

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.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/20/03 H3/27/03 S4/15/03

A Bill

HOUSE BILL 2813

5 By: Representative Biggs
6
7

For An Act To Be Entitled

9 AN ACT TO ADOPT SUBSTANTIVE AND TECHNICAL
10 CORRECTIONS TO THE ARKANSAS INSURANCE CODE TO
11 MODERNIZE THE INSURANCE CODE AND CONFORM IT TO
12 FEDERAL LAWS; TO AMEND PORTIONS OF ARKANSAS CODE
13 *TITLES 9, 11, 17, 19, 21, 23, 26, AND 27*
14 *CONCERNING STATE INSURANCE DEPARTMENT DUTIES AND*
15 *RESPONSIBILITIES; AND FOR OTHER PURPOSES.*
16

Subtitle

17 GENERAL INSURANCE OMNIBUS ACT.
18
19
20

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

23 *SECTION 1. Arkansas Code § 9-14-504(a), concerning health insurance*
24 *for minor children provided by custodial and noncustodial parents, is amended*
25 *to read as follows:*

26 *(a) Any insurer, health maintenance organization, self-funded group,*
27 *multiple-employer welfare arrangement, or hospital or medical services*
28 *corporation operating in this state shall receive claims for payment, respond*
29 *to requests concerning information necessary to determine coverage status,*
30 *claims status, and health policy plan, or benefits, for minor children or to*
31 *obtain benefits through such coverage for minor children, and otherwise*
32 *communicate with the custodial parent or the noncustodial parent of the minor*
33 *child or children, an assignee, or the Office of Child Support Enforcement,*
34 *without regard to the fact that such coverage may be through a policy*
35 *benefiting the noncustodial parent of such child or children.*
36



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1 SECTION 2. Effective January 1, 2004, Arkansas Code § 11-9-303 is
2 amended to read as follows:

3 11-9-303. Payment of tax by carrier.

4 (a) In addition to the premium taxes collected from carriers, the
5 carriers shall pay annually to the Workers' Compensation Commission a tax, at
6 the rate to be determined as provided in § 11-9-306 but not to exceed three
7 percent (3%), on all written manual premiums resulting from the writing of
8 workers' compensation insurance on risks within the state.

9 (b) "Written manual premium" shall mean premium produced in a given
10 year by the manual rates in effect during the experience period and shall
11 exclude the premium produced by the expense constant. Furthermore, "written
12 manual premium", for the purpose of this chapter, means premium before any
13 allowable deviated discounts, any experience rating modification, any premium
14 discount, any reinsurance or deductible arrangement as common with fronting
15 carriers, any dividend consideration, or other trade discount.

16 (c)(1) This tax shall be collected by the ~~Insurance Commissioner~~
17 Workers' Compensation Commission from the carriers at the same time and in
18 the same manner as other premium taxes are collected by the Insurance
19 Commissioner, provided in under the premium tax sections of the law of this
20 state, and shall be deposited into the funds created in § 11-9-301.

21 (2) This transfer from the funds created in § 11-9-301 shall be
22 in the same proportions that deposits were made into the three (3) funds as
23 set forth in § 11-9-306(a)-(c).

24 (d) Assessments upon which premium taxes are based shall be made on
25 forms prescribed ~~jointly by the Insurance Commissioner and~~ by the Workers'
26 Compensation Commission.

27
28 SECTION 3. Effective January 1, 2004, Arkansas Code § 11-9-305 is
29 amended to read as follows:

30 11-9-305. Payment of tax by public employer.

31 (a)(1) It shall be the duty of the Workers' Compensation Commission to
32 collect a tax from every public employer providing workers' compensation
33 coverage to its employees at a rate to be determined as provided by § 11-9-
34 306 but not to exceed three percent (3%) of the written manual premium which
35 an insurance carrier would have to pay under § 11-9-303 if the public
36 employer were insured by a carrier.

1 (2)(A) ~~The Public Employee Claims Division, or its successor~~
2 ~~agency, Workers' Compensation Commission shall collect and~~ tabulate the tax
3 to be collected from ~~public employers and furnish the tabulated information~~
4 ~~to the commission, together with four (4) separate payments representing the~~
5 ~~tax collected from~~ each of the four (4) categories of public employers: the
6 state; the counties; the municipalities; and the school districts.

7 (B) In tabulating the manual premium, a public employer
8 shall use the average compensation rate for this state as promulgated by the
9 National Council on Compensation Insurance for the tax year in question.

10 (3) The tax collected shall be deposited in and paid to the
11 commission from the Workers' Compensation Revolving Fund and miscellaneous
12 revolving funds.

13 (b)(1) In the event any public employer fails to cooperate in
14 furnishing information upon which the tax will be computed or fails to pay
15 the tax within thirty (30) days of the date provided in § 11-9-306, the
16 ~~Director of the Public Employee Claims Division~~ commission shall notify the
17 ~~commission~~ Director of the Public Employees Claims Division of the failure,
18 and the commission shall decertify the public employer from participation in
19 the state's workers' compensation program.

20 (2) In the event of decertification, the public employer shall
21 obtain its employer's workers' compensation liability coverage from the
22 private market and shall not be entitled to participate in the state's
23 workers' compensation program for a period of one (1) year thereafter.

24 (c) The procedure for decertification shall be the same as for the
25 revocation or termination of the self-insurer privilege.

26 ~~(d) [Repealed.]~~

27
28 SECTION 4. Effective January 1, 2004, Arkansas Code § 11-9-306 is
29 amended to read as follows:

30 11-9-306. Certification of surplus and rate of taxation.

31 (a)(1) The Workers' Compensation Commission, on or before December 31
32 of each year, shall certify ~~to the Insurance Commissioner~~ the surplus, if
33 any, in the Workers' Compensation Fund, together with the additional amounts
34 necessary to properly administer this chapter for the ensuing year.

35 (2) The commission shall state in the certification the rate of
36 taxation for collections for that year on or before March 1 of the following

1 year.

2 (b)(1) The commission, on or before December 31 of each year, shall
3 certify ~~to the Insurance Commissioner~~ the surplus, if any, in the Second
4 Injury Trust Fund, together with the additional amounts necessary to properly
5 administer this chapter for the ensuing year.

6 (2) The commission shall state in the certification the rate of
7 taxation for collections for that year on or before March 1 of the following
8 year.

9 (c)(1) The commission, on or before December 31 of each year, shall
10 certify ~~to the Insurance Commissioner~~ the surplus, if any, in the Death and
11 Permanent Total Disability Trust Fund, together with the additional amounts
12 necessary to properly administer this chapter for the ensuing year.

13 (2) The commission shall state in the certification the rate of
14 taxation for collections for that year on or before March 1 of the following
15 year.

16 (d) The total rate of taxation for all three (3) funds when added
17 together shall not exceed three percent (3%).

18 (e)(1) The ~~Insurance Commissioner~~ commission shall notify each
19 insurance carrier of the rate of taxation applicable to each fund for the
20 preceding year, and taxes shall be computed and paid pursuant to the
21 provisions of § 11-9-303(c) on or before April 1 of the following year.

22 (2) The commission shall notify each self-insured employer
23 subject to the tax as to the rate of taxation applicable to each fund for the
24 preceding year, and taxes shall be computed by the commission and paid to
25 each fund by the self-insurer through payments made directly to the
26 commission on or before April 1 of the following year.

27 (3) The commission shall also notify each public employer
28 subject to this tax ~~by notifying the Public Employee Claims Division, or its~~
29 ~~successor agency,~~ of the rate of taxation applicable to each fund for the
30 preceding year, and taxes shall be computed by the division and paid to each
31 respective fund by the public employer through payments made directly to the
32 commission on or before April 1 of the following year.

33 (f) The commission, ~~in cooperation with the Insurance Commissioner,~~
34 shall have the authority to promulgate rules or regulations for
35 administration of the assessment and tax collection process, including, but
36 not limited to, rules and regulations applicable to the funds established in

1 § 11-9-301.

2 (g) No later than March 30, 2004, and no later than March 30 each year
3 thereafter, the commission shall provide to the Insurance Commissioner a
4 complete listing of Workers' Compensation premium tax collections by year, by
5 name of workers' compensation carrier, by National Association of Insurance
6 Commissioners number, and disclosing the monetary amount of the Workers'
7 Compensation premium tax paid for the preceding calendar year.

8
9 SECTION 5. Arkansas Code § 11-9-409(d)(1), concerning Workers'
10 Compensation insurers' accident prevention services, is amended to read as
11 follows:

12 (1) Any insurance company desiring to write workers' compensation
13 insurance in Arkansas shall maintain or provide accident prevention services
14 as a prerequisite ~~for a license~~ to write such insurance. Such services shall
15 be adequate to furnish accident prevention programs required by the nature of
16 its policyholders' operations and shall include surveys, recommendations,
17 training programs, consultations, analyses of accident causes, industrial
18 hygiene, and industrial health services to implement the program of accident
19 prevention services.

20
21 SECTION 6. Arkansas Code § 17-19-111 is amended to read as follows:
22 17-19-111. Fees.

23 (a) Notwithstanding any other provisions of this chapter to the
24 contrary, and notwithstanding any other provisions of Arkansas law to the
25 contrary, beginning July 1, 2003, professional bail bond companies are hereby
26 required to charge, collect, and remit the following fees for direct deposit
27 as special revenues into the ~~State Insurance Department Trust Fund~~ Bail
28 Bondsman Board Fund for the support, personnel, maintenance, and operations
29 of the ~~State Insurance Department~~, Arkansas Professional Bail Bond Company
30 and Professional Bail Bondsman Licensing Board in addition to any other fees,
31 taxes, premium taxes, levies, or other assessments imposed in connection with
32 the issuance of bail bonds by professional bail bond companies under Arkansas
33 law.

34 (b)(1) In addition to the bail or appearance bond premium or
35 compensation allowed under § 17-19-301, each licensed professional bail bond
36 company shall charge and collect as a nonrefundable fee for the fund an

1 additional ten dollar (\$10.00) fee per bail bond for giving bond for each and
2 every bail and appearance bond issued by the licensed professional bail bond
3 company by or through its individual licensees.

4 (2) The fees shall be collected quarterly and then reported and
5 filed with the ~~Insurance Commissioner~~ board no later than fifteen (15)
6 calendar days after the end of each quarter.

7 (3) The notarized quarterly reporting form and a notarized
8 annual reconciliation form as to all fees collected for the fund shall be
9 filed by each professional bail bond company on forms prescribed by the
10 ~~commissioner~~ board and at the times and in the manner as the ~~commissioner~~
11 board shall prescribe in conformity with this section.

12 (4) A paper-processing charge of fifteen dollars (\$15.00) shall
13 be collected on each bail bond in order to defray the surety's costs incurred
14 by the quarterly and annual reporting requirements contained herein and to
15 further defray the surety's costs incurred in the collection of all fees due,
16 owing, and collected on behalf of the fund and the surety's costs incurred in
17 the preparation of all required reports submitted in conformance with the
18 standards established by the American Institute of Certified Public
19 Accountants.

20 (c)(1) The ~~commissioner~~ Executive Director or other board designee
21 may, in his or her discretion, grant an extension for the filing of the
22 report and fees for good cause shown upon timely written request.

23 (2) Absent an extension for good cause shown, each licensed
24 professional bail bond company failing to report or pay these fees shall be
25 liable to the fund for a monetary penalty of one hundred dollars (\$100) per
26 day for each day of delinquency.

27 (3) The ~~commissioner~~ board may pursue any appropriate legal
28 remedies on behalf of the fund to collect any delinquent fees and penalties
29 owed as special revenues.

30 (d)(1) Upon collection of the fees and any monetary penalties, the
31 ~~commissioner~~ board shall deposit all fees and penalties directly into the
32 fund as special revenues.

