

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

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

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

A Bill

HOUSE BILL 2813

5 By: Representative Biggs
6
7

For An Act To Be Entitled

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

Subtitle

17 GENERAL INSURANCE OMNIBUS ACT.
18
19
20

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 year.

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

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

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

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

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

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

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

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

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

1 § 11-9-301.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) Confidential data and reports provided to the commissioner
31 by the National Association of Insurance Commissioners, including, but not
32 limited to, insurers' Insurance Regulatory Information System ratios and
33 examiner team synopses, shall be deemed privileged communications. These
34 data and reports shall not be open to public inspection and shall not be
35 admissible in evidence in any action or proceeding, other than those brought
36 by the commissioner, nor shall any insurers, agents, or brokers, which may be

1 the subject of the confidential reports, have a cause of action against the
2 commissioner or his or her deputies, examiners, assistants, or employees or
3 against the National Association of Insurance Commissioners, or its members,
4 subscribers, officers, directors, assistants, or employees by reason of the
5 furnishing of any such information to the commissioner.

6 (4) The commissioner shall maintain as confidential, and not
7 subject to subpoena, financial information regarding material transactions of
8 insurers, as defined in § 23-63-1403 or other applicable laws or regulations
9 promulgated by the commissioner.

10 (5)(A) In order to assist in the performance of the
11 commissioner's duties, the commissioner may:

12 (i) Share documents, materials, or other
13 information, including confidential and privileged documents, materials, or
14 information, with other state, federal, and international regulatory and
15 legislative agencies, with the National Association of Insurance
16 Commissioners and its affiliates and subsidiaries, ~~and~~ with state, federal,
17 and international law enforcement authorities, and the Arkansas Life and
18 Health Insurance Guaranty Association and the Arkansas Property and Casualty
19 Advisory Association, provided that the recipient agrees to maintain the
20 confidentiality and privileged status of the document, material,
21 communication, or other information;

22 (ii) Receive documents, materials, communications,
23 or information, including otherwise confidential and privileged documents,
24 materials, or information, from the National Association of Insurance
25 Commissioners and its affiliates and subsidiaries, ~~and~~ from regulatory,
26 legislative, and law enforcement officials of other foreign, alien, or
27 domestic jurisdictions, and the Arkansas Life and Health Insurance Guaranty
28 Association and the Arkansas Property and Casualty Advisory Association, and
29 shall maintain as confidential or privileged any documents, materials, or
30 information received with notice or the understanding that it is confidential
31 or privileged under the laws of the jurisdiction that is the source of the
32 document, material, or information; and

33 (iii) Enter into agreements governing sharing and
34 use of information consistent with this subsection.

35 (B) No waiver of any applicable privilege or claim of
36 confidentiality in the documents, materials, or information shall occur as a

1 result of disclosure to the commissioner under this section or as a result of
2 sharing as authorized by this subsection.

3 (C) A privilege established under the law of any state or
4 jurisdiction that is substantially similar to the privilege established under
5 this subsection shall be available and enforced in any proceeding in, and in
6 any court of, this state.

7

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

11 (2) No later than sixty (60) days following completion of the
12 examination, the examiner in charge shall file with the State Insurance
13 Department a verified written report of the examination under oath. Upon
14 receipt of the verified report, the department shall transmit the report to
15 the company examined, together with a notice which shall afford the company
16 examined a reasonable opportunity of not more than ~~twenty (20)~~ thirty (30)
17 days to make a written submission or rebuttal with respect to any matters
18 contained in the examination report.

19

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

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

31

32 SECTION 18. Arkansas Code § 23-61-711 is amended to read as follows:

33 23-61-711. Fees additional to all others currently payable –
34 Exception.

35 The fees assessed or imposed by this subchapter upon insurers, as
36 defined or referenced in § 23-61-703, and the fees assessed or imposed in §

1 ~~17-19-301 and §§ 23-61-706 - 23-61-709 upon professional bail bond companies,~~
 2 ~~insurers, insurance agents, brokers, and other licensees or registrants are~~
 3 ~~imposed in addition to all other fees, assessments, premium and privilege~~
 4 ~~taxes, penalties, and other such payments such licensees or registrants pay~~
 5 ~~the State of Arkansas through the State Insurance Department or other state~~
 6 ~~or governmental agencies pursuant to applicable Arkansas laws, except that~~
 7 ~~insurers' payments of these administrative and financial regulation fees in §~~
 8 ~~23-61-703 are expressly and in pertinent part to be paid in lieu of payment~~
 9 ~~of department examiners' salaries, wages, and compensation due at or after~~
 10 ~~each examination conducted on the insurer by the department's examiners~~
 11 ~~pursuant to the provisions of § 23-61-201 et seq., and, in particular, § 23-~~
 12 ~~61-206. Therefore, insurers shall still be liable for payment of and shall~~
 13 ~~pay department examiners' expenses for food, lodging, and travel as directed~~
 14 ~~under § 23-61-201 et seq.~~

15
 16 SECTION 19. Arkansas Code § 23-62-204 is amended to read as follows:
 17 23-62-204. Allowance of credit.

