~brokers, and solicitors.~~

13 (ii) However, the restrictions of this subsection
 14 shall attach, and the commissioner shall not issue, renew, or continue any
 15 license of a lending institution or of any subsidiary or affiliate of a
 16 lending institution or to any officer or employee of either of the above if
 17 any ownership interest in or any right to participate directly or indirectly
 18 in the profits of the licensee whose license has been continued pursuant to
 19 subdivision (b)(3) of this section is transferred to a new or different
 20 lending institution or to an affiliate or subsidiary of such new or different
 21 lending institution.

22 ~~_____ (C)(i) Nothing in this subsection shall restrict the~~
 23 ~~expansion of a licensee other than a lending institution agency by the~~
 24 ~~acquisition through purchases of or through merger or consolidation with an~~
 25 ~~existing lending institution agency so long as following the purchase, merger,~~
 26 ~~or consolidation no part of the profits of the surviving entity inure directly~~
 27 ~~or indirectly to the benefit of a lending institution and so long as no part~~
 28 ~~of its capital stock is owned or controlled directly or indirectly by a~~
 29 ~~lending institution or an affiliate or subsidiary of a lending institution.~~

30 ~~(C)(ii)~~ No provision of this section shall in any way affect
 31 any business activities of a broker-dealer licensed by the State of Arkansas
 32 or its affiliates or subsidiaries nor affect any contracts or agreements such
 33 broker-dealer or its affiliates or subsidiaries may have with any entity.

34 (4) For purposes of this ~~subsection~~ section:

35 (A) Lending institution means any entity which has a place
 36 of business in this state at which it accepts deposits of money from the

1 public and lends money, including banks and savings and loan associations;

2 (B) Subsidiary means any person or entity which is
3 controlled by a lending institution or its affiliate;

4 (C) Affiliate means any person or entity which controls or
5 is under common control with a lending institution; and

6 (D) Control means the power to exercise a deciding
7 influence over the management of a lending institution, unless the power is
8 solely the result of an official position with the lending institution.

9 (5) The commissioner is authorized to promulgate regulations, in
10 order to effectuate the purposes of this subsection, which are to help
11 maintain the separation between lending institutions and the insurance
12 business and to minimize the possibilities of unfair competitive and
13 deceptive practices by lending institutions or their subsidiaries or
14 affiliates affecting agents, brokers, or the public, and to maintain parity
15 between federally chartered lending institutions and state chartered lending
16 institutions with respect to the sale of insurance.

17 (6)(A) The provisions of this subsection shall apply only to
18 transfers of any ownership interest in, or control of, or any right to
19 participate or share directly or indirectly in, the profits of any licensee
20 that occur on or after January 1, 1993.

21 (B) Such transfers effected prior to January 1, 1993, shall
22 be governed by the law in effect when the transfer was made.

23 (c) Notwithstanding the requirements contained in subsections (a) or (b)
24 of this section, the commissioner may renew or continue the ~~licenses~~ license
25 of persons who, as of immediately prior to January 1, 1960, were lawfully
26 licensed as agents or solicitors under laws then in force. All the licenses
27 shall, however, be subject to the other applicable provisions of this code.

28

29 ~~23-64-204 203. Life or disability insurance agents or brokers —~~
30 ~~Qualifications for license~~ Specific qualifications for license as an agent,
31 broker or consultant; exemptions.

32 (a) For the protection of the people of this state, the commissioner
33 shall not at or before completion of the application process issue, continue,
34 or permit to exist any agents, or brokers or consultants license as to ~~life~~
35 ~~and/or disability~~ insurance except in compliance with this chapter or other
36 applicable laws or as to any individual not qualified therefor as follows:

1 ~~_____ (1) He must be of legal age or have had disabilities of minority~~
 2 ~~removed for all general purposes;~~

3 ~~(2) (1) He must~~ Must be a resident of this state or of another
 4 state if, by reciprocal arrangements made by the commissioner with the other
 5 state, similar privileges therein are granted to residents of this state or
 6 per this chapter;

7 ~~(3) (2) He must~~ Must have been appointed an agent by an authorized
 8 insurer before solicitation or sale of any product, if licensed as an agent;

9 ~~_____ (4) He must be deemed by the commissioner to be competent,~~
 10 ~~trustworthy, financially responsible, and of good personal and business~~
 11 ~~reputation;~~

12 ~~_____ (5) He must not use or intend to use the license principally for~~
 13 ~~the writing of insurance on the lives or interests of himself or of his~~
 14 ~~relatives to the second degree;~~

15 ~~(6) (3) He must~~ Must pass such written examination as shall be
 16 required by the commissioner;

17 ~~(7)(A) (4) He shall~~ Shall, before licensure or examination if
 18 examination is required, not later than sixty (60) days after the license is
 19 issued or continued, complete specific courses of instruction in the field of
 20 insurance as the commissioner shall by regulation prescribe for the license
 21 when initially issued. Proof of completion must be presented before testing
 22 is administered. The courses of instruction shall in the aggregate consist of
 23 not less than thirty-six (36) hours of classroom instruction administered by
 24 or under the supervision of persons qualifying with and approved by the
 25 commissioner for such purpose and successful completion of which shall be
 26 certified to the commissioner, on forms prescribed by him, by the person under
 27 whose supervision the instruction was administered. The courses of
 28 instruction shall provide the applicant with basic knowledge of the broad
 29 principles of insurance, licensing, and regulatory laws of this state and the
 30 obligations and duties of an agent, broker, or consultant ~~solicitor~~ licensed
 31 as such to transact ~~life or disability~~ insurance. Programs of instruction may
 32 be provided by any authorized insurer, agents' association, or trade
 33 association recognized by the commissioner, or by any university, college, or
 34 any other educational institution in this state having a comprehensive course
 35 of instruction approved and certified by the commissioner. The commissioner
 36 shall issue appropriate regulations to implement the educational requirements

1 and standards prescribed in this subdivision and to prescribe the general
 2 curriculum of courses of instruction. The curriculum shall include not less
 3 than five (5) hours of instruction relative to the licensing of agents and
 4 insurance regulatory laws of this state, criteria for approval of the
 5 providers of the courses of instruction, and certifications contemplated
 6 pursuant to this subdivision.

7 ~~(B)~~ (5) None of the provisions of this subdivision (a)(3) shall
 8 apply to, and no examination ~~or educational requirements contained in this~~
 9 ~~subdivision~~ shall be required of, any applicant for a license presently
 10 exempted by law from an examination. ~~This subdivision~~ Subdivision (a)(3) shall
 11 also not apply ~~and no educational requirements shall be required~~ as to any
 12 person licensed as of March 18, 1983, as an insurance agent, or broker, ~~or~~
 13 ~~solicitor~~ under the laws of this state.

14 ~~_____ (C) The provisions of subdivision (a)(7)(A) of this section~~
 15 ~~shall not apply to persons making application for license as agent, broker, or~~
 16 ~~solicitor for crop hail insurance, mobile home physical damage insurance,~~
 17 ~~mortgagor's decreasing term life and disability insurance, and fire and marine~~
 18 ~~insurance written in connection with credit transactions, or any line exempted~~
 19 ~~by law, for which only a limited license is issued, nor any other insurance~~
 20 ~~for which only a limited license may be issued and the commissioner, by order~~
 21 ~~or regulation, exempts from the educational requirements of subdivision~~
 22 ~~(a)(7)(A) of this section.~~

23 ~~_____ (D) Persons who sell funeral expense insurance exclusively shall be~~
 24 ~~exempt from the education requirements of subdivision (a)(7)(A) of this~~
 25 ~~section.~~

26 (b) As to licenses existing immediately prior to January 1, 1960, the
 27 commissioner shall not issue any license as to banks, trust companies, and
 28 other financial institutions and persons prohibited from being licensed as to
 29 other kinds of insurance under ~~§ 23-64-203~~ 202 (b), but subject to ~~§ 23-64-203~~
 30 202(c).

31 (c)(1) No person shall be a licensed agent, broker, or consultant ~~to~~
 32 ~~sell life or disability insurance in this state~~ until that person shall take,
 33 if so required, and pass, to the satisfaction of the commissioner, a written
 34 examination to determine the competency of the person to be an a life or
 35 disability insurance agent, broker or consultant within that insurance area of
 36 expertise desired to be licensed, in addition to other requirements determined

1 by the commissioner. The commissioner shall prescribe the form and content of
 2 the examination and shall include therein questions calculated to determine
 3 the applicant's knowledge of familiarity of the applicant with the laws of
 4 this state and the regulations of the commissioner relative to those areas of
 5 licensure. life or disability insurance. ~~Prior to the examination, the~~
 6 ~~commissioner may issue a license in his discretion and under such conditions~~
 7 ~~as he shall prescribe, but in no event shall any licensee solicit or sell~~
 8 ~~insurance until he or she has passed the examination and is otherwise~~
 9 ~~qualified pursuant to all the requirements of this chapter.~~

10 ~~————— (2) Upon receipt of application by a person for a license to act~~
 11 ~~as an agent to sell life or disability insurance in this state, the~~
 12 ~~commissioner may investigate the character, experience, and general~~
 13 ~~trustworthiness of the applicant in a manner and to such extent as he shall~~
 14 ~~deem necessary to determine the moral fitness of the applicant to sell life or~~
 15 ~~disability insurance in this state. If, after the investigation, the~~
 16 ~~commissioner is satisfied that the applicant is morally fit to sell life or~~
 17 ~~disability insurance in this state, then he shall notify the applicant by mail~~
 18 ~~of the time and place where the applicant may take the written examination~~
 19 ~~required in subdivision (c)(1) of this section.~~

20 ~~(3) (2) If the employment or appointment of any life or disability~~
 21 ~~insurance agent is terminated by an insurance company because of the~~
 22 ~~licensee's agent's misrepresentation of insurance policies to any person, for~~
 23 ~~acts of fraud, or for any other reason of dishonesty or inappropriate action,~~
 24 ~~or because of the discovery of information found in an appointment review of~~
 25 ~~the agent, the insurance company shall notify the commissioner within ten (10)~~
 26 ~~working days of the dismissal and the reasons therefor. ~~Notice~~ Such notice~~
 27 ~~shall be a privileged communication and shall not be admissible in evidence in~~
 28 ~~any action or proceeding other than those brought by the commissioner. For~~
 29 ~~purposes of this communication only, the insurance company shall be deemed to~~
 30 ~~be commissioner's authorized representative and shall have available the~~
 31 ~~immunity afforded per A.C.A. §23-61-208. Failure by any insurance company to~~
 32 ~~notify the commissioner of such acts shall be deemed to be a refusal to give~~
 33 ~~information per A.C.A. §23-63-213(2).~~ Upon receipt of the notice from any
 34 insurance company, the commissioner shall, if he determines after
 35 investigation that the dismissal was because of misrepresentation of any
 36 insurance policy or for fraud or for violation of any of the laws of this

1 state, immediately suspend the license of the licensee insurance agent pending
 2 a hearing on the matter.

3 ~~(4)~~ (3) The commissioner shall maintain information ~~a file~~ on each
 4 licensee licensed life or disability insurance agent in this state. A complete
 5 record of all information furnished the commissioner regarding the conduct of
 6 any licensee life or disability insurance agent in this state shall be
 7 maintained for a reasonable period of time as determined by the commissioner.

8 If the commissioner receives information from any insurance company or from
 9 any other person about acts of fraud by a licensee-an insurance agent, or
 10 about misrepresentations of the terms and provisions of any life or disability
 11 insurance policy by the licensee insurance agent, the commissioner ~~is directed~~
 12 ~~to~~ shall transmit that the information plus any other information discovered
 13 in an investigation by the commissioner to the proper authorities for legal
 14 action against the agent as authorized by the laws of this state.

15 ~~(5)~~ (4) The provisions of this subsection shall be supplemental to and
 16 shall not repeal any existing laws on the same subject.

17

18 23-64-205 204. Agents, brokers, and solicitors - Application for
 19 license Application for agent's, broker's, or consultant's license.

