

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Pollan

HOUSE BILL 1794

"AN ACT RELATING TO INSURANCE; STATING PURPOSE; CREATING THE ARKANSAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; PROVIDING SHORT TITLE; DEFINING TERMS; SPECIFYING APPLICABILITY OF ACT; PROVIDING FOR A BOARD OF DIRECTORS; PROVIDING FOR PROCEDURAL RULES FOR THE ASSOCIATION; SETTING FORTH POWERS AND DUTIES OF THE ASSOCIATION; PROVIDING FOR A METHOD OF ASSESSING CERTAIN LIFE AND HEALTH INSURERS; SETTING FORTH DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; PROVIDING ASSESSMENT PROCEDURES AND REGULATIONS; PROVIDING FOR REGULATION OF ASSOCIATION; PROVIDING PROCEDURES IN CASE OF INSURER INSOLVENCIES; ALLOWING ASSOCIATION CERTAIN TAX EXEMPTIONS; LIMITING LIABILITY OF ASSOCIATION; STAYING CERTAIN LEGAL PROCEEDINGS UNDER CERTAIN CIRCUMSTANCES; PROHIBITING CERTAIN ADVERTISING; AND FOR OTHER PURPOSES."

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

SECTION 1. Short Title. This Act shall be known and may be cited as the Arkansas Life and Health Insurance Guaranty Association Act.

SECTION 2. Purpose of Act. The purpose of this Act is to protect policyowners, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies or contracts.

SECTION 3. Creation - Membership - Administration - Supervision.

(a) There is created a nonprofit legal entity to be known as the Arkansas

Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance business in this State.

(b) The Association shall perform its functions under a plan of operation established and approved in accordance with this Act and shall exercise its powers through the Board of Directors established in this Act. For purposes of administration and assessment, the Association shall maintain three (3) accounts:

- (1) the health insurance account;
- (2) the life insurance account; and
- (3) the annuity account.

(c) The Association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

SECTION 4. Definitions. As used in this Act:

(a) "Association" means the Arkansas Life and Health Insurance Guaranty Association created in Section 3 of this Act;

(b) "Board" means Board of Directors of the Arkansas Life and Health Insurance Guaranty Association;

(c) "Contractual obligation" means any commitment to perform specified acts under covered policies;

(d) "Covered policy" means any contract within the scope of this Act;

(e) "Impaired insurer" means a member insurer deemed by the Commissioner, after the effective date of this Act, to be potentially unable to fulfill its contractual obligations, but shall not mean an insolvent insurer;

(f) "Insolvent insurer" means a member insurer which, after the effective date of this Act, becomes insolvent and is placed under a final order of liquidation, rehabilitation, receivership or conservatorship by a court of competent jurisdiction;

(g) "Member insurer" means any person licensed by this State to transact any kind of insurance business to which this Act applies;

(h) "Premium" means gross insurance monies directly received by an insurer as part of the contractual obligation of the policyholder for the receipt of contractual obligations of the insurer and annuity considerations received on covered policies less return premiums and considerations on such

covered policies and dividends paid or credited to policyholders on such direct business. "Premium" shall not include premiums and considerations on contracts between insurers and reinsurers; and

(i) "Resident" means any person who resides in this State at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed.

SECTION 5. Application of Act - Exemptions.

(a) This Act shall apply to direct life insurance policies, accident and health insurance policies, annuity contracts, and contracts supplemental to life and accident and health insurance policies and annuity contracts issued by persons licensed to transact insurance business in this State at any time.

(b) This Act shall not apply to:

(1) that part of a variable life insurance or variable annuity contract not guaranteed by an insurer;

(2) that part of any policy or contract under which the risk is borne by the policyholder;

(3) any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued; and

(4) any policy or contract issued by nonprofit hospital and medical service corporations.

SECTION 6. Board of Directors - Membership - Term - Vacancies - Approval - Compensation.

(a) The Board of Directors of the Association shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the procedural rules which shall be created during the organizational meeting. The members of the Board shall be selected by member insurers subject to the approval of the Commissioner. Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the approval of the Commissioner. To select the initial Board of Directors, and initially organize the Association, the Commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote

in person or by proxy. If the Board is not selected within sixty (60) days after notice of the organizational meeting, the Commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the Board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board, but members of the Board shall not otherwise be compensated by the Association for their services.

SECTION 7. Procedural Rules and Amendments.

