

**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 87th General Assembly  
3 Regular Session, 2009  
4

*As Engrossed: S3/18/09*

# A Bill

SENATE BILL 806

5 By: Senators T. Smith, Altes, G. Baker, Bledsoe, Bookout, Horn, B. Johnson, P. Malone, Teague, H.  
6 Wilkins

7 By: Representatives Hawkins, Hoyt, Abernathy, Dunn, Glidewell, Hardy, Hyde, Ingram, W. Lewellen,  
8 Maxwell, Rainey  
9

## For An Act To Be Entitled

12 AN ACT TO ENACT THE STATE INSURANCE DEPARTMENT  
13 GENERAL OMNIBUS BILL; TO UPDATE AND MAKE  
14 TECHNICAL CORRECTIONS TO THE ARKANSAS INSURANCE  
15 LAWS; TO REPEAL SECTION 1 OF ACT 901 OF 1993,  
16 CONCERNING THE PAYMENT OF INSURANCE AGENT FEES;  
17 TO AMEND THE CAPITAL REQUIREMENTS FOR DOING  
18 BUSINESS UNDER THE SERVICE CONTRACTS ACT, § 4-  
19 114-101 ET SEQ.; TO AMEND ARKANSAS CODE § 11-9-  
20 801(a) TO AUTHORIZE THE PAYMENT OF WORKERS'  
21 COMPENSATION BENEFITS BY ELECTRONIC FUNDS  
22 TRANSFER; TO AMEND THE GENERAL PENALTY SECTION OF  
23 THE INSURANCE CODE; TO AMEND ARKANSAS CODE § 23-  
24 61-103(d) CONCERNING THE RELEASE OF ACTIVE  
25 EXAMINATION OR INVESTIGATORY FILES; TO AMEND  
26 ARKANSAS CODE § 23-61-207 TO PROVIDE  
27 CONFIDENTIALITY PROTECTION FOR ANICILLARY  
28 FINANCIAL AND INSURANCE INFORMATION REQUESTED BY  
29 THE INSURANCE COMMISSIONER; TO PERMIT THE  
30 BIENNIAL COLLECTION OF LICENSE FEES AND ESTABLISH  
31 EQUAL NONRESIDENT INSURANCE AGENT LICENSE FEES BY  
32 INSURANCE COMMISSIONER RULE; TO AMEND ARKANSAS  
33 CODE § 23-61-703 TO REVISE THE DUE DATE OF AN  
34 INSURER'S ADMINISTRATIVE AND FINANCIAL REGULATION  
35 FEE; TO AMEND ARKANSAS CODE § 23-62-111 TO ADD  
36 EMPLOYER-SPONSORED HEALTH PLANS AS AN INSURED



1 UNDER EMPLOYEE BENEFIT STOP-LOSS INSURANCE; TO  
2 AMEND ARKANSAS CODE § 23-63-111 TO REQUIRE AN  
3 INSURANCE PRODUCER TO MAIL OR DELIVER CLAIM LOSS  
4 INFORMATION TO THE POLICYHOLDER AFTER THE CLAIM  
5 LOSS INFORMATION HAS BEEN RECEIVED BY THE  
6 INSURANCE PRODUCER; TO MODERNIZE THE LAWS  
7 PERTAINING TO CHARITABLE GIFT ANNUITIES; TO  
8 REGULATE THE SUSPENSION OF AN INSURANCE COMPANY'S  
9 CERTIFICATE OF AUTHORITY; TO AMEND ARKANSAS CODE  
10 § 23-63-216(b)(5) TO REPEAL THE REQUIREMENT FOR  
11 FILING HARD COPIES OF FINANCIAL STATEMENTS WITH  
12 THE NATIONAL ASSOCIATION OF INSURANCE  
13 COMMISSIONERS; TO REPEAL § 23-63-701(g)  
14 CONCERNING THE LIMIT OF RISK OF A MUTUAL INSURER;  
15 TO AMEND ARKANSAS CODE § 23-63-818 CONCERNING A  
16 DOMESTIC INSURER'S INVESTMENTS IN ITS  
17 SUBSIDIARIES; TO AMEND ARKANSAS CODE § 23-63-841  
18 TO CORRECT AN INTERNAL REFERENCE; TO MAKE A  
19 TECHNICAL CORRECTION TO ARKANSAS CODE § 23-63-  
20 1105(b) CONCERNING CONTROLLED INSURERS; TO AMEND  
21 ARKANSAS CODE § 23-63-1607(b)(3)(A) TO CORRECT  
22 THE ARKANSAS CODE CITATION FOR AN ASSOCIATION  
23 CAPTIVE INSURANCE COMPANY'S ANNUAL REPORT; TO  
24 ADOPT THE NATIONAL ASSOCIATION OF INSURANCE  
25 COMMISSIONERS PROPERTY AND CASUALTY ACTUARIAL  
26 OPINION MODEL LAW; TO AMEND ARKANSAS CODE § 23-  
27 64-209 TO IMPLEMENT A CONTINUING EDUCATION  
28 REQUIREMENT AND A NOTICE REQUIREMENT FOR  
29 INSURANCE ADJUSTERS; TO PROVIDE A BIENNIAL CYCLE  
30 TO CONTINUE A LICENSE OF AN INSURANCE ADJUSTER OR  
31 INSURANCE CONSULTANT; TO CLARIFY THE RECORD  
32 RETENTION REQUIREMENTS OF INSURANCE AGENTS AND  
33 BROKERS; TO REVISE THE CONTINUING EDUCATION  
34 REQUIREMENTS FOR INSURANCE PRODUCERS; TO AMEND  
35 ARKANSAS CODE § 23-64-405(g)(2) TO CORRECT AN  
36 INTERNAL REFERENCE; TO AMEND ARKANSAS CODE § 23-

1 65-311 TO REQUIRE SURPLUS LINES BROKERS TO  
2 PROVIDE CLAIM LOSS INFORMATION TO THE  
3 POLICYHOLDER; TO AMEND ARKANSAS CODE § 23-69-113  
4 TO ELIMINATE THE USE OF CORPORATE SURETY BONDS AS  
5 ACCEPTABLE SECURITIES FOR DOMESTIC MUTUAL  
6 INSURERS; TO CLARIFY THE DEPOSIT REQUIREMENTS OF  
7 FARMERS' MUTUAL AID ASSOCIATIONS; TO AMEND  
8 ARKANSAS CODE § 23-75-106 TO REQUIRE A HOSPITAL  
9 MEDICAL SERVICE CORPORATION TO NOTIFY THE  
10 INSURANCE COMMISSIONER IF IT CHANGES OR AMENDS  
11 ITS ARTICLES OF INCORPORATION OR BYLAWS; TO AMEND  
12 ARKANSAS CODE § 23-79-109(a)(1)(B) TO EXEMPT  
13 SURPLUS LINES INSURERS FROM FILING POLICY AND  
14 CONTRACT FORMS FOR APPROVAL; TO AMEND ARKANSAS  
15 CODE § 23-79-138 TO INCLUDE INFORMATION TO  
16 ACCOMPANY TITLE INSURANCE POLICIES; TO REMOVE THE  
17 EXEMPTION FOR MEDICAL MALPRACTICE INSURANCE FROM  
18 THE MINIMUM POLICY REQUIREMENTS OF § 23-79-301 ET  
19 SEQ.; TO AUTHORIZE THE ARKANSAS COMPREHENSIVE  
20 HEALTH INSURANCE POOL TO INCREASE MAXIMUM  
21 LIFETIME BENEFITS FOR POOL POLICYHOLDERS,  
22 STRENGTHEN PROTECTION AGAINST FRAUDULENT  
23 INSURANCE ACTS, AND UPDATE BENEFIT EXCLUSION  
24 PROVISIONS IN POOL PLANS; TO REVISE THE  
25 DEFINITION OF A SMALL EMPLOYER FOR SMALL GROUP  
26 HEALTH INSURANCE COVERAGE; TO PROVIDE SIXTY DAYS'  
27 NOTICE OF THE RENEWAL OR NONRENEWAL OF A  
28 COMMERCIAL AUTOMOBILE INSURANCE POLICY; TO AMEND  
29 ARKANSAS CODE § 23-93-103 TO REVISE THE  
30 DEFINITION OF "CONTINUING CARE" UNDER THE  
31 CONTINUING CARE PROVIDER REGULATION ACT; TO  
32 DECLARE AN EMERGENCY FOR SECTION 20 OF THIS ACT;  
33 AND FOR OTHER PURPOSES.  
34  
35  
36

**Subtitle**

TO ENACT THE STATE INSURANCE DEPARTMENT  
GENERAL OMNIBUS BILL TO UPDATE AND MAKE  
TECHNICAL CORRECTIONS TO THE ARKANSAS  
INSURANCE LAWS AND TO DECLARE AN  
EMERGENCY FOR SECTION 20 OF THIS ACT.