20 (a) Application for an agents, brokers, or consultant's solicitors
 21 license shall be made to the commissioner by the applicant and be signed and
 22 sworn to by the applicant along with a nonrefundable application fee as
 23 prescribed by regulation. ~~The commissioner, in his discretion, may waive the~~
 24 ~~requirement that the application be sworn to.~~

25 (b) The form of application shall require full answers to such questions
 26 as may reasonably be necessary to determine the applicant's identity,
 27 residence, personal history, business record, experience in insurance, ~~purpose~~
 28 ~~for which license is to be used~~, and other facts, such as, but not limited to,
 29 criminal convictions, pleas, pending charges, bankruptcies or filings for
 30 bankruptcy or any other items, as required by the commissioner to determine
 31 whether the applicant meets the applicable qualifications mandated ~~for the~~
 32 ~~license applied for.~~

33 (c) ~~If for an agent's license, the~~ The application shall state the kinds
 34 of insurance proposed to be transacted.

35 ~~(d) If for a solicitor's license, the application shall be accompanied~~
 36 ~~by written appointment of an applicant as a solicitor by a licensed resident~~

1 ~~agent or broker, subject to issuance of the license.~~

2 ~~(e)~~ (d) If the applicant for ~~agents or brokers~~ license is a firm,
3 limited liability company, or corporation, the application shall show, ~~in~~
4 ~~addition~~, the names of all members, managers, officers, and directors and
5 shall designate each individual who is to exercise the powers to be conferred
6 by the license ~~upon the firm or corporation~~. Each individual so designated
7 shall furnish information with respect to himself/herself, as part of the
8 application, as though licensed as an individual licensee ~~for an individual~~
9 license.

10 ~~(f)~~ (e) The application shall also show whether the applicant or
11 individual designee under the license was ever previously licensed to transact
12 any kind of insurance in this state or elsewhere, whether the license was ever
13 refused, suspended, or revoked, and whether any insurer or insurance licensee
14 ~~general agent~~ claims an applicant is indebted to it, and if so, the details
15 thereof.

16 ~~—— (g)(1) As to any application for an agent's or broker's or solicitor's~~
17 ~~license, the commissioner shall require as part of the application the~~
18 ~~certificate of the insurer, agent, or broker proposed to be represented that~~
19 ~~the insurer, agent, or broker has conducted or caused to be conducted at the~~
20 ~~insurer's, agent's, or broker's expense an investigation relative to the~~
21 ~~applicant's identity, residence, experience, or instruction as to the kinds of~~
22 ~~insurance to be transacted, and relative to the applicant's character,~~
23 ~~financial condition, and financial history.~~

24 ~~—— (2) Such certificate shall include, at a minimum, the following~~
25 ~~information disclosed by such investigation:~~

26 ~~—— (A) Whether the applicant has been convicted of a felony, and, if so,~~
27 ~~the date and nature of the conviction, the name and location of the court, and~~
28 ~~the penalty imposed or other disposition of the case;~~

29 ~~—— (B) Whether, at the time of application, the applicant is a named party~~
30 ~~in any lawsuit, and, if so, the style of the lawsuit, a brief description of~~
31 ~~the litigation, and the name and location of the court;~~

32 ~~—— (C) Whether a judgment for monetary damages has been entered against the~~
33 ~~applicant within the last five (5) years, and, if so, the date of the~~
34 ~~judgment, the amount of the judgment, whether the judgment has been satisfied,~~
35 ~~the name and location of the court, and the style of the case; and~~

36 ~~—— (D) Such other information as the commissioner shall require.~~

1 ~~_____ (h) In the event no examination shall be required for the license, the~~
 2 ~~application shall be accompanied by the applicable appointment fee and~~
 3 ~~appointment form. All fees shall be in the respective amounts stated in~~
 4 ~~23-61-401 for filing, license, and miscellaneous fees.~~

5 ~~(i)~~ (f) If the application is approved and if the nonrefundable
 6 application fee is paid, an examination permit will be issued to the
 7 applicant. The permit will be valid for a period of ninety (90) days from the
 8 date of issuance. If the applicant does not schedule and appear for
 9 examination within that ninety-day period, the permit shall expire and the
 10 applicant may be required to file a new application and shall pay another
 11 nonrefundable application fee before issuance of another examination permit to
 12 the applicant. If an applicant appears for examination but fails to pass the
 13 examination, he shall be required to pay a nonrefundable reexamination fee
 14 before reexamination.

15

16 23-64-206 205. ~~Agents, brokers, and solicitors - Examination for~~
 17 ~~license~~ Written examination.

18 (a) Within a reasonable time and in a location to be determined by the
 19 commissioner, after filing of application and payment of the applicable fees,
 20 the commissioner shall subject each applicant for license as agent, broker, or
 21 consultant ~~solicitor~~, unless exempted therefrom under subsection ~~(g)~~ (f) of
 22 this section, to a written examination.

23 (b) If the applicant is a firm, limited liability company, or
 24 corporation, the examination shall be taken by each individual who is to be
 25 named in the license as having authority to act for the applicant in its
 26 insurance transactions under the license.

27 (c) Examination of an applicant for an agent's license shall cover only
 28 the kinds of insurance or subdivisions thereof defined in this code which the
 29 agent insurer ~~desires to be licensed~~ ~~appoint the applicant to transact in its~~
 30 ~~behalf.~~

31 (d) Examination of an applicant for a broker's or consultant's license
 32 shall cover the all kinds of insurance as to which the applicant is to be
 33 licensed ~~as provided in~~ ~~23-64-208.~~

34 ~~_____ (e) Examination of an applicant for a solicitor's license shall cover~~
 35 ~~all kinds of insurance, other than life or disability insurance, as to which~~
 36 ~~the appointing agent or broker is licensed.~~

1 ~~(f)~~ (e) The commissioner may give, conduct, and grade all examinations,
 2 or he may arrange to have examinations administered and graded by an
 3 independent testing service as specified by contract, in a fair and impartial
 4 manner, and without unfair discrimination as between individuals examined.
 5 Any written examination may be substituted ~~supplemented~~ by an oral examination
 6 of the applicant ~~at the commissioner's discretion~~ if so deemed necessary
 7 under any applicable statute including but not limited to the Americans with
 8 Disabilities Act. The commissioner shall ~~may~~ require a waiting period of
 9 eight (8) weeks before reexamination of an applicant who twice failed to pass
 10 previous similar examinations.

11 ~~(g)~~ (f) This section shall not apply to, and no examination shall be
 12 required of:

13 (1) Applicants for licenses to sell credit life or credit
 14 disability insurance ~~to debtors of the applicants or of their employers;~~

15 (2) Automobile dealers or automobile finance companies or their
 16 employees applying for licenses covering auto physical damage or the vendor's
 17 single interest ~~fire, theft, physical damage, comprehensive, and collision~~
 18 ~~insurance~~ on motor vehicles only;

19 (3) Transportation ticket agents of common carriers applying for
 20 licenses to solicit and sell only accident insurance ticket policies or
 21 insurance of personal effects while being carried as baggage on the common
 22 carrier, as incidental to their duties as transportation ticket agents;

23 ~~———— (4) Any applicant for license covering the same kinds of insurance~~
 24 ~~as to which the applicant was licensed in this state, other than under a~~
 25 ~~temporary license, within the twelve (12) months next preceding the date of~~
 26 ~~application other than as to licenses on inactive or retired status for longer~~
 27 ~~periods of time as provided in this chapter;~~

28 ~~———— (5) (4) Applicants for licenses as nonresident agents or~~
 29 ~~nonresident brokers, but subject to reciprocal arrangements as provided for in~~
 30 ~~this chapter —^{AA}23-64-204(a)(2) or 23-64-212;~~

31 ~~(6) (5) Any applicant for a temporary license under this~~
 32 ~~chapter; ^{AA}23-64-214;~~

33 ~~(7) (6) Applicants for licenses to sell credit property insurance~~
 34 ~~to debtors of the applicant or his employer;~~

35 ~~(8) (7) Applicants for licenses to sell funeral expense insurance~~
 36 ~~exclusively. Funeral expense insurance shall be defined in rules adopted by~~

1 the Insurance Commissioner;

2 ~~_____ (9) Applicants for reactivation of a resident agent license from~~
 3 ~~inactive licensure status; or~~

4 ~~(10)~~ (8) Applicants for licenses to sell mortgagor's decreasing
 5 term life or mortgagor's decreasing term disability insurance to debtors of
 6 the applicants or of their employers.

7 (9) Applicants for licenses to sell for Farmers' Mutual Aid
 8 Associations.

9

10 ~~23-64-207~~ 206. License for agents representing multiple insurers
 11 Appointments for agents representing insurers.

12 (a) Qualified ~~life or disability~~ agents shall have one (1) appointment
 13 for each insurer to be so represented as agent, ~~and the same appointment may~~
 14 ~~include both life and disability insurance.~~ No agent shall place any business
 15 with any insurer as to which that agent does not then hold an appointment as
 16 an agent, except as specifically provided in this chapter.

17 (b) Appointment of an agent shall be effectuated as specified per
 18 regulation by the commissioner.

19 ~~_____ (b) Qualified property, casualty, surety, or marine agents shall have~~
 20 ~~one (1) appointment for each insurer to be so represented as agent, and the~~
 21 ~~same appointment may include property, casualty, surety, and marine insurance.~~

22

23 ~~23-64-208~~ 207. Brokers license and authority Scope of broker's
 24 license and authority.

25 (a)(1) A license as a broker shall cover property, casualty, surety, and
 26 marine insurance, and the commissioner shall not issue a broker's license
 27 limited to particular lines of insurance- ;

28 (2) However, a broker's license shall not include life or
 29 disability insurance.

30 (3) A license as a consultant may cover:

31 (i) life and disability; or

32 (ii) property and casualty (which includes surety and
 33 marine); or

34 (iii) both (i) and (ii).

35 (b)(1) A broker, as such, is not an agent or other representative of an
 36 insurer and does not have power by his own acts to obligate the insurer upon

1 any risk or with reference to any insurance transaction.

2 (2) An insurer or agent shall have the right to pay to a broker
 3 licensed under this chapter the customary commissions upon insurance placed
 4 through the broker.

5

6 23-64-~~209~~ 208. ~~Bond for brokers license~~ Broker's surety bond.

7 (a) Every applicant for a broker's license and for a renewal license
 8 shall file with the application and shall thereafter maintain in force while
 9 so licensed a bond in favor of the people of the State of Arkansas executed by
 10 an authorized surety insurer.

11 (1) The bond may be continuous in form, and total aggregate
 12 liability on the bond may be limited to payment of twenty-five thousand
 13 dollars (\$25,000).

14 (2) The bond shall be conditioned upon full accounting and due
 15 payment to the person entitled thereto of funds coming into the broker's
 16 possession through insurance transactions under the license.

17 (b) The bond shall remain in force until released by the commissioner or
 18 until cancelled by the surety. Without prejudice to any liability previously
 19 incurred thereunder, the surety may cancel the bond on thirty (30) days'
 20 advance written notice to both the broker and the commissioner.

21

22 23-64-~~210~~ 209. ~~Adjusters license and qualifications~~ Qualifications for
 23 adjuster's license.

24 (a) No person shall, in this state, act as or hold himself out to be an
 25 adjuster unless then licensed therefor under this chapter. Application for
 26 license shall be made to the commissioner according to forms as prescribed and
 27 furnished by him. The commissioner shall issue the adjuster's license for
 28 property insurance, or for casualty insurance, or for workers' compensation
 29 insurance, or for any combination thereof as to individuals qualified therefor
 30 upon payment of the nonrefundable license fee stated in §23-61-401.