(a) (1) The Association shall submit to the Commissioner procedural rules and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The procedural rules and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(2) If the Association fails to submit suitable procedural rules within one hundred eighty (180) days following the effective date of this Act or if at any time thereafter the Association fails to submit suitable amendments to the rules, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by rules submitted by the Association and approved by the Commissioner. All member insurers shall comply with the procedural rules.

(b) The procedural rules shall, in addition to requirements enumerated elsewhere in this Act:

- (1) establish procedures for handling the assets of the Association;
- (2) establish regular places and times for meetings of the Board of Directors;
- (3) establish procedures for records to be kept of all financial transactions of the Association, its agents and the Board of Directors;
- (4) establish the procedures whereby selections for the Board of Directors will be made and submitted to the Commissioner;
- (5) establish any additional procedures for assessments under

Section 10 of this Act; and

(6) contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(c) The procedural rules may provide that any or all powers and duties of the Association, except those under subsection (c) of Section 9 and those under Section 10 of this Act, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more states if there is a reciprocal agreement with such states to provide similar services. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for the performance of any function of the Association. A delegation of powers or duties under this subsection shall take effect only with the approval of both the Board and the Commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this Act.

SECTION 8. Impaired, Insolvent, Foreign or Alien Insurers.

(a) If a domestic insurer is an impaired insurer, the Association shall, subject to the approval of the impaired insurer and the Commissioner:

(1) guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, any or all of the covered policies of the impaired insurer;

(2) provide such monies, pledges, notes, guarantees or other means as are proper to effectuate paragraph (1) of this subsection, and assure payment of the contractual obligations of the impaired insurer; and

(3) loan money to the insurer.

(b) If a domestic insurer is an insolvent insurer, the Association shall, subject to the approval of the Commissioner:

(1) guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the covered policies of the insolvent insurer;

(2) assure payment of the contractual obligations of the insolvent insurer; and

(3) provide such monies, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(c) If a foreign or alien insurer is an insolvent insurer, the

Association shall, subject to the approval of the Commissioner:

(1) guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of residents;

(2) assure payment of the contractual obligations of the insolvent insurer to residents; and

(3) provide such monies, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

This subsection shall not apply where the Commissioner has determined that the domiciliary jurisdiction or state of entry of the foreign or alien insurer provides, by statute, protection substantially similar to that provided by this Act for residents of this State.

(d) (1) Under subsections (b) and (c) of this section, permanent policy liens or contract liens may be imposed in connection with any guarantee, assumption or reinsurance agreement if the court in the insolvency action:

(i) finds that the amounts which can be assessed under this Act are less than the amounts needed to assure full and prompt performance of the contractual obligations of the insolvent insurer, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, to be in the public interest; and

(ii) approves the specific policy liens or contracts liens to be used.

(2) Before being obligated under subsections (b) and (c) of this section, the Association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to contractual provisions for deferral of cash or policy loan values, and such temporary moratoriums and liens may be imposed if they are approved by the court in the insolvency action.

(e) If the Association fails to act within a reasonable period of time, not to exceed one (1) year from the time an insurer is deemed impaired or insolvent, the Commissioner shall have the powers and duties of the Association under this Act with respect to insolvent insurers.

(f) The Association shall render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(g) The Association shall have standing to appear before any court of this State which has jurisdiction over an impaired or insolvent insurer for whom the Association is or may become obligated under this Act. Such standing shall extend to all matters germane to the powers and duties of the Association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(h) (1) The Association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Act upon such person. The Association shall be subrogated to these rights against the assets of any insolvent insurer.

(2) The Association shall have priority over the general creditors of the insolvent insurer against the assets of the insolvent insurer equal to the amount of claims paid by the Association to policyholders, beneficiaries and insureds pursuant to this Act. The expenses of the Association in processing claims shall be accorded the same priority as the liquidator's expenses. No other association or similar organization of another state shall have a priority under the provisions of this section unless the laws of such other state grant a similar priority to the association, in which cases such other association or similar organization of another state shall have a priority against the assets of the insolvent insurer equal to that given to the Association by such other state.

(i) The contractual obligations of the insolvent insurer for which the Association becomes or may become liable shall be as great as, but no greater than, the contractual obligations of the insolvent insurer would have been in the absence of an insolvency unless such obligations are reduced as permitted by subsection (d) of this section, but the aggregate liability of the Association shall not exceed One Hundred Thousand Dollars (\$100,000) in cash values, or Three Hundred Thousand Dollars (\$300,000) for all benefits, including cash values, with respect to any one life. In any such case, no liability accrued by the Association shall ever become a debt or obligation upon the State.