18 (a)(1) No credit shall be allowed, as an asset or a deduction from
 19 liability, to any ceding insurer for reinsurance unless the reinsurance
 20 contract provides, in substance, that if the ceding insurer becomes
 21 insolvent, the reinsurance is shall be payable under a contract reinsured by
 22 the assuming insurer on the basis of reported claims allowed by the
 23 liquidation court, the liability of the ceding insurer under the contracts
 24 reinsured without diminution because of the insolvency of the ceding insurer.

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

27 (A) The contract or other written agreement specifically
 28 provides another reinsurance payee if the insolvency of the ceding insurer;
 29 or

30 (B) The assuming insurer, with the consent of the direct
 31 insurer, has assumed the policy obligations of the ceding insurer as direct
 32 obligations of the assuming insurer to the payees under the policy and as a
 33 substitute for the obligations of the ceding insurer to the payees.

34 (b)(1) Notwithstanding subsection (a) of this section, if a life and
 35 health insurance guaranty association has made the election to succeed to the
 36 rights and obligations of the insolvent insurer under the contract of

1 reinsurance, then the reinsurer's liability to pay covered reinsured claims
2 shall continue under the contract of reinsurance, subject to the payment to
3 the reinsurer of the reinsurance premiums for the coverage.

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

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

10 (c)(1) A reinsurance agreement under this section may require the
11 domiciliary liquidator of an insolvent ceding insurer to give written notice
12 to the assuming insurer of the pendency of a claim against the ceding insurer
13 on the contract reinsured within a reasonable time after the reinsurance
14 claim is filed in the liquidation proceeding.

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

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

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

30
31 SECTION 20. Arkansas Code § 23-62-305 is amended to read as follows:
32 23-62-305. Credit allowed a domestic ceding insurer.

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

36 (A) The assets representing the security shall be

1 maintained in the United States and claims shall be filed with and valued by
 2 the state insurance commissioner with regulatory oversight; and

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

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

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

13 (A) In its state of domicile; or

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

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

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

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

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

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

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

34 ~~(4)~~(D) Files annually with the commissioner a copy of its
 35 annual statement filed with the insurance department of its state of
 36 domicile, or state of entry if an alien insurer, and a copy of its most

1 recent audited financial statement; and ~~either:~~

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

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

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

12 ~~(e)(d)(1)~~ Credit shall be allowed when the reinsurance is ceded to an
13 assuming insurer which is domiciled ~~and licensed~~ in, or in the case of a
14 United States branch of an alien assuming insurer is entered through, a state
15 which employs standards regarding credit for reinsurance substantially
16 similar to those applicable under this statute and the assuming insurer or
17 United States branch of an alien assuming insurer:

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

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

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

26 ~~(f)(e)(1)~~ Credit shall be allowed when the reinsurance is ceded to an
27 assuming insurer which maintains a trust fund in a qualified United States
28 financial institution, as defined in § 23-62-307(b), for the payment of the
29 valid claims of its United States ~~policyholders and~~ ceding insurers, their
30 assigns and successors in interest. The To enable the commissioner to
31 determine the sufficiency of the trust fund, the assuming insurer shall
32 report annually to the commissioner information substantially the same as
33 that required to be reported on the National Association of Insurance
34 Commissioners annual statement form by licensed insurers. ~~to enable the~~
35 ~~commissioner to determine the sufficiency of the trust fund. In the case of~~
36 ~~a single assuming insurer, the trust shall consist of a trustee account~~

1 ~~representing the assuming insurer's liabilities attributable to business~~
2 ~~written in the United States and, in addition, the assuming insurer shall~~
3 ~~maintain a trusteed surplus of not less than twenty million dollars~~
4 ~~(\$20,000,000). In the case of a group of incorporated and/or individual~~
5 ~~unincorporated underwriters, the trust shall consist of a trusteed account~~
6 ~~representing the group's liabilities attributable to business written in the~~
7 ~~United States and, in addition, the group shall maintain a trusteed surplus~~
8 ~~of which one hundred million dollars (\$100,000,000) shall be held jointly for~~
9 ~~the benefit of United States ceding insurers of any member of the group. The~~
10 ~~incorporated members of the group shall not be engaged in any business other~~
11 ~~than underwriting as a member of the group and shall be subject to the same~~
12 ~~level of solvency regulation and control by the group's domiciliary regulator~~
13 ~~as are the unincorporated members, and the group shall make available to the~~
14 ~~commissioner an annual certification of the solvency of each underwriter by~~
15 ~~the group's domiciliary regulator and its independent public accountants. The~~
16 ~~assuming insurer shall submit to examination of its books and records by the~~
17 ~~commissioner and bear the expense of examination.~~

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

35 ~~(3)(2)(A) Such trust shall be established in a form approved by~~
36 ~~the commissioner. Credit for reinsurance shall not be granted under this~~

1 section unless the form of the trust and any amendments to the trust have
2 been approved by:

3 (i) The commissioner of the state in which the trust
4 is domiciled; or

5 (ii) The commissioner of another state who, under
6 the terms of the trust instrument, has accepted principal regulatory
7 oversight of the trust.