31 (b) To be licensed as an adjuster, the applicant must be qualified as
 32 follows:

33 (1) ~~He must~~ Must be of the legal age of majority, or have had the
 34 disabilities of minority removed for all general purposes and provide evidence
 35 of same; ~~an individual eighteen (18) years or more of age;~~

36 (2) ~~He must~~ Must be a resident of Arkansas, or resident of another

1 state which will permit residents of Arkansas to act as adjusters in the other
2 state;

3 (3) ~~He must~~ Must be a full-time salaried employee of a licensed
4 adjuster, or a graduate of a recognized law school, or must have had
5 experience or special education or training as to the handling of property,
6 casualty, or workers' compensation loss claims under insurance contracts of
7 sufficient duration and extent reasonably to make him competent to fulfill the
8 responsibilities of an adjuster.

9 (4) ~~He must~~ Must be deemed by the commissioner to be competent,
10 trustworthy, financially responsible, and of good personal and business
11 reputation;

12 (5) ~~He must~~ Must have and maintain in this state an office
13 accessible to the public and keep therein the usual and customary records
14 pertaining to transactions under the license. This provision shall not be
15 deemed to prohibit maintenance of an office in the home of the licensee;

16 (6)(A) ~~He must~~ Must pass a written examination as to his
17 competence to act as a property, casualty, or workers' compensation insurance
18 adjuster as shall be required by the commissioner.

19 (i) The commissioner may give, conduct, and grade all
20 examinations or he may arrange to have examinations administered and graded by
21 an independent testing service as specified by contract, in a fair and
22 impartial manner, and without unfair discrimination as between individuals
23 examined.

24 (ii) The commissioner may require a waiting period of
25 eight (8) weeks before reexamination of an applicant who twice failed to pass
26 previous similar examinations.

27 (iii) The nonrefundable application fee shall be the
28 same as that charged an applicant for license as an agent or ~~or~~ broker, ~~or~~
29 ~~solicitor~~ under §23-61-401.

30 (iv) This examination requirement shall be effective
31 only as to all resident applicants for license as an adjuster hereunder
32 beginning January 1, 1986.

33 (B) If the application is approved and if the nonrefundable
34 application fee is paid, an examination permit will be issued to the
35 applicant.

36 (i) The permit will be valid for a period of ninety

1 (90) days from the date of issuance.

2 (ii) If the applicant does not schedule and appear for
 3 examination within that ninety-day period, the permit shall expire and the
 4 applicant may be required to file a new application and shall pay another
 5 nonrefundable application fee before issuance of another examination permit
 6 to the applicant.

7 (iii) If the applicant appears for examination but
 8 fails to pass such examination, he shall be required to pay a nonrefundable
 9 reexamination fee before reexamination.

10 (C) By reciprocal arrangements with the insurance
 11 supervisory official in the other state, the commissioner may waive written
 12 examination of a nonresident applicant for license as an adjuster, if the
 13 official certifies that the applicant is licensed as a resident adjuster of
 14 that state and has complied with its qualification standards therefor.

15 (c) A firm, limited liability company, or corporation, whether or not
 16 organized under the laws of this state, may be licensed as an adjuster if each
 17 individual who is to exercise the license powers is named in the license and
 18 is qualified as for an individual licensed as adjuster. An additional full
 19 license fee shall be paid as to each individual in excess of one (1), so named
 20 in the license to exercise its powers.

21 (d) However, no adjuster's license or qualifications shall be required
 22 as to any adjuster who is sent into this state on behalf of an insurer for the
 23 purpose of investigating or making adjustment of a particular loss under an
 24 insurance policy, or for the adjustment of a series of losses resulting from a
 25 catastrophe common to all the losses.

26

27 ~~23-64-211 210. Licensing of firms and corporations~~ Licensing of firms,
 28 limited liability companies, and corporations.

29 (a)(1) A firm, limited liability company, or corporation ~~may shall~~ be
 30 licensed only as a licensee ~~an agent or broker~~. If a firm, each general
 31 partner and each other individual to act for the firm under the license, and
 32 if a limited liability company or a corporation, each individual to act for
 33 the limited liability company or corporation under the license, shall be named
 34 in the license and shall qualify for the license as though an individual
 35 licensee.

36 (2) The commissioner shall charge, and the licensee shall pay, a

1 full additional license fee as to each respective individual so named in such
2 license in excess of one (1) licensee.

3 (b)(1) The commissioner, in his discretion, may issue ~~an agent's a~~
4 license to a firm, limited liability company, or corporation organized under
5 the laws of another state if the firm, limited liability company, or
6 corporation is licensed as a resident licensee ~~agent or broker~~ under the laws
7 of its state of domicile.

8 (2) If a firm, each general partner and each other individual
9 authorized to act on behalf of ~~to act for~~ the firm under the license, and if a
10 limited liability company or corporation, each individual authorized to act on
11 behalf of ~~to act for~~ the limited liability company or corporation under the
12 license, shall be named in the license and shall qualify therefor as though an
13 individual licensee ~~agent~~ under the provisions of this code. The commissioner
14 shall charge, and the licensee shall pay, a full additional license fee as to
15 each respective individual licensee ~~agent~~ in the license in excess of one (1),
16 in the amounts stated in §23-61-401.

17 (3) The nonresident licensee shall promptly notify the
18 commissioner of all changes among its members, partners, directors, managers,
19 and officers, and all other individuals designated in the license.

20 (4) As a part of the application for the license of agent, the
21 commissioner shall require the applicant to file a written agreement executed
22 by a member, partner, or officer authorized to act for the firm, limited
23 liability company or corporation acknowledging under oath that its agents will
24 not during the period of the license directly or indirectly place insurance
25 upon subjects resident, located, or to be performed in this state except by
26 policies or contracts in insurers authorized to transact insurance in this
27 state ~~and countersigned by Arkansas resident agents, where countersignature is~~
28 ~~required under this code.~~

29 (5) Application for and acceptance of a firm's, limited liability
30 company or corporation's license as a nonresident licensee ~~agent~~ shall be
31 deemed to constitute irrevocable appointment of the commissioner as the
32 attorney of the licensee for the acceptance of service of process issued in
33 this state. The licensee shall comply with the further provisions of this
34 chapter. ~~§23-64-229 in that regard.~~

35 ~~_____ (6) Upon issuance, the license shall state the names of the~~
36 ~~insurers to be so represented.~~

1 (c) Within ten (10) days, each ~~the~~ licensee shall notify the
 2 commissioner of all changes among its members, directors, officers, and all
 3 other individuals designated in the license.

4 (d)(1) Every firm, limited liability company or corporation licensed ~~as~~
 5 ~~an agent~~ and every applicant for ~~such~~ a license shall file with the
 6 commissioner the true name of the firm, limited liability company or
 7 corporation and also all fictitious names under which it conducts or intends
 8 to conduct its business and, after licensing, shall file with the commissioner
 9 any change in or discontinuance of those names.

10 (2) The commissioner may disapprove in writing the use of any name
 11 on any of the following grounds:

12 (A) The name is identical to or is similar to that of
 13 another licensee licensed agency so as to confuse or otherwise mislead the
 14 public; or

15 (B) The name includes words or phrases that may mislead the
 16 public as to activities not authorized under the license or which are in
 17 violation of any insurance law or insurance regulation; or

18 (C) The name states, infers, or implies that the firm,
 19 limited liability company or corporation is an insurer, motor club, or
 20 hospital service plan or entitled to engage in insurance activities not
 21 permitted under the license applied for or held; or

22 (D) Such other reasonable grounds as the commissioner may
 23 determine.

24 (3) The grounds specified in subdivisions (d)(2)(B) and (d)(2)(D)
 25 of this section shall not be applicable to the true name of any firm or
 26 corporation which on March 21, 1985, held a license issued under this
 27 subchapter.

28 (e) The provisions of subsections (a) and (b) of this section shall not
 29 apply to those partners who are partners in the firm for investment purposes
 30 only and who do not act for the firm or take any other active role in the
 31 operations of the firm.

32 (f) In the event an insurer does not wish to provide for the authority
 33 of all such agents authorized under the license of a firm, limited liability
 34 company, or corporation to act on their behalf, that insurer may appoint
 35 specific agents individually within the firm, limited liability company or
 36 corporation and the firm, limited liability company or corporation may act on

1 the behalf of the insurer, but only through those agents individually
 2 appointed by the insurer while acting on the behalf of the firm, limited
 3 liability company or corporation and only if among those specific agents
 4 individually appointed, there is one general partner, one officer of the
 5 corporation or one manager of the limited liability company.

6

7 23-64-~~212~~ 211. ~~Nonresident agents and brokers - License~~ Nonresident
 8 agents or brokers - License.

9 (a)(1) The commissioner may license as an agent or a broker a person who
 10 is a licensed agent or broker of another state, and who is otherwise qualified
 11 therefor under this chapter except as to residence, if under the laws of the
 12 state of his domicile a similar privilege is granted to persons resident or
 13 domiciled in Arkansas.

14 (2) By reciprocal arrangements with the insurance supervisory
 15 official in such other state, the commissioner may waive written examination
 16 of an applicant for license as nonresident broker or agent, if the official
 17 certifies that the applicant is licensed as a resident agent or broker of such
 18 state and has complied with its qualification standards therefor.

19 (3) As part of the application for any such license, the
 20 commissioner shall require the applicant to file his written agreement,
 21 acknowledged under the oath of the applicant, that he will not during the
 22 period of the license directly or indirectly place insurance upon subjects
 23 resident, located, or to be performed in this state, except by policies or
 24 contracts in insurers authorized to transact insurance in this state.

25 (4) The fee for any such license shall be as stated in ~~§~~23-61-401.

26 (5) A nonresident agent shall have one (1) appointment for each
 27 insurer to be so represented.

28 (b)(1) Upon the nonresident broker's or nonresident agent's change of
 29 ~~domicile residence~~ to the State of Arkansas, each such licensee shall apply
 30 for and obtain a resident agent's or broker's license within ninety (90) days
 31 of such change of ~~domicile residence~~ to this state. The nonresident broker or
 32 nonresident agent license of such person shall cease to be valid ninety (90)
 33 days after such change of ~~domicile residence~~ to this state.

34 (2) If any nonresident broker or nonresident agent fails to obtain
 35 a resident agent's or broker's license within this time period, the
 36 commissioner in his discretion may refuse to issue a resident agent's or

1 broker's license to the person or, upon issuance of the license, may suspend
 2 the license for up to twelve (12) months and may impose an administrative
 3 penalty upon the person in the amount of three hundred dollars (\$300) or, if
 4 the commissioner has found willful misconduct or willful violation on the part
 5 of the person, one thousand dollars (\$1,000). This administrative penalty
 6 may, in the commissioner's discretion, be augmented by an amount equal to any
 7 commissions received by or accruing to the credit of the person with regard to
 8 any transactions occurring after the expiration of the ninety-day period as
 9 provided in subdivision (b)(1) of this section.

10 (c) A nonresident broker's license or a nonresident agent's license may
 11 be suspended or revoked for violation of the agreement referred to in
 12 subdivision (a)(3) of this section or for any other cause for which the
 13 license of a resident agent or broker may be revoked.

14

15 ~~23-64-213 Solicitors license and appointment.~~

16 ~~(a) A solicitor shall not be appointed or licensed as to more than one~~
 17 ~~(1) agent or broker.~~

18 ~~(b) The solicitor's license shall cover all the kinds of insurance,~~
 19 ~~other than life and disability insurance, for which the appointing agent or~~
 20 ~~broker is licensed.~~

21 ~~(c) A solicitor shall not concurrently be licensed as agent or broker,~~
 22 ~~except as to life or disability insurance.~~

23 ~~(d) A solicitor shall not have authority to bind risks or countersign~~
 24 ~~policies.~~

25 ~~(e) The transactions of a solicitor under his license shall be in the~~
 26 ~~name of the agent or broker by whom appointed, and the agent or broker shall~~
 27 ~~be responsible for the acts or omissions of the solicitor within the scope of~~
 28 ~~his appointment.~~

29 ~~(f) The solicitor shall maintain his office with that of the appointing~~
 30 ~~agent or broker, and records of his transactions under the license shall be~~
 31 ~~maintained as a part of the records of the agent or broker.~~

32 ~~(g) The solicitor's license shall remain in the custody of the agent or~~
 33 ~~broker by whom appointed. Upon termination of the appointment, the agent or~~
 34 ~~broker shall give written notice of the termination to the commissioner and~~
 35 ~~deliver the license to the commissioner for cancellation.~~

36

1 ~~23-64-214~~ 212. ~~Temporary agent and broker licenses~~ Temporary licenses.