SECTION 9. Powers and Duties of Association. The Association may:

(a) Enter into such contracts as are necessary or proper to carry out the

provisions and purposes of this Act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 10 of this Act;

(c) Borrow money to effect the purposes of this Act. Any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the Association, and to perform such other functions as become necessary or property under this Act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the Association;

(f) Take such legal action as may be necessary to avoid payment of improper claims; or

(g) Exercise, for the purpose of this Act and to the extent approved by the Commissioner, the powers of a domestic life or health insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

SECTION 10. Assessments.

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the Board shall assess the member insurers, separately for each account, at such time and for such amounts as the Board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at the maximum rate allowed by law and after the due date.

(b) There shall be three (3) classes of assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses and examinations conducted under the authority of subsection (d) of Section 13 of this Act not related to a particular impaired or insolvent insurer;

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under Sections 8 and 9 of this Act with regard to an impaired or insolvent domestic insurer.

(3) Class C assessments shall be made to the extent necessary to

carry out the powers and duties of the Association under Sections 8 and 9 of this Act with regard to an insolvent foreign or alien insurer.

(c) (1) The amount of any Class A assessment shall be determined by the Board and may be made on a non-pro rata basis. Such assessment shall be credited against future insolvency assessments and shall not exceed Fifty Dollars (\$50.00) per company in any one calendar year.

(2) Class B assessments for each account shall be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired or insolvent insurer on policies covered by such account for the last insolvent insurer received premiums bear to such premiums received in all such states for such calendar year by the impaired or insolvent insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bear to such premiums received on business in each state for the calendar year preceding assessment by all assessed member insurers.

(3) Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bear to such premiums received on business in this State for the calendar year preceding the assessment by all assessed member insurers.

(4) The amount of any Class B or C assessment shall be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bear to the premiums received by such insurer for such calendar year on all covered policies.

(5) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this Act.

(d) The Association may abate, or defer in whole or in part, the assessment of a member insurer if, in the opinion of the Board, payment of the assessment would endanger the ability of the member insurer to fulfill its

contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) The total of all assessments upon a member insurer for each account in any one calendar year shall not exceed two percent (2%) of such premiums of the insurer received in this State during the calendar year preceding the assessment on the policies covered by the account. If the maximum assessment and the other assets of the Association in either account do not provide in any one year an amount sufficient to carry out the responsibilities of the Association, then the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(f) The Board may, by an equitable method as established in the procedural rules, refund to member insurers, in proportion to the contributions of each insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to have to carry out the obligations of the Association during the coming year with regard to that account including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses of refunds are impractical.

(g) Any member insurer may consider the amount reasonably necessary to meet its obligations under this Act in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this Act.

(h) The Association shall issue to each insurer paying an assessment under this Act, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the Commissioner may approve.

(i) A member insurer may offset against its premium, franchise or income tax liability to this State, an assessment described in subsection (h) of this section to the extent of twenty percent (20%) of the amount of such assessment

for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium, franchise or income tax liability for the year it ceases doing business.

(j) Any sums acquired by refund, pursuant to subsection (f) of this section, from the Association which have theretofore been written off by contributing insurers and offset against premium, franchise or income taxes as provided in subsection (i) of this section, and are not needed for purposes of this Act, shall be paid by the Association to the Commissioner, who shall dispense such funds in accordance with the statutes regarding disbursement of such taxes.

SECTION 11. Commissioner - Powers and Duties.

(a) In addition to the duties and powers enumerated elsewhere in this Act, the Commissioner shall:

(1) Upon request of the Board, provide the Association with a statement of the premiums in the appropriate states for each member insurer; and

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the Association from the performance of its powers and duties under this Act.

If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the Commissioner shall be appointed conservator or shall be permitted to initiate an ancillary receivership.

(b) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance business in this State of any member insurer which fails to pay an assessment when due or fails to comply with the procedural rules. As an alternative, the Commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month but no forfeiture shall be less than One Hundred Dollars (\$100.00) per month.

(c) Any action of the Board or the Association may be appealed to the

Commissioner by any member insurer if such appeal is taken within thirty (30) days of the action being appealed. Any final action or order of the Commissioner shall be subject to judicial review in a court of competent jurisdiction.

SECTION 12. Detection and Prevention of Insurer Insolvencies.

(a) To aid in the detection and prevention of insurer insolvencies, it shall be the duty of the Commissioner:

(1) To notify his counterpart in all of the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:

- (i) revocation of license,
- (ii) suspension of license, or

(iii) makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors.