33 (2) The fees and penalties shall be in addition to all other
34 fees, licensure or registration fees, taxes, assessments, levies, or
35 penalties payable to any federal or state office, court, agency, board, or
36 commission or other public official or officer of the state, or its political

1 subdivisions, including counties, cities, or municipalities, by professional
2 bail bond companies.

3 (3)(A) Each individual bail bondsman is required to assist in
4 collection of the fees, but is exempt from the duty and responsibility of
5 payment of the fees to the fund unless he or she misappropriates or converts
6 such moneys to his or her own use or to the use of others not entitled to the
7 fees.

8 (B) In that case, the ~~commissioner~~ board shall proceed on
9 behalf of the fund with any civil or criminal remedies at his or her disposal
10 against the individual responsible.

11 (C) Upon criminal conviction of the individual responsible
12 for fraudulent conversion of the moneys due the fund the individual
13 responsible shall pay restitution to the ~~trust~~ fund, and the court shall
14 incorporate a finding to that effect in its order.

15 (D) Absent substantial evidence to the contrary, the
16 violations of the individual may be attributed to the employing bail bond
17 company, and any criminal or civil court may, in its discretion and upon
18 substantial evidence, order the employing bail bond company to pay
19 restitution to the fund on behalf of the responsible individual and shall
20 incorporate that finding into its order.

21 (e) For purposes of any statutory security deposit Arkansas law
22 requires of professional bail bond companies, including, but not limited to,
23 the deposit under § 17-19-205, the payment of the fees required by this
24 section is considered to be a duty of the licensee, so as to allow the
25 ~~commissioner~~ board on behalf of the fund to make a claim against any such
26 deposit for the fees required by this section and any penalties owed thereon,
27 up to the limit of any security deposit.

28 (f) Under no circumstances shall the fees or penalties thereon held in
29 or for deposit into the fund as special revenues be subject to any tax, levy,
30 or assessment of any kind, including, but not limited to, any bond forfeiture
31 claims, any garnishment or general creditors' claims, any remedies under
32 title 19 of this Code, or other provisions of Arkansas law.

33 (g)~~(1)~~ At the beginning of each fiscal year, the ~~department~~ board
34 shall certify to the Chief Fiscal Officer of the State an amount sufficient
35 to provide for personal services and operating expenses of the Professional
36 Bail Bond Company and Professional Bail Bondsman Licensing Board.

1 ~~(2) The Chief Fiscal Officer of the State shall then transfer~~
2 ~~the certified amount from the State Insurance Department Trust Fund to the~~
3 ~~Bail Bondsman Board Fund.~~

4
5 SECTION 7. Arkansas Code § 17-19-301(d) and (e), concerning bail bond
6 premiums, are amended to read as follows:

7 (d)(1)(A) In addition to the ten percent (10%) bail or appearance bond
8 premium or compensation allowed in subsection (a) of this section, and
9 commencing on ~~April 1, 1993,~~ July 1, 2003, each licensed professional bail
10 bond company shall charge and collect as a nonrefundable administrative and
11 regulatory fee for the ~~State Insurance Department Trust Fund~~ Bail Bondsman
12 Board Fund an additional ten dollars (\$10.00) per bond fee for giving bond
13 for each and every bail and appearance bond issued by the licensed
14 professional bail bond company by or through its individual licensees.

15 (B) The administrative and regulatory fees payable by
16 these companies to the fund for the support and operation of the ~~department,~~
17 board, and collected by the bail bond companies as required by this section,
18 shall be reported and filed with the ~~Insurance Commissioner~~ board no later
19 than fifteen (15) calendar days after the end of each calendar quarter,
20 contemporaneous with the professional bail bond company's filing of its
21 quarterly bail bond report with the ~~department~~ board.

22 (C) A notarized annual reconciliation of all such fees
23 collected in the preceding calendar year for the fund shall be filed by each
24 licensed professional bail bond company at a time and on forms prescribed by
25 the ~~commissioner~~ board.

26 (D) The ~~commissioner~~ executive director of the board may
27 in his or her discretion grant an extension for good cause shown upon timely
28 written request.

29 (E) In no event shall the administrative and regulatory
30 fees payable by the bail bond companies to the fund exceed ten dollars
31 (\$10.00) per bond, as required by this subchapter, exclusive of statutory
32 licensure fees elsewhere in this chapter.

33 (2)(A) Absent an extension the ~~commissioner~~ executive director
34 granted for good cause to a company and in addition to any license suspension
35 or revocation, the ~~commissioner may in his or her~~ board may in its discretion
36 order after notice and a hearing a professional bail bond company failing

1 timely to report or pay the regulatory fee to the fund by and through the
2 ~~commissioner board~~ shall be liable to the fund for a monetary penalty of one
3 hundred dollars (\$100) per day for each day of delinquency.

4 (B) The ~~commissioner board~~ may pursue any appropriate
5 legal remedies on behalf of the fund to collect any delinquent fees and
6 penalties owed pursuant to this section as special revenues to the fund.

7 (3) Upon collection of the regulatory fees and any monetary
8 penalties payable to the fund and assessed under this section, the
9 ~~commissioner board~~ shall deposit all fees and penalties directly into the
10 fund as special revenues.

11 (4)(A) Upon failure of the bail bond company to remit the fees
12 timely, the ~~commissioner board~~ may pursue civil legal remedies against the
13 noncomplying bail bond company on behalf of the fund to recover the balance
14 of the fees and any penalties owed.

15 (B) In its discretion, the board may also fine, or suspend
16 or revoke the license of, any professional bail bond company failing to remit
17 or pay timely the fees required by this section.

18 (5)(A) Other than sole proprietors licensed as professional bail
19 bond companies, individual bail bondsmen are exempt from the duty and
20 responsibility of payment of the administrative and regulatory fees to the
21 fund, except that the individual licenses of such individual employees of the
22 professional bail bond company may be suspended or revoked by the
23 ~~commissioner board~~ pursuant to the administrative procedures provided in this
24 chapter if the individual licensee fails to comply with his or her duties in
25 proper collection of the bail bond premiums earmarked for later payment to
26 the fund pursuant to this subsection, if he or she converts such moneys to
27 his or her own use, or commits other infractions in regard to collection of
28 such premium amounts.

29 (B) In those instances, the violations of the individual
30 may in the ~~commissioner's board's~~ discretion be attributed to the employing
31 professional bail bond company for good cause shown, and its license may be
32 sanctioned by the ~~commissioner board~~ pursuant to the administrative
33 procedures provided in this chapter.

34 (C) Further, upon criminal conviction of the individual
35 bondsman for theft of property in connection with fraudulent conversion of
36 those premium amounts due the fund, the board shall revoke the individual's

1 license, and in its discretion fine, or suspend or revoke the license of, the
 2 employing professional bail bond company if it assisted the individual in
 3 such fraudulent conduct.

4 (6)(A) For purposes of § 17-19-205 requiring the professional
 5 bail bond company's deposit of a letter of credit or certificate of deposit
 6 for the faithful performance of its duties, the company's payment of the
 7 administrative and regulatory fee as required by this subsection shall be
 8 considered to be and shall be a duty of the licensee so as to allow the
 9 ~~commissioner~~ board to make a claim against the security deposit required in §
 10 17-19-205 on behalf of the fund for the balance of any owed and unpaid
 11 administrative and regulatory fees the professional bail bond company still
 12 owes to the fund, and the ~~commissioner~~ board shall promptly proceed to make
 13 claims against such security deposits on behalf of the fund, up to the limit
 14 of the company's deposit for any remaining fee balance due, in the manner
 15 provided in this subchapter for any claim against the deposit required
 16 herein.

17 (B) Under no circumstances shall such deposits held for
 18 the fund, or fees or any moneys deposited into the fund be subject to any
 19 levy or assessment of any kind, including forfeiture claims, misconduct
 20 claims, or general creditor claims of the bail bond company, subject to
 21 garnishment or other creditors' remedies under Title 19 or other provisions
 22 of Arkansas law.

23 (e) The administrative and regulatory fees imposed on professional
 24 bail bond companies under this section shall be in addition to all other
 25 fees, taxes and assessments, and penalties licensed professional bail bond
 26 companies pay the State of Arkansas
 27 through the ~~department~~ board or other state agencies under other laws.

28
 29 SECTION 8. Arkansas Code § 19-5-922(b), concerning special revenues
 30 transferred to fund the State Insurance Department Trust Fund, is amended to
 31 read as follows:

32 (b) Such fund shall consist of those special revenues as specified in
 33 § 19-6-301(172), ~~the first \$100,000 of workers' compensation premium taxes~~
 34 ~~transferred from the various funds created in § 11-9-301 as provided in § 11-~~
 35 ~~9-303(e)~~, grants, refunds, gifts, and any remaining funds of the Arkansas
 36 Earthquake Authority as provided in § 23-102-119 and examination of insurers

1 payments as set out in §§ 23-61-201 - 23-61-206, there to be used to defray
2 the expenses of the State Insurance Department in the discharge of its
3 administrative and regulatory powers and duties as prescribed by law and as
4 set out in § 23-61-701 et seq.

5
6 SECTION 9. Arkansas Code § 19-5-1088 is amended to read as follows:
7 19-5-1088. Bail Bondsman Board Fund.

8 There is hereby established on the books of the Treasurer of State,
9 Auditor of State, and Chief Fiscal Officer of the State, a fund to be known
10 as the Bail Bondsman Board Fund. This fund shall consist of those moneys
11 ~~transferred from the State Insurance Department Trust Fund~~ deposited directly
12 into the Bail Bondsman Board Fund by the Arkansas Professional Bail Bond
13 Company and Professional Bail Bondsman Licensing Board from licensee fee
14 collections, beginning July 1, 2003; and other moneys, including from the
15 collection of fees, there to be used exclusively for the operation of the
16 Professional Bail Bondsman Licensing Board board.

17
18 SECTION 10. Arkansas Code § 21-2-704(b), concerning claims covered by
19 the Governmental Bonding Board, is amended to read as follows:

20 (b)(1) The fidelity bond coverage provided by the Self-Insured
21 Fidelity Bond Program shall cover actual losses sustained by the
22 participating governmental entities as defined in § 21-2-702 through any
23 fraudulent or dishonest act or acts committed by any of the officials or
24 employees of the participating governmental entity, acting alone or in
25 collusion with others, during the bond period to an amount not exceeding the
26 lesser of three hundred thousand dollars (\$300,000) or the amount of the
27 bond.

28 (2) Coverage for loss of property other than money and
29 securities shall be limited to the actual cash value of the property on the
30 day the loss was discovered.

31 (3) No coverage shall be provided for and no monetary benefits
32 shall be paid for any claim in which a participating governmental entity,
33 through fraudulent means, takes money or other property from another
34 participating governmental entity.

35
36 SECTION 11. Arkansas Code § 21-2-705(b)(2), concerning the payment of

1 per diem and mileage of the Governmental Bonding Board, is amended to read as
2 follows:

3 (b)(2) The expense reimbursement of members of the board shall be paid
4 ~~by the Department of Insurance from funds specifically appropriated to the~~
5 ~~department for that purpose or from other funds available to the department~~
6 ~~for paying expense reimbursement~~ from the Fidelity Bond Trust Fund.

7
8 SECTION 12. Arkansas Code § 21-2-709 is amended to read as follows:

9 21-2-709. Determination of coverage – Assignment of rights.

10 (a)(1)(A) Upon the receipt of the proof of loss from the Legislative
11 Auditor, the board shall determine whether the loss is covered under the
12 Self-Insured Fidelity Bond Program.

13 (B) The board may withhold claim determination and
14 payments until the investigation in each case has been completed and all
15 information deemed necessary for determination of coverage under the Self-
16 Insured Fidelity Bond Program has been received.

17 (C) Coverage will be provided only for losses disclosed in
18 audits as defined in § 21-2-702.