2 (a) The commissioner may issue a temporary license as ~~life insurance~~
3 ~~agent~~, resident agent, or resident broker, as the case may be, to or with
4 respect to an individual qualified therefor as to age and character and
5 without requiring the individual to take an examination, in the following
6 cases:

7 (1) To the surviving spouse or next of kin or to the administrator
8 or executor, or the employee of the administrator or executor, of a licensed
9 agent or broker becoming deceased;

10 (2) To the spouse, next of kin, employee, or legal guardian of a
11 licensed agent or broker disabled by sickness, injury, or insanity;

12 (3) With respect to an employee of a firm, or officer or employee
13 of a corporation, manager or employee of a limited liability company, licensed
14 as agent or broker, upon the death or disability of an individual designated
15 in the license to exercise the powers thereof;

16 (4) To a salaried employee of an authorized insurer sent to this
17 state by the insurer to take the place of a licensed agent of the insurer;

18 (5) To the designee of a licensed agent or broker entering upon
19 active service in the armed force of the United States;

20 (6) To an applicant for a license as agent or broker, who is
21 otherwise qualified for the license, pending the availability and taking, by
22 the applicant, of any written examination required under ~~§23-64-206~~ this
23 chapter.

24 (b) The temporary license shall be issued upon application filed with
25 the commissioner in such form and containing such information as the
26 commissioner may reasonably require and upon payment of the applicable fee as
27 stated in ~~§23-61-401~~.

28 (c) The temporary license shall be for a period of not over one hundred
29 eighty (180) days ~~ninety (90) days~~, subject to extension by the commissioner
30 in his discretion for an additional one hundred eighty-day ~~ninety-day~~ period.
31 However, a license issued pursuant to subdivision (a)(1) of this section may
32 be continued without payment of additional fee until the executor or
33 administrator disposes of the insurance business but not to exceed a period of
34 fifteen (15) months. ~~Temporary~~ A temporary license issued to the next of kin
35 under subdivision (a)(1) of this section shall not be extended for additional
36 terms after appointment and qualification of an administrator or executor.

1

2 ~~23-64-215~~ 213. Limitations and rights under temporary license Rights
3 and limitations on temporary licenses.

4 (a) The commissioner shall not issue more than one (1) temporary
5 license, to or with respect to the same individual to be so licensed, within
6 any twelve-month period.

7 (b) The temporary license may cover the same kinds of insurance for
8 which the agent or broker thereby being replaced was licensed.

9 (c) As to a temporary agent's license issued on account of the death or
10 disability of an agent, the licensee may so represent all of the insurers last
11 represented by the deceased or disabled agent without the making of a new
12 appointment of the licensee by the insurers. However, the licensee shall not
13 be appointed as to any additional insurer or additional kind of insurance
14 under a temporary license. This provision shall not be deemed to prohibit
15 termination of its appointment by an insurer.

16 (d) A temporary licensee shall have the same license powers and duties
17 as though under a permanent license.

18 (e) The fee paid for temporary license may be applied upon the fee for a
19 like permanent license issued to the licensee before expiration of the
20 temporary license.

21

22 ~~23-64-216~~ 214. Issuance of license Issuance of license; form and
23 content of license.

24 (a) The commissioner may promptly issue licenses applied for to persons
25 qualified therefor in accordance with this chapter.

26 (b) The license shall state the name and address of the licensee, the
27 date of issue, general conditions relative to expiration or termination, kind
28 or kinds of insurance covered, the license number as determined and assigned
29 by the commissioner, and the other conditions of the license.

30 (c) If the licensee ~~agent or broker~~ is other than an individual, a firm
31 ~~or corporation~~, the license shall also state the name of each individual
32 authorized thereunder to exercise the license powers.

33 ~~—— (d) If the licensee is a solicitor, the license shall state the name and~~
34 ~~address of the agent or broker to be represented.~~

35 ~~(e)~~ (d) Every licensee shall notify the commissioner, in writing, of any
36 change in his mailing or residence address within ten (10) days of the change.

1 ~~—— (f)(1) Notwithstanding the provisions of ^A 23-64-101 et seq., other~~
2 ~~sections of the Arkansas Insurance Code, and other Arkansas laws, commencing~~
3 ~~on January 1, 1994, in an orderly program to be devised and implemented by the~~
4 ~~Insurance Commissioner and on forms as he shall prescribe, the Insurance~~
5 ~~Commissioner shall begin issuance of a license, permit, or registrations with~~
6 ~~an accompanying number assigned to each applicant for a license as an agent,~~
7 ~~solicitor, broker, adjuster, or consultant, for a permit as an amusement ride~~
8 ~~operator, and for registration as a third party administrator, pending~~
9 ~~completion of all other requirements of the Arkansas Insurance Code at the~~
10 ~~point in the application process as the commissioner shall prescribe, and such~~
11 ~~number shall be maintained for that applicant throughout his licensed,~~
12 ~~permitted, or registered tenure with the State Insurance Department. Each~~
13 ~~insurance agent's license and number shall be maintained no longer than five~~
14 ~~(5) years after the applicant is granted inactive status for all his issued~~
15 ~~and outstanding licenses by the State Insurance Department per its procedure,~~
16 ~~absent proper license and license number reactivation by the Insurance~~
17 ~~Commissioner at the end of such five-year period, or until such license has~~
18 ~~been surrendered or revoked. The number shall be maintained for other~~
19 ~~permittees and registrants as referenced in this subsection until such permits~~
20 ~~or registrations expire or are cancelled or revoked.~~

21 ~~—— (2) Notwithstanding other provisions of the Arkansas Insurance Code and~~
22 ~~other Arkansas laws, and commencing on January 1, 1994, in an orderly program~~
23 ~~to be devised and implemented by the Insurance Commissioner, and on forms as~~
24 ~~he shall prescribe, the Insurance Commissioner shall begin issuance of a~~
25 ~~number for each person, firm, or corporation holding an active and subsisting~~
26 ~~license as an agent, broker, solicitor, consultant, or adjuster, or a permit~~
27 ~~as an amusement ride operator, or registration as a third party administrator,~~
28 ~~who currently does not have an identifying number. Such identifying number~~
29 ~~shall be maintained for that person, firm, or corporation throughout the~~
30 ~~licensed, permitted, or registered tenure with the State Insurance Department.~~
31 ~~Each insurance agent's license number shall be maintained no longer than five~~
32 ~~(5) years after inactive license status is granted for all his issued and~~
33 ~~outstanding licenses by the State Insurance Department per its procedure,~~
34 ~~absent proper license and number reactivation by the Insurance Commissioner at~~
35 ~~the end of the five-year period, or until such license has been surrendered or~~
36 ~~revoked. The number shall be maintained for other permittees and registrants~~

1 ~~as referenced in this subsection until such permits or registrations expire or~~
 2 ~~are cancelled or revoked.~~

3

4 23-64-217 215 ~~Expiration of licenses~~ Continuance Continuance of
 5 license.

6 (a)(1) All agent, broker, consultant, or adjuster, ~~and nonresident life~~
 7 ~~and disability agent~~ licenses, ~~and all agent licenses as to life or disability~~
 8 ~~insurance only, or life and disability insurance only,~~ shall continue in force
 9 unless until non-renewed, expired, suspended, revoked, or terminated, but
 10 subject at all times to annual payment to the commissioner of the applicable
 11 continuation fee as stated in A.C.A. §23-61-401, accompanied by a written
 12 request for the continuation biennially on or before the licensee's birthday
 13 if an individual or the annual period from the date of issue if a firm,
 14 limited liability company or corporation, ~~June 1 of even-numbered years of the~~
 15 ~~applicable continuation fee as stated in § 23-61-401,~~ accompanied by a written
 16 request for the continuation. ~~As to a solicitor's license, the request shall~~
 17 ~~be signed by the agent or broker by whom the licensee is employed.~~ Failure to
 18 pay the annual continuation fee on or before the date required shall
 19 automatically terminate the license as of the following business day after the
 20 due date. Reinstatement of a terminated license within thirty (30) days from
 21 the due date shall require payment of double the annual continuation fee. Up
 22 to sixty (60) days from the licensee's due date, license reinstatement shall
 23 require payment of triple the annual continuation fee. After sixty (60) days
 24 from the licensee's due date, reinstatement shall not be available, the
 25 licensee must again proceed to become licensed as if never having held a
 26 license, should a license be desired.

27 (2) For purposes of implementation of subsection (a)(1) on the
 28 effective date of July 1, 1997, if the licensee has already paid the
 29 applicable continuation fee within the previous one hundred eighty (180) days
 30 on the date it was due, such fee shall not be due again until the next annual
 31 due date.

32 ~~—— (2) All other licenses or appointments, not previously set forth in~~
 33 ~~subdivision (a)(1) of this section, shall continue in force until expired,~~
 34 ~~suspended, revoked, or terminated, but subject to payment to the commissioner~~
 35 ~~biennially on or before June 1 of odd-numbered years of the applicable~~
 36 ~~continuation fee as stated in § 23-61-401, accompanied by written request for~~

1 ~~such continuation.~~

2 ~~—— (b)(1) Any license referred to in subdivision (a)(1) of this section as~~
 3 ~~to which a fee and request for continuation is not received by the~~
 4 ~~commissioner as required in subdivision (a)(1) of this section shall be deemed~~
 5 ~~to have expired as of midnight on June 30 next following. Request for~~
 6 ~~continuation of any such license or appointment or payment of the continuation~~
 7 ~~fee therefor which is received by the commissioner after such June 1, and~~
 8 ~~prior to the next following July 15, shall be accepted and effectuated by the~~
 9 ~~commissioner if accompanied by a biennial continuation fee in twice the amount~~
 10 ~~otherwise required.~~

11 ~~—— (2) Any license or appointment referred to in subdivision (a)(2) of this~~
 12 ~~section as to which such fee and request for continuation is not received by~~
 13 ~~the commissioner as required in subdivision (a)(2) shall be deemed to have~~
 14 ~~expired as of midnight on June 30 next following. Request for continuation of~~
 15 ~~any license or appointment or payment of the continuation fee therefor which~~
 16 ~~is received by the commissioner after such June 1, and prior to the next~~
 17 ~~following July 15, shall be accepted and effectuated by the commissioner, if~~
 18 ~~accompanied by a biennial continuation fee in twice the amount otherwise~~
 19 ~~required.~~

20 ~~—— (c) The license of an agent shall continue in force as long as there is~~
 21 ~~in effect, as shown by the commissioner's records, an appointment or~~
 22 ~~appointments, as agent of authorized insurer, covering collectively all of the~~
 23 ~~kinds of insurance included in the agent's licenses.~~

24 ~~—— (d)(1) Any resident agent, as defined in § 23-64-102(2)(A), who desires~~
 25 ~~not to continue in the business of insurance or who is not permitted to so~~
 26 ~~continue as a condition of employment, but who is not desirous of or eligible~~
 27 ~~for permanent retirement, may apply for inactive status of his resident agent~~
 28 ~~license on forms prescribed by the commissioner.~~

29 ~~—— (2)(A) The commissioner, in his discretion, may grant or deny the~~
 30 ~~application for inactive status and shall notify the resident agent of his~~
 31 ~~decision in writing.~~

32 ~~—— (B) Inactive status of such resident agent license, once granted, shall~~
 33 ~~continue in force:~~

34 ~~—— (i) For a period not to exceed sixty (60) months from the date placed on~~
 35 ~~inactive status; or~~