8 (B) The form of the trust and any trust amendments also
9 shall be filed with the commissioner of every state in which the ceding
10 insurer beneficiaries of the trust are domiciled. The trust instrument shall
11 provide that contested claims shall be valid and enforceable upon the final
12 order of any court of competent jurisdiction in the United States. The trust
13 shall vest legal title to its assets in ~~the~~ its trustees ~~of the trust~~ for the
14 benefit of the assuming insurer's ~~its~~ United States policyholders and ceding
15 insurers, their assigns, and successors in interest. The trust and the
16 assuming insurer shall be subject to examination as determined by the
17 commissioner.

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

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

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

33 (i) For reinsurance ceded under reinsurance
34 agreements with an inception, amendment or renewal date beginning August 1,
35 1995, the trust shall consist of a trustee account in an amount not less
36 than the group's several liabilities attributable to business ceded by United

1 States domiciled ceding insurers to any member of the group;

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

8 (iii) In addition to these trusts, the group shall
9 maintain in trust a trustee surplus of which one hundred thousand dollars
10 (\$100,000) shall be held jointly for the benefit of the United States
11 domiciled ceding insurers of any member of the group for all years of
12 account; and

13 (B)(i) The incorporated members of the group shall not be
14 engaged in any business other than underwriting as a member of the group, and
15 shall be subject to the regulations and degree of solvency control by the
16 group's domiciliary regulator as are the unincorporated members.

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

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

22 (b) If a certification is unavailable,
23 financial statements, prepared by independent public accountants, of each
24 underwriter member of the group.

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

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

34 (1)(A) That in the event of the failure of the assuming insurer
35 to perform its obligations under the terms of the reinsurance agreement, the
36 assuming insurer, at the request of the ceding insurer, shall submit to the

1 jurisdiction of any court of competent jurisdiction in any state of the
2 United States, will comply with all requirements necessary to give such court
3 jurisdiction, and will abide by the final decision of ~~such~~ the court or of
4 any appellate court in the event of an appeal; and

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

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

13 (h) If the assuming insurer does not meet the requirements of
14 subsections (b), (c), or (d) of this section, the credit permitted by
15 subsection (e) of this section shall not be allowed unless the assuming
16 insurer agrees in the trust agreements to the following conditions:

17 (1) Notwithstanding any other provisions in the trust
18 instrument, if the trust fund is inadequate because it contains an amount
19 less than the amount required by subdivision (e)(3) of this section, or if
20 the grantor of the trust has been declared insolvent or placed into
21 receivership, rehabilitation, liquidation, or similar proceedings under the
22 laws of its state or country of domicile, the trustee shall comply with an
23 order of the commissioner with regulatory oversight over the trust or with an
24 order of a court of competent jurisdiction directing the trustee to transfer
25 to the commissioner with regulatory oversight all of the assets of the trust
26 fund.

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

31 (3) If the commissioner with regulatory oversight determines
32 that the assets of the trust fund or any part thereof are not necessary to
33 satisfy the claims of the United States ceding insurers of the grantor of the
34 trust, the assets or part thereof shall be returned by the commissioner with
35 regulatory oversight to the trustee for distribution in accordance with the
36 trust agreement.

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

3
 4 SECTION 21. Arkansas Code § 23-62-306 is amended to read as follows:
 5 23-62-306. Reduction from liability for reinsurance ceded by a
 6 domestic insurer to an assuming insurer.

7 (a) A An asset or a reduction from liability for the reinsurance ceded
 8 by a domestic insurer to an assuming insurer not meeting the requirements of
 9 § 23-62-305 shall be allowed in an amount not exceeding the liabilities
 10 carried by the ceding insurer, ~~and such~~ The reduction shall be in the
 11 amount of funds held by or on behalf of the ceding insurer, including funds
 12 held in trust for the ceding insurer, under a reinsurance contract with such
 13 assuming insurer as security for the payment of obligations thereunder, if
 14 ~~such~~ the security is held in the United States subject to withdrawal solely
 15 by, and under the exclusive control of, the ceding insurer; or, in the case
 16 of a trust, held in a qualified United States financial institution, as
 17 defined in § 23-62-307(b).

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

19 (1) Cash;

20 (2) Securities listed by the Securities Valuation Office of the
 21 National Association of Insurance Commissioners and qualifying as admitted
 22 assets;

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

28 (B) Letters of credit meeting applicable standards of
 29 issuer acceptability as of the dates of their issuance or confirmation shall,
 30 notwithstanding the issuing or confirming institution's subsequent failure to
 31 meet applicable standards of issuer acceptability, continue to be acceptable
 32 as security until their expiration, extension, renewal, modification, or
 33 amendment, whichever first occurs; or

34 (4) Any other form of security acceptable to the Insurance
 35 Commissioner.

36

1 SECTION 22. Arkansas Title 23, Chapter 63, Subchapter 1 is amended by
2 adding an additional section to read as follows:

3 23-63-111. Consumer information system.

4 (a)(1) The Insurance Commissioner may utilize, develop, or cause to be
5 developed a consumer information system that will provide and disseminate
6 price and other relevant information on a readily available basis to
7 purchasers of insurance in this state.

