

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: H3/7/01 H3/19/01

83rd General Assembly

# A Bill

Regular Session, 2001

HOUSE BILL 2405

By: Representative Files

## For An Act To Be Entitled

AN ACT TO AMEND VARIOUS CHAPTERS AND SUBCHAPTERS OF THE ARKANSAS INSURANCE CODE, TITLE 23 OF THE ARKANSAS CODE, IN ORDER TO REPLACE THE TERM DISABILITY INSURANCE WITH THE TERM ACCIDENT AND HEALTH INSURANCE, WHERE WARRANTED AND APPROPRIATE; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT TO REPLACE THE TERM DISABILITY INSURANCE WITH THE TERM ACCIDENT AND HEALTH INSURANCE, WHERE WARRANTED AND APPROPRIATE.

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

*SECTION 1. Arkansas Code 23-61-401(4)(B), concerning appointment fees for insurance agents, is amended to read as follows:*

*(B) Life and ~~disability~~ accident and health insurance agents:*

*Appointment of agent by insurer, each insurer . . . . . 10.00*

*Annual continuation of appointment, each insurer . . . 10.00*

*SECTION 2. Arkansas Code 23-61-507(a) is amended to read as follows:*

*(a) Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in § 23-61-503 and which is required to submit to an examination by the Insurance Commissioner under § 23-61-504, if the coverage is not fully insured or otherwise fully covered by an admitted life or ~~disability~~ accident and health*

insurer, nonprofit hospital service plan, or nonprofit health care plan, shall advise every purchaser, prospective purchaser, and covered person of this lack of insurance or other coverage.

SECTION 3. Arkansas Code 23-62-103 is amended to read as follows:

23-62-103. ~~Disability~~ Accident and health insurance.

(a) As used in this code, unless the context otherwise requires, "~~disability~~ accident and health insurance" is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against loss of income due to disablement, or expense resulting from sickness, and every insurance appertaining thereto.

(b) Transaction of ~~disability~~ accident and health insurance does not include workers' compensation, as defined in § 23-62-105(a)(3).

SECTION 4. Arkansas Code 23-62-105(a)(2), concerning the elements of casualty insurance, is amended to read as follows:

(2) Liability Insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, and the provision of medical, hospital, surgical, ~~or~~ disability, or accident and health benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

SECTION 5. Arkansas Code 23-62-105(b), concerning the elements of casualty insurance, is amended to read as follows:

(b) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (1) vehicle, (2) liability, (4) burglary, and (10) malpractice, of subsection (a) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or ~~disability~~ accident and health insurances.

SECTION 6. Arkansas Code 23-62-301(b) is amended to read as follows:

(b) All reserves ceded to a nonadmitted reinsurer on life insurance

1 and ~~disability~~ accident and health insurance written in this state shall be  
2 subject to the provisions of this subchapter.

3  
4 SECTION 7. Arkansas Code 23-62-302(a), concerning reinsurance of life  
5 and accident and health risks, is amended to read as follows:

6 (a) Reinsurance of life and ~~disability~~ accident and health insurance  
7 risks by domestic and foreign insurance companies is regulated under the  
8 provisions of §§ 23-62-201, 23-62-202, ~~23-62-203 [repealed]~~, 23-62-204, and  
9 23-62-205.

10  
11 SECTION 8. Arkansas Code 23-63-204(1), concerning certificate of  
12 authority eligibility, is amended to read as follows:

13 (1) A life insurer shall be authorized to transact in addition  
14 only ~~disability~~ accident and health insurance; however, the commissioner  
15 shall continue to so authorize any life insurer otherwise qualified which,  
16 immediately prior to January 1, 1960, was lawfully authorized to transact in  
17 this state kinds of insurance in addition to life and ~~disability~~ accident and  
18 health;

19  
20 SECTION 9. Arkansas Code 23-63-205(f), concerning capital funds of  
21 insurers, is amended to read as follows:

22 (f) A casualty insurer may be authorized to transact also ~~disability~~  
23 accident and health insurance without additional capital or additional  
24 surplus.

25  
26 SECTION 10. Arkansas Code 23-63-515(d), concerning extraordinary  
27 dividends, is amended to read as follows:

28 (d) For purposes of this section, an extraordinary dividend or  
29 distribution means any dividend or distribution of cash or other property  
30 whose fair market value, together with that of the other dividends or  
31 distributions made within the preceding twelve (12) months, exceeds the  
32 larger of:

33 (1) The lesser of:

34 (A) Ten percent (10%) of surplus; or

35 (B)(i) The net gain from operations of life and/or

36 ~~disability~~ accident and health insurers; or

(ii) The net income of property and/or casualty insurers, not including, with either type of insurer, its realized capital gains, and, further, in determining under this alternative whether a distribution or dividend is extraordinary, a property and/or casualty insurer may carry forward income from the previous two (2) calendar years that has not already been paid out as dividends; or

(2) Ten percent (10%) of surplus, with dividends payable only from unassigned funds less twenty-five percent (25%) of unrealized capital gains; or

(3) The lesser of:

(A) Ten percent (10%) of surplus; or

(B)(i) The net gain before capital gains for life and/or ~~disability~~ accident and health insurers, with it understood that such an insurer may carry forward net gain before capital gains from the previous two (2) calendar years that has not already been paid out as dividends; or

(ii) The net investment income for property and/or casualty insurers, with it understood that such an insurer may carry forward net investment income from the previous three (3) calendar years, with dividends in each instance being payable only from unassigned funds less twenty-five percent (25%) of unrealized capital gains.