36 ~~—— (ii) Until cancelled, or reactivated pursuant to this subsection; or~~

1 ~~—— (iii) Until the license is suspended or revoked pursuant to §23-64-218.~~

2 ~~—— (C)(i) (b)(1) During the period that an agent a licensee has no company~~
 3 ~~appointments, remains on inactive status, the licensee shall not transact the~~
 4 ~~business of insurance in this state, nor engage in any other insurance~~
 5 ~~activities which may only be engaged in by active licensees.~~

6 ~~—— (ii) (2) An agent A licensee who has no active appointments on~~
 7 ~~inactive status may continue, subject to the terms of the insurer's contract~~
 8 ~~with the licensee, to receive commissions or other compensation relative to~~
 9 ~~business written while actively appointed by such licensee. during active~~
 10 ~~license status. However, the commissioner may prescribe payment of fees~~
 11 ~~during inactive license status per other laws or pursuant to a rule and~~
 12 ~~regulation which the commissioner may promulgate on inactive license status~~
 13 ~~and continuation fees as authorized by this section or other applicable laws~~
 14 ~~of this state.~~

15 ~~—— (iii) The commissioner may determine the amount of the fee payment due~~
 16 ~~in his rules and regulations and specify therein where and when payment shall~~
 17 ~~be made and where such funds shall be deposited upon receipt, and, further, he~~
 18 ~~may consider termination or cancellation of any inactive license for failure~~
 19 ~~to comply with the provisions of this section.~~

20 ~~—— (3) Any licensed resident agent who has no insurance company~~
 21 ~~appointments must continue to comply with A.C.A. §23-64-301 as to continuing~~
 22 ~~education, pay all applicable license fees, and shall at all times be subject~~
 23 ~~to the provisions and sanctions of the Arkansas Insurance Code.~~

24 ~~—— (3) Any resident agent whose license is placed on inactive status shall~~
 25 ~~be exempt from compliance with §§ 23-64-203(a)(3), 23-64-204(a)(3), or~~
 26 ~~23-64-221(b) as to insurance company appointments. However, inactive agents~~
 27 ~~must comply with § 23-64-301 as to continuing education during such period of~~
 28 ~~inactive license status.~~

29 ~~—— (4)(A) Any resident agent whose license is on inactive status may apply~~
 30 ~~for reactivation of such license on forms prescribed by the commissioner.~~

31 ~~—— (B) The commissioner, in his discretion, may grant or deny the~~
 32 ~~application for reactivation.~~

33 ~~—— (C) The agent shall not be required to meet examination requirements or~~
 34 ~~to submit proof of completion of thirty-six (36) hours of prelicensing~~
 35 ~~insurance education pursuant to the provisions of §§23-64-203(a)(9)(A) or~~
 36 ~~23-64-204(a)(7)(A) as to any line or kind of insurance to be transacted under~~

1 ~~the reactivated license. However, the request shall also include a company~~
2 ~~appointment as required by ~~§§23-64-203(a)(3) or 23-64-204(a)(3) along with~~~~
3 ~~payment of the biennial continuation of appointment fees specified in ~~§~~~~
4 ~~23-61-401.~~

5 ~~—— (5) A resident agent whose application for reactivation is granted shall~~
6 ~~be required to meet any applicable requirements of ~~§§23-64-301, et seq. during~~~~
7 ~~the calendar year of reactivation and thereafter, absent qualification for an~~
8 ~~applicable exemption pursuant to ~~§§23-64-301, et seq. during active licensure.~~~~

9 ~~—— (6) Any resident agent on inactive status whose license is revoked or~~
10 ~~not reactivated in a timely manner shall have his license cancelled or expired~~
11 ~~and shall be subject to the provisions of ~~§ 23-64-219(c).~~~~

12 ~~—— (7)(A) For purposes of this subsection, the term "retiree" is deemed to~~
13 ~~mean only resident agents who retire from active transaction of business under~~
14 ~~licensure permanently, but who wish to have their licensure records with the~~
15 ~~commissioner maintained in a retired status rather than cancelled or expired.~~

16 ~~—— (B) Upon official notice to the department of retirement, the resident~~
17 ~~agent may request that his license be placed in retired status rather than~~
18 ~~cancelled or expired.~~

19 ~~—— (C) A resident agent granted retired status by the commissioner shall~~
20 ~~thereafter not be subject to continuing education mandated under ~~§§23-64-301,~~~~
21 ~~et seq., but must continue to pay any annual or biennial license or regulatory~~
22 ~~fee which the Arkansas Insurance Code or other laws or rules and regulations~~
23 ~~of the commissioner impose on a resident agent, or his license shall be~~
24 ~~cancelled or expired.~~

25 ~~—— (D) A retired resident agent cannot maintain insurer appointments on~~
26 ~~department records during this inactive license status, unless by contract the~~
27 ~~retiree is required to keep a company appointment on department records as a~~
28 ~~condition by the employing insurer for continued receipt of renewal~~
29 ~~commissions for business written under active licensure.~~

30 ~~—— (E) In addition, retirees who must maintain insurer appointments on~~
31 ~~department records must arrange for the department's receipt of each insurer's~~
32 ~~written certification each biennium that the appointment renewal is only for~~
33 ~~purposes of the retiree's receipt of commissions for business written under~~
34 ~~active licensure and that the retiree will solicit or produce no new insurance~~
35 ~~business while on retired status.~~

36 ~~—— (F)(i) Upon the retiree's desire to reactivate the former resident agent~~

~~1 license, the retiree must apply for reactivation accompanied by evidence of
2 completion of prelicensure education requirements under §§23-64-203 and
3 23-64-204, as applicable, all applicable licensure and regulation fees as
4 specified in §23-61-401 and other applicable laws, and one (1) or more insurer
5 appointments as prescribed on the commissioner's forms for each insurer
6 sponsoring the retiree, and such other information as the commissioner shall
7 require.~~

~~8 (ii) The retiree shall not be subject to examination in order to
9 reactivate the license.~~

~~10 (iii) Failure of the retiree to comply with the provisions of this
11 subsection, either in maintaining the license on retired status or in
12 successfully reactivating the license, shall cause the license to be
13 automatically cancelled and expired.~~

~~14 (8)(A) Retirees are not entitled to change their license status from
15 retired to inactive but may apply only to activate a retired license to active
16 status.~~

~~17 (B) Inactive licensees are not entitled to change their license status
18 from inactive to retired status, but may apply only to activate an inactive
19 license to active status.~~

~~20 (C) Further, inactive resident agents and retired resident agents shall
21 be subject to the provisions of §23-64-218 as to license sanctions for
22 Arkansas Insurance Code or rule violations as if they held active licenses.~~

~~23 (9) The provisions of this subsection shall not be available or
24 applicable to any other persons licensed under §23-64-101, et seq. or to any
25 other provisions of the Arkansas Insurance Code or other licensure laws which
26 the commissioner administers and enforces, or to any full-time or part-time
27 employee of or intern or volunteer for the State Insurance Department or to
28 any resident firm or corporation licensed under §23-64-211 or other sections
29 of the Arkansas Insurance Code.~~

~~30 (10) An inactive resident agent or a retired resident agent whose
31 license is cancelled or expired shall have twelve (12) full months to apply
32 for active licensure without complying with applicable exam or prelicensure
33 education requirements, and, upon failure to apply for and obtain a new
34 original resident agent license within that time period, the applicant shall
35 have to comply with exam and prelicensure requirements and others to obtain
36 the new original resident agent license as though he never held a resident~~

1 ~~agent license previously.~~

2 ~~----- (e) This section shall not apply to temporary licenses issued under~~
 3 ~~AA 23-64-214.~~

4

5 23-64-218 216. ~~Suspension, revocation, or refusal of license~~
 6 Suspension or revocation.

7 (a) The commissioner may suspend for up to thirty-six (36) ~~twelve (12)~~
 8 months, or may revoke or refuse to continue, any license issued by him if,
 9 after notice to the licensee and after hearing, he finds any one (1) or more
 10 of the following causes exist:

11 (1) Any cause for which issuance of the license could have been
 12 refused had it then existed and been known to the commissioner;

13 (2) Violation of or noncompliance with any applicable provision of
 14 the laws of this state, this code, or of any lawful rule, regulation, or order
 15 of the commissioner;

16 (3) Obtaining or attempting to obtain any such license through
 17 misrepresentation or fraud;

18 (4) Misappropriation or conversion to the licensee's ~~his~~ own use
 19 or benefit or illegal withholding of moneys belonging to policyholders,
 20 insurers, beneficiaries, or others and received in conduct of business under
 21 the license;

22 (5) Conviction of or the pleading of guilty or nolo contendere to
 23 a felony;

24 (6) If, in the conduct of the licensee's ~~his~~ affairs ~~under the~~
 25 ~~license~~, the licensee has used fraudulent or dishonest practices or trade
 26 practices prohibited by the ~~insurance~~ laws or ~~and~~ regulations of this state;

27 (7) Failing to provide a written response after receipt of a
 28 written inquiry from the commissioner or his representative as to transactions
 29 under the license within thirty (30) days after receipt thereof, unless such
 30 timely written response is knowingly waived in writing by the commissioner;

31 (8) Having an insurance license suspended or revoked in any other
 32 state, province, district, or territory;

33 (9) The licensee no longer meets the qualifications required for a
 34 license as described in the Insurance Code ~~AA 23-64-203 and 23-64-204~~; or

35 (10) Refusing to be examined or to produce any of his accounts,
 36 records, and files for examination or failure to cooperate with the

1 commissioner in an investigation when required by the commissioner.

2 (11) For purposes of this section, licenses also include permits,
3 registrations or certificates of authority.

4 (b) The license of a firm, limited liability company or corporation may
5 be suspended, revoked, or refused also for any of such causes as relate to any
6 individual designated in the license to exercise its powers.

7 (c) If the commissioner finds that one (1) or more grounds exist for the
8 suspension or revocation of any license ~~or permit~~, the commissioner in his
9 discretion may impose upon the licensee ~~or permittee~~ an administrative penalty
10 in the amount of up to one thousand (\$1,000) dollars per violation ~~three~~
11 ~~hundred dollars (\$300)~~ or, if the commissioner has found willful misconduct or
12 willful violation on the part of the licensee up to five thousand dollars
13 (\$5,000) per violation ~~or permittee, one thousand dollars (\$1,000)~~. The
14 administrative penalty may, in the commissioner's discretion, be augmented by
15 an amount equal to any commissions received by or accruing to the credit of
16 the licensee for any transaction related to the proceeding against the
17 licensee. The commissioner may also order restitution of actual losses to
18 affected persons.

19 (d) If the commissioner determines that the public health, safety, or
20 welfare imperatively requires emergency action, and incorporates a finding to
21 that effect in his order, a summary suspension of any license issued by him
22 may be ordered pending an administrative hearing before the commissioner,
23 which hearing shall be promptly instituted.

24 (e)(1) If the commissioner finds upon notice and hearing that the
25 licensee has violated a provision of the insurance laws of this state or any
26 rule, regulation, or order of the commissioner and that the licensee
27 previously has been found to have violated provisions of the insurance laws of
28 this state or any rule, regulation, or order of the commissioner, by an order
29 of the commissioner after hearing or by an order entered with the consent and
30 agreement of the parties, the commissioner may take judicial notice of such
31 previous orders against the licensee and, within his ~~without an abuse of~~
32 discretion, may enhance or increase the penalties ordered in the current
33 proceeding as to the licensee, and the commissioner shall incorporate a
34 finding to that effect in his order.

35 (2) Statutory or regulatory violations for which an order has been
36 entered as to the licensee by the insurance department or equivalent

1 regulatory body in any other jurisdiction may be taken into consideration and
 2 included in assessing the enhanced or increased penalties provided in
 3 subdivision (e)(1) of this section.

4 (f) The penalties recited in this section may be imposed by the
 5 commissioner for violations of this code or other applicable laws, or rules or
 6 orders of the commissioner, committed by any resident agent whose license is
 7 on inactive or retired status.