8 (2) The consumer information system may be developed by the
9 State Insurance Department, in cooperation with other state insurance
10 departments, through outside contracts, or in any other appropriate manner.

11 (3) To the extent deemed necessary and appropriate by the
12 commissioner, licensed insurers, advisory organizations, fraternal benefit
13 societies, health maintenance organizations, hospital and medical service
14 corporations, farmers' mutual aid associations, and other persons or
15 organizations involved in conducting the business of insurance in this state
16 shall cooperate in the development and utilization of a consumer information
17 system.

18 (b)(1) Any moneys assessed and received by the department for these
19 consumer advocacy purposes under comparable prior laws and maintained by the
20 commissioner in an account with the Arkansas State Treasury are to be used
21 solely for the maintenance, operation, and support of the department in its
22 role of providing consumer services and disseminating prices, and other
23 relevant information to purchasers of insurance in this state.

24 (2) The commissioner may purchase items which are necessary to
25 offer information on the department for public awareness, including
26 advertising material on the Arkansas Insurance Department.

27 (3) No additional fees or assessments shall be imposed or
28 collected to support the development or maintenance of a consumer information
29 system under this section.

30
31 SECTION 23. Arkansas Code § 23-63-201(d)(1)(D)(ii), concerning
32 statements required to be filed with the Insurance Commissioner by certain
33 organization receiving charitable annuities, is amended to read as follows:

34 (ii) A statement certifying that it adopts and will
35 adhere to the annuity rates as published from time to time by the ~~Committee~~
36 ~~on Gift Annuities of Dallas, Texas,~~ American Council on Gift Annuities or its

1 successor, until such corporation or association advises the commissioner to
2 the contrary in writing. At such latter time, the corporation or association
3 shall then file a schedule of its new proposed maximum annuity rates for
4 approval.

5

6 SECTION 24. Effective January 1, 2004, Arkansas Code § 23-63-205 is
7 amended to read as follows:

8 23-63-205. Certificate of authority - Eligibility - Capital Funds.

9 (a)(1) ~~On and after January 1, 2002, to~~ To qualify for and maintain
10 authority to transact any one (1) kind of insurance, as defined in §§ 23-62-
11 101 - 23-62-108, or combination of kinds of insurance as shown in this
12 subsection, an insurer applying for its original certificate of authority in
13 Arkansas shall possess and maintain in cash and marketable securities
14 unimpaired paid-in capital if the insurer is a domestic, foreign, or alien
15 stock insurer or surplus if the insurer is a domestic, foreign or alien
16 mutual, or domestic mutual legal reserve life insurer, or foreign or alien
17 reciprocal insurer, in an amount not less than is applicable under the
18 schedule below, and shall possess when first so authorized such additional
19 funds as surplus as are required under § 23-63-207:

20

21 Kinds of	Minimum Capital or
22 Insurance	Surplus Required
23 Life	\$750,000
24 Accident and Health.....	750,000
25 Life and Accident and Health.....	750,000
26 Property.....	500,000
27 Casualty.....	750,000
28 Surety.....	750,000
29 Marine.....	500,000
30 Title.....	250,000
31 Property, Casualty, Surety, and Marine.....	750,000
32 Combination of other lines.....	750,000

33 (2)(A) As to any combination of kinds of insurance, other than
34 combinations of kinds of insurance specifically listed in this subsection,
35 the insurer shall possess the sum of the minimum capital or surplus required
36 ~~by this subsection~~ by the Arkansas Insurance Code for the separate kinds of

1 insurance it proposes to transact, unless the commissioner deems it
2 sufficient for the applicant to possess and maintain the total amount of
3 seven hundred and fifty thousand dollars (\$750,000) for the proposed
4 combination of lines.

5 (B) If the Arkansas Insurance Code does not specify the
6 minimum capital or surplus for any line of insurance, then the commissioner
7 shall affix a minimum capital and surplus not less than five hundred thousand
8 dollars (\$500,000).

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

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

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

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

33 (d) As to surplus required for qualification to transact one (1) or
34 more kinds of insurance and to be maintained, domestic mutual insurers, other
35 than mutual life insurers, shall be governed by §§ 23-69-101 - 23-69-103, 23-
36 69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, and domestic

1 reciprocal insurers shall be governed by §§ 23-70-101 et seq.

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

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

6
7 SECTION 25. Arkansas Code § 23-63-206(a)(1)(A)(ii), concerning insurer
8 security deposits, is amended to read as follows:

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

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

15 (c) Deposit releases will continue to be
16 allowed after 2004.

17
18 SECTION 26. Arkansas Code § 23-63-206(a)(2)(A)(ii), concerning foreign
19 insurer security deposits, is amended to read as follows:

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

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

26 (c) Deposit releases will continue to be
27 allowed after 2004.

28
29 SECTION 27. Arkansas Code § 23-63-206(a)(3)(D)(i), concerning deposit
30 releases for foreign insurers, is amended to read as follows:

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

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

1 (iii) Deposit releases will continue to be allowed
2 after 2004.