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

SECTION 1. Uncodified Section 1 of Act 901 of 1993, concerning the payment of insurance agent fees, is repealed:

~~SECTION 1. The administrative and regulatory fee assessed insurance agents at a maximum of fifty dollars (\$50) under The State Insurance Department Trust Fund Act of 1993 as it is popularly known, with such fee as referenced therein to be addressed in the Insurance Commissioner's companion rule and regulation to that legislation upon its passage and approval, shall be borne as a regulatory fee by insurance agents, and shall not be considered to be, or borne or paid as an obligation by sponsoring insurance companies, notwithstanding contrary language, if any, of The State Insurance Department Trust Fund Act of 1993.~~

SECTION 2. Arkansas Code § 4-114-104(d), concerning the capital requirements for doing business under the Service Contracts Act, is amended to read as follows:

(d) In order to assure the faithful performance of a provider's obligations to its contract holders, each provider that is contractually obligated to provide service under a service contract shall:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or authorized to transact insurance in this state or a surplus lines insurer that is authorized under § 23-65-310 and maintains statutory capital and surplus of at least fifteen million dollars (\$15,000,000) at all times while the reimbursement insurance policy is in force;

(2) Do both of the following:

(A)(i) Maintain a funded reserve account for its

1 obligations under its contracts issued and outstanding in this state.

2 ~~(B)(ii)~~ The reserves shall not be less than forty  
3 percent (40%) of gross consideration received less claims paid on the sale of  
4 all unexpired service contracts.

5 ~~(C)(iii)~~ The reserve account shall be subject to  
6 examination and review by the commissioner; and

7 ~~(3)(B)~~ Place in trust with the commissioner a financial  
8 security deposit having a value of not less than five percent (5%) of the  
9 gross consideration received less claims paid on the sale of all unexpired  
10 service contracts, but not less than twenty-five thousand dollars (\$25,000),  
11 consisting of a surety bond issued by an authorized surety; or

12 ~~(4)(A)(3)(A)~~ Maintain a net worth of one hundred million dollars  
13 (\$100,000,000) on its own or together with its parent company if the parent  
14 company executes a parental guarantee in a form acceptable to the  
15 commissioner.

16 (B) Upon request, the provider shall provide the  
17 commissioner with a copy of the provider's financial statements or, if the  
18 provider's financial statements are consolidated with those of its parent  
19 company, the provider's parent company's most recent Form 10-K or Form 20-F  
20 filed with the Securities and Exchange Commission within the last calendar  
21 year, or if the company does not file with the Securities and Exchange  
22 Commission, a copy of the company's audited financial statements, which shows  
23 an independent net worth of the provider or its parent company of at least  
24 one hundred million dollars (\$100,000,000).

25 (C) If the provider's parent company's Form 10-K, Form 20-  
26 F, or audited financial statements are filed to meet the provider's financial  
27 stability requirement, then the parent company shall agree to guarantee the  
28 obligations of the obligor relating to service contracts sold by the provider  
29 in this state.

30  
31 SECTION 3. Arkansas Code § 11-9-801(a), concerning the methods for  
32 paying workers' compensation benefits, is amended to read as follows:

33 (a) Compensation shall be paid by check, by electronic funds transfer,  
34 or by state warrant.

35  
36 SECTION 4. Arkansas Code § 23-60-108 is amended to read as follows:

1 23-60-108. Penalty generally.

2 ~~Each violation of the Arkansas Insurance Code for which a greater~~  
3 ~~penalty is not provided by other applicable laws of this state, in addition~~  
4 ~~to any applicable refusal, suspension, or revocation of a license or~~  
5 ~~certificate of authority, and upon conviction in a court of this state, shall~~  
6 ~~be punishable by a fine of not less than fifty dollars (\$50.00) nor more than~~  
7 ~~one thousand dollars (\$1,000).~~ Unless a greater penalty is provided by  
8 another law of this state, a violation of a statute or regulation enforceable  
9 by the Insurance Commissioner is punishable:

10 (1) By the refusal, suspension, revocation, or nonrenewal of a  
11 license or certificate of authority; and

12 (2) A fine no greater than one thousand dollars (\$1,000) per  
13 violation, not to exceed fifty thousand dollars (\$50,000) in any six-month  
14 period.

15  
16 SECTION 5. Arkansas Code § 23-61-103(d)(6), concerning the release of  
17 active examination or investigatory files, is amended to read as follows:

18 (6) Release of active investigatory or examination files ~~as~~  
19 ~~provided in~~ under subdivision ~~(d)(4)~~ (d)(5) of this section does not abrogate  
20 or modify the confidential nature of investigatory or examination files ~~as~~  
21 ~~provided in~~ under subdivision (d)(2) of this section.

22  
23 SECTION 6. Arkansas code § 23-61-207 is amended to read as follows:

24 23-61-207. Confidentiality of ancillary information.

25 All working papers, recorded information, documents, and copies  
26 produced by, obtained by, or disclosed to the Insurance Commissioner or any  
27 other person in the course of an examination made under this subchapter must  
28 be given confidential treatment and are not subject to subpoena and may not  
29 be made public by the commissioner or any other person, except to the extent  
30 provided in § 23-61-205. In addition, all workpapers, financial statement  
31 analyses, ratio calculations, and any other materials produced by State  
32 Insurance Department financial examiners or analysts, or documents submitted  
33 or disclosed to the department by an insurer in response to a request from  
34 the commissioner or a department financial examiner or analyst during the  
35 course of reviewing or investigating the financial solvency, condition, or  
36 affairs of an insurer, shall be confidential and not subject to subpoena,

1 except to the extent as provided in § 23-61-205. Access may also be granted  
2 to the National Association of Insurance Commissioners. The parties must  
3 agree in writing prior to receiving the information to provide to it the same  
4 confidential treatment as required by this section, unless the prior written  
5 consent of the company to which it pertains has been obtained.

6  
7 SECTION 7. The introductory language to Arkansas Code § 23-61-401,  
8 concerning fees, licenses, and charges collected by the Insurance  
9 Commissioner, is amended to read as follows:

10 The Insurance Commissioner shall collect ~~in advance, and persons so~~  
11 ~~served shall~~ annually or biennially as prescribed by rule of the commissioner  
12 and pay to the Treasurer of State through the commissioner, the following  
13 fees, licenses, and miscellaneous charges ~~as follows:~~

14  
15 SECTION 8. Arkansas Code § 23-61-401(8), concerning nonresident agent  
16 license fees, is amended to read as follows:

17 (8) Nonresident agent license fees: As established by rule of  
18 the commissioner

- 19 ~~(A) Original license, individual..... 30.00~~
- 20 ~~(B) Annual continuation of license, individual, 30.00~~
- 21 ~~(C) Original license, nonresident firms and corporations~~
- 22 ~~plus one (1) qualifying individual..... 100.00~~
- 23 ~~(D) Each additional individual ..... 30.00~~
- 24 ~~(E) Annual continuation of nonresident firms and corporation~~
- 25 ~~license ..... 100.00~~
- 26 ~~(F) Annual continuation of each additional individual~~
- 27 ~~.....,..... 30.00~~

28  
29 SECTION 9. Effective January 1, 2010, Arkansas Code § 23-61-703(a),  
30 concerning a licensed insurer's administrative and financial regulation fee,  
31 is amended to read as follows:

32 (a) Notwithstanding ~~the provisions of~~ § 26-57-602 and other provisions  
33 of Arkansas law, all licensed insurers, including, ~~but not limited to,~~  
34 without limitation all licensed stock and mutual insurance companies, health  
35 maintenance organizations, fraternal benefit societies, hospital and medical  
36 service corporations, stipulated premium insurers, reinsurers, and farmers'

1 mutual aid associations ~~shall annually on or before June 30 at the time and~~  
 2 in the manner ~~as prescribed by~~ the Insurance Commissioner ~~shall prescribe or~~  
 3 ~~at times alternate from June 30 annually as the commissioner shall prescribe,~~  
 4 shall pay to the State Insurance Department Trust Fund a nonrefundable  
 5 administrative and financial regulation fee, no later than:

6 (1) June 1; or

7 (2) A date or dates established by rule of the commissioner.

8  
 9 SECTION 10. Arkansas Code § 23-62-111(a), concerning employee benefit  
 10 stop-loss insurance, is amended to read as follows:

11 (a) As used in the Arkansas Insurance Code, “employee benefit stop-  
 12 loss insurance” or “employee benefit excess loss insurance” means coverage  
 13 that insures an employer or an employer-sponsored health plan against the  
 14 risk that:

15 (1) any ~~Any~~ one (1) claim will exceed a specific dollar amount;

16 or

17 (2) that the ~~The~~ entire loss of a self-insurance plan will  
 18 exceed a specific dollar amount.

19  
 20 SECTION 11. Arkansas Code § 23-63-111(a)(1), concerning the delivery  
 21 of claim loss information to the policyholder, is amended to read as follows:

22 (a)(1)(A) Upon written request, each licensed property and casualty  
 23 insurer shall mail or deliver the policyholder’s claim loss information to  
 24 the policyholder or his or her authorized producer within thirty (30) days  
 25 from the date of receipt of the request ~~by~~ from the policyholder.

26 (B) If the requested claim loss information is not  
 27 provided directly to the policyholder, the authorized producer shall mail or  
 28 deliver the requested claim loss information to the policyholder within seven  
 29 (7) days from the date of receipt of the claim loss information from the  
 30 licensed property and casualty insurer.