SECTION 11. Arkansas Code 23-63-1302(F), concerning RBC definitions, is amended to read as follows:

F. "Life and/or ~~disability~~ accident and health insurer" means any insurance company authorized to transact a life and/or ~~disability~~ accident and health insurance business pursuant to § 23-63-201 et seq.

SECTION 12. Arkansas Code 23-63-1302(H), concerning RBC definitions, is amended to read as follows:

H. "Negative trend" means, with respect to a life and/or ~~disability~~ accident and health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions.

SECTION 13. Arkansas Code 23-63-1303(B), concerning RBC reports, is amended to read as follows:

1       B. A life and/or ~~disability~~ accident and health insurer's RBC shall be  
2 determined in accordance with the formula set forth in the RBC Instructions.  
3 The formula shall take into account and may adjust for the covariance  
4 between:

- 5               (1) The risk with respect to the insurer's assets;  
6               (2) The risk of adverse insurance experience with respect to the  
7 insurer's liabilities and obligations;  
8               (3) The interest rate risk with respect to the insurer's  
9 business; and  
10              (4) All other business risks and such other relevant risks as  
11 are set forth in the RBC Instructions;  
12 determined in each case by applying the factors in the manner set forth in  
13 the RBC Instructions.

14  
15       SECTION 14. Arkansas Code 23-63-1304(A)(1)(b), concerning company  
16 action level events, is amended to read as follows:

17               (b) If a life and/or ~~disability~~ accident and health  
18 insurer, the insurer has Total Adjusted Capital which is greater than or  
19 equal to its Company Action Level RBC but less than the product of its  
20 Authorized Control Level RBC and 2.5 and has a negative trend;

21  
22       SECTION 15. Arkansas Code 23-63-1404(A), concerning revisions of ceded  
23 reinsurance agreements, is amended to read as follows:

24       A. Materiality and Scope.

25               1. No nonrenewals, cancellations or revisions of ceded  
26 reinsurance agreements need be reported pursuant to § 23-63-1402 if the  
27 nonrenewals, cancellations or revisions are not material. For purposes of  
28 this subchapter, a material nonrenewal, cancellation or revision is one that  
29 affects:

30               (a) As respects property and casualty business, including  
31 ~~disability~~ accident and health business written by a property and casualty  
32 insurer:

33                       (i) More than fifty percent (50%) of the insurer's  
34 total ceded written premium; or

35                       (ii) More than fifty percent (50%) of the insurer's  
36 total ceded indemnity and loss adjustment reserves.

(b) As respects life, annuity, and ~~disability~~ accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.

(c) As respects either property and casualty or life, annuity, and ~~disability~~ accident and health business, either of the following events shall constitute a material revision which must be reported:

(i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or

(ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

2. However, no filing shall be required if:

(a) As respects property and casualty business, including ~~disability~~ accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or

(b) As respects life, annuity, and ~~disability~~ accident and health insurance: the total reserve taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

SECTION 16. Arkansas Code 23-64-219(b), concerning appointments of agents, is amended to read as follows:

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

SECTION 17. Arkansas Code 23-64-219(c), concerning appointments of agents, is amended to read as follows:

(c) Biennially, prior to June 1 of each even-numbered year, each

1 insurer maintaining a certificate of authority to transact life and  
2 ~~disability~~ accident and health insurance and, prior to June 1 of each odd-  
3 numbered year, all other insurers maintaining a certificate of authority to  
4 transact insurance in this state, shall file with the commissioner an  
5 alphabetical list of the names and addresses of all its agents whose  
6 appointments in this state are to remain in effect, accompanied by payment of  
7 the biennial continuation of appointment fee as provided in § 23-61-401. At  
8 the same time, the insurer shall also file with the commissioner an  
9 alphabetical list of the names and addresses of all its agents whose  
10 appointments in this state are not to remain in effect, accompanied by any  
11 documentation the commissioner shall require.

12  
13 SECTION 18. Arkansas Code 23-64-222(d), concerning payment of  
14 commissions, is amended to read as follows:

15 (d) This section shall not apply as to those transactions with surplus  
16 line brokers which are lawful under § 23-65-310, nor to life or ~~disability~~  
17 accident and health insurance placed as provided in § 23-64-225.

18  
19 SECTION 19. Arkansas Code 23-64-225 is amended to read as follows:  
20 23-64-225. Excess or rejected business.

21 A licensed agent authorized to sell life or ~~disability~~ accident and  
22 health insurance may, from time to time, place excess or rejected risks in  
23 any other life or ~~disability~~ accident and health insurer authorized to  
24 transact insurance in this state, with the knowledge and approval of the  
25 insurers as to which the agent is so appointed, and may receive a commission  
26 thereon without being required to have an appointment as to the other  
27 insurer.

28  
29 SECTION 20. Arkansas Code 23-64-301(b), concerning continuing  
30 education requirements, is amended to read as follows:

31 (b)(1) Beginning July 1, 1998, any person licensed to act as an  
32 insurance agent or broker shall, during each annual period during the  
33 duration of his license, satisfactorily complete courses or programs of  
34 instruction equivalent to a minimum of eight (8) hours of instruction for a  
35 life or ~~disability~~ accident and health license, or both, or a minimum of  
36 eight (8) hours of instruction for a property and casualty license.