3
4 SECTION 28. Arkansas Code § 23-63-206, concerning foreign insurer
5 deposits, is amended to add a new subsection follows:

6 (c)(1) As of the effective date of this subsection, foreign and alien
7 insurers seeking release permission must make a special filing with the
8 commissioner to demonstrate the adequacy and sufficiency of the deposit in
9 the state of domicile, Canada, Mexico, or port-of-entry state, in order to
10 obtain release of deposited assets.

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

18
19 SECTION 29. Arkansas Code § 23-63-216(a)(1), concerning annual
20 financial reports of insurers, is amended to read as follows:

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

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

32
33 SECTION 30. Arkansas Code § 23-63-216(a)(2), concerning financial
34 statements filed by licensed insurers, is amended to read as follows:

35 (2)(A) The prescribed statement shall be prepared in accordance
36 with the most recent, companion National Association of Insurance

1 Commissioners' "Annual Statement Instructions" and shall follow those
 2 accounting practices and procedures prescribed by the most recent National
 3 Association of Insurance Commissioners' Accounting Practices and Procedures
 4 Manual.

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

8 ~~(A)(i)~~ "Annual Statement Blank For Life And Accident
 9 And Health";

10 ~~(B)(ii)~~ "Property And Casualty Annual Statement
 11 Blank";

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

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

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

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

18 ~~(G)(i)(vii)~~ Other National Association of Insurance
 19 Commissioners' convention ~~blank blanks~~ as appropriate, ~~which shall be~~
 20 ~~prepared in accordance with the most recent and appropriate, companion~~
 21 ~~National Association of Insurance Commissioners' "Annual Statement~~
 22 ~~Instructions" and follow those accounting practices and procedures prescribed~~
 23 ~~by the most recent and appropriate companion National Association of~~
 24 ~~Insurance Commissioners' Accounting Practices and Procedures Manual.~~

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

32
 33 SECTION 31. Arkansas Code § 23-63-216(h)(1), concerning the filing of
 34 annual financial reports by insurers, is amended to read as follows:

35 (h)(1) On or before March 1, ~~1992,~~ 2004, and annually on or before
 36 March 1 of each year thereafter, each domestic, foreign, and alien insurer

1 authorized to transact business in this state shall file with the National
 2 Association of Insurance Commissioners a hardcopy and an electronic copy of
 3 its annual statement, ~~convention blank~~, along with such additional filings as
 4 prescribed by the commissioner as of the December 31 preceding. The
 5 information filed with the National Association of Insurance Commissioners
 6 shall be in the same format and scope as that required by the commissioner
 7 and shall include the signed jurat page and the actuarial certification. Any
 8 amendments and addendums to the annual statement filing subsequently filed
 9 with the commissioner shall also be filed with the National Association of
 10 Insurance Commissioners.

11
 12 SECTION 32. Arkansas Code § 23-63-304 is amended to read as follows:

13 23-63-304. Service of process of foreign or alien insurers or domestic
 14 reciprocal insurers.

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

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

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

25 (2) Has withdrawn from transacting business in this state under
 26 this subchapter; or

27 (3) Has had its certificate of authority revoked under this
 28 subchapter.

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

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

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

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

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

6 (e) This section does not prescribe the only means, or necessarily the
7 required means, of serving a licensed foreign insurer or a licensed domestic
8 reciprocal insurer.

9
10 SECTION 33 Arkansas Code § 23-63-503(5)(A), concerning definitions for
11 holding company laws applicable to insurers with depository corporation
12 affiliates, is amended to read as follows:

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

18
19 SECTION 34. Arkansas Code § 23-63-506(a), concerning changes in
20 control of domestic insurers in an insurer holding company, is amended to
21 read as follows:

22 (a) No person other than the issuer shall make a tender offer for or a
23 request or invitation for tenders of, or enter into any agreement to exchange
24 securities for, seek to acquire, or acquire, in the open market or otherwise,
25 any voting security of a domestic insurer if, after the consummation thereof,
26 the person would, directly or indirectly, or by conversion or by exercise of
27 any right to acquire, be in control of the insurer. No person shall enter
28 into an agreement to merge with or otherwise to acquire control of a domestic
29 insurer or any person controlling a domestic insurer unless, at the time ~~any~~
30 the offer, request, or invitation is made or any the agreement is entered
31 into, or prior to the acquisition of the securities if no offer or agreement
32 is involved, the person has filed with the Insurance Commissioner and has
33 sent to the insurer, and the insurer has sent to its shareholders, a
34 statement containing the information required by this section and §§ 23-63-
35 507 - 23-63-513 and such an the offer, request, invitation, agreement, or
36 acquisition has been approved by the commissioner in the manner prescribed in

1 this section and §§ 23-63-507 - 23-63-513.

2
3 SECTION 35. Arkansas Code § 23-63-909(b), as to administration and
4 release of security deposits of insurers, is amended to read as follows:

5 (b)(1) The commissioner, under procedures he or she shall prescribe,
6 may release to the insurer any part of the special additional four percent
7 (4%) accident and health deposit ~~to the insurer~~ required under former laws.

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

13
14 SECTION 36. Arkansas Code § 23-65-302 is amended to read as follows:

15 23-65-302. Exceptions.