31  
 32 SECTION 12. Arkansas Code § 23-63-201(d)(2), concerning gift  
 33 annuities, is amended to read as follows:

34 (2) ~~Each~~ Upon entering an annuity agreement, a domestic  
 35 corporation or association ~~shall maintain reserves with respect to the~~  
 36 ~~annuity or income stream that it has agreed to pay to a charitable donor by~~



1 shall establish and maintain liabilities with respect to the annuity by one  
 2 (1) of the following methods, using an amount:

3 (A) ~~Calculation of the reserves:~~

4 ~~(i) Upon the obligation of the permittee to the~~  
 5 ~~donor annuitant in the manner set forth in the Standard Valuation Law for~~  
 6 ~~Life Insurance and Annuities, § 23-84-101 et seq., concerning the standard~~  
 7 ~~valuation law for life insurance and annuities; or~~

8 ~~(ii) As the present value of all future benefits to~~  
 9 ~~be paid to the donor annuitant based upon the most recent mortality table~~  
 10 ~~published by the Internal Revenue Service; or~~

11 ~~(B) Maintaining account reserves in an amount equal to the~~  
 12 ~~aggregate values determined at the dates of contribution of all assets~~  
 13 ~~received from donors with respect to annuities for annuitants who are then~~  
 14 ~~living. Not less than the present value of future benefits payable to the~~  
 15 ~~donor as determined by the most recent method established by the Internal~~  
 16 ~~Revenue Service;~~

17 (B) Determined by applying the method established for  
 18 annuities under the Standard Valuation Law for Life Insurance and Annuities,  
 19 § 23-84-101 et seq.; or

20 (C) Equal to the aggregate values determined at the dates  
 21 of contribution of all assets received from donors with respect to annuities  
 22 for annuitants who are then living.

23  
 24 SECTION 13. Arkansas Code § 23-63-201(d)(5), concerning the  
 25 requirement to maintain net admitted assets, is amended to read as follows:

26 (5) Each domestic corporation or association maintaining  
 27 reserves in the manner described in subdivision ~~(d)(2)(B)~~ (d)(2)(C) of this  
 28 section shall maintain net admitted assets at least equal to the amount of  
 29 the reserves plus all other outstanding liabilities.

30  
 31 SECTION 14. Arkansas Code § 23-63-201(d)(7), concerning gift  
 32 annuities, is amended to read as follows:

33 ~~(7)(A)~~ The required admitted assets shall be invested:

34 ~~(i)(A)~~ Only in securities permitted by ~~the provisions of~~  
 35 §§ 23-63-801 - 23-63-833, 23-63-835, 23-63-836, 23-63-839, and 23-63-840; or

36 ~~(ii)(B)~~ In accordance with ~~the provisions of~~ the prudent

1 investor rule stated in §§ 24-2-610 – 24-2-619.

2 ~~(B) The investments shall be held by a custodian in~~  
3 ~~accordance with § 23-69-134(b)(4).~~

4  
5 SECTION 15. Arkansas Code § 23-63-201(d)(9)(C)(i), concerning gift  
6 annuities, is amended to read as follows:

7 (C)(i) All corporations or associations operating under  
8 this subsection shall ~~be required to~~ file an annual financial statement of  
9 their operations and accounts and schedule of outstanding annuities with  
10 applicable reserves within ~~ninety (90)~~ one hundred eighty (180) days of the  
11 end of their fiscal year.

12  
13 SECTION 16. Arkansas Code § 23-63-201, concerning the requirement that  
14 an insurer obtain a certificate of authority and exceptions to that  
15 requirement, is amended to add an additional subsection to read as follows:

16 (f) The commissioner may punish a person that fails to meet the  
17 requirements of subsection (d) or subsection (e) of this section by:

18 (1) Imposing a penalty of up to ten thousand dollars (\$10,000);

19 or

20 (2) Suspending or revoking the charitable annuity permit and  
21 authority to operate under subsection (d) or subsection (e) of this section.

22  
23 SECTION 17. Arkansas Code § 23-63-215 is amended to read as follows:  
24 23-63-215. Certificate of authority – Period of suspension –  
25 Reinstatement.

26 (a) ~~Beginning January 1, 2006, The~~ suspension of an insurer's  
27 certificate of authority ~~shall be for~~ is indefinite unless: the

28 (1) A specific period is fixed by the Insurance Commissioner in  
29 the order of suspension; or

30 (2) unless the The commissioner shortens or rescinds the  
31 suspension.

32 (b)(1) ~~During~~ Unless in the order of suspension the commissioner  
33 waives payment of any fees, licenses, and taxes during the period of  
34 suspension, the insurer shall file its annual statement and pay fees,  
35 licenses, and taxes during the suspension as required under the Arkansas  
36 Insurance Code as if the certificate of authority had continued in full

1 force.

2 (2) Upon reinstatement of a suspended insurer's certificate of  
 3 authority, all fees, licenses, and taxes accumulated during the suspension  
 4 are immediately due and payable.

5 ~~(c)(1) Upon expiration of the suspension period, if~~ If a suspension  
 6 ends within the period ~~the~~ a certificate of authority has not otherwise  
 7 terminated, the ~~insurer's~~ certificate of authority shall automatically  
 8 reinstate unless the commissioner finds that:

9 (A) the ~~the~~ The causes of the suspension have not been  
 10 removed; or

11 (B) that the ~~that the~~ The insurer is ~~otherwise~~ not in compliance  
 12 with the ~~requirements of the~~ Arkansas Insurance Code.

13 (2) If the commissioner finds that the certificate of authority  
 14 does not automatically reinstate, and of which the commissioner shall provide  
 15 written notice and give the insurer notice not less than thirty (30) days ~~in~~  
 16 ~~advance of the expiration of the suspension period~~ to remove the cause for  
 17 suspension or otherwise comply with the Arkansas Insurance Code.

18 (3) If the certificate of authority is not ~~so~~ automatically  
 19 reinstated, the certificate of authority shall be deemed to have expired ~~as~~  
 20 ~~of the end of the suspension period or~~ upon the earliest of:

21 (A) Thirty (30) days after the commissioner gives notice  
 22 under subdivision (c)(2) of this section; or

23 (B) The failure of the insurer to continue the certificate  
 24 of authority during the suspension period, ~~whichever event first occurs.~~

25 (d) Upon reinstatement of the insurer's certificate of authority:

26 ~~(1), the~~ The authority of ~~its~~ the insurer's agents in this state  
 27 to represent the insurer ~~shall likewise reinstate,~~ is reinstated; and

28 (2) The commissioner shall promptly notify the insurer and its  
 29 agents in this state of the reinstatement.

30

31 SECTION 18. Arkansas Code § 23-63-216(b)(5), concerning the filing of  
 32 information with the National Association of Insurance Commissioners, is  
 33 amended to read as follows:

34 (b)(5) Each authorized insurer shall submit its annual and quarterly  
 35 statement and supplemental information to the National Association of  
 36 Insurance Commissioners in ~~hardcopy and~~ electronic format as specified by the

1 National Association of Insurance Commissioners.

2  
3 SECTION 19. Arkansas Code § 23-63-701(g), concerning the limit of risk  
4 of a mutual insurer, is repealed.

5 ~~(g) Limit of risk as to newly organized domestic mutual insurers shall~~  
6 ~~be as provided in § 23-69-112.~~

7  
8 SECTION 20. Arkansas Code § 23-63-818 is amended to read as follows:  
9 23-63-818. Stocks of subsidiaries.

10 (a) With the Insurance Commissioner's ~~consent, an~~ written approval, a  
11 domestic insurer may invest in the stock of its wholly owned subsidiary  
12 insurance corporation or in the stock of its wholly owned subsidiary business  
13 corporation formed or acquired for, and necessary and incidental to,:

14 (1) ~~the~~ The convenient operation of the domestic insurer's  
15 insurance business; or

16 (2) ~~the~~ The administration of any of ~~its~~ the domestic insurer's  
17 lawful investments.

18 (b) ~~All~~ Unless a greater investment has been approved in writing by  
19 the commissioner:

20 (1) All of the domestic insurer's investments under this  
21 section, together with its investments in insurance stocks under § 23-63-  
22 817(b), shall not at any time exceed:

23 (A) ~~the~~ The amount of the investing domestic insurer's  
24 surplus if a life insurer; or

25 (B) ~~its~~ The domestic insurer's surplus to policyholders  
26 policyholders' surplus if other than a life insurer; and

27 ~~(c)(1)(2)(A) Unless a greater investment has been approved in~~  
28 ~~writing by the commissioner, a~~ A domestic insurer subject to this subchapter  
29 shall limit its investments in common stock, preferred stock, debt  
30 obligations, and other securities of its noninsurance subsidiaries to the  
31 lesser of:

32 ~~(A)(i)~~ Ten percent (10%) of the domestic insurer's  
33 assets; or

34 ~~(B)(ii)~~ Fifty percent (50%) of the domestic  
35 insurer's surplus.

36 ~~(2)(B)~~ This subsection subdivision (b)(2) does not apply

1 to the amount of an investment held on July 31, 2007, by a domestic insurer  
2 licensed in Arkansas.

3 (c) With the prior written approval of the commissioner, a domestic  
4 insurer may invest any amount in the securities of one (1) or more of the  
5 domestic insurer's subsidiaries if after the investment the domestic  
6 insurer's policyholders' surplus is:

7 (1) Reasonable in relation to the domestic insurer's outstanding  
8 liabilities; and

9 (2) Adequate for the domestic insurer's financial needs.

10 (d) An investment that exceeds the scope of an approval granted under  
11 this section requires the additional prior written approval of the  
12 commissioner.