(2) Persons holding dual licenses for life and ~~disability~~ accident and health or life or ~~disability~~ accident and health and property and casualty shall also be required to complete courses of instruction for a total of ten (10) hours.

(3) For purposes of implementation, those agents who were to obtain educational hours before December 31, 1997, shall be able to credit those hours obtained for the December 31, 1997, requirement as the annual requirement of eight (8) hours by their birthdate.

SECTION 21. Arkansas Code 23-64-302(7), concerning continuing requirements for licenses, is amended to read as follows:

(7) Licensed insurance consultants for life, ~~disability~~ accident and health, property, or casualty insurance, or for other lines of insurance; and

SECTION 22. Arkansas Code 23-65-101(a)(2), concerning unauthorized insurance transactions, is amended to read as follows:

(2)(A) No person shall act as a solicitor, adjuster, or consultant without first obtaining appropriate licensure or registration as required by the insurance laws of this state for the transaction of insurance with respect to subjects of insurance or self-insurance resident, located, or to be performed in this state.

(B) No person shall act as a multiple employer trust, multiple employer welfare arrangement, collectively-bargained or self-insurance plan, or any other type of employee welfare benefit plan, providing ~~disability~~ accident and health benefits to citizens of this state without first obtaining appropriate registration as required by § 23-92-101; provided, however, this provision, while requiring registration and proof of their bona fides, shall not be deemed to authorize regulation of multiple employer trusts or multiple employer welfare arrangements, collectively-bargained or self-insurance plans, or any other type of employee welfare benefit plan which is in fact exempt from regulation by this state under the Employee Retirement Income Security Act of 1974, as amended.

(C) No person shall act as a third-party administrator for multiple employer trusts, multiple employer welfare arrangements, collectively-bargained trusts, or self-insurance plans providing ~~disability~~



1 accident and health insurance benefits to the citizens of this state without  
2 first obtaining appropriate registration as required by § 23-92-201 et seq.

3  
4 SECTION 23. Arkansas Code 23-65-104(b), concerning records produced on  
5 order, is amended to read as follows:

6 (b) This section does not apply to life and ~~disability~~ accident and  
7 health insurances.

8  
9 SECTION 24. Arkansas Code 23-66-206(7)(B), concerning unfair  
10 discrimination, is amended to read as follows:

11 (B) Making or permitting any unfair discrimination between  
12 individuals of the same class and of essentially the same hazard in the  
13 amount of premium policy fees or rates charged for any policy or contract of  
14 ~~disability~~ accident and health insurance, or in the benefits payable  
15 thereunder, or in any of the terms or conditions of the contract, or in any  
16 other manner whatever;

17  
18 SECTION 25. Arkansas Code 23-66-206(13), concerning churning of  
19 business, is amended to read as follows:

20 (13) "Churning of business" is wherein the licensee replaces an  
21 existing policy of life and/or ~~disability~~ accident and health insurance and  
22 that replacement is not in accordance with § 23-66-307 or that replacement is  
23 without objective demonstration by the licensee of the purpose of replacing  
24 the policy for the benefit and betterment of the insured.

25  
26 SECTION 26. Arkansas Code 23-66-304(c), concerning fictitious groups,  
27 is amended to read as follows:

28 (c) Nothing in this section shall apply to the State of Arkansas or  
29 any governmental unit thereof, including counties, school districts,  
30 municipalities, state agencies, or any other governmental subsidiary, to life  
31 or ~~disability~~ accident and health insurance or to annuity contracts, nor to  
32 any insurer which restricts its insurance coverage to members of a particular  
33 association or organization with which the insurer is directly affiliated.

34  
35 SECTION 27. Arkansas Code 23-66-307(a), concerning inducement to  
36 surrender life and accident and health insurance policies, is amended to read

1 as follows:

2 (a)(1) It is the public policy of this state that life and ~~disability~~  
3 accident and health insurance agents shall provide reasonable and  
4 professional service to each insured or prospective insured.

5 (2) Each agent is therefore charged with the responsibility of  
6 exercising discretion and good faith in the sales presentation or  
7 transaction.

8 (3) Further, it is within the general welfare of the people that  
9 each life and ~~disability~~ accident and health agent, when it is professionally  
10 advisable, shall improve upon or change the type of insurance that any  
11 insured or prospective insured presently has by providing either better  
12 coverage or an overall program of insurance more suitable for the needs of  
13 the insured, his or her family, or a business.

14 (4) However, certain abuses occur when agents engage in the  
15 above type of solicitation without good faith and professional discretion.  
16

17 SECTION 28. Arkansas Code 23-66-405 is amended to read as follows:

18 23-66-405. Premiums.