19 (2)(A) If the board determines that the loss is covered under
20 the program, the Insurance Commissioner shall authorize fidelity bond loss
21 payments from the fund to the participating governmental entity on a timely
22 basis.

23 (B) The board shall provide a timely explanation of
24 payments and denial of losses to the Legislative Auditor and to the
25 participating governmental entity.

26 (3) All vouchers for bond claim payments shall include as
27 supporting documents a copy of the payment recommendation by the State Risk
28 Manager and a copy of the proof of loss from the Legislative Auditor.

29 (4) Any loss payment may be adjusted by any applicable
30 deductibles, restitution, or coinsurance payments.

31 ~~(b)(1) Upon fidelity bond loss payment from the fund, the recipients~~
32 ~~of the loss payment shall, to the extent of the payment, assign to the fund~~
33 ~~all rights and claims that they may have against the official, officer, or~~
34 ~~employee involved.~~ Before any bond loss payment is issued from the fund, the
35 recipient of the bond loss payment shall sign and return a transfer of rights
36 form, assigning to the fund, to the extent of payment, all rights and claims

1 that the recipient may have against the official, officer, or employee
2 involved. The fund shall be subrogated to all of the rights of the
3 recipients of the fidelity bond loss payment to the extent of the payment.

4 (2) If the participating governmental entity shall sustain any
5 loss which exceeds the amount of indemnity provided by the Fidelity Bond
6 Program, the governmental entity shall be entitled to all recoveries, except
7 from suretyship, insurance, reinsurance, security, or indemnity taken by or
8 for the benefit of the Fidelity Bond Program, by whomever made, on account of
9 such loss until fully reimbursed, less the amount of the deductible and
10 coinsurance; and any remainder shall be applied to reimbursement of the
11 Fidelity Bond Program.

12 (3) If a participating governmental entity fails to pay over
13 amounts due the Fidelity Bond Program under these provisions, the
14 Governmental Bonding Board may, at its discretion, deduct any amounts due
15 from future bond loss payments due the applicable participating governmental
16 entity or from any treasury funds of the applicable participating
17 governmental entity.

18 ~~(e) The Insurance Commissioner shall timely notify the Legislative~~
19 ~~Auditor if the board determines that the loss is not covered under the~~
20 ~~Fidelity Bond Program.~~

21
22 SECTION 13. Arkansas Code § 21-2-710 is amended to read as follows:

23 21-2-710. Premium Billing certification – Payment ~~and deposit.~~

24 ~~(a)~~ The board, with the assistance of the State Insurance Department,
25 shall:

26 (1)(A) Prepare a billing certification to be remitted to the
27 Department of Finance and Administration. Upon receipt of this
28 certification, the Director of the Department of Finance and Administration
29 shall pay it from funds specifically appropriated for it by the General
30 Assembly or from other funds available therefore;

31 (B) Funds so appropriated or otherwise made available for this
32 purpose shall not be subject to reduction as a result of any shortfall of
33 projected revenues, for premiums for fidelity bonds for state public
34 officials and employees and state officers and employees;

35 (2) Prepare a billing certification to be remitted to the Chief Fiscal
36 Officer of the State who shall pay it from funds withheld from the County Aid

1 Fund which are due each county participating in the Self-Insured Fidelity
2 Bond Program for premiums for fidelity bonds for county public officials and
3 employees;

4 (3) Prepare a billing certification to be remitted to the Chief Fiscal
5 Officer of the State who shall pay it from funds withheld from the Municipal
6 Aid Fund which are due each municipality participating in the Self-Insured
7 Fidelity Bond Program for premiums for fidelity bonds for municipal public
8 officials and employees; and

9 (4) Prepare a billing certification to be remitted to the Chief Fiscal
10 Officer of the State who shall pay the same from funds withheld from the
11 Public School Fund which are due each school district participating in the
12 Self-Insured Fidelity Bond Program for premiums for fidelity bonds for school
13 district officials and employees.

14 ~~(b) Upon receipt of these funds, the commissioner shall deposit them~~
15 ~~in the fund created in § 21-2-711.~~

16

17 SECTION 14. Arkansas Code § 21-2-711, concerning Governmental Bonding
18 Board funds and expenditures, is amended to read as follows:

19 21-2-711. Fidelity Bond Trust Fund.

20 (a) There is established on the books of the Treasurer of State, the
21 Auditor of State, and the Chief Fiscal Officer of the State a separate fund
22 to be known as the Fidelity Bond Trust Fund.

23 (b)(1) No money shall be appropriated from this fund for any
24 purpose except for the use and benefit of participating governmental entities
25 for bond claims, board members travel, and for ~~board~~ other expenses
26 including, but not limited to, actuarial, consultant, and service contract
27 fees.

28 (2) The fund established in this section shall be administered
29 by and disbursed at the direction of the board.

30 (c)(1)(A) The assets of the fund may be invested and reinvested as the
31 board may determine with the advice of the State Board of Finance.

32 (B) All incomes derived through investment of the fund as
33 established herein shall be credited, as investment income, to the fund.

34 (C) For the purposes of investment, fund moneys invested
35 and interest earned thereon shall be administered as trust funds pursuant to
36 the provisions of § 19-3-219(a).

1 (2) Further, all moneys deposited to the fund shall not be
2 subject to any deduction, tax, levy, or any other type of assessment.

3 ~~(d) The bond premiums collected by the board under the provisions of~~
4 ~~this subchapter~~ All moneys received by the board for the Fidelity Bond
5 Program, including premiums collected by the board under this subchapter,
6 restitution, interest payments, grants and gifts, and refunds shall be
7 deposited in the fund created in subsection (a) of this section.

8
9 SECTION 15. Arkansas Code § 23-61-107(a)(1) and (2), concerning
10 records maintained in the Insurance Commissioner's office, is amended to read
11 as follows:

12 (a)(1) The Insurance Commissioner shall enter, in permanent form,
13 records of his or her official transactions, examinations, investigations,
14 and proceedings and keep these records in his or her office.

15 (2)(A) These records and insurance filings in his or her office
16 shall be open to public inspection, except as otherwise provided in the
17 Arkansas Insurance Code with respect to particular records or filings.

18 (B) The commissioner may establish a retention-destruction
19 schedule for records of his or her office, in order to dispose of hard copy
20 and electronic copy records five (5) years after receipt or creation, or two
21 (2) years after hard copy records have been reduced to electronically imaged
22 records for retention until proper disposition, except for State Insurance
23 Department records whose retention or destruction is subject to other
24 applicable provisions of Arkansas law.

25 (C) The commissioner may dispose of consumer complaint
26 records in the five-year cycle under (a)(2)(B) of this section.

27 (D) The commissioner may adopt rules and regulations
28 governing records maintenance and destruction in accordance with this and
29 other applicable provisions of Arkansas law.

30
31 SECTION 16. Arkansas Code § 23-61-205(a)(2), concerning adoption of
32 insurer examination reports issued by the Commissioner, is amended to read as
33 follows:

34 (2) No later than sixty (60) days following completion of the
35 examination, the examiner in charge shall file with the State Insurance
36 Department a verified written report of the examination under oath. Upon

1 receipt of the verified report, the department shall transmit the report to
2 the company examined, together with a notice which shall afford the company
3 examined a reasonable opportunity of not more than ~~twenty (20)~~ thirty (30)
4 days to make a written submission or rebuttal with respect to any matters
5 contained in the examination report.

6
7 SECTION 17. Arkansas Code § 23-61-205(c), concerning the distribution
8 of confidential Department examination reports to insurers, is amended to
9 read as follows:

10 (c) Upon the adoption of the examination report under subdivision
11 (a)(3)(A) of this section, the commissioner shall continue to hold the
12 content of the examination report as private and confidential information for
13 a period of thirty (30) days from the date the company received, by United
14 States mail, the order issued by the commissioner to adopt the examination
15 report, except to the extent provided in subdivision (a)(2) of this section.
16 Thereafter, the commissioner may open the report for public inspection so
17 long as no court of competent jurisdiction has stayed its publication.

18
19 SECTION 18. Arkansas Code § 23-61-711 is amended to read as follows:
20 23-61-711. Fees additional to all others currently payable –
21 Exception.

22 The fees assessed or imposed by this subchapter upon insurers, as
23 defined or referenced in § 23-61-703, and the fees assessed or imposed in §
24 ~~17-19-301 and §§ 23-61-706 - 23-61-709~~ upon ~~professional bail bond companies,~~
25 insurers, insurance agents, brokers, and other licensees or registrants are
26 imposed in addition to all other fees, assessments, premium and privilege
27 taxes, penalties, and other such payments such licensees or registrants pay
28 the State of Arkansas through the State Insurance Department ~~or other state~~
29 ~~or governmental agencies~~ pursuant to applicable Arkansas laws, except that
30 insurers' payments of these administrative and financial regulation fees in §
31 23-61-703 are expressly and in pertinent part to be paid in lieu of payment
32 of department examiners' salaries, wages, and compensation due at or after
33 each examination conducted on the insurer by the department's examiners
34 pursuant to the provisions of § 23-61-201 et seq., and, in particular, § 23-
35 61-206. Therefore, insurers shall still be liable for payment of and shall
36 pay department examiners' expenses for food, lodging, and travel as directed

1 under § 23-61-201 et seq.

2
3 SECTION 19. Arkansas Code § 23-62-204 is amended to read as follows:
4 23-62-204. Allowance of credit.

5 (a)(1) No credit shall be allowed, as an asset or a deduction from
6 liability, to any ceding insurer for reinsurance unless the reinsurance
7 contract provides, in substance, that if the ceding insurer becomes
8 insolvent, the reinsurance is shall be payable under a contract reinsured by
9 the assuming insurer on the basis of reported claims allowed by the
10 liquidation court, the liability of the ceding insurer under the contracts
11 reinsured without diminution because of the insolvency of the ceding insurer.

12 (2) Payments under subsection (a)(1) of this section shall be
13 made directly to the ceding insurer or to its domiciliary liquidator unless:

14 (A) The contract or other written agreement specifically
15 provides another reinsurance payee if the insolvency of the ceding insurer;
16 or

17 (B) The assuming insurer, with the consent of the direct
18 insurer, has assumed the policy obligations of the ceding insurer as direct
19 obligations of the assuming insurer to the payees under the policy and as a
20 substitute for the obligations of the ceding insurer to the payees.

21 (b)(1) Notwithstanding subsection (a) of this section, if a life and
22 health insurance guaranty association has made the election to succeed to the
23 rights and obligations of the insolvent insurer under the contract of
24 reinsurance, then the reinsurer's liability to pay covered reinsured claims
25 shall continue under the contract of reinsurance, subject to the payment to
26 the reinsurer of the reinsurance premiums for the coverage.

27 (2) Payment for reinsured claims under this section shall only
28 be made by the reinsurer under the direction of the guaranty association or
29 its designated successor.

30 (3) Any payment made at the direction of the guaranty
31 association or its designated successor by the reinsurer will discharge the
32 reinsurer of all further liability to any other party for the claim payment.

33 (c)(1) A reinsurance agreement under this section may require the
34 domiciliary liquidator of an insolvent ceding insurer to give written notice
35 to the assuming insurer of the pendency of a claim against the ceding insurer
36 on the contract reinsured within a reasonable time after the reinsurance

1 claim is filed in the liquidation proceeding.

2 (2)(A) During the pendency of a reinsured claim under this
3 section, any assuming insurer may investigate the claim and may interpose, at
4 its own expense, in the proceeding in which the claim is to be adjudicated,
5 any defenses that it deems available to the ceding insurer, or its
6 liquidator.

7 (B) An assuming insurer's expense under subdivision (c)
8 (2)(A) of this section may be filed as a claim against the insolvent ceding
9 insurer to the extent of the proportionate share of the benefit that may
10 accrue to the ceding insurer solely as a result of the defense undertaken by
11 the assuming insurer.