16 ~~The provisions of this subchapter controlling the placing of insurance~~
17 ~~with unauthorized insurers shall not apply to reinsurance or to the following~~
18 ~~insurances when so placed by licensed agents or brokers of this state. This~~
19 ~~subchapter shall not apply to reinsurance or to the following kinds of~~
20 ~~insurance placed by licensed agents or brokers in this state:~~

21 (1) Wet marine and foreign trade insurance;

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

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

27 (4) Insurance of aircraft owned or operated by manufacturers of
28 aircraft, or aircraft operated in scheduled interstate flight, or cargo of
29 the aircraft, or against liability, other than workers' compensation and
30 employer's liability, arising out of the ownership, maintenance, or use of
31 the aircraft.

32
33 SECTION 37. Arkansas Code § 23-66-507 is amended to read as follows:

34 23-66-507. Confidentiality.

35 (a) Notwithstanding any other provision of law, the documents and
36 evidence provided pursuant to §§ 23-66-505 and 23-66-508 or obtained by the

1 Insurance Commissioner in an investigation of suspected or actual fraudulent
2 insurance acts shall be privileged and confidential and shall not be a public
3 record and shall not be subject to discovery or subpoena in a civil or
4 criminal action until the matter under investigation is closed by the
5 ~~Insurance Fraud~~ Criminal Investigation Division with the consent of the
6 commissioner.

7 (b) Subsection (a) of this section does not prohibit release by the
8 commissioner of documents and evidence obtained by the division in an
9 investigation of suspected or actual fraudulent insurance acts:

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

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

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

18 (c) Release of documents and evidence under subsection (b) of this
19 section does not abrogate or modify the privilege granted in subsection (a)
20 of this section.

21

22 SECTION 38. Arkansas Code § 23-66-508 is amended to read as follows:

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

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

27 (2) The Insurance Commissioner shall appoint the full-time
28 supervisory and investigative personnel of the division, who shall be
29 qualified by training and experience to perform the duties of their
30 positions.

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

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

6 (4) The commissioner shall also appoint clerical and other staff
7 necessary for the division to carry out its duties and responsibilities under
8 this subchapter.

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

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

13 (2) Review reports or complaints of alleged fraudulent insurance
14 activities from federal, state, and local law enforcement and regulatory
15 agencies, persons engaged in the business of insurance, and the public to
16 determine whether the reports require further investigation and to conduct
17 these investigations; and

18 (3) Conduct independent examinations of alleged fraudulent
19 insurance acts and undertake independent studies to determine the extent of
20 fraudulent insurance acts.

21 (c) The division shall have the authority to:

22 (1)(A) Issue subpoenas to examine any individual under oath and
23 to compel the production of records, books, papers, contracts, and other
24 documents.

25 (B) Subpoenas shall be served in the same manner as if
26 issued by a circuit court.

27 (C) If any individual fails to obey a subpoena issued and
28 served pursuant to this subsection, upon application of the division, the
29 Pulaski County Circuit Court or the circuit court of the county where the
30 subpoena was served may issue an order requiring the individual to comply
31 with the subpoena.

32 (D) Any failure to obey the order of the court may be
33 punished by the court as contempt thereof;

34 (2) Administer oaths and affirmations;

35 (3) Share records and evidence with federal, state, or local law
36 enforcement or regulatory agencies;

1 (4)(A) Make criminal referrals to prosecuting authorities.

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

6 (C) The prosecuting attorney shall have the right and
7 discretion to proceed against any person or organization on criminal
8 referrals made hereunder, both organizational and individual liability being
9 intended; and

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

11 (B) If the information the division seeks to obtain is
12 located outside this state, the person from whom the information is sought
13 may make the information available to the division to examine at the place
14 where the information is located.

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

19
20 SECTION 39. Arkansas Code § 23-67-211(a), regarding a waiver of the
21 twenty-day review period for certain property and casualty filings in
22 competitive markets, is amended to read as follows:

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

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

32 (A) The filing has been pending for more than twenty (20)
33 days;

34 (B) The current rates are inadequate; or

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

36 ~~(2)(3)~~ In a competitive market, if the commissioner determines

1 after a hearing or by agreement that an insurer's rates require closer
 2 supervision because of the insurer's financial condition or its rating
 3 practices, the insurer shall file with the commissioner at least sixty (60)
 4 days prior to the effective date all rates and supplementary rate information
 5 and supporting information prescribed by the commissioner. Upon application
 6 by the filer, the commissioner may authorize an earlier effective date. A
 7 filing shall be deemed to meet the requirements of this chapter and to become
 8 effective upon the expiration of the waiting period.

9
 10 SECTION 40. Arkansas Code § 23-69-108(a)(1), concerning officers for
 11 domestic stock or mutual insurers, is amended to read as follows:

12 (a)(1) Every domestic stock or mutual insurer shall have a chief
 13 executive officer who shall be a director and who may also be the insurer's
 14 president, who shall be a director, a president, and a secretary and a
 15 treasurer. They shall be chosen by the board of directors and shall hold
 16 their offices until their respective successors are chosen and qualify.