8

9 23-64-219 217. ~~Procedure following suspension or revocation of license~~
 10 Procedure following suspension or revocation.

11 (a) Upon the suspension or revocation of a license, the commissioner
 12 shall immediately notify the licensee of the suspension or revocation either
 13 in person or by mail addressed to the licensee at his address last of record
 14 with the commissioner.

15 (1) Notice by mail shall be deemed effectuated when so mailed.

16 (2) The commissioner shall give like notice to the insurers
 17 represented by the agent in the case of an agent's license, ~~and to the agent~~
 18 ~~or broker by whom appointed in the case of a solicitor's license.~~ Where the
 19 license has been revoked, each such insurer represented by the agent shall,
 20 upon receipt of notice from the commissioner, take appropriate and prompt
 21 action necessary to:

22 (A) Retrieve from the agent all solicitation materials,
 23 policy applications, binders, and any and all other materials in the
 24 possession of the agent which are the property of such insurer; and

25 (B) Retrieve the agent's policyholder files and records for
 26 policies in force at the time such insurer receives notice of the revocation.

27 ~~(b) Suspension or revocation of the license of an agent or broker shall~~
 28 ~~automatically revoke or suspend the licenses of all solicitors appointed by~~
 29 ~~him.~~

30 ~~(e)~~ (b) The commissioner may not again issue a license under this code
 31 to any person whose license has been revoked until after the expiration of
 32 three (3) years, and thereafter not until:

33 (1) Such person has paid in full any fines, administrative
 34 penalties, or monetary penalties imposed on such person at the time of
 35 revocation;

36 (2) Such person has paid restitution of actual losses to affected

1 persons where the order of revocation contains findings that the conduct of
 2 such person resulted in actual losses to affected persons ~~and specifies the~~
 3 ~~dollar amount of such losses;~~ and

4 (3) Such person again qualifies for license in accordance with the
 5 applicable provisions of this code.

6 (d) If the license of a firm, limited liability company or corporation
 7 is so suspended or revoked, no member of the firm or limited liability
 8 company, or officer or director of the corporation shall be licensed or be
 9 designated in any license to exercise the powers thereof during the period of
 10 the suspension or revocation, unless the commissioner determines upon
 11 substantial evidence that the member, officer, or director was not personally
 12 at fault and did not acquiesce in the matter on account of which the license
 13 was suspended or revoked.

14

15 23-64-220 218. ~~Ownership of license by commissioner~~ Return of license
 16 to commissioner.

17 (a)(1) All licenses issued under this chapter, although issued and
 18 delivered to the licensee, ~~agent, broker, solicitor, or adjuster~~, shall at all
 19 times be the property of the State of Arkansas.

20 (2) Upon any expiration, termination, suspension, or revocation of
 21 the license, the licensee or other person having possession or custody of the
 22 license shall immediately deliver it to the commissioner either by personal
 23 delivery or by mail.

24 (b) As to any license lost, stolen, or destroyed while in the possession
 25 of any licensee or person, the commissioner may accept, in lieu of return of
 26 the license, the affidavit of the licensee or other person responsible for or
 27 involved in the safekeeping of the license concerning the facts of the loss,
 28 theft, or destruction.

29 (c) Any licensee who ceases to maintain his residence in this state
 30 shall deliver his insurance license to the commissioner within ten (10) days
 31 after terminating his residency.

32

33 23-64-221 219. ~~Appointment of agents - Continuation - Termination -~~
 34 ~~Loss ratio experience~~ Appointment of agent; continuation and termination of
 35 appointment.

36 (a) Each insurer appointing an agent in this state shall file with the

1 commissioner the appointment setting out the kinds of insurance to be
2 transacted by the agent and pay the fee therefor. The appointing insurer's
3 appointment of an agent shall be an indication to the Commissioner that the
4 insurer has reviewed the agent's background and fitness to be an agent.

5 (b) Subject to a biennial continuation by the insurer not later than
6 June 1, commencing on January 1, 1988, for life and disability insurers, and
7 commencing on January 1, 1989, for all other insurers, each appointment shall
8 remain in effect until the agent's license is revoked or otherwise terminated,
9 unless written notice of earlier termination of the appointment is filed with
10 the commissioner by the insurer or agent.

11 (c) Biennially, prior to June 1 of each even-numbered year, each insurer
12 maintaining a certificate of authority to transact life and disability
13 insurance and, prior to June 1 of each odd-numbered year, all other insurers
14 maintaining a certificate of authority to transact insurance in this state,
15 shall file with the commissioner an alphabetical list of the names and
16 addresses of all its agents whose appointments in this state are to remain in
17 effect, accompanied by payment of the biennial continuation of appointment fee
18 as provided in §23-61-401. At the same time, the insurer shall also file with
19 the commissioner an alphabetical list of the names and addresses of all its
20 agents whose appointments in this state are not to remain in effect,
21 accompanied by any documentation the commissioner shall require.

22 (d)(1) Subject to the terms of the agency contract, an insurer may
23 terminate an agent's appointment at any time. The insurer shall promptly give
24 written notice of such termination to the commissioner and thirty (30) days'
25 advance notice to the agent by certified mail, return receipt requested. The
26 return receipt shall be retained as part of the insurer's records. However,
27 less than thirty (30) days' notice of cancellation may be given to the agent
28 when the termination is for cause relating to the misconduct of the agent.

29 (2) Any information as to the cause of termination of any such
30 appointment furnished the commissioner as part of the notice of termination
31 shall be deemed a privileged communication and shall not be admissible in
32 evidence in any action or proceedings other than those brought by the
33 commissioner, nor shall any agent whose appointment has been so terminated
34 have a cause of action against the insurer or any of its officers, directors,
35 or employees by reason of the furnishing of such information to the
36 commissioner.

1 (e) The insurer shall promptly give written notice of nonrenewal of the
 2 agent's appointment to the agent by certified mail, return receipt requested,
 3 and the return receipt shall be retained as part of the insurer's records.

4

5 23-64-~~222~~ 220. ~~Place of business - Display of license - Records~~ Place
 6 of business; maintenance of records.

7 (a) Every resident agent or resident broker shall have and maintain in
 8 this state, or in a city or town in another state through which passes the
 9 boundary of this state, a place of business accessible to the public.

10 (1) The place of business shall be that wherein the licensee
 11 principally conducts transactions under his license.

12 (2) The address of the place shall appear upon the license, and
 13 the licensee shall promptly notify the commissioner in writing of any change
 14 of address within ten (10) days of that change of address.

15 (3) Nothing in this section shall be deemed to prohibit
 16 maintenance of the place of business in the licensee's place of residence in
 17 this state.

18 (b) The licenses of the licensee, ~~and the licenses of solicitors~~
 19 ~~appointed by and representing the licensee,~~ shall be conspicuously displayed
 20 in the place of business in a part thereof customarily open to the public.

21 (c) The agent or broker shall keep at his place of business the usual
 22 and customary records pertaining to transactions under his license ~~and the~~
 23 ~~licenses of his solicitors.~~

24 ~~----- (d) This section shall not apply as to life and disability insurances.~~

25

26 23-64-~~223~~ 221. ~~Insurance vending machines~~ Vending machines.

27 (a) A licensed resident agent may solicit applications for and issue
 28 policies of personal travel and accident insurance by means of mechanical
 29 vending machines supervised by him and placed at airports, railroad stations,
 30 bus stations, hotels, and similar places of convenience to the traveling
 31 public if the commissioner finds that:

32 (1) The policy to be so sold provides reasonable coverage and
 33 benefits, is reasonably suited for sale and issuance through vending machines,
 34 and that use of such a machine therefor in a particular proposed location
 35 would be of material convenience to the public;

36 (2) The type of vending machine proposed to be used is reasonably

1 suitable and practical for the purpose;

2 (3) Reasonable means are provided for informing the prospective
3 purchaser of the policy of the coverage and restrictions of the policy; and

4 (4) Reasonable means are provided for refund to the applicant or
5 prospective applicant of money inserted in defective machines and for which no
6 insurance, or a less amount than that paid for, is actually received.

7 (b) As to each machine to be so used, the commissioner shall issue to
8 the agent a special vending machine license.

9 (1) The license shall specify the name and address of the insurer
10 and agent, the name of the policy to be sold, the serial number of the
11 machine, and the place where the machine is to be in operation.

12 (2) The license shall be subject to annual continuation,
13 expiration, suspension, or revocation coincidentally with that of the agent.

14 (3) The commissioner shall also revoke the license as to any
15 machine for which he finds that the conditions upon which the machine was
16 licensed, as referred to in subsection (a) of this section, no longer exist.

17 (4) The license fee shall be as stated in § 23-61-401 for each
18 license year or part of a year for each respective vending machine.

19 (5) Proof of the existence of a subsisting license shall be
20 displayed on or about each vending machine in use in such manner as the
21 commissioner may reasonably require.

22 (c) Application for insurance issued by any vending machine must be
23 signed by or on behalf of the individual to be so insured, as provided in
24 §23-79-105.

25

26 23-64-224 222. ~~Payment and sharing of commissions~~ Payment of
27 commissions.

28 (a) No insurer shall directly or indirectly pay, and no person shall so
29 receive, any fee, commission, or other compensation for services as agent ~~or~~
30 ~~broker, or solicitor~~ in connection with any insurance of a subject resident,
31 located, or to be performed in this state, or for obtaining any such
32 insurance, unless at the time of the service to which such compensation is
33 related, such person was licensed and appointed as an agent or licensed as a ~~τ~~
34 ~~broker, or solicitor,~~ or licensed as a nonresident broker or licensed and
35 appointed as a nonresident agent.

36 (b) No licensee shall directly or indirectly share his commission or

1 other compensation received or to be received on account of a transaction
 2 under his license with any person not also licensed under this chapter as to
 3 the same kinds of insurance involved in the transaction. This provision shall
 4 not affect payment of the regular salaries due employees of the licensee or
 5 the distribution in regular course of business of compensation and profits
 6 among members or stockholders if the licensee is a firm, limited liability
 7 company or corporation.

8 (c) If a licensed nonresident broker or nonresident agent resides in a
 9 state which requires its resident agents to retain all or a stipulated
 10 percentage of the commission on coverages placed in such state by nonresident
 11 agents or brokers, the Arkansas agent shall retain not less than a like
 12 percentage of the commission for his services for like coverage placed in
 13 Arkansas by residents of such other state.

14 (d) This section shall not apply as to those transactions with surplus
 15 line brokers which are lawful under §23-65-310, nor to life or disability
 16 insurance placed as provided in §23-64-227.

17 ~~—— (e) Payment of commissions accrued or earned under active licensure to a~~
 18 ~~resident agent after his license is recorded as on inactive or retired status~~
 19 ~~on State Insurance Department licensure records is not prohibited by this~~
 20 ~~section.~~

21

22 23-64-225 223. Reporting and accounting for premiums Fiduciary duties
 23 of licensees.

24 (a) All funds, fees, monies, premiums or return premiums received by a
 25 licensee in the capacity as a licensee ~~an agent, broker, or solicitor~~ shall be
 26 trust funds so received by the licensee in a fiduciary capacity, and the
 27 licensee ~~agent, broker, or solicitor~~ shall in the applicable regular course of
 28 business account for and pay these funds, fees, monies, premiums or return
 29 premiums to the insured, insurer, licensee or any other person ~~or agent~~
 30 entitled thereto.

31 (b) Any licensee ~~agent, broker, or solicitor~~ who, not being lawfully
 32 entitled thereto, diverts or appropriates those funds or any portion thereof
 33 to his own use shall upon conviction be guilty of theft of property and shall
 34 be punished as provided by law.

35

36 23-64-226 224. Relationship of agents and brokers to insurer

1 Combination agent and broker license.

2 (a) A licensed agent may be licensed as a broker and be a broker as to
3 insurers for which he is not then licensed as agent.

4 (b) A licensed broker may be licensed as and be an agent as to insurers
5 appointing him as agent.