12 (C) Where two (2) or more assuming insurers are involved
13 in the same claim and a majority in interest elect to interpose a defense to
14 the claim, the expense shall be apportioned in accordance with the terms of
15 the reinsurance agreement as though the expense had been incurred by the
16 ceding insurer.

17
18 SECTION 20. Arkansas Code § 23-62-305 is amended to read as follows:
19 23-62-305. Credit allowed a domestic ceding insurer.

20 (a)(1) Upon the insolvency of a non-United States insurer or reinsurer
21 that provides security to fund its United States obligations in accordance
22 with this subchapter:

23 (A) The assets representing the security shall be
24 maintained in the United States and claims shall be filed with and valued by
25 the state insurance commissioner with regulatory oversight; and

26 (B) The assets shall be distributed, in accordance with
27 the insurance laws of the state in which the trust is domiciled that are
28 applicable to the liquidation of domestic United States insurance companies.

29 (2) Credit for reinsurance shall be allowed a domestic ceding
30 insurer as either an asset or a ~~deduction~~ reduction from liability on account
31 of reinsurance ceded only when the reinsurer meets the requirements of this
32 subchapter.

33 (3) Credit shall be allowed under subsections (b), (c), and (d)
34 of this section only for cessions of those kinds or classes of business that
35 the assuming insurer is licensed or otherwise permitted to write or assume:

36 (A) In its state of domicile; or

1 (B) In the case of a United States branch of an alien
 2 assuming insurer, in the state through which it is entered and licensed to
 3 transact insurance or reinsurance.

4 (4) Credit shall be allowed under subsections (d) and (e) of
 5 this section only if requirements under subsection (g) of this section have
 6 been satisfied.

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

10 (c)(1) Credit shall be allowed when the reinsurance is ceded to an
 11 assuming insurer which is accredited as a reinsurer in this state. An
 12 accredited reinsurer is one which:

13 ~~(1)(A)~~ Files with the Insurance Commissioner evidence of
 14 its submission to this state's jurisdiction;

15 ~~(2)(B)~~ Submits to this state's authority to examine its
 16 books and records;

17 ~~(3)(C)~~ Is licensed to transact insurance or reinsurance in
 18 at least one (1) state, or, in the case of a United States branch of an alien
 19 assuming insurer, is entered through and licensed to transact insurance or
 20 reinsurance in at least one (1) state; and

21 ~~(4)(D)~~ Files annually with the commissioner a copy of its
 22 annual statement filed with the insurance department of its state of
 23 domicile, or state of entry if an alien insurer, and a copy of its most
 24 recent audited financial statement; and ~~either:~~

25 ~~(A)(i)~~ Maintains a surplus as regards policyholders
 26 in an amount ~~which is~~ not less than twenty million dollars (\$20,000,000) and
 27 whose accreditation has not been denied by the commissioner within ninety
 28 (90) days of its submission; or

29 ~~(B)(ii)~~ Maintains a surplus as regards policyholders
 30 in an amount less than twenty million dollars (\$20,000,000) and whose
 31 accreditation has been approved by the commissioner.

32 ~~(d)(2)~~ ~~No credit~~ Credit shall not be allowed a domestic ceding
 33 insurer, if the assuming insurer's accreditation has been revoked by the
 34 commissioner after notice and hearing.

35 ~~(e)(d)(1)~~ Credit shall be allowed when the reinsurance is ceded to an
 36 assuming insurer which is domiciled ~~and licensed~~ in, or in the case of a

1 United States branch of an alien assuming insurer is entered through, a state
2 which employs standards regarding credit for reinsurance substantially
3 similar to those applicable under this statute and the assuming insurer or
4 United States branch of an alien assuming insurer:

5 ~~(1)(A)~~ Maintains a surplus as regards policyholders in an
6 amount not less than twenty million dollars (\$20,000,000); and

7 ~~(2)(B)~~ Submits to the authority of this state to examine
8 its books and records.

9 ~~(2)~~ Provided, however, that the The requirement of subdivision
10 ~~(e)(1)(d)(1)~~ of this section does not apply to reinsurance ceded and assumed
11 pursuant to pooling arrangements among insurers in the same holding company
12 system.

13 ~~(f)(e)(1)~~ Credit shall be allowed when the reinsurance is ceded to an
14 assuming insurer which maintains a trust fund in a qualified United States
15 financial institution, as defined in § 23-62-307(b), for the payment of the
16 valid claims of its United States ~~policyholders and~~ ceding insurers, their
17 assigns and successors in interest. ~~The~~ To enable the commissioner to
18 determine the sufficiency of the trust fund, the assuming insurer shall
19 report annually to the commissioner information substantially the same as
20 that required to be reported on the National Association of Insurance
21 Commissioners annual statement form by licensed insurers. ~~to enable the~~
22 ~~commissioner to determine the sufficiency of the trust fund. In the case of~~
23 ~~a single assuming insurer, the trust shall consist of a trustee account~~
24 ~~representing the assuming insurer's liabilities attributable to business~~
25 ~~written in the United States and, in addition, the assuming insurer shall~~
26 ~~maintain a trustee surplus of not less than twenty million dollars~~
27 ~~(\$20,000,000). In the case of a group of incorporated and/or individual~~
28 ~~unincorporated underwriters, the trust shall consist of a trustee account~~
29 ~~representing the group's liabilities attributable to business written in the~~
30 ~~United States and, in addition, the group shall maintain a trustee surplus~~
31 ~~of which one hundred million dollars (\$100,000,000) shall be held jointly for~~
32 ~~the benefit of United States ceding insurers of any member of the group. The~~
33 ~~incorporated members of the group shall not be engaged in any business other~~
34 ~~than underwriting as a member of the group and shall be subject to the same~~
35 ~~level of solvency regulation and control by the group's domiciliary regulator~~
36 ~~as are the unincorporated members, and the group shall make available to the~~

~~1 commissioner an annual certification of the solvency of each underwriter by
2 the group's domiciliary regulator and its independent public accountants. The
3 assuming insurer shall submit to examination of its books and records by the
4 commissioner and bear the expense of examination.~~

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

~~22 (3)(2)(A) Such trust shall be established in a form approved by
23 the commissioner. Credit for reinsurance shall not be granted under this
24 section unless the form of the trust and any amendments to the trust have
25 been approved by:~~

~~26 (i) The commissioner of the state in which the trust
27 is domiciled; or~~

~~28 (ii) The commissioner of another state who, under
29 the terms of the trust instrument, has accepted principal regulatory
30 oversight of the trust.~~

~~31 (B) The form of the trust and any trust amendments also
32 shall be filed with the commissioner of every state in which the ceding
33 insurer beneficiaries of the trust are domiciled. The trust instrument shall
34 provide that contested claims shall be valid and enforceable upon the final
35 order of any court of competent jurisdiction in the United States. The trust
36 shall vest legal title to its assets in ~~the~~ its trustees ~~of the trust~~ for the~~

1 benefit of the assuming insurer's ~~its~~ United States ~~policyholders and~~ ceding
2 insurers, their assigns, and successors in interest. The trust and the
3 assuming insurer shall be subject to examination as determined by the
4 commissioner.

5 (C) The trust described herein must shall remain in effect
6 for as long as the assuming insurer ~~shall have~~ has outstanding obligations
7 due under the reinsurance agreements subject to the trust. ~~(4)No~~ later than
8 February 28 of each year, the trustees of the trust shall report to the
9 commissioner in writing ~~setting forth~~ the balance of the trust and listing
10 the trust's investments at the preceding year end and shall certify the date
11 of termination of the trust, if so planned, or certify that the trust ~~shall~~
12 will not expire prior to the ~~next~~-following December 31.

13 (3) The trust fund for a single assuming insurer shall consist
14 of funds in trust in an amount not less than the assuming insurer's
15 liabilities attributable to reinsurance ceded by United States ceding
16 insurers, and the assuming insurer shall maintain a trustee surplus of not
17 less than twenty million dollars (\$20,000,000).

18 (4)(A) In the case of a group including incorporated and
19 individual unincorporated underwriters:

20 (i) For reinsurance ceded under reinsurance
21 agreements with an inception, amendment or renewal date beginning August 1,
22 1995, the trust shall consist of a trustee account in an amount not less
23 than the group's several liabilities attributable to business ceded by United
24 States domiciled ceding insurers to any member of the group;

25 (ii) Notwithstanding any other provision of this
26 subchapter, for reinsurance ceded under reinsurance agreements with an
27 inception date on or before July 31, 1995, and not amended or renewed after
28 that date, the trust shall consist of a trustee account in an amount not
29 less than the group's several insurance and reinsurance liabilities
30 attributable to business written in the United States; and

31 (iii) In addition to these trusts, the group shall
32 maintain in trust a trustee surplus of which one hundred thousand dollars
33 (\$100,000) shall be held jointly for the benefit of the United States
34 domiciled ceding insurers of any member of the group for all years of
35 account; and

36 (B)(i) The incorporated members of the group shall not be

1 engaged in any business other than underwriting as a member of the group, and
2 shall be subject to the regulations and degree of solvency control by the
3 group's domiciliary regulator as are the unincorporated members.

4 (ii) Within ninety (90) days after its financial
5 statements are due to be filed with the group's domiciliary regulator, the
6 group shall provide to the commissioner:

7 (a) An annual certification by the group's
8 domiciliary regulator of the solvency of each underwriter member; or

9 (b) If a certification is unavailable,
10 financial statements, prepared by independent public accountants, of each
11 underwriter member of the group.

12 ~~(g)(f)~~ Credit shall be allowed when the reinsurance is ceded to an
13 assuming insurer not meeting the requirements of ~~subsection~~ subsections (a),
14 ~~(b), (e), or (d)~~ (b), (c), (d), or (e) of this section, but only with respect
15 as to the insurance of risks located in jurisdictions where ~~such~~ the
16 reinsurance is required by applicable law or regulation of that jurisdiction.

17 ~~(h)(g)~~ If the assuming insurer is not licensed or accredited to
18 transact insurance or reinsurance in this state, the credit permitted by
19 ~~subsections (e) and (g)~~ (d) and (e) of this section shall not be allowed
20 unless the assuming insurer agrees in the reinsurance agreements:

21 (1)(A) That in the event of the failure of the assuming insurer
22 to perform its obligations under the terms of the reinsurance agreement, the
23 assuming insurer, at the request of the ceding insurer, shall submit to the
24 jurisdiction of any court of competent jurisdiction in any state of the
25 United States, will comply with all requirements necessary to give such court
26 jurisdiction, and will abide by the final decision of ~~such~~ the court or of
27 any appellate court in the event of an appeal; and

28 (B) To designate the commissioner or a designated attorney
29 as its true and lawful attorney upon whom may be served any lawful process in
30 any action, suit, or proceeding instituted by or on behalf of the ceding
31 company.

32 (2) This ~~provision~~ section is not intended to conflict with or
33 override the obligation of the parties to a reinsurance agreement to
34 arbitrate their disputes, if ~~such an~~ the arbitration obligation is created in
35 the agreement.

36 (h) If the assuming insurer does not meet the requirements of

1 subsections (b), (c), or (d) of this section, the credit permitted by
 2 subsection (e) of this section shall not be allowed unless the assuming
 3 insurer agrees in the trust agreements to the following conditions:

4 (1) Notwithstanding any other provisions in the trust
 5 instrument, if the trust fund is inadequate because it contains an amount
 6 less than the amount required by subdivision (e)(3) of this section, or if
 7 the grantor of the trust has been declared insolvent or placed into
 8 receivership, rehabilitation, liquidation, or similar proceedings under the
 9 laws of its state or country of domicile, the trustee shall comply with an
 10 order of the commissioner with regulatory oversight over the trust or with an
 11 order of a court of competent jurisdiction directing the trustee to transfer
 12 to the commissioner with regulatory oversight all of the assets of the trust
 13 fund.