17
 18 SECTION 41. Arkansas Code § 23-69-141(d), as to a domestic stock
 19 insurer's conversion to a mutual insurer, is amended to read as follows:

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

23
 24 SECTION 42. Arkansas Code § 23-73-105(f)(2)(A), concerning licensure
 25 eligibility of and financial stability for farmers' mutual aid associations
 26 or companies, is amended to read as follows:

27 (2)(A)(i) Before any association shall be authorized to write
 28 the coverages listed in subdivision (f)(1) of this section, the policy form
 29 shall have prior approval of the commissioner, in accordance with § 23-79-
 30 109, ~~the association shall have and thereafter maintain a minimum surplus of~~
 31 ~~fifty thousand dollars (\$50,000) to be deposited with the commissioner in the~~
 32 ~~form of securities eligible for deposit under § 23-63-903.~~

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

36 (iii) If immediate compliance with subdivision

1 (f)(2)(A) of this section would cause the domestic association or company to
2 be impaired or insolvent, the commissioner, in his or her sole discretion,
3 may allow domestic associations or companies to augment surplus and special
4 surplus in increments over five (5) years until December 31, 2008, to achieve
5 compliance with the minimum requirements of subdivision (f)(2)(A) of this
6 section.

7
8 SECTION 43. Arkansas Code § 23-73-112, concerning the minimum number
9 of members required for domestic farmers' mutual aid associations or
10 companies, is amended to read as follows:

11 23-73-112. Continuance of certificate of authority.

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

14 (1)(A) Have at least ~~fifty (50)~~ two hundred fifty (250) members
15 who hold policies or certificates upon at least ~~fifty (50)~~ two hundred fifty
16 (250) separate risks.

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

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

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

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

34
35 SECTION 44. Arkansas Code § 23-73-113, concerning certificates of
36 authority for farmers' mutual aid associations or companies, is amended to

1 read as follows:

2 23-73-113. Continuance of certificate of authority.

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

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

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

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

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

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

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

25 (A) The association or company is entitled to the new
26 certificate;

27 (B) The association or company timely and satisfactorily
28 complies with annual continuation requirements of this section and other
29 applicable laws or rules.

30 (4) Although issued to the association or company under this
31 law, the certificate of authority is the property of the State of Arkansas,
32 and, upon any termination or expiration, the association or company shall
33 promptly deliver the certificate to the commissioner.

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

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

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

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

12 (2) If the association or company is using methods or practices
13 in the conduct of its business that render further transactions of insurance
14 in Arkansas hazardous or injurious to its members, policyholders, or the
15 public;

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

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

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

25
26 SECTION 45. Arkansas Code § 23-77-107(a)(2), concerning the suspension
27 and licenses for automobile clubs, is amended to read as follows:

28 (2) If the automobile club or association no longer meets the
29 requirements for the authority originally granted due to a deficiency in the
30 deposit required by § 23-77-106(d)(1)(A) or the failure to maintain a ~~surety~~
31 ~~bond~~ deposit of securities or other assets acceptable to the commissioner, in
32 such amount as prescribed by § 23-77-106(d)(1)(A); or
33

34 SECTION 46. Arkansas Code § 23-79-121(a), concerning insurance
35 policies delivered to consumers, is amended to read as follows:

36 (a)(1) Subject to the insurer's requirements as to payment of premium,

1 every policy shall be mailed or delivered to the insured or to the person
 2 entitled to receive it, within a reasonable period of time after its
 3 issuance, except where a condition required by the insurer has not been met.

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

6 (B) The insurer shall retain the electronic transmittal,
 7 along with an electronic or imaged copy of the policy, as a part of the
 8 insurer's records.

9
 10 SECTION 47. Arkansas Code § 23-79-123(a) concerning delivery of
 11 insurance certificates or endorsements to policyholders, is amended to read
 12 as follows:

13 (a)(1) Any insurance policy terminating by its terms at a specified
 14 expiration date and not otherwise renewable may be renewed or extended at the
 15 option of the insurer upon a currently authorized policy form and at the
 16 premium rate then required for that type of policy, for a specific additional
 17 period or periods by certificate or by endorsement of the policy, or by
 18 electronic certificate or electronic endorsement properly executed, and
 19 without requiring the issuance of a new policy.

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

22
 23 SECTION 48. Arkansas Code § 23-81-304(b)(1)(A), concerning minimum
 24 values for annuity contracts, is amended to read as follows:

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 49. Arkansas Code § 23-81-308 is amended to read as follows:
23-81-308. Maturity date.

(a) For the purpose of determining the benefits calculated under §§ 23-81-306 and 23-81-307, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract. This date shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

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

SECTION 50. Arkansas Code § 23-89-213 is amended to read as follows:
23-89-213. ~~Premium delinquencies~~ Auto Liability – Proof of insurance card.

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

- (1) The name, address, and telephone number of the insurer, and as the National Association of Insurance Commissioners' five-digit identification number assigned to the insurer;
- (2) The name and telephone number of the local agent through whom the policy was issued, if any, or a blank space where a local agent's name may be stamped or filled in;
- (3) The policy number;
- (4) The effective date of the insurance policy coverage and the expiration date of the insurance policy coverage;
- (5) The vehicle identification number and a brief description of the insured vehicle; and
- (6) The name and address of the insured person.