19 For every premium collected on a policy of property, casualty, life, or  
20 ~~disability~~ accident and health insurance in this state, the agent collecting  
21 or receiving such premium shall:

22 (1) Furnish the payor with written evidence of payment at the  
23 time the premium is collected, which shall include the amount paid, the date  
24 paid, the date-paid-to status of the policy, the policy number, or the  
25 identifying characteristics for which the payment will be credited, the  
26 signature or signed initials of the agent, and the office address and phone  
27 number of the insurer; and

28 (2) Remit to the insurer's home office or applicable district  
29 office the premium collected within ten (10) days of receipt from the premium  
30 payor or policy owner.  
31

32 SECTION 29. Arkansas Code 23-69-134(b)(3)(B)(ii), concerning  
33 maintenance of home office and records, is amended to read as follows:

34 (ii) Forty percent (40%) of its surplus if a life or  
35 ~~disability~~ accident and health insurer, or of its surplus to policyholders if  
36 other than a life or ~~disability~~ accident and health insurer; and

1  
2       SECTION 30. Arkansas Code 23-71-103(11), concerning stipulated premium  
3 insurers, is amended to read as follows:

4               (11) Sections 23-85-101 - 23-85-131, ~~disability~~ accident and  
5 health insurance policies;

6  
7       SECTION 31. Arkansas Code 23-71-116 is amended to read as follows:  
8       23-71-116. Conversion to legal reserve insurer.

9       A stipulated premium plan insurer may be converted to a legal reserve  
10 stock life and ~~disability~~ accident and health insurer subject to the  
11 following conditions:

12               (1) The insurer's articles of incorporation shall be amended to  
13 provide for transaction of insurance on a legal reserve basis;

14               (2) When first so converted, the insurer shall have paid-in  
15 capital stock of at least twenty-five thousand dollars (\$25,000) and surplus  
16 funds of at least twelve thousand five hundred dollars (\$12,500). At the end  
17 of the fifth calendar year next succeeding the calendar year in which the  
18 insurer was converted, its paid-in capital stock shall be not less than  
19 thirty-seven thousand five hundred dollars (\$37,500). At the end of the tenth  
20 and subsequent calendar years next succeeding the calendar year in which the  
21 insurer was so converted, its paid-up capital stock shall be not less than  
22 fifty thousand dollars (\$50,000);

23               (3) The insurer shall write no new business on the stipulated  
24 premium plan following the date of conversion;

25               (4) Stipulated premium plan business in force on the date of  
26 conversion may continue in force on the same plan. However, the insurer shall  
27 maintain separate accounts of its stipulated premium plan business and its  
28 legal reserve business;

29               (5) The maximum single risk retained by the insurer after  
30 conversion shall not exceed five percent (5%) of the insurer's paid-in  
31 capital stock, until the paid-in capital stock amounts to one hundred  
32 thousand dollars (\$100,000) or more;

33               (6) After conversion the insurer shall otherwise have the same  
34 powers and obligations as like legal reserve insurers under this code.

35  
36       SECTION 32. Arkansas Code 23-74-404(f), concerning society benefit

1 contracts, is amended to read as follows:

2 (f) No certificate shall be delivered or issued for delivery in this  
3 state unless a copy of the form has been filed with the commissioner in the  
4 manner provided for like policies issued by life insurers in this state.  
5 Every life, accident, health, or ~~disability~~ accident and health insurance  
6 certificate and every annuity certificate issued on or after January 1, 1991,  
7 shall meet the standard contract provision requirements not inconsistent with  
8 this chapter for like policies issued by life insurers in this state, except  
9 that a society may provide for a grace period for payment of premiums of one  
10 (1) full month in its certificates. The certificate shall also contain a  
11 provision stating the amount of premiums which are payable under the  
12 certificate and a provision reciting or setting forth the substance of any  
13 sections of the society's laws or rules in force at the time of issuance of  
14 the certificate which, if violated, will result in the termination or  
15 reduction of benefits payable under the certificate. If the laws of the  
16 society provide for expulsion or suspension of a member, the certificate  
17 shall also contain a provision that any member so expelled or suspended,  
18 except for nonpayment of a premium or within the contestable period for  
19 material misrepresentation in the application for membership or insurance,  
20 shall have the privilege of maintaining the certificate in force by  
21 continuing payment of the required premium.

22  
23 SECTION 33. Arkansas Code 23-75-113(b), concerning expenses and  
24 investments, is amended to read as follows:

25 (b) Every corporation heretofore incorporated shall maintain unearned  
26 subscription charges and other reserves upon the same basis as that required  
27 of domestic insurance companies transacting ~~disability~~ accident and health  
28 insurance.

29  
30 SECTION 34. Arkansas Code 23-79-403(7), concerning Medicare supplement  
31 definitions, is amended to read as follows:

32 (7) "Medicare supplement policy" means a group or individual  
33 policy of ~~disability~~ accident and health insurance or a subscriber contract  
34 of a hospital and medical service corporation or health maintenance  
35 organization, other than a policy issued pursuant to a contract under Section  
36 1876 or Section 1833 of the federal Social Security Act, or an issued policy

1 under a demonstration project authorized pursuant to amendments to the  
2 federal Social Security Act, which is advertised, marketed or designed  
3 primarily as a supplement to reimbursements under Medicare for the hospital,  
4 medical or surgical expenses of persons eligible for Medicare; and  
5

6 SECTION 35. Arkansas Code 23-79-406(d), concerning Medicare supplement  
7 disclosure standards, is amended to read as follows:

8 (d) The commissioner may adopt regulations for captions or notice  
9 requirements determined to be in the public interest and designed to inform  
10 prospective insureds that particular insurance coverages are not Medicare  
11 supplement coverages for all ~~disability~~ accident and health insurance  
12 policies sold to persons eligible for Medicare by reason of age, other than:

- 13 (1) Medicare supplement policies;
  - 14 (2) Disability income policies;
  - 15 (3) Basic, catastrophic, or major medical expense policies; or
  - 16 (4) Single premium, nonrenewable policies.
- 17

18 SECTION 36. Arkansas Code 23-79-406(e), concerning Medicare supplement  
19 disclosure standards, is amended to read as follows:

20 (e) The commissioner may adopt reasonable regulations to govern the  
21 full and fair disclosure of the information in connection with the  
22 replacement of ~~disability~~ accident and health policies, subscriber contracts,  
23 or certificates by persons eligible for Medicare.  
24

25 SECTION 37. Arkansas Code 23-79-701(2), concerning definitions, is  
26 amended to read as follows:

27 (2) "Health plan" means any group, blanket, or individual  
28 ~~disability~~ accident and health insurance policy, contract, or plan issued in  
29 this state by an insurance company, hospital medical service corporation, or  
30 health maintenance organization;  
31

32 SECTION 38. Arkansas Code 23-79-703(c), concerning health coverage for  
33 medically necessary foods, is amended to read as follows:

34 (c) If the cost of the medical food or low protein modified food  
35 products for an individual or a family with a dependent child or children  
36 exceeds the two thousand four hundred dollars (\$2,400) per year per child

1 income tax credit allowed under § 23-79-702, and the individual or a family  
2 with a dependent child or children has been denied accident and health ~~or~~  
3 ~~disability~~ insurance or coverage for phenylketonuria or cannot afford  
4 insurance coverage for phenylketonuria, the Department of Health shall  
5 reimburse the provider up to one thousand dollars (\$1,000) per individual  
6 from any funds appropriated therefor for the required health care service,  
7 including screening, diagnostic, and treatment services.

8  
9 SECTION 39. Arkansas Code 23-80-201 is amended to read as follows:  
10 23-80-201. Title.

11 This subchapter may be cited as the "Life and ~~Disability~~ Accident and  
12 Health Insurance Policy Language Simplification Act".

13  
14 SECTION 40. Arkansas Code 23-80-202 is amended to read as follows:  
15 23-80-202. Purpose.

16 (a) The purpose of this subchapter is to establish minimum standards  
17 for language used in policies, contracts, and certificates of life insurance  
18 and annuities, ~~disability~~ accident and health insurance, credit life  
19 insurance, and credit disability insurance delivered or issued for delivery  
20 in this state to facilitate ease of reading by insureds.

21 (b)(1) This subchapter is not intended to increase the risk assumed by  
22 insurance companies or other entities subject to this subchapter or to  
23 supersede their obligation to comply with the substance of other insurance  
24 legislation applicable to life, ~~disability~~ accident and health, credit life,  
25 or credit disability insurance policies or annuities.

26 (2) This subchapter is not intended to impede flexibility and  
27 innovation in the development of policy forms or content or to lead to the  
28 standardization of policy forms or content.

29  
30 SECTION 41. Arkansas Code 23-80-203 is amended to read as follows:  
31 23-80-203. Definitions.

32 As used in this subchapter, unless the context otherwise requires:

33 (1) "Commissioner" means the Insurance Commissioner;

34 (2) "Company" or "insurer" means any life or ~~disability~~ accident  
35 and health insurance company, fraternal benefit society, nonprofit health  
36 service corporation, nonprofit hospital service corporation, nonprofit

1 medical service corporation, prepaid health plan, dental care plan, vision  
2 care plan, pharmaceutical plan, health maintenance organization, and all  
3 similar type organizations; and

4 (3) "Policy" or "policy form" means any policy, contract, plan,  
5 or agreement of life insurance and annuities or ~~disability~~ accident and  
6 health insurance, including credit life insurance and credit disability  
7 insurance, delivered or issued for delivery in this state by any company  
8 subject to this subchapter, any certificate, contract, or policy issued by a  
9 fraternal benefit society; any certificate issued pursuant to a group  
10 insurance policy delivered or issued for delivery in this state; and any  
11 evidence of coverage issued by a health maintenance organization.

12  
13 SECTION 42. Arkansas Code 23-80-303 is amended to read as follows:

14 23-80-303. Definitions.

15 As used in this subchapter, unless the context otherwise requires:

16 (1) "Casualty insurance" does not include accident and health  
17 insurance or ~~disability~~ insurance;

18 (2) "Commissioner" means the Insurance Commissioner of this  
19 state; and

20 (3) "Policy" or "policy forms" means any written contract of  
21 property and casualty insurance delivered or issued for delivery in this  
22 state by or on behalf of any insurer licensed in this state.

23  
24 SECTION 43. Arkansas Code 23-90-104(1), concerning applicability and  
25 exceptions, is amended to read as follows:

26 (1) Life, annuity, health, or ~~disability~~ accident and health  
27 insurance;

28  
29 SECTION 44. Arkansas Code 23-92-101(a), concerning registration  
30 requirements, is amended to read as follows:

31 (a) Every multiple employer trust or self-insured plan which intends  
32 to provide ~~disability~~ accident and health benefits to citizens of this state  
33 shall maintain a current registration with the Insurance Commissioner in such  
34 form and manner as he shall prescribe.