14 (2) The assets shall be distributed by and claims shall be filed
 15 with and valued by the commissioner with regulatory oversight in accordance
 16 with the laws of the state in which the trust is domiciled that are
 17 applicable to the liquidation of domestic insurance companies.

18 (3) If the commissioner with regulatory oversight determines
 19 that the assets of the trust fund or any part thereof are not necessary to
 20 satisfy the claims of the United States ceding insurers of the grantor of the
 21 trust, the assets or part thereof shall be returned by the commissioner with
 22 regulatory oversight to the trustee for distribution in accordance with the
 23 trust agreement.

24 (4) The grantor shall waive any right otherwise available to it
 25 under United States law that is inconsistent with this section.

26
 27 SECTION 21. Arkansas Code § 23-62-306 is amended to read as follows:

28 23-62-306. Reduction from liability for reinsurance ceded by a
 29 domestic insurer to an assuming insurer.

30 (a) A ~~An asset or a~~ reduction from liability for the reinsurance ceded
 31 by a domestic insurer to an assuming insurer not meeting the requirements of
 32 § 23-62-305 shall be allowed in an amount not exceeding the liabilities
 33 carried by the ceding insurer, ~~and such~~ The reduction shall be in the
 34 amount of funds held by or on behalf of the ceding insurer, including funds
 35 held in trust for the ceding insurer, under a reinsurance contract with such
 36 assuming insurer as security for the payment of obligations thereunder, if

1 ~~such~~ the security is held in the United States subject to withdrawal solely
2 by, and under the exclusive control of, the ceding insurer; or, in the case
3 of a trust, held in a qualified United States financial institution, as
4 defined in § 23-62-307(b).

5 (b) This security may be in the form of:

6 (1) Cash;

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

10 (3)(A) Clean, irrevocable, unconditional letters of credit,
11 issued or confirmed by a qualified United States financial institution, as
12 defined in § 23-62-307(a), effective no later than December 31 ~~in respect~~ of
13 the year for which filing is being made, and in the possession of the ceding
14 company on or before the filing date of its annual statement;

15 (B) Letters of credit meeting applicable standards of
16 issuer acceptability as of the dates of their issuance or confirmation shall,
17 notwithstanding the issuing or confirming institution's subsequent failure to
18 meet applicable standards of issuer acceptability, continue to be acceptable
19 as security until their expiration, extension, renewal, modification, or
20 amendment, whichever first occurs; or

21 (4) Any other form of security acceptable to the Insurance
22 Commissioner.

23
24 SECTION 22. Arkansas Code § 23-63-201(d)(1)(D)(ii), concerning
25 statements required to be filed with the Insurance Commissioner by certain
26 organization receiving charitable annuities, is amended to read as follows:

27 (ii) A statement certifying that it adopts and will
28 adhere to the annuity rates as published from time to time by the ~~Committee~~
29 ~~on Gift Annuities of Dallas, Texas,~~ American Council on Gift Annuities or its
30 successor, until such corporation or association advises the commissioner to
31 the contrary in writing. At such latter time, the corporation or association
32 shall then file a schedule of its new proposed maximum annuity rates for
33 approval.

34
35 SECTION 23. Effective January 1, 2004, Arkansas Code § 23-63-205 is
36 amended to read as follows:

23-63-205. Certificate of authority - Eligibility - Capital Funds.

(a)(1) ~~On and after January 1, 2002, to~~ To qualify for and maintain authority to transact any one (1) kind of insurance, as defined in §§ 23-62-101 - 23-62-108, or combination of kinds of insurance as shown in this subsection, an insurer applying for its original certificate of authority in Arkansas shall possess and maintain in cash and marketable securities unimpaired paid-in capital if the insurer is a domestic, foreign, or alien stock insurer or surplus if the insurer is a domestic, foreign or alien mutual, or domestic mutual legal reserve life insurer, or foreign or alien reciprocal insurer, in an amount not less than is applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as are required under § 23-63-207:

Kinds of Insurance	Minimum Capital or Surplus Required
Life	\$750,000
Accident and Health.....	750,000
Life and Accident and Health.....	750,000
Property.....	500,000
Casualty.....	750,000
Surety.....	750,000
Marine.....	500,000
Title.....	250,000
Property, Casualty, Surety, and Marine.....	750,000
Combination of other lines.....	750,000

(2)(A) As to any combination of kinds of insurance, other than combinations of kinds of insurance specifically listed in this subsection, the insurer shall possess the sum of the minimum capital or surplus required ~~by this subsection~~ by the Arkansas Insurance Code for the separate kinds of insurance it proposes to transact, ~~unless the commissioner deems it sufficient for the applicant to possess and maintain the total amount of seven hundred and fifty thousand dollars (\$750,000) for the proposed combination of lines.~~

(B) If the Arkansas Insurance Code does not specify the minimum capital or surplus for any line of insurance, then the commissioner shall affix a minimum capital and surplus not less than five hundred thousand

1 dollars (\$500,000).

2 (3) The Insurance Commissioner may require reinsurance on terms
3 and in amounts as are reasonable under the circumstances for abstractor's
4 professional liability insurance when written by title insurers.

5 (4) In his or her discretion, the commissioner may require the
6 insurer to possess and maintain additional capital, if a stock insurer, and
7 surplus, if a mutual or reciprocal insurer, in addition to that required by
8 this section, based on the financial condition of the insurer or based on the
9 types, volume, or nature of the business transacted by the insurer.

10 (b) An insurer holding a valid certificate of authority to transact
11 insurance in this state immediately prior to January 1, 2002, may continue to
12 be authorized to transact the same kinds of insurance as permitted by the
13 certificate of authority by maintaining thereafter the same amount of paid-in
14 capital stock, if the insurer is a stock insurer, or the amount of surplus,
15 if the insurer is a mutual or reciprocal insurer, as required by the laws of
16 this state for such an insurer immediately prior to January 1, 2002. However,
17 the insurer shall not be granted authority to transact any other or
18 additional kind of insurance, unless it then fully complies with the
19 requirement as to capital and surplus, as applied to the kinds of insurance
20 it then proposes to transact, as provided by this section with respect to
21 insurers applying for original certificates of authority.

22 (c) Capital and surplus requirements shall be based upon all the kinds
23 of insurance actually transacted or currently to be transacted by the insurer
24 in any and all areas in which it operates, whether or not only a portion of
25 the kinds are to be transacted in this state.

26 (d) As to surplus required for qualification to transact one (1) or
27 more kinds of insurance and to be maintained, domestic mutual insurers, other
28 than mutual life insurers, shall be governed by §§ 23-69-101 - 23-69-103, 23-
29 69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, and domestic
30 reciprocal insurers shall be governed by §§ 23-70-101 et seq.

31 (e) A life insurer may also grant annuities without additional capital
32 or additional surplus.

33 (f) A casualty insurer may be authorized to transact also accident and
34 health insurance without additional capital or additional surplus.

35
36 SECTION 24. Arkansas Code § 23-63-206(a)(1)(A)(ii), concerning insurer

1 security deposits, is amended to read as follows:

2 (ii)(a) On and after January 1, 2002, the provisions
3 of subdivision (a)(1)(A)(i) of this section shall apply only to domestic
4 insurers licensed or hereafter licensed.

5 (b) Foreign and alien insurers licensed or
6 hereafter licensed shall be exempt, upon filing of evidence of a satisfactory
7 deposit in the state of domicile, Canada, Mexico, or port-of-entry state.

8 (c) Deposit releases will continue to be
9 allowed after 2004.

10
11 SECTION 25. Arkansas Code § 23-63-206(a)(2)(A)(ii), concerning foreign
12 insurer security deposits, is amended to read as follows:

13 (ii)(a) On and after January 1, 2002, the provisions
14 of subdivision (a)(2)(A)(i) of this section shall apply only to domestic
15 insurers licensed or hereafter licensed.

16 (b) Foreign and alien insurers licensed or
17 hereafter licensed shall be exempt, upon filing of evidence of a satisfactory
18 deposit in the state of domicile, Canada, Mexico, or port-of-entry state.

19 (c) Deposit releases will continue to be
20 allowed after 2004.

21
22 SECTION 26. Arkansas Code § 23-63-206(a)(3)(D)(i), concerning deposit
23 releases for foreign insurers, is amended to read as follows:

24 (D)(i) On and after January 1, 2002, the provisions of
25 this subdivision (a)(3) shall apply only to domestic insurers licensed or
26 hereafter licensed.

27 (ii) Foreign and alien insurers licensed or
28 hereafter licensed shall be exempt, upon filing of evidence of a satisfactory
29 deposit in the state of domicile, Canada, Mexico, or port-of-entry state.

30 (iii) Deposit releases will continue to be allowed
31 after 2004.

32
33 SECTION 27. Arkansas Code § 23-63-206, concerning foreign insurer
34 deposits, is amended to add a new subsection follows:

35 (c)(1) As of the effective date of this subsection, foreign and alien
36 insurers seeking release permission must make a special filing with the

1 commissioner to demonstrate the adequacy and sufficiency of the deposit in
2 the state of domicile, Canada, Mexico, or port-of-entry state, in order to
3 obtain release of deposited assets.

4 (2) Applicants under subdivision (c)(1) of this section shall
5 agree to maintain deposits adequate to cover Arkansas deposit obligations at
6 all times, by certificate of authority lines of insurance in this state as
7 they are reflected on the Uniform Certificate of Authority Application and
8 shall file with the commissioner an updated certificate of deposit issued by
9 the insurance regulator in the state of domicile, Canada, Mexico, or port-of-
10 entry state.

11
12 SECTION 28. Arkansas Code § 23-63-216(a)(1), concerning annual
13 financial reports of insurers, is amended to read as follows:

14 (a)(1)(A) Annually on or before March 1, or within any extension of
15 time which the Insurance Commissioner for good cause may have granted, each
16 authorized insurer shall file with the commissioner a full and true statement
17 of its financial condition, transactions, and affairs as of the December 31
18 preceding- in hardcopy format only and as specified by the commissioner.

19 (B) Beginning July 1, 2003, foreign and alien insurers
20 authorized to transact insurance in this state may satisfy the department's
21 filing requirements by filing with the National Association of Insurance
22 Commissioners a hardcopy and an electronic annual statement, and electronic
23 quarterly statements if requested, using the most recent National Association
24 of Insurance Commissioners specifications adopted by the commissioner.

25
26 SECTION 29. Arkansas Code § 23-63-216(a)(2), concerning financial
27 statements filed by licensed insurers, is amended to read as follows:

28 (2)(A) The prescribed statement shall be prepared in accordance
29 with the most recent, companion National Association of Insurance
30 Commissioners' "Annual Statement Instructions" and shall follow those
31 accounting practices and procedures prescribed by the most recent National
32 Association of Insurance Commissioners' Accounting Practices and Procedures
33 Manual.

34 (B) The statement shall be, as adopted by the
35 commissioner, the appropriate and most recent National Association of
36 Insurance Commissioners':

1 ~~(A)(i)~~ "Annual Statement Blank For Life And Accident
2 And Health";

3 ~~(B)(ii)~~ "Property And Casualty Annual Statement
4 Blank";

5 ~~(C)(iii)~~ "Title Insurance Annual Statement Blank";

6 ~~(D)(iv)~~ "Annual Statement Blank for Health" for use
7 by hospital, medical, and dental service or indemnity corporations;

8 ~~(E)(v)~~ "Fraternal Annual Statement Blank";

9 ~~(F)(vi)~~ "Annual Statement Blank for Health" for
10 health insurers or health maintenance organizations and others; or

11 ~~(G)(i)(vii)~~ Other National Association of Insurance
12 Commissioners' convention ~~blank blanks~~ as appropriate, ~~which shall be~~
13 ~~prepared in accordance with the most recent and appropriate, companion~~
14 ~~National Association of Insurance Commissioners' "Annual Statement~~
15 ~~Instructions" and follow those accounting practices and procedures prescribed~~
16 ~~by the most recent and appropriate companion National Association of~~
17 ~~Insurance Commissioners' Accounting Practices and Procedures Manual.~~

18 ~~(ii)(C)~~ The commissioner is authorized to allow a life insurer
19 or property and casualty insurer whose insurance premiums and required
20 statutory reserves for accident and health insurance constitute at least
21 ninety-five percent (95%) of its total premium considerations or total
22 statutory required reserves, respectively, to file the "Annual Statement
23 Blank for Health" as its annual statement with the companion quarterly
24 statement forms.