Such notice shall be mailed to all counterparts of the Commissioner within thirty (30) days following the action or the date on which such action occurs.

(2) To report to the Board when he has taken any of the actions set forth in paragraph (1) of this subsection or has received a report from any other state indicating that any such action has been taken in another state. Such report to the Board shall contain all significant details of the action taken or the report received from another state.

(3) To report to the Board when he has reasonable cause to believe from any examination, whether completed or in process, of any member company, that such company may be an impaired or insolvent insurer.

(4) To furnish to the Board information, if available, which is contained in the Early Warning Tests developed by the National Association of Insurance Commissioners.

(b) The Commissioner may seek the advice and recommendations of the Board concerning any matter affecting his duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this State.

SECTION 13. Reports and Recommendations as to Insurer Insolvencies.

(a) The Board may use the information provided in paragraph (4) of subsection (a) of Section 12 of this Act in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the Board until such time as made public by the Commissioner or other lawful authority.

(b) The Board may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, receivership or conservatorship of any member insurer or germane to the solvency of any company seeking to do any insurance business in this State. These reports and recommendations shall not be considered public documents.

(c) It shall be the duty of the Board, upon majority vote, to notify the Commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(d) The Board may, upon majority vote, request that the Commissioner order an examination of any member insurer which the Board in good faith believes may be an impaired or insolvent insurer. Within thirty (30) days of the receipt of the request, the Commissioner may begin examination. The examination may be conducted by such persons as the Commissioner designates. The cost of the examination shall be paid by the Association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the Board prior to its release to the public, but this shall not preclude the Commissioner from complying with subsection (a) of Section 12 of this Act. The commissioner shall notify the Board when the examination is completed. The examination request shall be kept on file by the Commissioner but shall not be open to public inspection prior to the release of the examination report to the public.

(e) The Board may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies.

(f) The Board shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report to the Commissioner concerning such information as it may have in its possession bearing on the history and causes of such insolvency. The Board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by such

other associations.

SECTION 14. Unpaid Assessments of Impaired or Insolvent Insurer. Nothing in this Act shall be construed to reduce the liability for unpaid assessments of the insured on an impaired or insolvent insurer operating under a plan with assessment liability.

SECTION 15. Records of Negotiations and Meetings. Records shall be kept of all negotiations and meetings in which the Association or its representative are involved, to discuss the activities of the Association in carrying out its powers and duties under Sections 8 and 9 of this Act. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, receivership or conservatorship proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon an order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the Association to render a report of its activities under Section 18 of this Act.

SECTION 16. Assets of Impaired or Insolvent Insurer - Association as Creditor - Payment of Policies and Contractual Obligations. For the purpose of carrying out its obligations under this Act, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as a subrogee pursuant to subsection (h) of Section 8 in this Act. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as used in this section, are that proportion of assets which the reserves which should have been established for such policies, bear to the reserves which should have been established for all policies of insurance written by the impaired or insolvent insurer.

SECTION 17. Distribution of Ownership Rights of Impaired or Insolvent Insurer.

(a) Prior to the termination of any liquidation, rehabilitation,

receivership or conservatorship proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders and the policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyowners of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total valid claims of the Association for funds expended in carrying out its powers and duties under Section 8 of this Act with respect to such insurer have been fully recovered by the Association.

SECTION 18. Recovery of Distribution of Insurer - Limitations.

(a) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (b) through (d) of this section.

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two (2) persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under subsection (c) of this section is insol-

vent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

SECTION 19. Examination and Regulation of Association - Reports. The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit to the Commissioner, not later than May 1 of each year, a financial report, for the preceding calendar year in a form approved by the Commissioner and a report of its activities during the preceding calendar year.

SECTION 20. Exemption From Taxes and Fees. The Association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on all real property.

SECTION 21. Certain Persons Exempted From Liability. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Association nor its agents or employees, members of the Board, or the Commissioner or his representatives, for any action taken by them in the performance of their official duties under this Act.

SECTION 22. Stay of Other Proceedings - Judgments May Be Set Aside. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, receivership or conservatorship is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding, based on default, the Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

SECTION 23. Advertising Prohibited - Exemptions. No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public, in any

newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the Arkansas Life and Health Insurance Guaranty Association of this State for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the Arkansas Life and Health Insurance Guaranty Association Act. Provided, however, that this section shall not apply to the Arkansas Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