35  
36 SECTION 45. Arkansas Code 23-92-201 is amended to read as follows:

23-92-201. Definition.

As used in this subchapter, unless the context otherwise requires, "third party administrator" means any person, firm, or partnership which collects or charges premiums from which or adjusts or settles claims on residents of this state in connection with life or ~~disability~~ accident and health coverage provided by a self-insured plan or a multiple employer trust. The term third party administrator includes administrative services only contracts offered by insurance companies, but does not include the following persons:

(1) An employer, for its employees or for the employees of a subsidiary or affiliated corporation of the employer;

(2) A union, for its members;

(3) An insurer licensed to do business in this state;

(4) A creditor, for its debtors, regarding insurance covering a debt between them;

(5) A credit card issuing company that advances for or collects premiums or charges from its credit cardholders as long as that company does not adjust or settle claims;

(6) An individual who adjusts or settles claims in the normal course of his practice or employment and who does not collect charges or premiums in connection with life or ~~disability~~ accident and health coverage;

(7) An agency licensed by the Insurance Commissioner and performing duties pursuant to an agency contract with an insurer authorized to do business in this state.

SECTION 46. Arkansas Code 23-96-101 is amended to read as follows:

23-96-101. Title.

This chapter shall be known and cited as the "Arkansas Life and ~~Disability~~ Health Insurance Guaranty Association Act".

SECTION 47. Arkansas Code 23-96-102 is amended to read as follows:

23-96-102. Purpose.

A. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in § 23-96-107A against failure in the performance of contractual obligations, under life and ~~disability~~ accident and health insurance policies and annuity contracts specified in § 23-96-



1 107B, because of the impairment or insolvency of the member insurer that  
2 issued the policies or contracts.

3 B. To provide this protection, an association of insurers is created  
4 to pay benefits and to continue coverages as limited herein, and members of  
5 the association are subject to assessment to provide funds to carry out the  
6 purpose of this chapter.

7  
8 SECTION 48. Arkansas Code 23-96-104(B), concerning definitions  
9 associated with the Guaranty Association, is amended to read as follows:

10 B. "Association" means the Arkansas Life and ~~Disability~~ Health  
11 Insurance Guaranty Association created under § 23-96-109.

12  
13 SECTION 49. Arkansas Code 23-96-104(W), concerning definitions  
14 associated with the Guaranty Association, is amended to read as follows:

15 W. "Supplemental contract" means a written agreement entered into for  
16 the distribution of proceeds under a life, ~~disability~~ accident and health or  
17 annuity policy or contract.

18  
19 SECTION 50. Arkansas Code 23-96-105(A), concerning advertising of the  
20 Guaranty Association, is amended to read as follows:

21 A. No person, including an insurer, agent, or affiliate of an insurer  
22 shall make, publish, disseminate, circulate, or place before the public, or  
23 cause, directly or indirectly, to be made, published, disseminated,  
24 circulated or placed before the public, in any newspaper, magazine, or other  
25 publication, or in the form of a notice, circular, pamphlet, letter, or  
26 poster, or over any radio station or television station, or in any other way,  
27 any advertisement, announcement, or statement, written or oral, which uses  
28 the existence of the Arkansas Life and ~~Disability~~ Health Insurance Guaranty  
29 Association for the purpose of sales, solicitation, or inducement to purchase  
30 any form of insurance covered by this chapter, except in conformity with the  
31 rules and regulations of the commissioner. In adopting such rules and  
32 regulations, the commissioner, in consultation with the board of directors of  
33 the Association, shall take into consideration the following factors: the  
34 need of the public to have confidence in the financial soundness of insurance  
35 products offered for sale in this state, the financial integrity of member  
36 insurers doing business in this state, and the role of the Association in

1 serving as a safety net for policyowners, contract owners, insureds and  
2 beneficiaries of impaired or insolvent insurers in this state. Provided,  
3 however, that this section shall not apply to the Arkansas Life and  
4 ~~Disability Health~~ Insurance Guaranty Association or any other entity which  
5 does not sell or solicit insurance.

6  
7 SECTION 51. Arkansas Code 23-96-105(C), concerning advertising of the  
8 Guaranty Association, is amended to read as follows:

9 C. (1) The document prepared under Subsection B of this section  
10 shall contain a clear and conspicuous disclaimer on its face.

11 (2) The commissioner shall establish the form and content of the  
12 disclaimer.

13 (3) The disclaimer shall:

14 (a) State the name and address of the Arkansas Life and  
15 ~~Disability Health~~ Insurance Guaranty Association and State Insurance  
16 Department;

17 (b) Prominently warn the policy or contract owner that the  
18 Arkansas Life and ~~Disability Health~~ Insurance Guaranty Association may not  
19 cover the policy or, if coverage is available, it will be subject to  
20 substantial limitations, exclusions, and conditioned on continued residence  
21 in this state;

22 (c) State the types of policies for which guaranty funds  
23 will provide coverage;

24 (d) State that the insurer and its agents are prohibited  
25 by law from using the existence of the Arkansas Life and ~~Disability Health~~  
26 Insurance Guaranty Association for the purpose of sales, solicitation, or  
27 inducement to purchase any form of insurance;

28 (e) State that the policy or contract owner should not  
29 rely on coverage under the Arkansas Life and ~~Disability Health~~ Insurance  
30 Guaranty Association when selecting an insurer;

31 (f) Explain rights available and procedures for filing a  
32 complaint to a violation of any provisions of this chapter; and

33 (g) Provide other information as directed by the  
34 commissioner including but not limited to, sources of information about  
35 financial conditions of insurers provided that the information is not  
36 proprietary and is subject to disclosure under that state's public records

1 law.