25
26 SECTION 30. Arkansas Code § 23-63-216(h)(1), concerning the filing of
27 annual financial reports by insurers, is amended to read as follows:

28 (h)(1) On or before March 1, ~~1992,~~ 2004, and annually on or before
29 March 1 of each year thereafter, each domestic, foreign, and alien insurer
30 authorized to transact business in this state shall file with the National
31 Association of Insurance Commissioners a hardcopy and an electronic copy of
32 its annual statement, ~~convention blank~~, along with such additional filings as
33 prescribed by the commissioner as of the December 31 preceding. The
34 information filed with the National Association of Insurance Commissioners
35 shall be in the same format and scope as that required by the commissioner
36 and shall include the signed jurat page and the actuarial certification. Any

1 amendments and addendums to the annual statement filing subsequently filed
2 with the commissioner shall also be filed with the National Association of
3 Insurance Commissioners.

4
5 SECTION 31. Arkansas Code § 23-63-304 is amended to read as follows:

6 23-63-304. Service of process of foreign or alien insurers or domestic
7 reciprocal insurers.

8 (a) The registered agent of a licensed foreign insurer or a licensed
9 domestic reciprocal insurer is the insurer's agent for service of process,
10 notice, or demand required or permitted by law to be served on the insurer.

11 (b) A licensed foreign insurer or a licensed domestic reciprocal
12 insurer may be served by registered or certified mail, return receipt
13 requested, addressed to the president or the secretary at its principal
14 office shown in its application for a certificate of authority or in its most
15 recent annual statement if the insurer:

16 (1) Has no registered agent or its registered agent cannot with
17 reasonable diligence be served;

18 (2) Has withdrawn from transacting business in this state under
19 this subchapter; or

20 (3) Has had its certificate of authority revoked under this
21 subchapter.

22 (c) Service is perfected under subsection (b) of this section at the
23 earliest of:

24 (1) The date the insurer receives the mail; or

25 (2) The date shown on the return receipt, if signed on behalf of
26 the insurer; ~~or,~~

27 ~~(3) Five (5) calendar days after its deposit in the United~~
28 ~~States mail, as evidenced by the postmark, if mailed postpaid and correctly~~
29 ~~addressed.~~

30 ~~(d) This section does not prescribe the only means, or necessarily the~~
31 ~~required means, of serving a licensed foreign insurer or a licensed domestic~~
32 ~~reciprocal insurer. When service is made upon the designated Arkansas~~
33 ~~registered agent, service shall be perfected under the Arkansas Rules of~~
34 ~~Civil Procedure.~~

35 (e) This section does not prescribe the only means, or necessarily the
36 required means, of serving a licensed foreign insurer or a licensed domestic

1 reciprocal insurer.

2
3 SECTION 32. Arkansas Code § 23-63-503(5)(A), concerning definitions
4 for holding company laws applicable to insurers with depository corporation
5 affiliates, is amended to read as follows:

6 (5)(A) A "person" is a corporation, a partnership, an association, a
7 joint-stock company, a business trust, an unincorporated organization,
8 depository corporation, or any similar entity or any combination of the
9 foregoing acting in concert, but shall not include any securities broker
10 performing no more than the usual and customary broker's function.

11
12 SECTION 33. Arkansas Code § 23-63-506(a), concerning changes in
13 control of domestic insurers in an insurer holding company, is amended to
14 read as follows:

15 (a) No person other than the issuer shall make a tender offer for or a
16 request or invitation for tenders of, or enter into any agreement to exchange
17 securities for, seek to acquire, or acquire, in the open market or otherwise,
18 any voting security of a domestic insurer if, after the consummation thereof,
19 the person would, directly or indirectly, or by conversion or by exercise of
20 any right to acquire, be in control of the insurer. No person shall enter
21 into an agreement to merge with or otherwise to acquire control of a domestic
22 insurer or any person controlling a domestic insurer unless, at the time ~~any~~
23 the offer, request, or invitation is made or ~~any~~ the agreement is entered
24 into, or prior to the acquisition of the securities if no offer or agreement
25 is involved, the person has filed with the Insurance Commissioner and has
26 sent to the insurer, ~~and the insurer has sent to its shareholders,~~ a
27 statement containing the information required by this section and §§ 23-63-
28 507 - 23-63-513 and ~~such an~~ the offer, request, invitation, agreement, or
29 acquisition has been approved by the commissioner in the manner prescribed in
30 this section and §§ 23-63-507 - 23-63-513.

31
32 SECTION 34. Arkansas Code § 23-63-909(b), as to administration and
33 release of security deposits of insurers, is amended to read as follows:

34 (b)(1) The commissioner, under procedures he or she shall prescribe,
35 may release to the insurer any part of the special additional four percent
36 (4%) accident and health deposit ~~to the insurer~~ required under former laws.

1 (2) ~~Provided, that any funds withdrawn pursuant to this~~
2 ~~subsection shall be replaced within one hundred eighty (180) days after such~~
3 ~~a withdrawal. For good cause, the commissioner may exempt insurers in writing~~
4 ~~from filing replacement deposits for any line of insurance, including~~
5 ~~statutory deposits for discontinued lines of insurance.~~

6
7 SECTION 35. Arkansas Code § 23-65-302 is amended to read as follows:
8 23-65-302. Exceptions.

9 ~~The provisions of this subchapter controlling the placing of insurance~~
10 ~~with unauthorized insurers shall not apply to reinsurance or to the following~~
11 ~~insurances when so placed by licensed agents or brokers of this state. This~~
12 ~~subchapter shall not apply to reinsurance or to the following kinds of~~
13 ~~insurance placed by licensed agents or brokers in this state:~~

14 (1) Wet marine and foreign trade insurance;

15 (2) Insurance on subjects located, resident, or to be performed
16 wholly outside of this state or on vehicles or aircraft owned and principally
17 garaged outside this state;

18 (3) Insurance on property or operation of railroads engaged in
19 interstate commerce; and

20 (4) Insurance of aircraft owned or operated by manufacturers of
21 aircraft, or aircraft operated in scheduled interstate flight, or cargo of
22 the aircraft, or against liability, other than workers' compensation and
23 employer's liability, arising out of the ownership, maintenance, or use of
24 the aircraft.

25
26 SECTION 36. Arkansas Code § 23-66-507 is amended to read as follows:
27 23-66-507. Confidentiality.

28 (a) Notwithstanding any other provision of law, the documents and
29 evidence provided pursuant to §§ 23-66-505 and 23-66-508 or obtained by the
30 Insurance Commissioner in an investigation of suspected or actual fraudulent
31 insurance acts shall be privileged and confidential and shall not be a public
32 record and shall not be subject to discovery or subpoena in a civil or
33 criminal action until the matter under investigation is closed by the
34 ~~Insurance Fraud~~ Criminal Investigation Division with the consent of the
35 commissioner.

36 (b) Subsection (a) of this section does not prohibit release by the

1 commissioner of documents and evidence obtained by the division in an
2 investigation of suspected or actual fraudulent insurance acts:

3 (1) In administrative or judicial proceedings to enforce laws
4 administered by the commissioner;

5 (2) To federal, state, or local law enforcement or regulatory
6 agencies, to an organization established for the purpose of detecting and
7 preventing fraudulent insurance acts, or to the National Association of
8 Insurance Commissioners; or

9 (3) At the discretion of the commissioner, to a person in the
10 business of insurance that is aggrieved by a fraudulent insurance act.

11 (c) Release of documents and evidence under subsection (b) of this
12 section does not abrogate or modify the privilege granted in subsection (a)
13 of this section.
14

15 SECTION 37. Arkansas Code § 23-66-508 is amended to read as follows:

16 23-66-508. Creation and purpose of the ~~Insurance Fraud~~ Criminal
17 Investigation Division.

18 (a)(1) The ~~Insurance Fraud~~ Criminal Investigation Division is
19 established within the Arkansas Insurance Department.

20 (2) The Insurance Commissioner shall appoint the full-time
21 supervisory and investigative personnel of the division, who shall be
22 qualified by training and experience to perform the duties of their
23 positions.

24 (3)(A) The commissioner shall designate the personnel assigned
25 to the division, who, upon meeting the qualifications established by the
26 Arkansas Commission on Law Enforcement Standards and Training, shall have the
27 powers of specialized law enforcement officers of the State of Arkansas for
28 the purpose of conducting investigations under § 23-66-504 and any criminal
29 violations related to those investigations.

30 (B) Personnel hired as specialized law enforcement
31 officers shall have a minimum of three (3) years of certified law enforcement
32 experience or its equivalent in national or military law enforcement
33 experience as approved by the Arkansas Commission on Law Enforcement
34 Standards and Training.

35 (4) The commissioner shall also appoint clerical and other staff
36 necessary for the division to carry out its duties and responsibilities under

1 *this subchapter.*

2 *(b) It shall be the duty of the division to:*

3 *(1) Initiate independent inquiries and conduct independent*
4 *investigations when the division has cause to believe that a fraudulent*
5 *insurance act may be, is being, or has been committed;*

6 *(2) Review reports or complaints of alleged fraudulent insurance*
7 *activities from federal, state, and local law enforcement and regulatory*
8 *agencies, persons engaged in the business of insurance, and the public to*
9 *determine whether the reports require further investigation and to conduct*
10 *these investigations; and*

11 *(3) Conduct independent examinations of alleged fraudulent*
12 *insurance acts and undertake independent studies to determine the extent of*
13 *fraudulent insurance acts.*

14 *(c) The division shall have the authority to:*

15 *(1)(A) Issue subpoenas to examine any individual under oath and*
16 *to compel the production of records, books, papers, contracts, and other*
17 *documents.*

18 *(B) Subpoenas shall be served in the same manner as if*
19 *issued by a circuit court.*

20 *(C) If any individual fails to obey a subpoena issued and*
21 *served pursuant to this subsection, upon application of the division, the*
22 *Pulaski County Circuit Court or the circuit court of the county where the*
23 *subpoena was served may issue an order requiring the individual to comply*
24 *with the subpoena.*

25 *(D) Any failure to obey the order of the court may be*
26 *punished by the court as contempt thereof;*

27 *(2) Administer oaths and affirmations;*

28 *(3) Share records and evidence with federal, state, or local law*
29 *enforcement or regulatory agencies;*

30 *(4)(A) Make criminal referrals to prosecuting authorities.*

31 *(B) The prosecuting attorney of the judicial district*
32 *where a criminal referral has been made shall, for the purpose of assisting*
33 *in the prosecution, have the authority to appoint as special deputy*
34 *prosecuting attorneys licensed attorneys in the employment of the division.*

35 *(C) The prosecuting attorney shall have the right and*
36 *discretion to proceed against any person or organization on criminal*

1 referrals made hereunder, both organizational and individual liability being
2 intended; and

3 (5)(A) Conduct investigations outside of this state.

4 (B) If the information the division seeks to obtain is
5 located outside this state, the person from whom the information is sought
6 may make the information available to the division to examine at the place
7 where the information is located.