13  
14 SECTION 21. Arkansas Code § 23-63-841(f), concerning the Insurance  
15 Commissioner's approval of derivative transactions, is amended to read as  
16 follows:

17 (f) The commissioner may approve additional transactions involving the  
18 use of derivative instruments in excess of the limits of subsection ~~(b)~~(c) of  
19 this section or for other risk management purposes, but replication  
20 transactions ~~shall~~ are not be permitted for other risk management purposes.  
21

22 SECTION 22. The introductory paragraph of Arkansas Code § 23-63-  
23 1105(b), concerning transactions between a controlled insurer and a  
24 controlling insurance producer, is amended to read as follows:

25 (b) A controlled insurer shall not accept business from a controlling  
26 producer and a controlling producer shall not place business with a  
27 ~~controlling~~ controlled insurer unless there is a written contract between the  
28 controlling producer and the controlled insurer specifying the  
29 responsibilities of each party, ~~which~~ and the contract has been approved by  
30 the board of directors of the controlled insurer and contains the following  
31 minimum provisions:  
32

33 SECTION 23. Arkansas Code § 23-63-1607(b)(3)(A), concerning the annual  
34 report of an association captive insurance company, is amended to read as  
35 follows:

36 (b)(3)(A) Unless provided otherwise,:

1                    (i) ~~an~~ An association captive insurance company shall  
 2 file its report in the form required by § 23-63-216(a); and

3                    (ii) ~~an~~ An industrial insured group shall:

4                    (a) file File its report in the form required  
 5 by § 23-63-216(a); and

6                    (b) ~~each industrial insured group shall comply~~  
 7 Comply with the requirements set forth in § 23-63-216(h) § 23-63-216(b)(1).

9                    SECTION 24. Effective January 1, 2010, Arkansas Code Title 23, Chapter  
 10 63 is amended to add an additional subchapter to read as follows:

11                    23-63-1901. Title.

12                    This subchapter shall be known and may be cited as the "Property and  
 13 Casualty Actuarial Opinion Law".

14  
 15                    23-63-1902. Definitions.

16                    As used in this subchapter:

17                    (1) "Actuarial opinion summary" means a summary of the  
 18 information supporting a statement of actuarial opinion;

19                    (2) "Appointed actuary" means the actuary appointed by a  
 20 property and casualty insurance company to prepare a statement of actuarial  
 21 opinion and an actuarial opinion summary; and

22                    (3) "Statement of actuarial opinion" means the actuarial opinion  
 23 of an appointed actuary prepared in accordance with the appropriate National  
 24 Association of Insurance Commissioners Property and Casualty Annual Statement  
 25 Instructions.

26  
 27                    23-63-1903. Annual statement of actuarial opinion, actuarial opinion  
 28 summary, and supporting documentation required.

29                    (a)(1) Unless exempted by the Insurance Commissioner, a property and  
 30 casualty insurance company doing business in this state shall annually file  
 31 with the commissioner a statement of actuarial opinion and an actuarial  
 32 opinion summary.

33                    (2) A property and casualty insurance company licensed but not  
 34 domiciled in this state shall provide the actuarial opinion summary upon  
 35 request.

36                    (b)(1) An actuarial report and underlying work papers as required by

1 the appropriate National Association of Insurance Commissioners Property and  
2 Casualty Annual Statement Instructions shall be prepared to support each  
3 statement of actuarial opinion.

4 (2) If a property and casualty insurance company fails to  
5 provide a supporting actuarial report or underlying work papers at the  
6 request of the commissioner or the commissioner determines that the  
7 supporting actuarial report or work papers provided by the insurance company  
8 are not acceptable to the commissioner, the commissioner may engage a  
9 qualified actuary at the expense of the property and casualty insurance  
10 company to:

11 (A) Review the statement of actuarial opinion and the  
12 basis for the statement of actuarial opinion; and

13 (B) Prepare the supporting actuarial report or work  
14 papers.

15  
16 23-63-1904. Liability of appointed actuary.

17 An appointed actuary is not liable for damages to any person other than  
18 the property and casualty insurance company or the Insurance Commissioner, or  
19 both the property and casualty insurance company and the commissioner, for  
20 any act, error, omission, decision, or conduct with respect to the actuary's  
21 statement of actuarial opinion, except in cases of fraud or willful  
22 misconduct on the part of the appointed actuary.

23  
24 23-63-1905. Confidentiality.

25 (a) The statement of actuarial opinion shall be filed with the annual  
26 statement required by § 23-63-216 and treated as a public record under the  
27 Freedom of Information Act of 1967, § 25-19-101 et seq.

28 (b)(1) Documents, materials or other information in the possession or  
29 control of the State Insurance Department that are considered an actuarial  
30 report, work papers, or an actuarial opinion summary provided in support of  
31 the statement of actuarial opinion, and any other material provided by the  
32 property and casualty insurance company to the commissioner in connection  
33 with the actuarial report, work papers, or actuarial opinion summary, are:

34 (A) Confidential by law;

35 (B) Privileged;

36 (C) Conclusively presumed to be records that would give

1 advantage to competitors under § 25-19-105(b)(9)(A);

2 (D) Not subject to subpoena; and

3 (E) Not discoverable or admissible as evidence in a  
4 private civil action.

5 (2) This subsection (b) does not limit the Insurance  
6 Commissioner's authority to:

7 (A) Release the documents, materials, or other information  
8 to the Actuarial Board for Counseling and Discipline if:

9 (i) The documents, materials, or other information  
10 is required for professional disciplinary proceedings; and

11 (ii) The board establishes procedures satisfactory  
12 to the commissioner for preserving the confidentiality of the documents,  
13 materials, or other information; or

14 (B) Use the documents, materials, or other information in  
15 furtherance of any regulatory or legal action brought as part of the  
16 commissioner's official duties.

17 (c) The commissioner or any person who received documents, materials,  
18 or other information while acting under the authority of the commissioner  
19 shall not testify in a private civil action concerning any confidential  
20 documents, materials, or information described in subsection (b) of this  
21 section.

22 (d) To assist the performance of the commissioner's duties, the  
23 commissioner may:

24 (1) Share with the following entities the documents, materials,  
25 or other information described in subsection (b) of this section if the  
26 respective entity agrees to maintain the confidentiality and privileged  
27 status of documents, materials, or other information and has the legal  
28 authority to maintain confidentiality:

29 (A) Other state, federal, and international regulatory  
30 agencies;

31 (B) The National Association of Insurance Commissioners  
32 and its affiliates and subsidiaries; and

33 (C) State, federal, and international law enforcement  
34 authorities;

35 (2)(A) Receive documents, materials, or information, including  
36 otherwise confidential and privileged documents, materials, or information



1 from:

2 (i) The National Association of Insurance  
3 Commissioners and its affiliates and subsidiaries; and

4 (ii) Regulatory and law enforcement officials of  
5 other foreign or domestic jurisdictions.

6 (B) The commissioner shall maintain as confidential or  
7 privileged any document, material, or information received with notice or the  
8 understanding that it is confidential or privileged under the laws of the  
9 jurisdiction that is the source of the document, material, or information;  
10 and

11 (3) Enter into agreements governing the sharing and use of  
12 information consistent with this subsection and subsections (b) and (c) of  
13 this section.

14 (e) A waiver of any applicable privilege or claim of confidentiality  
15 in the documents, materials, or information described in subsection (b) of  
16 this section shall not occur as a result of disclosure to the commissioner  
17 under this section or as a result of sharing a document, material, or other  
18 information under subsection (d) of this section.

19  
20 SECTION 25. Arkansas Code § 23-64-209(d), concerning adjusting  
21 procedures in response to a catastrophe, is amended to read as follows:

22 ~~(d) However, no adjuster's license or qualifications shall be required~~  
23 ~~as to any An~~ an adjuster who is sent into this state on behalf of an insurer for  
24 the purpose of investigating or making adjustment of a ~~particular~~ loss  
25 resulting from a catastrophe under an insurance policy, ~~or for the adjustment~~  
26 ~~of a series of losses resulting from a catastrophe common to all the losses~~  
27 is not required to be qualified or licensed under this section if within ten  
28 (10) business days of entering the state the adjuster notifies the  
29 commissioner in writing of the adjuster's activities on behalf of the  
30 insurer.

31  
32 SECTION 26. Arkansas Code § 23-64-209, concerning the qualifications  
33 for holding an insurance adjuster's license, is amended to add an additional  
34 subsection to read as follows:

35 (e)(1)(A) Unless exempt under subdivision (e)(2) of this section, a  
36 licensed adjuster shall successfully complete and report a minimum of twenty-

1 four (24) hours of continuing education courses approved by the commissioner  
 2 within the time established by rule of the commissioner.

3 (B) At least three (3) hours of continuing education  
 4 required by this subsection (e) shall be in an ethics course approved by the  
 5 commissioner.

6 (2) This subsection (e) does not apply to an adjuster licensed  
 7 in:

8 (A) This state for less than one (1) year; or

9 (B) Another state if the adjuster has satisfied the  
 10 continuing education requirements of the licensing state.

11  
 12 SECTION 27. Arkansas Code § 23-64-209(b)(6)(A)(v), concerning the  
 13 effective date for insurance adjuster examinations, is repealed.