2  
3 SECTION 52. Arkansas Code 23-96-106(A)(4), concerning the scope of the  
4 Guaranty Association chapter, is amended to read as follows:

5 (4) A portion of a policy or contract issued to a plan or  
6 program of an employer, association, or other person to provide life,  
7 ~~disability~~ accident and health, or annuity benefits to its employees, members  
8 or others to the extent that such plan or program is self-funded or  
9 uninsured, including but not limited to benefits payable by an employer,  
10 association, or other person under

11 (a) A multiple employer welfare arrangement as defined in  
12 Section 514 of the Employee Retirement Income Security Act of 1974, as  
13 amended;

14 (b) A minimum premium group insurance plan;

15 (c) A stop-loss group insurance plan; or

16 (d) An administrative services only contract;

17  
18 SECTION 53. Arkansas Code 23-96-107(B), concerning persons covered by  
19 the statute, is amended to read as follows:

20 B. This chapter shall provide coverage to the persons specified in  
21 Subsection A for direct, nongroup life, ~~disability~~ accident and health or  
22 annuity policies or contracts, and supplemental contracts to any of these,  
23 for certificates under direct group policies and contracts, and for  
24 unallocated annuity contracts issued by member insurers, except as limited by  
25 this chapter. Annuity contracts and certificates under group annuity  
26 contracts include but are not limited to guaranteed investment contracts,  
27 deposit administration contracts, unallocated funding agreements, allocated  
28 funding agreements, structured settlement annuities, annuities issued to or  
29 in connection with government lotteries and any immediate or deferred annuity  
30 contracts.

31  
32 SECTION 54. Arkansas Code 23-96-107(C)(1), concerning persons covered  
33 by the statute, is amended to read as follows:

34 C. (1) No insurer or agent may deliver a policy or contract  
35 described in Subsection B of this section and excluded under § 23-96-106A(1)  
36 from coverage under this chapter unless the insurer or agent, prior to or at

1 the time of delivery, gives the policy or contract holder a separate written  
2 notice which clearly and conspicuously discloses that the policy or contract  
3 is not covered by the Arkansas Life and ~~Disability~~ Health Insurance Guaranty  
4 Association.

5  
6 SECTION 55. Arkansas Code 23-96-109(A)(1), concerning the creation of  
7 the Guaranty Association, is amended to read as follows:

8 A. (1) There is created a nonprofit legal entity to be known as the  
9 "Arkansas Life and ~~Disability~~ Health Insurance Guaranty Association". All  
10 member insurers shall be and remain members of the Association as a condition  
11 of their authority to transact insurance in this state. The association shall  
12 perform its functions under the plan of operation established and approved  
13 under § 23-96-116 and shall exercise its powers through a board of directors  
14 established under Subsection B of this section.

15  
16 SECTION 56. Arkansas Code 23-96-109(A)(5)(b), concerning the creation  
17 of the Guaranty Association, is amended to read as follows:

18 (b) The ~~disability~~ accident and health insurance account.

19  
20 SECTION 57. Arkansas Code 23-96-110(A)(6) is amended to read as  
21 follows:

22 (6) Exercise, for the purpose of this chapter and to the extent  
23 approved by the commissioner, the powers of a domestic life or ~~disability~~  
24 accident and health insurer, but in no case may the Association issue  
25 insurance policies or annuity contracts other than those issued to perform  
26 its obligations under this chapter;

27  
28 SECTION 58. Arkansas Code 23-96-113(A)(1)(a), concerning the authority  
29 of the Guaranty Association, is amended to read as follows:

30 (a) With respect to life and ~~disability~~ accident and  
31 health insurance policies and annuities, assure payment of benefits for  
32 premiums identical to the premiums and benefits, except for terms of  
33 conversion and renewability, that would have been payable under the policies  
34 or contracts of the insolvent insurer, for claims incurred:

35 (i) With respect to group policies, and contracts,  
36 not later than the earlier of the next renewal date under such policies or

1 contracts or forty-five (45) days, but in no event less than thirty (30)  
2 days, after the date on which the Association becomes obligated with respect  
3 to such policies and contracts;

4 (ii) With respect to nongroup policies, contracts  
5 and annuities, not later than the earlier of the next renewal date, if any,  
6 under such policies or contracts or one (1) year, but in no event less than  
7 thirty (30) days, from the date on which the Association becomes obligated  
8 with respect to such policies or contracts;

9  
10 SECTION 59. Arkansas Code 23-96-113(A)(1)(c), concerning the authority  
11 of the Guaranty Association, is amended to read as follows:

12 (c) With respect to non-group life and ~~disability~~  
13 accident and health insurance policies and annuities covered by the  
14 Association, make available to each known insured or annuitant, or owner if  
15 other than the insured or annuitant, and with respect to an individual  
16 formerly insured or formerly an annuitant under a group policy who is not  
17 eligible for replacement group coverage, make available substitute coverage  
18 on an individual basis in accordance with the provisions of Paragraph A(2)(a)  
19 of this section, if the insureds or annuitants had a right under law or the  
20 terminated policy or annuity to convert coverage to individual coverage or to  
21 continue an individual policy or annuity in force until a specified age or  
22 for a specified time, during which the insurer had no right unilaterally to  
23 make changes in any provisions of the policy or annuity or had a right only  
24 to make changes in premium by class.