6 (c) The sole relationship between a broker and an insurer as to which he
7 is then licensed as an agent, as to transactions arising during the existence
8 of the agency appointment, shall be that of insurer and agent and not that of
9 insurer and broker.

10

11 ~~23-64-227~~ 225. Life or disability insurance agent - Excess or rejected
12 ~~business~~ Excess or rejected business.

13 A licensed life or disability insurance agent authorized to sell life or
14 disability insurance, may, from time to time may place excess or rejected
15 risks in any other life or disability insurer authorized to transact insurance
16 in this state, with the knowledge and approval of the insurers as to which the
17 agent is so appointed licensed, and may receive a commission thereon without
18 being required to have an appointment a license as to the other insurer.

19

20 ~~23-64-228~~ 226. Rights of agent following termination of appointment
21 Termination rights of agents.

22 Following termination of any agency appointment as to property,
23 casualty, or surety insurance, subject to consent of the insurer and to the
24 terms of the insurer's contract with the agent, the agent may continue to
25 service, and receive from the insurer commissions or other compensation
26 relative to, business written by him for the insurer during the existence of
27 the appointment.

28

29 ~~23-64-229~~ 227. Nonresident agents and brokers - Service of process
30 Appointment of commissioner as agent for service of process.

31 (a) Application for an acceptance of any nonresident license provided
32 under this chapter ~~a license as a nonresident broker or a nonresident agent~~
33 ~~under § 23-64-212, or as an agent pursuant to the provisions of §§ 23-64-203 or~~
34 ~~23-64-204 for the licensing of individuals who are not actual residents of~~
35 ~~this state,~~ shall thereby be deemed to constitute irrevocable appointment of
36 the commissioner as the agent of the licensee for the acceptance of service of

1 process issued in this state in any action or proceeding against the licensee
2 arising out of such licensing or at any time out of transactions under the
3 license.

4 (b) Duplicate copies of the process shall be served upon the
5 commissioner or upon his deputy, assistant, or other person in charge of his
6 office during his absence.

7 (1) Upon receiving the service, the commissioner shall promptly
8 forward a copy of it by registered mail, return receipt requested, to the
9 nonresident licensee at his business address last of record with the
10 commissioner.

11 (2) Where process is served upon the commissioner as a
12 nonresident's process agent, the licensee shall be required to appear, answer,
13 or plead within thirty (30) days after date of the mailing of the copy of such
14 process by the commissioner.

15 (3) Process served upon the commissioner and a copy forwarded
16 shall for all purposes constitute service upon the person licensed.

17

18 SUBCHAPTER 3. CONTINUING EDUCATION

19 23-64-301. ~~Requirement~~ Continuing education required.

20 (a) Beginning July 1, 1990, each insurance agent, ~~solicitor, consultant,~~
21 ~~and or~~ broker, unless exempt under § 23-64-302, licensed to ~~sell insurance~~ in
22 this state shall successfully complete courses of instruction as required by
23 this ~~subchapter~~ section.

24 (b) ~~Any~~ Beginning July 1, 1998, any person licensed to act as an
25 insurance agent, ~~solicitor, consultant~~ or broker shall, during each annual
26 ~~consecutive period of two (2) calendar years~~ during the duration of his
27 license, satisfactorily complete courses or programs of instruction equivalent
28 to a minimum of eight (8) ~~sixteen (16)~~ hours of instruction for a life or
29 disability license, or both, ~~or and~~ a minimum of eight (8) ~~sixteen (16)~~ hours
30 of instruction for a property and casualty license. ~~(c)~~ Persons holding dual
31 licenses for life and disability or life or disability and property and
32 casualty shall also be required to complete courses of instruction for a total
33 of ten (10) ~~twenty (20)~~ hours. For purposes of implementation, those agents
34 who were to obtain educational hours before 12-31-97 shall be able to credit
35 those hours obtained for the 12-31-97 requirement as the annual requirement of
36 8 hours by their birthdate.

1 (c) The Commissioner may arrange for the administration of this
 2 subchapter, or any part thereof, by independent contractor as specified by
 3 contract, in a fair and impartial manner, and without unfair discrimination as
 4 between individuals subject to this subchapter.

5

6 23-64-302. ~~Applicability of subchapter~~ Requirements for licensees;
 7 exceptions. The provisions of this subchapter shall not apply to:

8 (1) Those natural persons holding licenses for any kind or kinds of
 9 insurance for which an examination is not required by the laws of this state;

10 (2) Any limited or restricted license the commissioner may exempt;

11 (3) Any natural person who is at least sixty (60) years of age;

12 (4) Any natural person who has held an active license as an agent,
 13 solicitor, consultant, or broker for a period of at least fifteen (15)
 14 consecutive years;

15 (5) The licensee as a firm, limited liability company or corporation,
 16 but this exception does not apply to any individual or natural person unless
 17 already exempted.

18 ~~—— (5) Any third party administrator who does not solicit business; and~~

19 (6) Nonresident agents, ~~solicitors, consultants~~ or brokers.

20

21 23-64-303. ~~Newly licensed agents~~ Requirements for newly licensed agents
 22 or brokers.

23 Newly licensed agents, ~~solicitors~~ or brokers shall not be required to
 24 meet the requirements of this subchapter until the first annual period
 25 ~~calendar year~~ after the first renewal of their license on the birthdate of the
 26 licensee end of the calendar year in which the applicant first received an
 27 Arkansas license.

28

29 23-64-304. ~~Powers and duties of commissioner~~ Determination of course
 30 content and credit; time extensions.

31 (a) Rules and regulations necessary and appropriate to implement and
 32 administer this subchapter shall be promulgated by the commissioner.

33 ~~—— (b) The Insurance Advisory Examining Board provided for in [#]23-64-201~~
 34 ~~may be utilized by the commissioner to assist him in determining acceptable~~
 35 ~~content and classroom credit of courses or programs of instruction.~~

36 ~~(c)~~ (b) For good cause shown, the commissioner may grant an extension of

1 time during which the educational requirements imposed by this subchapter may
 2 be completed, but such extension of time shall not exceed a period of one (1)
 3 calendar year.

4 ~~(d)~~ (c) The number of ~~classroom~~ hours for which credit shall be given
 5 for such courses, meetings, or programs of instruction shall be as determined
 6 by the commissioner.

7 (d) Educational requirements shall be obtained and reported annually to
 8 the commissioner on or before the birthdate of the licensee. Failure to
 9 report or obtain the mandated educational requirements along with the fee
 10 imposed in a timely manner shall result in the additional following fines:

11 (i) if within thirty (30) days after the due date, a fine of
 12 twenty-five dollars (\$25) shall be imposed automatically;

13 (ii) if within sixty (60) days after the due date, a fine of
 14 fifty dollars (\$50) shall be imposed automatically;

15 (iii) if within ninety (90) days after the due date, a fine of
 16 one hundred dollars (\$100) shall be imposed automatically;

17 (iv) if after ninety (90) days from the due date, the license
 18 shall become automatically suspended; reinstatement of the license shall
 19 require payment of fine of one hundred fifty dollars (\$150) if reinstated
 20 within one year from the due date of the education;

21 (v) reinstatement after one year from the due date is not
 22 available. The licensee must again proceed to become licensed as if never
 23 having held a license, should a license be desired, in addition to obtaining
 24 the education due when the license suspended and paying the One Hundred Fifty
 25 Dollar (\$150) fine.

26
 27 ~~23-64-305. Courses or programs meeting commissioner's standards - Credit~~
 28 ~~for teachers~~ Programs of instruction.

29 (a) Subject to approval of the commissioner, the courses or programs of
 30 instruction or parts thereof which shall be deemed to meet the commissioner's
 31 standards for continuing education required hereunder shall include, but not
 32 be limited to, the following:

- 33 (1) American College Courses (CLU, ChFC);
- 34 (2) Life Underwriters Training Council (LUTC);
- 35 (3) Certified Insurance Counselor (CIC);
- 36 (4) Chartered Property & Casualty Underwriter (CPCU);

1 (5) Insurance Institute of America (IAA);

2 (6) Certified Health Consultant (CHC);

3 (7) Registered Health Underwriter (RHU);

4 (8) An insurance-related course or program of instruction taught by an
 5 accredited college, university, or other educational institution in this state
 6 having a comprehensive course of instruction approved and certified by the
 7 commissioner;

8 (9) A course or program of instruction developed or sponsored by any
 9 authorized insurer, recognized agents' association, or insurance trade
 10 association, including meetings dedicated to the instruction of agents'
 11 education concerning matters of insurance or insurance law.

12 (b) A person teaching any approved course or program of instruction
 13 shall be allowed credit for the same number of educational ~~classroom~~ hours as
 14 would be granted a person taking and successfully completing such course, ~~or~~
 15 program, or meeting.

16 (10) For courses, meetings, or programs not personally attended, but
 17 taken by correspondence, a proctored written exam shall be required with proof
 18 of passing said correspondence course accompanied by an affidavit from the
 19 proctor in form and substance as may be prescribed by the commissioner, before
 20 credit may be considered for educational hours for that correspondence course.

21

22 23-64-306. ~~Certification~~ Certification of courses completed; filing
 23 fee.

24 (a) Every person subject to the provisions of this subchapter shall
 25 furnish, in a form satisfactory to the commissioner, written certification as
 26 to the courses, meetings or programs of instruction taken and successfully
 27 completed by such persons.

28 (b) A filing fee shall be paid by the person furnishing the
 29 certification in an amount determined by the commissioner to be sufficient to
 30 cover the administrative costs related to the handling of such certification.

31 (c) The commissioner shall determine the amount of the filing fee which
 32 shall not substantially exceed the cost of administering this subchapter.

33

34 ~~23-64-307. Failure to comply with subchapter - Extension of time.~~

35 ~~(a) The commissioner may suspend the license of any agent, solicitor,~~
 36 ~~consultant or broker who has failed to comply with the provisions of this~~

1 ~~subchapter within ninety (90) days after January 1, 1993, or within ninety~~
 2 ~~(90) days of the first day of January of each year thereafter.~~

3 ~~—— (b) Such suspension shall be accomplished in the following manner:~~

4 ~~—— (1) If an agent, solicitor, consultant, or broker fails to furnish the~~
 5 ~~written certification required by this subchapter within ninety (90) days~~
 6 ~~after the first day of January, the commissioner shall issue an order to show~~
 7 ~~cause why the license of such individual should not be suspended.~~

8 ~~—— (2) The order to show cause shall state that the individual has the~~
 9 ~~right to a public hearing before the commissioner if a written request is~~
 10 ~~delivered to the commissioner within thirty (30) days from the date of mailing~~
 11 ~~of the order to show cause.~~

12 ~~—— (c)(1) Upon request of such individual within such thirty-day period,~~
 13 ~~the commissioner may extend the time for filing such certification for an~~
 14 ~~additional ninety (90) days. The notice shall be mailed by first-class mail~~
 15 ~~to the last known address contained in the licensing records of the~~
 16 ~~department.~~

17 ~~—— (2) If the commissioner fails to receive a request for such extension or~~
 18 ~~for a hearing within such thirty-day period, he shall enter an order~~
 19 ~~suspending the individual's license and mail a copy thereof to such person.~~

20

21 23-64-308 307. ~~Insurance Continuing Education Trust Fund Insurance~~
 22 ~~Continuing Education Trust Fund~~

23 (a) All funds received pursuant to the provisions of this subchapter
 24 shall be transmitted by the commissioner to the Treasurer of State to the
 25 credit of an account or fund to be entitled Insurance Continuing Education
 26 Trust Fund, which is hereby established.

27 (b) All expenditures disbursed pursuant to this subchapter shall be paid
 28 from funds appropriated from the Insurance Continuing Education Trust Fund by
 29 the General Assembly.

30

31 SUBCHAPTER 4. MANAGING GENERAL AGENTS ACT

32 23-64-401. TITLE.