8 (C) The division may designate representatives, including
9 officials of the state in which the matter is located, to inspect the
10 information on behalf of the division, and the division may respond to
11 similar requests from officials of other states.

12

13 SECTION 38. Arkansas Code § 23-67-211(a), regarding a waiver of the
14 twenty-day review period for certain property and casualty filings in
15 competitive markets, is amended to read as follows:

16 (a)(1) Filings ~~as to~~ in Competitive Markets. In a competitive market,
17 every insurer shall file with the Insurance Commissioner all rates,
18 supplementary rate information, and supporting information for risks which
19 are to be written in this state. The rates and information shall be filed
20 twenty (20) days prior to the effective date. A filing shall be deemed to
21 meet the requirements of this chapter and to become effective upon the
22 expiration of the waiting period.

23 (2) Upon written request the commissioner may waive any portion
24 of the twenty-day period provided for in this subsection (a) if:

25 (A) The filing has been pending for more than twenty (20)
26 days;

27 (B) The current rates are inadequate; or

28 (C) The filing will result in a net decrease in rates.

29 ~~(2)(3)~~ In a competitive market, if the commissioner determines
30 after a hearing or by agreement that an insurer's rates require closer
31 supervision because of the insurer's financial condition or its rating
32 practices, the insurer shall file with the commissioner at least sixty (60)
33 days prior to the effective date all rates and supplementary rate information
34 and supporting information prescribed by the commissioner. Upon application
35 by the filer, the commissioner may authorize an earlier effective date. A
36 filing shall be deemed to meet the requirements of this chapter and to become

1 effective upon the expiration of the waiting period.

2
3 SECTION 39. Arkansas Code § 23-69-108(a)(1), concerning officers for
4 domestic stock or mutual insurers, is amended to read as follows:

5 (a)(1) Every domestic stock or mutual insurer shall have a chief
6 executive officer who shall be a director and who may also be the insurer's
7 president, ~~who shall be a director,~~ a president, and a secretary and a
8 treasurer. They shall be chosen by the board of directors and shall hold
9 their offices until their respective successors are chosen and qualify.

10
11 SECTION 40. Arkansas Code § 23-69-141(d), as to a domestic stock
12 insurer's conversion to a mutual insurer, is amended to read as follows:

13 (d) This section ~~shall not apply to~~ is not intended to conflict with
14 formations of, or insurer conversions to, domestic mutual holding companies
15 under other provisions of the Arkansas Insurance Code.

16
17 SECTION 41. Arkansas Code § 23-73-105(f)(2)(A), concerning licensure
18 eligibility of and financial stability for farmers' mutual aid associations
19 or companies, is amended to read as follows:

20 (2)(A)(i) Before any association shall be authorized to write
21 the coverages listed in subdivision (f)(1) of this section, the policy form
22 shall have prior approval of the commissioner, in accordance with § 23-79-
23 109, ~~the association shall have and thereafter maintain a minimum surplus of~~
24 ~~fifty thousand dollars (\$50,000) to be deposited with the commissioner in the~~
25 ~~form of securities eligible for deposit under § 23-63-903.~~

26 (ii) Beginning January 1, 2004, each farmers' mutual
27 aid association or company shall maintain unimpaired a minimum surplus of
28 five hundred thousand dollars (\$500,000).

29 (iii) If immediate compliance with subdivision
30 (f)(2)(A) of this section would cause the domestic association or company to
31 be impaired or insolvent, the commissioner, in his or her sole discretion,
32 may allow domestic associations or companies to augment surplus and special
33 surplus in increments over five (5) years until December 31, 2008, to achieve
34 compliance with the minimum requirements of subdivision (f)(2)(A) of this
35 section.

1 SECTION 42. Arkansas Code § 23-73-112, concerning the minimum number
2 of members required for domestic farmers' mutual aid associations or
3 companies, is amended to read as follows:

4 23-73-112. Continuance of certificate of authority.

5 To qualify for and hold a certificate of authority to insure property
6 or issue policies, the company or association must:

7 (1)(A) Have at least ~~fifty (50)~~ two hundred fifty (250) members
8 who hold policies or certificates upon at least ~~fifty (50)~~ two hundred fifty
9 (250) separate risks.

10 (B) An association whose membership falls below ~~fifty (50)~~
11 two hundred fifty (250) members shall notify the Insurance Commissioner
12 immediately and shall have ninety (90) days from that date to bring its
13 membership level back up to the requisite number of ~~fifty (50)~~ two hundred
14 fifty (250) members.

15 (C) Failure to restore the membership level to ~~fifty (50)~~
16 two hundred fifty (250) members within the prescribed ninety-day period shall
17 cause the commissioner to place the association into involuntary dissolution
18 as contained in § 23-73-120; and

19 (2) Fully comply with and qualify according to the other
20 provisions of this chapter.

21 (3) If immediate compliance with this subsection would cause the
22 domestic association or company to be ineligible for a continued certificate
23 of authority to operate in this state, the commissioner, in his or her sole
24 discretion, may allow domestic associations or companies to augment
25 membership in increments over five (5) years until December 31, 2008, to
26 achieve compliance with the minimum requirements of this section.

27
28 SECTION 43. Arkansas Code § 23-73-113, concerning certificates of
29 authority for farmers' mutual aid associations or companies, is amended to
30 read as follows:

31 23-73-113. Continuance of certificate of authority.

32 (a) For continuance of an original certificate of authority, a
33 farmers' mutual aid company or association shall file with the Insurance
34 Commissioner:

35 (1) A concise statement of its financial condition, management,
36 and affairs on a form satisfactory to the commissioner;

1 (2) Other documents or stipulations as the commissioner may
2 reasonably require to evidence compliance with the provisions of this
3 chapter; and

4 (3) Pay any fees required by the Arkansas Insurance Code to be
5 paid for filing the accompanying documents and for the certificate of
6 authority if granted.

7 (b)(1) Beginning September 1, 2003, the commissioner shall prepare and
8 forward to each farmers' mutual aid association or company, licensed in good
9 standing on department records as of that date, a new Arkansas certificate of
10 authority, evidencing full licensure from the original year and date on
11 department records when each association or company commenced business in
12 this state.

13 (2) The certificate under subdivision (b)(1) of this section
14 shall replace any previous certificate of authority, which shall be void upon
15 the effective date of the new certificate.

16 (3) The new certificate shall remain in force and effect until
17 cancelled, revoked, expired, or surrendered if:

18 (A) The association or company is entitled to the new
19 certificate;

20 (B) The association or company timely and satisfactorily
21 complies with annual continuation requirements of this section and other
22 applicable laws or rules.

23 (4) Although issued to the association or company under this
24 law, the certificate of authority is the property of the State of Arkansas,
25 and, upon any termination or expiration, the association or company shall
26 promptly deliver the certificate to the commissioner.

27 (5)(A) If for any reason the association or company is not
28 entitled to a continuation of the certificate of authority, the commissioner
29 may refuse to continue the certificate under this section.

30 (B) If the commissioner refuses to continue the
31 certificate under this section, the certificate shall expire on the next
32 April 30 following the commissioner's written or electronic notice to the
33 association or company.

34 (c) The certificate of authority of a farmers' mutual aid association
35 or company may be suspended or revoked or otherwise cancelled, after notice
36 and a hearing, by the commissioner:

1 (1) If the association or company no longer meets the
2 requirements for the authority originally granted, on account of a deficiency
3 of assets or otherwise, or if the association or company is impaired or
4 insolvent;

5 (2) If the association or company is using methods or practices
6 in the conduct of its business that render further transactions of insurance
7 in Arkansas hazardous or injurious to its members, policyholders, or the
8 public;

9 (3) If the association or company has refused to be examined or
10 to produce its accounts, records, or files for examination, or if any of its
11 officers have refused to give information with respect to its affairs, when
12 required by the commissioner;

13 (4) If the association or company has failed to pay a final
14 judgment against it; or

15 (5) If the association or company has violated or failed to
16 comply with applicable provisions of the Arkansas Code or any lawful order or
17 regulation of the commissioner.

18
19 SECTION 44. Arkansas Code § 23-77-107(a)(2), concerning the suspension
20 and licenses for automobile clubs, is amended to read as follows:

21 (2) If the automobile club or association no longer meets the
22 requirements for the authority originally granted due to a deficiency in the
23 deposit required by § 23-77-106(d)(1)(A) or the failure to maintain a ~~surety~~
24 ~~bond~~ deposit of securities or other assets acceptable to the commissioner, in
25 such amount as prescribed by § 23-77-106(d)(1)(A); or
26

27 SECTION 45. Arkansas Code § 23-79-121(a), concerning insurance
28 policies delivered to consumers, is amended to read as follows:

29 (a)(1) Subject to the insurer's requirements as to payment of premium,
30 every policy shall be mailed or delivered to the insured or to the person
31 entitled to receive it, within a reasonable period of time after its
32 issuance, except where a condition required by the insurer has not been met.

33 (2)(A) The insurer may mail or deliver an electronic copy of the
34 policy to the insured or to the person entitled to receive it.

35 (B) The insurer shall retain the electronic transmittal,
36 along with an electronic or imaged copy of the policy, as a part of the

1 insurer's records.

2
3 SECTION 46. Arkansas Code § 23-79-123(a) concerning delivery of
4 insurance certificates or endorsements to policyholders, is amended to read
5 as follows:

6 (a)(1) Any insurance policy terminating by its terms at a specified
7 expiration date and not otherwise renewable may be renewed or extended at the
8 option of the insurer upon a currently authorized policy form and at the
9 premium rate then required for that type of policy, for a specific additional
10 period or periods by certificate or by endorsement of the policy, or by
11 electronic certificate or electronic endorsement properly executed, and
12 without requiring the issuance of a new policy.

13 (2) The insurer shall retain the electronic transmittal, and a
14 copy of the certificate or endorsement, as a part of the insurer's records.

15
16 SECTION 47. Arkansas Code § 23-81-304(b)(1)(A), concerning minimum
17 values for annuity contracts, is amended to read as follows:

18 (b)(1)(A) With respect to contracts providing for flexible
19 considerations, the minimum nonforfeiture amount at any time at or prior to
20 the commencement of any annuity payments shall be equal to an accumulation up
21 to such time at a rate of interest of ~~three percent (3%)~~ one and one-half
22 percent (1.5%) per annum of percentages of the net considerations paid prior
23 to the time, decreased by the sum of:

24 (i) Any prior withdrawals from or partial surrenders
25 of the contract accumulated at a rate of interest of ~~three percent (3%)~~ one
26 and one-half percent (1.5%) per annum; and

27 (ii) The amount of any indebtedness to the insurer
28 on the contract, including interest due and accrued and increased by any
29 existing additional amounts credited by the insurer to the contract.

30
31 SECTION 48. Arkansas Code § 23-81-308 is amended to read as follows:
32 23-81-308. Maturity date.

33 (a) For the purpose of determining the benefits calculated under §§
34 23-81-306 and 23-81-307, in the case of annuity contracts under which an
35 election may be made to have annuity payments commence at optional maturity
36 dates, the maturity date shall be deemed to be the latest date for which

1 election shall be permitted by the contract. This date shall not be deemed to
2 be later than the anniversary of the contract next following the annuitant's
3 seventieth birthday or the tenth anniversary of the contract, whichever is
4 later.

5 (b) This section does not apply to annuities funding funeral and
6 related expenses.

7
8 SECTION 49. Arkansas Code § 23-89-213 is amended to read as follows:
9 23-89-213. ~~Premium delinquencies~~ Auto Liability – Proof of insurance
10 card.