25  
26 SECTION 60. Arkansas Code 23-96-114(A)(2)(a)(ii), concerning  
27 liabilities for benefits of the Guaranty Association, is amended to read as  
28 follows:

29 (ii) One hundred thousand dollars (\$100,000) in  
30 ~~disability~~ accident and health insurance benefits, including any net cash  
31 surrender and net cash withdrawal values;

32  
33 SECTION 61. Arkansas Code 23-96-114(F), concerning liabilities for  
34 benefits of the Guaranty Association, is amended to read as follows:

35 F. It is the intent of the General Assembly that the coverage provided  
36 through the Arkansas Life and ~~Disability~~ Health Insurance Guaranty

1 Association for any annuity contract executed pursuant to § 11-9-210 shall be  
2 the lesser of the contractual obligations of the insurer or one hundred  
3 thousand dollars (\$100,000) in the present value of annuity benefits  
4 including net cash surrender and net cash withdrawal values as provided in  
5 subsection A of this section;

6  
7 SECTION 62. Arkansas Code 23-96-114(G) is amended to read as follows:

8 G. It is the intent of the General Assembly that coverage provided by  
9 the Arkansas Life and ~~Disability~~ Health Insurance Guaranty Association for  
10 annuity contracts executed pursuant to § 11-9-210, shall not be affected by  
11 the fact that the annuity payments are sent to the Workers' Compensation  
12 Commission for distribution to the claimants and beneficiaries, and that any  
13 funds provided by the Arkansas Life and ~~Disability~~ Health Insurance Guaranty  
14 Association for payment to claimants or beneficiaries for whom annuity  
15 contracts are executed under § 11-9-210 shall be sent to the Workers'  
16 Compensation Commission for distribution to claimants or beneficiaries.

17  
18 SECTION 63. Arkansas Code 23-96-(F)(1)(a), concerning assessments and  
19 tax credits, is amended to read as follows:

20 F. (1)(a) Subject to the provisions of Paragraph F(1)(b) of this  
21 section the total of all assessments authorized by the Association with  
22 respect to a member insurer for each subaccount of the life insurance and  
23 annuity account and for the ~~disability~~ accident and health account shall not  
24 in any one (1) calendar year exceed two percent (2%) of such insurer's  
25 average annual premiums received in this state on the policies and contracts  
26 covered by the subaccount or account during the three (3) calendar years  
27 preceding the year in which the insurer became an impaired or insolvent  
28 insurer.

29  
30 SECTION 64. Arkansas Code 23-97-203(5)(A)(iii), concerning definitions  
31 under this chapter, is amended to read as follows:

32 (iii) Long-term care insurance may be issued by  
33 insurers, fraternal benefits societies, nonprofit hospital, and medical  
34 service corporations, prepaid health plans, health maintenance organizations  
35 or any similar organization to the extent they are otherwise authorized to  
36 issue life or ~~disability~~ accident and health insurance.

1  
2       SECTION 65. Arkansas Code 23-98-106(d), concerning minimum basic  
3 benefits, is amended to read as follows:

4       (d) Any minimum basic benefit policy issued pursuant to the provisions  
5 of this chapter may be issued without the provision of the benefits or  
6 requirements mandated by the following statutes of the State of Arkansas to  
7 be included in or offered to be included in ~~disability~~ accident and health  
8 insurance or health maintenance organization policies or subscription  
9 contracts, or regulations issued pursuant to such statutes: §§ 23-79-129, 23-  
10 79-130, 23-79-137, 23-79-139 - 23-79-141, 23-85-131(b), 23-85-137, 23-86-  
11 108(4) and (7), 23-86-113 - 23-86-116, and 23-86-118; provided, nothing in  
12 this chapter shall reduce any professional scope of practice as defined in  
13 the licensure law for any health care provider, shall authorize any  
14 discrimination not permitted under Arkansas law in payment or reimbursement  
15 for services, or shall be construed to repeal or eliminate the application of  
16 the Arkansas freedom of choice legislation, § 23-79-114, or coordination of  
17 benefit statutes or regulations, to policies issued pursuant to this chapter.

18  
19       SECTION 66. EMERGENCY CLAUSE. It is found and determined by the  
20 Eighty-third General Assembly that the term disability insurance is obsolete  
21 in the insurance industry and should be updated to the usage of accident and  
22 health insurance to conform with national industry standards. Therefore, an  
23 emergency is declared to exist and this act being immediately necessary for  
24 the preservation of the public peace, health and safety shall become  
25 effective on the date of its approval by the governor. If the bill is  
26 neither approved nor vetoed by the Governor, it shall become effective on the  
27 expiration of the period of time during which the Governor may veto the bill.  
28 If the bill is vetoed by the Governor and the veto is overridden, it shall  
29 become effective on the date the last house overrides the veto.

30  
31                               /s/ Files  
32  
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34  
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