33 This subchapter may be cited as the Managing General Agents Act .

34 23-64-402. Definitions.

35 (a) Actuary means a person who is a member in good standing of the
 36 American Academy of Actuaries.

1 (b) Insurer means any person, firm, association, limited liability
 2 company or corporation duly licensed in this state as an insurance company.

3 (c)(1) Managing general agent means any person, firm, association,
 4 limited liability company or corporation who manages all or part of the
 5 insurance business of an insurer, including the management of a separate
 6 division, department, or underwriting office, and acts as an agent for such
 7 insurer whether known as a managing general agent, manager, or other similar
 8 term, who, with or without the authority, either separately or together with
 9 affiliates:

10 (A) Produces, directly or indirectly, and underwrites an
 11 amount of gross direct written premium equal to or more than five percent (5%)
 12 of the policyholder surplus as reported in the last annual statement of the
 13 insurer in any one (1) quarter or year; together with

14 (B) One (1) or more of the following activities related to
 15 the business produced:

16 (i) Adjusts or pays claims in excess of an amount
 17 determined by the commissioner; or

18 (ii) Negotiates reinsurance on behalf of the insurer.

19 (2) Notwithstanding subdivision (c)(1) of this section, the
 20 following persons shall not be considered as managing general agents for the
 21 purposes of this subchapter:

22 (A) An employee of the insurer;

23 (B) A United States manager of the United States branch of
 24 an alien insurer;

25 (C) An underwriting manager which, pursuant to contract,
 26 manages all or part of the insurance operations of the insurer, is under
 27 common control with the insurer, subject to the Insurance Holding Company
 28 Regulatory Act, §§23-63-501, et seq., and whose compensation is not based on
 29 the volume of premiums written; or

30 (D) The attorney-in-fact authorized by and acting for the
 31 subscribers of a reciprocal insurer or interinsurance exchange under powers of
 32 attorney.

33 (d) Underwrite means the authority to accept or reject risk on behalf
 34 of the insurer.

35

36 23-64-403. ~~Licensure~~ License; surety requirements.

1 (a) No person, firm, association, limited liability company or
 2 corporation shall act in the capacity of a managing general agent with respect
 3 to risks located in this state for an insurer licensed in this state unless
 4 such person is a licensed managing general agent in this state.

5 (b) No person, firm, association, limited liability company or
 6 corporation shall act in the capacity of a managing general agent representing
 7 an insurer domiciled in this state with respect to risks located outside this
 8 state unless such person is licensed as a managing general agent in this state
 9 pursuant to the provisions of this subchapter. Such license may be a
 10 nonresident license.

11 (c) The commissioner may require the managing general agent to post a
 12 bond in an amount acceptable to him for the protection of the insurer.

13 (d) The commissioner may require the managing general agent to maintain
 14 an errors and omissions policy.

15

16 23-64-404. ~~Required contract provisions~~ Agency contracts; provisions.

17 No person, firm, association, limited liability company or corporation
 18 acting in the capacity of a managing general agent shall place business with
 19 an insurer unless there is in force a written contract between the parties
 20 which sets forth the responsibilities of each party and, where both parties
 21 share responsibility for a particular function, specifies the division of such
 22 responsibilities, and which contains the following minimum provisions, that:

23 (1) The insurer may terminate the contract for cause upon written notice
 24 to the managing general agent. The insurer may suspend the underwriting
 25 authority of the managing general agent during the pendency of any dispute
 26 regarding the cause for termination;

27 (2) The managing general agent will render accounts to the insurer
 28 detailing all transactions and remit all funds due under the contract to the
 29 insurer on not less than a monthly basis;

30 (3) All funds collected for the account of an insurer will be held by
 31 the managing general agent in a fiduciary capacity in a bank which is a member
 32 of the Federal Reserve System. This account shall be used for all payments on
 33 behalf of the insurer. The managing general agent may retain no more than
 34 three (3) months' estimated claims payments and allocated loss adjustment
 35 expenses;

36 (4) Separate records of business written by the managing general agent

1 will be maintained. The insurer shall have access and the right to copy all
 2 accounts and records related to its business in a form usable by the insurer,
 3 and the commissioner shall have access to all books, bank accounts, and
 4 records of the managing general agent in a form usable to the commissioner;
 5 ~~Such records shall be retained according to §23-64-222(c);~~

6 (5) The contract may not be assigned in whole or part by the managing
 7 general agent;

8 (6)(A) Appropriate underwriting guidelines, including:

- 9 (i) The maximum annual premium volume;
- 10 (ii) The basis of the rates to be charged;
- 11 (iii) The types of risks which may be written;
- 12 (iv) Maximum limits of liability;
- 13 (v) Applicable exclusions;
- 14 (vi) Territorial limitations;
- 15 (vii) Policy cancellation provisions; and
- 16 (viii) The maximum policy period.

17 (B) The insurer shall have the right to cancel or nonrenew any
 18 policy of insurance subject to the applicable laws and regulations of this
 19 state concerning the cancellation and nonrenewal of insurance policies;

20 (7) If the contract permits the managing general agent to settle claims
 21 on behalf of the insurer:

22 (A) All claims must be reported to the company in a timely manner;

23 (B) A copy of the claim file will be sent to the insurer at its
 24 request or as soon as it becomes known that the claim:

- 25 (i) Has the potential to exceed an amount determined by the
 26 commissioner or exceeds the limit set by the company, whichever is less;
- 27 (ii) Involves a coverage dispute;
- 28 (iii) May exceed the managing general agent's claims
 29 settlement authority;
- 30 (iv) Is open for more than six (6) months; or
- 31 (v) Is closed by payment of an amount set by the
 32 commissioner or an amount set by the company, whichever is less;

33 (C) All claim files will be the joint property of the insurer and
 34 managing general agent. However, upon an order of liquidation of the insurer,
 35 such files shall become the sole property of the insurer or its estate; the
 36 managing general agent shall have reasonable access to and the right to copy

1 the files on a timely basis; and

2 (D) Any settlement authority granted to the managing general agent
3 may be terminated for cause upon the insurer's written notice to the managing
4 general agent or upon the termination of the contract. The insurer may
5 suspend the settlement authority during the pendency of any dispute regarding
6 the cause for termination;

7 (8) Where electronic claims files are in existence, the contract must
8 address the timely transmission of the data;

9 (9) If the contract provides for a sharing of interim profits by the
10 managing general agent, and the managing general agent has the authority to
11 determine the amount of the interim profits by establishing loss reserves or
12 controlling claim payments, or in any other manner, interim profits will not
13 be paid to the managing general agent until one (1) year after they are earned
14 for property insurance business and five (5) years after they are earned on
15 casualty business and not until the profits have been verified pursuant to §
16 23-64-405; and

17 (10) The managing general agent shall not:

18 (A) Bind reinsurance or retrocessions on behalf of the insurer,
19 except that the managing general agent may bind facultative reinsurance
20 contracts pursuant to obligatory facultative agreements if the contract with
21 the insurer contains reinsurance underwriting guidelines including, for both
22 reinsurance assumed and ceded, a list of reinsurers with which such automatic
23 agreements are in effect, the coverages and amounts or percentages that may be
24 reinsured, and commission schedules;

25 (B) Commit the insurer to participate in insurance or reinsurance
26 syndicates;

27 (C) Appoint any agent without assuring that the agent is lawfully
28 licensed to transact the type of insurance for which appointed;

29 (D) Without prior approval of the insurer, pay or commit the
30 insurer to pay a claim over a specified amount, net of reinsurance, which
31 shall not exceed one percent (1%) of the insurer's policyholder's surplus as
32 of December 31 of the last completed calendar year;

33 (E) Collect any payment from a reinsurer, or commit the insurer to
34 any claim settlement with a reinsurer, without prior approval of the insurer.
35 If prior approval is given, a report must be promptly forwarded to the
36 insurer;

1 (F) Permit its subagent to serve on the insurer's board of
2 directors;

3 (G) Jointly employ an individual who is employed with the insurer;
4 or

5 (H) Appoint a managing general subagent.

6

7 23-64-405. ~~Duties of insurers~~ Reporting requirements.

8 (a) The insurer shall have on file an independent financial examination,
9 in a form acceptable to the commissioner, of each managing general agent with
10 which it has done business.

11 (b) If a managing general agent establishes loss reserves, the insurer
12 shall annually obtain the opinion of an actuary attesting to the adequacy of
13 loss reserves established for losses incurred and outstanding on business
14 produced by the managing general agent. This is in addition to any other
15 required loss reserve certification.

16 (c) The insurer shall periodically, and not less often than
17 semiannually, conduct an on-site review of the underwriting and claims
18 processing operations of the managing general agent.

19 (d) Binding authority for all reinsurance contracts or participation in
20 insurance or reinsurance syndicates shall rest with an officer of the insurer,
21 who shall not be affiliated with the managing general agent.

22 (e)(1) Within thirty (30) days of entering into or termination of a
23 contract with a managing general agent, the insurer shall provide written
24 notification of such appointment or termination to the commissioner.

25 (2) Notices of appointment of a managing general agent shall
26 include a statement of duties which the applicant is expected to perform on
27 behalf of the insurer, the lines of insurance for which the applicant is to be
28 authorized to act, and any other information the commissioner may request.

29 (f)(1) An insurer shall review its books and records each quarter to
30 determine if any agent has become, by operation of §23-64-402(c), a managing
31 general agent as defined in that subsection.

32 (2) If the insurer determines that an agent has become a managing
33 general agent pursuant to § 23-64-402(c), the insurer shall promptly notify
34 the agent and the commissioner of such determination and the insurer and agent
35 must fully comply with the provisions of this subchapter within thirty (30)
36 days.

1 (g)(1) An insurer shall not appoint to its board of directors an
 2 officer, director, employee, subagent, or controlling shareholder of its
 3 managing general agents.

4 (2) This subsection shall not apply to relationships governed by
 5 §§23-63-601, et seq.

6

7 23-64-406. ~~Examination authority~~ Representative capacity; examinations.

8 The acts of the managing general agent are considered to be the acts of
 9 the insurer on whose behalf it is acting. A managing general agent may be
 10 examined as if it were the insurer.

11

12 23-64-407. ~~Penalties and liabilities~~ Penalties for violations.

13 (a) If the commissioner finds after a hearing conducted in accordance
 14 with §§23-61-301, et seq. that any person has violated any provision of this
 15 subchapter, the commissioner may order:

16 (1) For each separate violation, a penalty in an amount of ~~one~~
 17 ~~thousand (\$1,000)~~ two thousand (\$2,000) dollars or, if the commissioner has
 18 found willful misconduct or willful violation, ~~five thousand (\$5,000)~~ ten
 19 thousand (\$10,000) dollars;

20 (2) Revocation or suspension of the managing general agent's
 21 license; and

22 (3) The managing general agent to reimburse the insurer, the
 23 rehabilitator, or liquidator of the insurer for any losses incurred by the
 24 insurer caused by a violation of this subchapter committed by the managing
 25 general agent.

26 (b) The decision, determination, or order of the commissioner pursuant
 27 to subsection (a) of this section shall be subject to judicial review pursuant
 28 to §23-61-307.

29 (c) Nothing contained in this section shall affect the right of the
 30 commissioner to impose any other penalties provided for in the insurance law.

31 (d) Nothing contained in this subchapter is intended to or shall in any
 32 manner limit or restrict the rights of policyholders, claimants, and auditors.

33

34 23-64-408. ~~Rules and regulations~~ Commissioner's regulatory authority.

35 The commissioner may adopt reasonable rules and regulations for the
 36 implementation and administration of the provisions of this subchapter."

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SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the name in the Code.

SECTION 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that the changes made in this act should become effective at the beginning of the next fiscal year; that unless the changes become effective at the beginning of the next fiscal year a substantial and unnecessary burden will be placed upon the insurance department; and therefore an emergency is hereby declared to exist and this act being immediately necessary for the preservation of public health, peace, and safety shall be in full force and effect from and after July 1, 1997.