14 ~~(v) This examination requirement shall be effective~~  
 15 ~~only as to all resident applicants for license as an adjuster hereunder~~  
 16 ~~beginning January 1, 1986.~~

17  
 18 SECTION 28. Arkansas Code § 23-64-215 is amended to read as follows:  
 19 23-64-215. Continuance of license.

20 ~~(a) All insurance consultants or adjuster licenses shall continue in~~  
 21 ~~force unless nonrenewed, expired, suspended, revoked, or terminated, but~~  
 22 ~~shall be subject at all times to annual payment to the Insurance Commissioner~~  
 23 ~~of the applicable continuation fee as stated in § 23-61-401, accompanied by a~~  
 24 ~~written request for the continuation.~~

25 ~~(1) On or before the licensee's birthday if an individual; or~~

26 ~~(2) The annual period from the date of issue if a firm, limited~~  
 27 ~~liability company, or corporation~~ Unless the license of an insurance adjuster  
 28 or an insurance consultant is not renewed, expires, is suspended, is revoked,  
 29 or is terminated, the licensee may continue the license by:

30 (1) Paying annually or biennially the continuation of license  
 31 fee prescribed by rule of the Insurance Commissioner; and

32 (2) Complying with all other rules of the commissioner for  
 33 continuing the license.

34 (b)(1) A licensee who allows his or her license to lapse may reinstate  
 35 the same license within twelve (12) months after the due date of the renewal  
 36 continuation of license fee without the necessity of passing a written

1 examination.

2           (2) However, a penalty in the amount of double the unpaid  
3 ~~renewal~~ continuation of license fee shall be required for any ~~renewal~~  
4 continuation of license fee received after the due date.

5  
6           SECTION 29. Arkansas Code § 23-64-220(c), concerning the record  
7 retention requirements for insurance agents and brokers, is amended to read  
8 as follows:

9           (c)(1)(A) The agent or broker shall keep at his or her place of  
10 business the usual and customary records pertaining to transactions under his  
11 or her license for at least:

12                           (i) Five (5) years from the date the record was  
13 created; or

14                           (ii) One (1) year following the final settlement or  
15 final adjudication of a criminal proceeding, civil litigation, or an  
16 administrative proceeding:

17   (a) Commenced within five (5) years from the  
18 date the record was created; and

19   (b) Involving records pertaining to a  
20 transaction conducted by the agent or broker under his or her license.

21                           (B) A record required to be kept by this subsection (c)  
22 may be maintained in its original form, electronically, or as a hard copy.

23           (2) As used in this subsection (c), "usual and customary  
24 records" means:

25                           (A) Applications;

26                           (B) Memoranda;

27                           (C) Notations of telephone conversations or other  
28 communications;

29                           (D) Billing information;

30                           (E) Correspondence;

31                           (F) Policy information;

32                           (G) Claims files; and

33                           (H) Any other records detailing insurer information or  
34 insurance policies or contracts bound through the agent or broker.

35  
36           SECTION 30. Arkansas Code § 23-64-301 is amended to read as follows:

1 23-64-301. Continuing education required.

2 (a) Beginning July 1, 2003, each insurance producer licensed in this  
3 state shall successfully complete courses of instruction as required by this  
4 section unless exempt under § 23-64-302.

5 (b)(1) Beginning July 1, 2003, during each annual period of the  
6 duration of his or her license, ~~any person~~ an individual licensed to act as  
7 an insurance producer shall satisfactorily complete courses or programs of  
8 instruction equivalent to:

9 (A) A minimum of eight (8) hours of related instruction  
10 for a life license or an accident and health license, or both;

11 (B) A minimum of eight (8) hours of instruction for a  
12 property and casualty license; or

13 (C) A minimum number of hours of instruction for a title  
14 insurance license as established by rule of the Insurance Commissioner.

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

19 (3)(A) Beginning July 1, 2003, as part of the continuing  
20 education described in subdivisions (b)(1) and (2) of this section, during  
21 each annual period of the duration of the insurance producer's license, ~~any~~  
22 ~~person~~ an individual licensed to act as an insurance producer shall  
23 satisfactorily complete at least one (1) hour of training in an ethics course  
24 that is related to the business of insurance and that has been approved by  
25 the ~~Insurance Commissioner~~ commissioner.

26 (B) The ethics training under subdivision (b)(3)(A) of  
27 this section shall count toward the producer's eight (8) hours of continuing  
28 education required under subdivision (b)(1) of this section.

29 (4)(A) As of July 1, 2003, ~~all insurance producers~~ an insurance  
30 producer holding an active license shall meet the requirements under this  
31 section unless exempt under § 23-64-302.

32 (B) ~~All insurance producers~~ An insurance producer licensed  
33 after July 1, 2003, shall also meet the requirements of this section, and as  
34 of July 1, 2003, the exemptions contained in § 23-64-302(3) and (4) shall no  
35 longer ~~be applicable~~ apply to those insurance producers.

36 (c) An individual who holds a title insurance license shall complete

1 the minimum number of hours of continuing education courses established by  
 2 rule of the commissioner.

3 ~~(d) The commissioner may arrange for the administration of this~~  
 4 ~~subchapter, or any part thereof, hire an independent contractor to administer~~  
 5 ~~all or part of this subchapter in a fair and impartial manner by an~~  
 6 ~~independent contractor as specified by contract and without unfair~~  
 7 ~~discrimination as between individuals subject to this subchapter.~~

8  
 9 SECTION 31. Effective January 1, 2010, Arkansas Code § 23-64-301(a)  
 10 and (b), concerning continuing education requirements for insurance  
 11 producers, are amended to read as follows:

12 ~~(a)(1) Beginning July 1, 2003, each~~ Unless exempt under § 23-64-302, an  
 13 insurance producer licensed in this state shall successfully complete and  
 14 report the courses of instruction ~~as required by this section unless exempt~~  
 15 ~~under § 23-64-302 within the biennial period prescribed by rule of the~~  
 16 Insurance Commissioner for the insurance producer to satisfy the continuing  
 17 education requirements necessary to continue the insurance producer's  
 18 license.

19 ~~(2) The exemptions in § 23-64-302(3) and (4) do not apply to an~~  
 20 insurance producer licensed after July 1, 2003.

21 ~~(b)(1) Beginning July 1, 2003, during each annual period of the~~  
 22 ~~duration of his or her license, any person licensed to act as an insurance~~  
 23 ~~producer shall satisfactorily complete courses or programs of instruction~~  
 24 ~~equivalent to:~~

25 ~~(A) A minimum of eight (8) hours of related instruction~~  
 26 ~~for a life license or an accident and health license, or both;~~

27 ~~(B) A minimum of eight (8) hours of instruction for a~~  
 28 ~~property and casualty license; or~~

29 ~~(C) A minimum number of hours of instruction for a title~~  
 30 ~~insurance license as established by rule of the Insurance Commissioner.~~

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

34 ~~(3)(A) Beginning July 1, 2003, as part of the continuing~~  
 35 ~~education described in subdivisions (b)(1) and (2) of this section, during~~  
 36 ~~each annual period of the duration of the insurance producer's license, any~~

1 ~~person licensed to act as an insurance producer shall satisfactorily complete~~  
 2 ~~at least one (1) hour~~ An individual shall satisfactorily complete a minimum  
 3 of twenty-four (24) hours of continuing education courses each biennial  
 4 period for continuing education if the individual is licensed to sell:

5 (A) Life insurance;

6 (B) Accident and health or sickness insurance;

7 (C) Property insurance;

8 (D) Casualty insurance;

9 (E) Variable products insurance; or

10 (F) Personal lines insurance.

11 (2) At least three (3) hours of ~~training~~ continuing education  
 12 required by this subsection shall be in an ethics course that is related to  
 13 the business of insurance ~~and that has been~~ approved by the Insurance  
 14 Commissioner.

15 ~~(B) The ethics training under subdivision (b)(3)(A) of~~  
 16 ~~this section shall count toward the producer's eight (8) hours of continuing~~  
 17 ~~education required under subdivision (b)(1) of this section.~~

18 ~~(4)(A) As of July 1, 2003, all insurance producers holding an~~  
 19 ~~active license shall meet the requirements under this section unless exempt~~  
 20 ~~under § 23-64-302.~~

21 ~~(B) All insurance producers licensed after July 1, 2003,~~  
 22 ~~shall also meet the requirements of this section, and as of July 1, 2003, the~~  
 23 ~~exemptions contained in § 23-64-302(3) and (4) shall no longer be applicable~~  
 24 ~~to those insurance producers.~~

25  
 26 SECTION 32. Arkansas Code § 23-64-405(g)(2), concerning reporting  
 27 requirements, is amended to read as follows:

28 (g)(2) This subsection ~~shall~~ does not apply to relationships governed  
 29 by ~~§ 23-63-601~~ the Insurance Holding Company Regulatory Act, § 23-63-501 et  
 30 seq.

31  
 32 SECTION 33. Arkansas Code § 23-65-311(e), concerning the delivery of  
 33 claim loss information to a policyholder, is amended to read as follows:

34 (e)(1)(A) Upon written request, each approved but nonadmitted surplus  
 35 lines insurer shall mail or deliver the policyholder's claim loss information  
 36 to the policyholder or his or her surplus lines broker within thirty (30)

1 days from the date of receipt of the request ~~by~~ from the policyholder.