11 All insurance companies authorized to do business in this state and
12 issuing automobile liability insurance policies in this state shall furnish
13 to the insured a proof of insurance card which shall contain the following
14 information:

15 (1) The name, address, and telephone number of the insurer, and
16 as the National Association of Insurance Commissioners' five-digit
17 identification number assigned to the insurer;

18 (2) The name and telephone number of the local agent through
19 whom the policy was issued, if any, or a blank space where a local agent's
20 name may be stamped or filled in;

21 (3) The policy number;

22 (4) The effective date of the insurance policy coverage and the
23 expiration date of the insurance policy coverage;

24 (5) The vehicle identification number and a brief description of
25 the insured vehicle; and

26 (6) The name and address of the insured person.

27
28 SECTION 50. Arkansas Code § 23-100-101 is amended to read as follows:
29 23-100-101. Title.

30 This chapter shall be known as "The Insurance Fraud
31 State Insurance Department Criminal Investigation Division Trust Fund Act".

32
33 SECTION 51. Arkansas Code § 23-100-102(a), concerning insurers'
34 payment extensions for antifraud assessments and penalties for noncompliance,
35 is amended to read as follows:

36 (a) The Insurance Commissioner may grant any licensed insurer an

1 extension for payment of the annual antifraud assessment for good cause
2 shown, upon written application of the licensed insurer received at the State
3 Insurance Department on or before each annual due date. Absent the
4 commissioner's approval of such time extensions for good cause, licensed
5 insurers failing timely to pay the antifraud assessment shall be subject to a
6 penalty of one hundred dollars (\$100) per day for each day of delinquency,
7 payable to the ~~Insurance Fraud~~ State Insurance Department Criminal
8 Investigation Division Trust Fund. The commissioner may pursue any
9 appropriate legal remedies to collect the antifraud assessment and penalties
10 due and unpaid from any insurer. Further, the commissioner may in his
11 discretion order suspension of the delinquent insurer's Arkansas certificate
12 of authority after notice and hearing until the payment of all such antifraud
13 assessments and penalties is remitted to the fund. Absent grant of his waiver
14 for good cause shown, the commissioner may revoke the Arkansas certificate of
15 authority of any delinquent insurer consistently refusing and failing without
16 good cause to remit payment of these antifraud assessments and penalties to
17 the fund pursuant to this section.

18
19 SECTION 52. Arkansas Code § 23-100-103 is amended to read as follows:

20 23-100-103. The ~~Insurance Fraud~~ State Insurance Department Criminal
21 Investigation Division Trust Fund - Creation.

22 (a) There is hereby established on the books of the Treasurer of
23 State, the Auditor of State, and the Chief Fiscal Officer of the State a fund
24 to be known as the ~~Insurance Fraud~~ State Insurance Department Criminal
25 Investigation Division Trust Fund to be used to defray the expenses of the
26 ~~Insurance Fraud~~ Criminal Investigation Division of the State Insurance
27 Department in the discharge of its administrative and regulatory powers and
28 duties as prescribed by law.

29 (b) No money is to be appropriated from this fund for any purpose except
30 for the personal services and operating expenses, maintenance and operations,
31 and support of and improvements to the division, and at the direction of the
32 Insurance Commissioner for the use, benefit, and support of the division.

33 (c) The fund established pursuant to this section shall be administered,
34 disbursed, and invested under the direction of the commissioner and the
35 Treasurer of State.

36 (d) All income derived through investment of the fund, including, but

1 not limited to, interest and dividends, shall be credited as investment
2 income to the fund. All income derived through grants, refunds, gifts, or any
3 other sources, to the fund shall be credited as income to the fund and
4 deposited therein.

5 (e) Further, all moneys deposited to the aforementioned fund shall not
6 be subject to any deduction, tax, levy, or any other type of assessment,
7 except as may be provided by law.

8

9 SECTION 53. Arkansas Code § 23-100-104(a)(1) is amended to read as
10 follows:

11 (a)(1) Notwithstanding the provisions of § 26-57-601 et seq., § 23-61-
12 701 et seq., and other provisions of Arkansas law, all licensed insurers,
13 including, but not limited to, all licensed stock and mutual insurance
14 companies, reinsurers, health maintenance organizations, fraternal benefit
15 societies, hospital and medical service corporations, stipulated premium
16 insurers, farmers' mutual aid associations, and prepaid legal insurers,
17 shall, not later than June 30, 1997, for the 1996-1997 fiscal year, and
18 thereafter annually on or before June 30 for all subsequent years at the time
19 and in the manner as the Insurance Commissioner shall prescribe, or at times
20 alternate from June 30 annually as the commissioner shall prescribe, pay to
21 the ~~Insurance Fraud~~ State Insurance Department Criminal Investigation
22 Division Trust Fund, in addition to the premium taxes and fees now required
23 under existing law, a nonrefundable antifraud assessment as directed by the
24 commissioner for the reasonable and necessary expenses and operation of the
25 ~~Insurance Fraud~~ Criminal Investigation Division.

26

27 SECTION 54. Arkansas Code § 23-100-105 is amended to read as follows:

28 23-100-105. Insurers' antifraud fees - Deposit into the ~~Insurance~~
29 ~~Fraud~~ State Insurance Department Criminal Investigation Division Trust Fund.

30 The Insurance Commissioner shall deposit all antifraud assessments and
31 any penalties assessed under this chapter, as well as any other income
32 received for purposes set out in § 23-100-103(a), into the ~~Insurance Fraud~~
33 State Insurance Department Criminal Investigation Division Trust Fund as
34 special revenues.

35

36 SECTION 55. Arkansas Code § 23-100-107 is amended to read as follows:

1 23-100-107. ~~The Insurance Fraud~~ State Insurance Department Criminal
2 Investigation Division Trust Fund - Department vouchers and Auditor of State
3 warrants.

4 All antifraud assessments, penalties, and revenues provided in this
5 chapter received as special revenues for the ~~Insurance Fraud~~ State Insurance
6 Department Criminal Investigation Division Trust Fund and deposited therein
7 shall be deemed for all purposes special revenues of the fund and of the
8 State Insurance Department for the sole support, operation, and maintenance
9 of the ~~Insurance Fraud~~ Criminal Investigation Division of the State Insurance
10 Department, and, when paid into the State Treasury by the Insurance
11 Commissioner, shall be maintained by the State Treasury as the ~~Insurance~~
12 ~~Fraud~~ State Insurance Department Criminal Investigation Division Trust Fund,
13 separate from all other funds, and available only for the payment of the
14 expenses of the division pursuant to the appropriations therefor. The Auditor
15 of State shall, upon proper voucher from the commissioner, issue his warrant
16 on the Treasurer of State in payment of all salaries and other expenses
17 incurred in the administration of this chapter.

18
19 SECTION 56. Arkansas Code § 26-57-606 is repealed.

20 ~~26-57-606. Foreign automobile insurance companies—Annual reports.~~
21 ~~Each alien and foreign insurance company insuring motor vehicles in~~
22 ~~this state shall annually file a report with the Insurance Commissioner~~
23 ~~showing the total premiums collected on collision, comprehensive, and~~
24 ~~liability insurance written on motor vehicles, the licensed address of which~~
25 ~~is a city or town in the state, and the total premium taxes paid thereon to~~
26 ~~the state. The report shall show separately the premiums collected upon~~
27 ~~insurance policies or contracts for motor vehicles addressed in each city or~~
28 ~~town in this state and the amount of premium taxes paid to the State of~~
29 ~~Arkansas on such premiums.~~

30
31 SECTION 57. Arkansas Code § 26-57-614(e), concerning premium taxes for
32 fire protection services, is amended to read as follows:

33 (e)(1) Premium tax payments shall be made upon company checks payable
34 to the Fire Protection Premium Tax Fund.

35 (2)(A) If the premium taxes required to be paid are less than
36 twenty-five dollars (\$25.00), the insurer may defer payment to the following

1 quarter or quarters of that calendar year.

2 (B) However, the tax payment shall be remitted to the
3 State Insurance Department no later than March 1 of the following year,
4 coincident with the filing of the annual statement.

5
6 SECTION 58. Arkansas Code § 27-19-717 is amended to read as follows:

7 27-19-717. Money or security as proof.

8 (a)(1)~~(A)~~ Proof of financial responsibility may be evidenced by the
9 certificate of the ~~Insurance Commissioner~~ State Revenue Commissioner that the
10 person named therein has deposited with him ~~sixty-five thousand dollars~~
11 ~~(\$65,000)~~ seventy-five thousand dollars (\$75,000) in cash or securities such
12 as may be legally purchased by savings banks or for trust funds of a market
13 value of ~~sixty-five thousand dollars (\$65,000)~~ seventy-five thousand dollars
14 (\$75,000).

15 (B) Surety bonds will no longer be accepted for the statutory
16 deposit after the effective date of this subdivision (a)(1)(B).

17 (2) The commissioner shall not accept any such deposit and issue
18 a certificate therefor and the office shall not accept the certificate unless
19 accompanied by evidence that there are no unsatisfied judgments of any
20 character against the depositor in the county where the depositor resides.

21 (b)(1) The deposit shall be held by the commissioner to satisfy, in
22 accordance with the provisions of this subchapter, any execution on a
23 judgment issued against the person making the deposit, for damages, including
24 damages for care and loss of services because of bodily injury to or death of
25 any person, or for damages because of injury to or destruction of property,
26 including the loss of use thereof, resulting from the ownership, maintenance,
27 use, or operation of a vehicle of a type subject to registration under the
28 laws of this state after the deposit was made.

29 (2) Money or securities so deposited shall not be subject to
30 attachment or execution unless the attachment or execution shall arise out of
31 a suit for damages as indicated.

32
33 SECTION 59. Arkansas Code § 27-19-719 is amended to read as follows:

34 27-19-719. Substitution of proof.

35 The office shall consent to the cancellation of any bond or certificate
36 of insurance or the office shall direct, and the ~~Insurance Commissioner~~ State

1 Revenue Commissioner shall return, any money or securities to the person
2 entitled thereto upon the substitution and acceptance of other adequate proof
3 of financial responsibility pursuant to this chapter.

4
5 SECTION 60. Subsection (a) of Arkansas Code 27-19-721(a), concerning
6 refund deposits posted to meet vehicle financial responsibility laws, is
7 amended to read as follows:

8 (a) The office shall, upon request, consent to the immediate
9 cancellation of any bond or certificate of insurance, or the office shall
10 direct, and the ~~Insurance Commissioner~~ State Revenue Commissioner shall
11 return, to the person entitled thereto any money or securities deposited
12 pursuant to this subchapter as proof of financial responsibility, or the
13 office shall waive the requirement of filing proof, in any of the following
14 events:

15 (1) At any time after three (3) years from the date the proof
16 was required when, during the three-year period preceding the request, the
17 office has not received record of a conviction or a forfeiture of bail which
18 would require or permit the suspension or revocation of the license or
19 registration of the person by or for whom the proof was furnished; or

20 (2) In the event of the death of the person on whose behalf the
21 proof was filed or the permanent incapacity of the person to operate a motor
22 vehicle; or

23 (3) In the event the person who has given proof surrenders his
24 license and registration to the office.

25
26 SECTION 61. Arkansas Code § 23-61-113(b), concerning the Insurance
27 Commissioner's rulemaking authority relating to disclosure of nonpublic
28 personal information, is amended to read as follows:

29 (b) The Insurance Commissioner shall adopt rules and regulations
30 governing the treatment of consumer financial and protected health
31 information by the Arkansas Comprehensive Health Insurance Pool and by all
32 licensed insurers, producers, and other persons licensed or required to be
33 licensed, authorized or required to be authorized, or registered or required
34 to be registered by the commissioner.

35
36 SECTION 62. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that the laws of this state
2 regarding insurance regulation and vehicle liability deposits for proof of
3 financial responsibility are inadequate for the protection of the public; and
4 that the immediate passage of this act is necessary in order to provide for
5 the adequate protection of the public. Therefore, an emergency is declared
6 to exist, and this act being necessary for the preservation of the public
7 peace, health, and safety, shall become effective on July 1, 2003.

8
9 /s/ Biggs
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