SECTION 51. Arkansas Code § 23-100-101 is amended to read as follows:
23-100-101. Title.

1 This chapter shall be known as “The ~~Insurance Fraud~~
2 State Insurance Department Criminal Investigation Division Trust Fund Act”.

3
4 SECTION 52. Arkansas Code § 23-100-102(a), concerning insurers’
5 payment extensions for antifraud assessments and penalties for noncompliance,
6 is amended to read as follows:

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

25
26 SECTION 53. Arkansas Code § 23-100-103 is amended to read as follows:

27 23-100-103. The ~~Insurance Fraud~~ State Insurance Department Criminal
28 Investigation Division Trust Fund - Creation.

29 (a) There is hereby established on the books of the Treasurer of
30 State, the Auditor of State, and the Chief Fiscal Officer of the State a fund
31 to be known as the ~~Insurance Fraud~~ State Insurance Department Criminal
32 Investigation Division Trust Fund to be used to defray the expenses of the
33 ~~Insurance Fraud~~ Criminal Investigation Division of the State Insurance
34 Department in the discharge of its administrative and regulatory powers and
35 duties as prescribed by law.

36 (b) No money is to be appropriated from this fund for any purpose except

1 for the personal services and operating expenses, maintenance and operations,
2 and support of and improvements to the division, and at the direction of the
3 Insurance Commissioner for the use, benefit, and support of the division.

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

7 (d) All income derived through investment of the fund, including, but
8 not limited to, interest and dividends, shall be credited as investment
9 income to the fund. All income derived through grants, refunds, gifts, or any
10 other sources, to the fund shall be credited as income to the fund and
11 deposited therein.

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

15
16 SECTION 54. Arkansas Code § 23-100-104(a)(1) is amended to read as
17 follows:

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

33
34 SECTION 55. Arkansas Code § 23-100-105 is amended to read as follows:

35 23-100-105. Insurers' antifraud fees - Deposit into the ~~Insurance~~
36 ~~Fraud~~ State Insurance Department Criminal Investigation Division Trust Fund.

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

6
7 SECTION 56. Arkansas Code § 23-100-107 is amended to read as follows:
8 23-100-107. The ~~Insurance Fraud~~ State Insurance Department Criminal
9 Investigation Division Trust Fund - Department vouchers and Auditor of State
10 warrants.

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

25
26 SECTION 57. Arkansas Code § 26-57-606 is repealed.

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

1
2 SECTION 58. Arkansas Code § 26-57-614(e), concerning premium taxes for
3 fire protection services, is amended to read as follows:

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

6 (2)(A) If the premium taxes required to be paid are less than
7 twenty-five dollars (\$25.00), the insurer may defer payment to the following
8 quarter or quarters of that calendar year.

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

12
13 SECTION 59. Arkansas Code § 27-19-717 is amended to read as follows:
14 27-19-717. Money or security as proof.

15 (a)(1)(A) Proof of financial responsibility may be evidenced by the
16 certificate of the ~~Insurance Commissioner~~ State Revenue Commissioner that the
17 person named therein has deposited with him ~~sixty-five thousand dollars~~
18 ~~(\$65,000)~~ seventy-five thousand dollars (\$75,000) in cash or securities such
19 as may be legally purchased by savings banks or for trust funds of a market
20 value of ~~sixty-five thousand dollars (\$65,000)~~ seventy-five thousand dollars
21 (\$75,000).

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

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

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

36 (2) Money or securities so deposited shall not be subject to

1 attachment or execution unless the attachment or execution shall arise out of
2 a suit for damages as indicated.

3
4 SECTION 60. Arkansas Code § 27-19-719 is amended to read as follows:
5 27-19-719. Substitution of proof.

6 The office shall consent to the cancellation of any bond or certificate
7 of insurance or the office shall direct, and the ~~Insurance Commissioner~~ State
8 Revenue Commissioner shall return, any money or securities to the person
9 entitled thereto upon the substitution and acceptance of other adequate proof
10 of financial responsibility pursuant to this chapter.

11
12 SECTION 61. Subsection (a) of Arkansas Code 27-19-721(a), concerning
13 refund deposits posted to meet vehicle financial responsibility laws, is
14 amended to read as follows:

15 (a) The office shall, upon request, consent to the immediate
16 cancellation of any bond or certificate of insurance, or the office shall
17 direct, and the ~~Insurance Commissioner~~ State Revenue Commissioner shall
18 return, to the person entitled thereto any money or securities deposited
19 pursuant to this subchapter as proof of financial responsibility, or the
20 office shall waive the requirement of filing proof, in any of the following
21 events:

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

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

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

32
33 SECTION 62. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that the laws of this state
35 regarding insurance regulation and vehicle liability deposits for proof of
36 financial responsibility are inadequate for the protection of the public; and

1 that the immediate passage of this act is necessary in order to provide for
2 the adequate protection of the public. Therefore, an emergency is declared
3 to exist, and this act being necessary for the preservation of the public
4 peace, health, and safety, shall become effective on July 1, 2003.

5
6 /s/ Biggs
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36