2 (B) If the claim loss information is provided to the  
3 surplus lines broker, the surplus lines broker shall deliver the claim loss  
4 information to the policyholder within seven (7) days from the date of  
5 receipt of the claim loss information from the surplus lines insurer.

6 (C) If the surplus lines broker generates the claim loss  
7 information for the surplus lines insurer, the claim loss information shall  
8 be provided to the policyholder within thirty (30) days from the date of  
9 receipt of the request from the policyholder.

10 (2)(A) "Claim loss information" as used in this subsection means  
11 the:

- 12 (i) Date of loss;
- 13 (ii) Property insured; and
- 14 (iii) Amount paid.

15 (B) "Claim loss information" as used in this subsection  
16 does not include supporting claim file documentation, including, ~~but not~~  
17 ~~limited to,~~ without limitation copies of claim files, investigation reports,  
18 evaluation statements, insured's statements, and documents protected by a  
19 common law or statutory privilege.

20 (3) The surplus lines insurer or the surplus lines broker may  
21 charge a reasonable fee for providing the claim loss information as part of  
22 the expense of underwriting the policy.

23 (4) The surplus lines insurer and the surplus lines broker ~~shall~~  
24 are not ~~be~~ required to maintain claim loss information for more than five (5)  
25 years following the termination of coverage.

26  
27 SECTION 34. Arkansas Code § 23-69-113 is amended to read as follows:

28 23-69-113. Formation of nonlife mutual insurer – ~~Bond~~ Deposit  
29 required.

30 (a) Before soliciting any applications for insurance as required under  
31 § 23-69-112 as a qualification for the certificate of authority, the  
32 incorporator or incorporators of the proposed insurer shall ~~file~~ deposit with  
33 the Insurance Commissioner ~~a corporate surety bond or other~~ acceptable  
34 securities in the penal sum of one hundred thousand dollars (\$100,000) in  
35 favor of the state and for the use and benefit of the state and of applicant  
36 members and creditors of the corporation. The ~~bond~~ deposit shall be

1 conditioned as follows:

2 (1) For the prompt return to applicant members of all premiums  
3 collected in advance;

4 (2) For payment of all indebtedness of the corporation; and

5 (3) For payment of costs incurred by the state in the event of  
6 any legal proceedings for liquidation or dissolution of the corporation, all  
7 in the event the corporation fails to complete its organization and secure a  
8 certificate of authority within one (1) year from and after the date of its  
9 certificate of incorporation.

10 ~~(b) In lieu of a bond, the incorporator or incorporators may deposit~~  
11 ~~with the commissioner one hundred thousand dollars (\$100,000) in acceptable~~  
12 ~~securities or United States Government bonds, negotiable and payable to the~~  
13 ~~bearer, with a market value at all times of not less than one hundred~~  
14 ~~thousand dollars (\$100,000) to be held in trust upon the same conditions as~~  
15 ~~required for the bond or other securities.~~

16 ~~(e) (b) Any bond filed or deposit or~~ The remaining portion thereof of  
17 a deposit held under this section shall be released and discharged upon  
18 settlement and termination of all liabilities against ~~it~~ the deposit.

19 ~~(d) (c) This section shall~~ does not apply to mutual insurers licensed  
20 on or before August 13, 2001.

21

22 SECTION 35. Arkansas Code § 23-73-105(g), concerning farmers' mutual  
23 aid associations, is amended to read as follows:

24 (g)(1) Before ~~any~~ an association ~~or company shall be authorized to~~ may  
25 write coverages:

26 (A) The policy form shall have prior approval of the  
27 commissioner, in accordance with § 23-79-109; and

28 (B) ~~The~~ An association that writes any of the coverages  
29 listed in subsection (f) of this section shall ~~have and thereafter~~ maintain a  
30 minimum ~~surplus~~ of fifty thousand dollars (\$50,000) to be deposited with the  
31 commissioner in the form of securities eligible for deposit under § 23-63-  
32 903; ~~and.~~

33 ~~(C) The association shall have and thereafter maintain~~  
34 ~~with the commissioner a statutory deposit of not less than fifty thousand~~  
35 ~~dollars (\$50,000) in the form of securities eligible under § 23-63-903.~~

36 (2)(A) Each association ~~or company~~ shall maintain an unimpaired



1 minimum surplus of five hundred thousand dollars (\$500,000).

2 (B)(i) If compliance with this section would cause the  
3 association ~~or company~~ to become impaired or insolvent, the commissioner may  
4 allow ~~that domestic~~ the association ~~or company~~ to augment incrementally its  
5 unimpaired minimum surplus in order for the association ~~or company~~ to achieve  
6 compliance no later than December 31, 2010.

7 (ii) For good cause shown in writing by an  
8 association ~~or company~~, the commissioner may grant a one-time extension of  
9 the deadline set for compliance in subdivision (g)(2)(B)(i) of this section  
10 for a period not to exceed two (2) years.

11 (3) However, if the association reinsures its obligations under  
12 the coverages listed in this section to the extent of one hundred percent  
13 (100%), the commissioner, in his or her discretion, may waive the deposit  
14 requirement under this section.

15 (4) The deposit ~~shall be~~ is subject to:

16 (A) ~~conditioned for the~~ The payment of creditors and the  
17 prompt payment of all claims arising and accruing to any person in this  
18 state; and

19 (B) ~~The deposit shall be further subject to the~~ The  
20 conditions specified in § 23-63-909.

21  
22 SECTION 36. Arkansas Code § 23-75-106 is amended to read as follows:

23 23-75-106. Incorporation - Amendments to articles or bylaws.

24 (a) Any corporation shall hereafter be organized under the laws of  
25 this state relating to private corporations not for pecuniary profit, insofar  
26 as the laws are not inconsistent with ~~any of the provisions of~~ this chapter.

27 (b)(1) Upon adoption of an amendment to its articles of incorporation  
28 or bylaws, the corporation shall make in duplicate under its corporate seal a  
29 certificate setting forth the amendment and the date and manner of its  
30 adoption.

31 (2) The certificate shall be:

32 (A) Executed by the corporation's president or vice  
33 president and secretary or assistant secretary; and

34 (B) Acknowledged before an officer authorized by law to  
35 take acknowledgments of deeds.

36 (3) The corporation shall deliver to the Insurance Commissioner:

- 1                   (A) A duplicate original of the certificate; and  
 2                   (B)(i) The filing fee that is:  
 3                               (a) Specified in § 23-61-401; or  
 4                               (b) Established by rule of the commissioner.  
 5                               (ii) The filing fee is not refundable.  
 6                   (4) If the commissioner finds that the certificate and the  
 7 amendment comply with the law, the commissioner shall:  
 8                               (A) Endorse his or her approval upon each of the duplicate  
 9 originals;  
 10                              (B) Place one (1) set on file in his or her office; and  
 11                              (C) Return the remaining set to the corporation for its  
 12 corporate records.  
 13                   (5) The amendment shall be effective when the commissioner has  
 14 endorsed his or her approval on the certificate.  
 15                   (6) If the commissioner finds that the proposed amendment or  
 16 certificate does not comply with the law, the commissioner shall:  
 17                              (A) Not approve the certificate;  
 18                              (B) Return the duplicate certificate to the corporation  
 19 with his or her written statement of reasons for not approving the  
 20 certificate; and  
 21                              (C) Retain the filing fee.  
 22

23           SECTION 37. Arkansas Code § 23-79-109(a)(1)(B), concerning the  
 24 exemptions to the filing requirements for insurance policy and contract  
 25 forms, is amended to add an additional subdivision to read as follows:

26                               (xvii) Policies, contracts, riders, endorsements,  
 27 and certificates issued by surplus lines insurers.  
 28

29           SECTION 38. Arkansas Code § 23-79-138 is amended to read as follows:  
 30           23-79-138. Information to accompany policies.

31           (a) ~~Every~~ The following information shall accompany every policy of  
 32 life insurance, accident and health insurance, property insurance, ~~or~~  
 33 casualty insurance, or title insurance issued ~~after January 1, 1988,~~ and  
 34 covering risks located, resident, or to be performed in the State of Arkansas  
 35 ~~shall be accompanied by the following information:~~

- 36                   (1) The complete address and telephone number, ~~800 number if~~

1 ~~possible~~ including a toll-free number if available, of the policyholder's  
 2 service office of the company issuing the policy;

3 (2) The name, address, and telephone number of the ~~agent~~  
 4 producer or agency soliciting the policy, if applicable; and

5 (3) The address and telephone number, ~~800 number if available~~  
 6 including a toll-free number if available, of the State Insurance Department.

7 (b) ~~Any~~ A person who fails to comply with ~~the provisions of this~~  
 8 section ~~shall be~~ is subject to the penalties provided in § 23-60-108.

9 (c) The Insurance Commissioner ~~is authorized to~~ may adopt appropriate  
 10 rules ~~and regulations~~ to enforce and carry out the intent and purposes of  
 11 this section.

12  
 13 SECTION 39. Arkansas Code § 23-79-303, concerning exceptions to the  
 14 minimum standards for property and casualty insurance policies, is amended to  
 15 read as follows:

16 23-79-303. Applicability – Exceptions.

17 (a) This subchapter ~~shall apply~~ applies to property and casualty  
 18 insurance on commercial risks in this state, except:

19 (1) Reinsurance;

20 (2) Insurance against loss of or damage to aircraft, or their  
 21 hulls, accessories, and equipment or against liability arising out of the  
 22 ownership, maintenance, or use of aircraft;

23 (3) Ocean marine or foreign trade insurance;

24 ~~(4) Medical malpractice insurance;~~

25 ~~(5)~~ (4) Title insurance;

26 ~~(6)~~ (5) Surety or fidelity insurance;

27 ~~(7)~~ (6) Credit insurance;

28 ~~(8)~~ (7) Workers' compensation or employers' liability insurance;

29 ~~or~~ and

30 ~~(9)~~ (8) Large commercial risks.

31 (b) Sections 23-79-307(5)(A), 23-79-311, and 23-79-312 do not apply to  
 32 medical malpractice insurance.

33  
 34 SECTION 40. Arkansas Code § 23-79-506(a), concerning specific  
 35 authority granted to the Arkansas Comprehensive Health Insurance Pool, is  
 36 amended to read as follows:

1 (a)(1) The Arkansas Comprehensive Health Insurance Pool shall have the  
2 general powers and authority granted under the laws of the State of Arkansas  
3 to health insurers and, in addition thereto, the specific authority to:

4 ~~(1)(A)~~ Enter into contracts as are necessary or proper to  
5 carry out the provisions and purposes of this subchapter;

6 ~~(2)(B)~~ Sue or be sued, including taking any legal actions  
7 necessary or proper;

8 ~~(3)(C)~~ Take such legal action as necessary, including, ~~but~~  
9 ~~not limited to~~ without limitation:

10 ~~(A)(i)~~ Avoiding the payment of improper claims  
11 against the pool or the coverage provided by or through the pool;

12 ~~(B)(ii)~~ Recovering any amounts erroneously or  
13 improperly paid by the pool;

14 ~~(C)(iii)~~ Recovering any amounts paid by the pool as  
15 a result of mistake of fact or law;

16 ~~(D)(iv)~~ Recovering other amounts due the pool; or

17 ~~(E)(v)~~ Coordinating legal action with the Insurance  
18 Commissioner to enforce the provisions of this subchapter;

19 ~~(4)(A)(D)(i)~~ Establish and modify from time to time as  
20 appropriate, rates, rate schedules, rate adjustments, expense allowances,  
21 agent referral fees, claim reserve formulas, deductibles, copayments,  
22 coinsurance, and any other actuarial function appropriate to the operation of  
23 the pool.

24 ~~(B)(ii)~~ Rates and rate schedules may be adjusted for  
25 appropriate factors such as age, sex, and geographical variation in claim  
26 costs and shall take into consideration appropriate factors in accordance  
27 with established actuarial and underwriting practices;

28 ~~(5)(E)~~ Issue policies of insurance in accordance with the  
29 requirements of this subchapter. All policy forms shall be subject to the  
30 approval of the commissioner;

31 ~~(6)(F)~~ Authorize the plan administrator to prepare and  
32 distribute certificate of eligibility forms and enrollment instruction forms  
33 to agents and to the general public;

34 ~~(7)(G)~~ Provide ~~for~~ and employ cost-containment measures  
35 and requirements, including, ~~but not limited to,~~ without limitation  
36 preadmission screening, second surgical opinion, concurrent utilization

1 review, and individual case management for the purposes of making the plan  
2 more cost effective;

3 ~~(8)~~(H) Design, utilize, contract, or otherwise arrange for  
4 the delivery of cost-effective health care services, including establishing  
5 or contracting directly or through the plan administrator with preferred  
6 provider organizations, health maintenance organizations, physician hospital  
7 organizations, or other limited network provider arrangements;

8 ~~(9)~~(I) Borrow money to effect the purposes of the pool.  
9 Any notes or other evidence of indebtedness of the pool not in default shall  
10 be legal investments for insurers and may be carried as admitted assets;

11 ~~(10)~~(J) Pledge, assign, and grant a security interest in  
12 any of the assessments authorized by this subchapter or other assets of the  
13 pool in order to secure any notes or other evidences of indebtedness of the  
14 pool;

15 ~~(11)~~(K) Provide for reinsurance of risks incurred by the  
16 pool;

17 ~~(12)~~(L) Provide additional types of plans to provide  
18 optional coverages, including Medicare supplement health insurance and health  
19 savings accounts that comply with applicable federal law as in effect January  
20 1, 2005;

21 ~~(13)~~(M) Enter into reciprocal agreements with other  
22 comparable state plans in order to provide coverage for persons who move  
23 between states and are covered by such other states' plans; and

24 ~~(14)~~(N) Establish lifetime maximum benefits under § 23-79-  
25 510(a)(2)(W) for any person covered by a plan.

26 ~~(14)~~(2) In addition to the other powers granted by the Arkansas  
27 Insurance Code, the commissioner may impose, after notice and hearing in  
28 accordance with the provisions of the Arkansas Insurance Code, a monetary  
29 penalty upon any insurer or suspend or revoke the certificate of authority to  
30 transact insurance in the State of Arkansas of any insurer ~~who~~ that fails to  
31 pay an assessment or otherwise file any report or furnish information  
32 required to be filed with the Board of Directors of the Arkansas  
33 Comprehensive Health Insurance Pool pursuant to the board's direction that  
34 the board believes is necessary in order for the board to perform its duties  
35 under this subchapter.

36

1 SECTION 41. Arkansas Code § 23-79-507(d), concerning assessments and  
2 fees to fund the Arkansas Comprehensive Health Insurance Pool Program, is  
3 amended to read as follows:

4 (d)(1)~~(A)~~ All assessments and fees shall be due and payable upon  
5 receipt and shall be delinquent if not paid within thirty (30) days of the  
6 receipt of the notice by the insurer.

7 ~~(B)~~(2) Failure to timely pay the assessment will automatically  
8 subject the insurer to a ten percent (10%) penalty, which will be due and  
9 payable within the next thirty-day period.

10 ~~(C)~~(3) The board and the commissioner shall have the authority  
11 to enforce the collection of the assessment and penalty in accordance with  
12 the provisions of this subchapter and the Arkansas Insurance Code.

13 ~~(D)~~(4) The board may waive the penalty authorized by this  
14 subsection if it determines that compelling circumstances exist that justify  
15 such a waiver.

16 ~~(2)(A)The board and the commissioner shall have the authority to~~  
17 ~~enforce the collection of the assessment and penalty in accordance with the~~  
18 ~~provisions of this subchapter and the Arkansas Insurance Code.~~

19 ~~(B)The board may waive the penalty authorized by this~~  
20 ~~subsection if it determines that compelling circumstances exist that justify~~  
21 ~~the waiver.~~

22  
23 SECTION 42. Arkansas Code § 23-79-509(a)(2), concerning persons not  
24 eligible for coverage under a plan offered by the Arkansas Comprehensive  
25 Health Insurance Pool, is amended to read as follows:

26 (2) A person shall not be eligible for coverage under the plan  
27 if:

28 (A) The person has or obtains health insurance coverage  
29 substantially similar to or more comprehensive than a plan policy or would be  
30 eligible to have coverage if the person elected to obtain it except that:

31 (i) A person may maintain other coverage for the  
32 period of time the person is satisfying any waiting period for a preexisting  
33 condition under a plan policy; and

34 (ii) A person may maintain plan coverage for the  
35 period of time the person is satisfying a waiting period for a preexisting  
36 condition under another health insurance policy intended to replace the plan

1 policy;

2 (B) The person is determined to be eligible for health  
3 care benefits under Title XIX of the Social Security Act;

4 (C) The person has previously terminated plan coverage  
5 unless twelve (12) months have elapsed since termination of coverage;

6 (D) The person fails to pay the required premium under the  
7 covered person's terms of enrollment and participation, in which event the  
8 liability of the plan shall be limited to benefits incurred under the plan  
9 for the same period for which premiums had been paid and the covered person  
10 remained eligible for plan coverage;

11 (E) The plan has paid ~~a total of one million dollars~~  
12 ~~(\$1,000,000.00) in benefits~~ on behalf of the covered person the maximum  
13 lifetime benefit established by the board in accordance with § 23-79-  
14 510(a)(2)(W);

15 (F) The person is a resident of a public institution; ~~or~~

16 (G) The person's premium is paid for or reimbursed under  
17 any government-sponsored program or by any government agency, foundation,  
18 health care facility, or health care provider except for premiums paid on  
19 behalf of:

20 (i) A trade adjustment assistance eligible person or  
21 a qualified trade adjustment assistance eligible person in accordance with  
22 section 35 of the Internal Revenue Code; or

23 (ii) An otherwise qualifying full-time employee or  
24 dependent of such an employee of a government agency, foundation, health care  
25 facility, or health care provider; or

26 (H) The person commits a fraudulent insurance act as  
27 defined in § 23-66-501(4) against the Arkansas Comprehensive Health Insurance  
28 Pool;

29  
30 SECTION 43. Arkansas Code § 23-79-509(a)(5), concerning loss of  
31 coverage when eligibility ends, is amended to read as follows:

32 (5) Except under the conditions set forth in subdivision (a)(4)  
33 of this section, the coverage of any person who ceases to meet the  
34 eligibility requirements of this section ~~shall be terminated~~ terminates at  
35 the end of the ~~current policy period for which the necessary premiums have~~  
36 ~~been paid~~ month that the person ceases to meet the eligibility requirements

1 of this section.

2

3 SECTION 44. Arkansas Code § 23-79-510(a)(2), concerning to exclusions  
4 from coverage under pool plans, is amended to read as follows:

5 (2) EXCLUSIONS. ~~Subject to~~ Unless the contractual policy form  
6 language adopted by the board provides otherwise, the following services,  
7 supplies, drugs, or articles whether or not prescribed by a physician ~~or not~~  
8 shall not be covered:

9 (A) Any charge for treatment for cosmetic purposes other  
10 than surgery for the repair or treatment of an injury or a congenital bodily  
11 defect to restore normal bodily functions;

12 (B) Care that is primarily for custodial or domiciliary  
13 purposes;

14 (C) Any charge for confinement in a private room to the  
15 extent it is in excess of the institution's charge for its most common  
16 semiprivate room unless a private room is medically necessary;

17 (D) That part of any charge for services rendered or  
18 articles prescribed by a physician, dentist, or other health care personnel  
19 that exceeds the prevailing charge in the locality or for any charge not  
20 medically necessary;

21 (E) Any charge for services or articles the provision of  
22 ~~which~~ that is not within the scope of authorized practice of the institution  
23 or individual providing the services or articles;

24 (F) Any expense incurred prior to the effective date of  
25 coverage by the plan for the person on whose behalf the expense is incurred;

26 (G) Dental care except as provided in subdivision  
27 (a)(1)(K) of this section;

28 (H) Eyeglasses and hearing aids;

29 (I) Illness or injury due to acts of war;

30 (J) Services of blood donors and any fee for failure to  
31 replace the first three (3) pints of blood provided to a covered person each  
32 policy year;

33 (K) Personal supplies or services provided by a hospital  
34 or nursing home or any other nonmedical or nonprescribed supply or service;

35 ~~(L) Routine maternity charges for a pregnancy except when~~  
36 ~~added as optional coverage with payment of additional premiums;~~



1                   ~~(M)~~(L) Any expense or charge for services, articles,  
2 drugs, or supplies that are not provided in accord with generally accepted  
3 standards of current medical practice;

4                   ~~(N)~~—Any expense or charge for routine physical  
5 examinations or tests;

6                   ~~(O)~~(M) Any expense for which a charge is not made in the  
7 absence of insurance or for which there is no legal obligation on the part of  
8 the patient to pay;

9                   ~~(P)~~(N) Any expense incurred for benefits provided under  
10 the laws of the United States and the State of Arkansas, including Medicare  
11 and Medicaid and other medical assistance, military service-connected  
12 disability payments, medical services provided for members of the armed  
13 forces and their dependents or employees of the armed forces of the United  
14 States, and medical services financed on behalf of all citizens by the United  
15 States;

16                   ~~(Q)~~ (O) Any expense or charge for in vitro fertilization,  
17 artificial insemination, or any other artificial means used to cause  
18 pregnancy;

19                   ~~(R)~~(P) Any expense or charge for oral contraceptives used  
20 for birth control or any other temporary birth control measures;

21                   ~~(S)~~(Q) Any expense or charge for sterilization or  
22 sterilization reversals;

23                   ~~(T)~~(R) Any expense or charge for weight-loss programs,  
24 exercise equipment, or treatment of obesity except when certified by a  
25 physician as morbid obesity, i.e., at least two (2) times normal body weight;

26                   ~~(U)~~(S) Any expense or charge for acupuncture treatment  
27 unless used as an anesthetic agent for a covered surgery;

28                   ~~(V)~~(T) Any expense or charge for organ or bone marrow  
29 transplants other than those performed at a hospital with a board-approved  
30 organ transplant program that has been designated by the board as a preferred  
31 provider organization for that specific organ or bone marrow transplant;

32                   ~~(W)~~(U) Any expense or charge for procedures, treatments,  
33 equipment, or services that are provided in special settings for research  
34 purposes or in a controlled environment, are being studied for safety,  
35 efficiency, and effectiveness, and are awaiting endorsement by the  
36 appropriate national medical specialty college for general use within the

1 medical community; ~~and~~

2 ~~(X)(V)~~ Such additional exclusions deemed appropriate by  
3 the board in accordance with the provisions of subsection (b) of this  
4 section; and

5 (W)(i) Any benefits that exceed the maximum lifetime  
6 benefit for plan coverage established by the board under § 23-79-  
7 506(a)(1)(N).

8 (ii) The maximum lifetime benefit shall not be less  
9 than one million dollars (\$1,000,000) and shall not exceed three million  
10 dollars (\$3,000,000).

11

12 SECTION 45. Arkansas Code § 23-86-202(12), concerning the definition  
13 of a "small employer" for small group health insurance coverage, is amended  
14 to read as follows:

15 (12)(A) "Small employer" means any person, firm, corporation,  
16 partnership, or association actively engaged in business ~~who~~ that, on at  
17 least fifty percent (50%) of its working days during the preceding year,  
18 employed no fewer than two (2) nor more than twenty-five (25) eligible  
19 employees, the majority of whom were employed within this state.

20 (B) In determining the number of eligible employees under  
21 subdivision (12)(A) of this section, companies that are affiliated companies  
22 or that are eligible to file a combined tax return for purposes of state  
23 taxation ~~shall be~~ are considered to be one (1) employer; and

24

25 SECTION 46. Arkansas Code § 23-89-305 is amended to read as follows:

26 23-89-305. Notice required ~~prior to~~ before renewal or nonrenewal =  
27 Inapplicability to commercial policies.

28 (a)(1) ~~The~~ Except as provided in subsection (e) of this section, the  
29 insurer shall give either a written notice of nonrenewal or an offer of  
30 renewal at least thirty (30) days ~~prior to~~ before the expiration of the  
31 policy's existing term.

32 (2)(A) The insurer shall send the insured a written notice and  
33 the insurance producer written or electronic notice of the offer of renewal  
34 under subdivision (a)(1) of this section.

35 (B) The notice required under subdivision (a)(2)(A) of  
36 this section shall:

1                    (i) indicating State the new premium for the renewal  
2 policy; and

3                    (ii) providing Provide a description of any change  
4 in deductible or policy provisions in the renewal policy.

5            (b)(1) This section ~~shall~~ does not apply in case of nonpayment of  
6 premium.

7                    (2) However, notwithstanding the failure of an insurer to comply  
8 with this section, the policy shall terminate on the effective date of any  
9 other insurance policy with respect to any automobile designated in both  
10 policies.

11            (c) Unless a statement of the grounds for nonrenewal accompanies or is  
12 included in the notice of nonrenewal, the notice of nonrenewal shall state or  
13 be accompanied by a statement that, ~~upon written request of the named insured~~  
14 ~~mailed or delivered to the insurer not less than fifteen (15) days prior to~~  
15 ~~the effective date of the nonrenewal,~~ the insurer shall specify the grounds  
16 for the nonrenewal upon written request of the named insured if the request  
17 is mailed or delivered to the insurer not less than fifteen (15) days before  
18 the effective date of the nonrenewal.

19            (d) Renewal of a policy ~~shall~~ does not constitute a waiver or estoppel  
20 with respect to grounds for cancellation that existed before the effective  
21 date of the renewal.

22            (e) This section does not apply to the sixty-day notice requirement  
23 for the renewal or nonrenewal of a commercial policy governed by § 23-79-  
24 307(7).

25  
26            SECTION 47. Arkansas Code § 23-93-103(2)(A) concerning the definition  
27 of “continuing care” under the Continuing Care Provider Regulation Act, is  
28 amended to read as follows:

29                    (2)(A) “Continuing care” means the furnishing of independent  
30 living units to individuals and ~~either:~~

31                                    (i) Furnishing nursing care or personal care  
32 services ~~pursuant to~~ under an agreement, whether the nursing care or personal  
33 care services are provided in the facility or in another setting designated  
34 by the agreement for providing continuing care to individuals; ~~or~~ and

35                                    (ii)(a) Requiring the payment of an entrance fee by  
36 an individual not related by consanguinity or affinity to the provider

1 furnishing the living unit.

2 (b) ~~Payments~~ Payment may be made by an  
3 entrance fee alone, an entrance fee and periodic payments, or by payment of  
4 less fees for service.

5  
6 SECTION 48. EMERGENCY CLAUSE. It is found and determined by the  
7 General Assembly of the State of Arkansas that the state of the economy has  
8 made it more important for insurance companies to find appropriate  
9 investments; that in certain cases an investment in an insurance company's  
10 subsidiary may be a prudent investment option for an insurance company, but  
11 the opportunity for the investment is available only for a limited time as  
12 economic circumstances permit; and that Section 20 of this act is immediately  
13 necessary to permit the timely investment in an insurance company's  
14 subsidiary when considered appropriate by the Insurance Commissioner.  
15 Therefore, an emergency is declared to exist and Section 20 of this act being  
16 immediately necessary for the preservation of the public peace, health, and  
17 safety, Section 20 of this act shall become effective on:

18 (1) The date of this act's approval by the Governor;

19 (2) If the bill is neither approved nor vetoed by the Governor,  
20 the expiration of the period of time during which the Governor may veto the  
21 bill; or

22 (3) If the bill is vetoed by the Governor and the veto is  
23 overridden, the date the last house overrides the veto.

24  
25 */s/ T. Smith*  
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