

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: S3/23/15*

# A Bill

SENATE BILL 881

5 By: Senator Rapert  
6 By: Representative Collins  
7

## For An Act To Be Entitled

9 *AN ACT TO CLARIFY A CREDIT FOR REINSURANCE; TO ALLOW*  
10 *A RETALIATORY TAX CREDIT FOR CERTAIN TAXES,*  
11 *PENALTIES, OR FEES PAID TO OTHER STATES BY A DOMESTIC*  
12 *PROPERTY AND CASUALTY INSURER; TO REVISE THE*  
13 *REQUIREMENTS FOR MARKET CONDUCT ANNUAL STATEMENTS; TO*  
14 *MODIFY THE INSURANCE HOLDING COMPANY REGULATORY ACT;*  
15 *TO AMEND THE INVESTMENT LAWS FOR DOMESTIC INSURERS;*  
16 *TO ALLOW AN INSURER TO USE BORROWED SURPLUS; TO*  
17 *ESTABLISH THE RISK MANAGEMENT AND OWN RISK ASSESSMENT*  
18 *ACT; TO REGULATE PRINCIPAL-BASED RESERVES; TO ADOPT*  
19 *THE NATIONAL ASSOCIATION FOR INSURANCE COMMISSIONERS'*  
20 *MODEL STANDARD VALUATION LIFE INSURANCE AND ANNUITIES*  
21 *LAW; AND FOR OTHER PURPOSES.*

## Subtitle

22  
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24  
25 TO MODIFY THE FINANCIAL AND REGULATORY  
26 INSURANCE LAWS IN THIS STATE.  
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

30  
31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

32  
33 *SECTION 1. Arkansas Code § 23-62-305 is amended to read as follows:*  
34 *23-62-305. Credit allowed a domestic ceding insurer.*

35 *(a)(1) ~~Credit for reinsurance shall be allowed a domestic~~ A domestic*  
36 *ceding insurer shall be allowed credit for reinsurance as either an asset or*



1 a reduction from liability on account of reinsurance ceded only when the  
2 reinsurer meets the requirements ~~of this subchapter~~ of this section.

3 (2) Credit shall be allowed under subsection (b), subsection  
4 (c), or subsection (d) of this section only for cessions of the kinds or  
5 classes of business ~~which that~~ the assuming insurer is licensed or otherwise  
6 permitted to write or assume in:

7 (A) Its state of domicile; or

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

11 (3) Credit shall be allowed under subsection (d) or subsection  
12 (e) of this section only if the applicable requirements of subsection ~~(g)~~ (i)  
13 of this section have been satisfied.

14 (b) Credit shall be allowed ~~when~~ if the reinsurance is ceded to an  
15 assuming insurer ~~which that~~ is licensed to transact insurance or reinsurance  
16 in this state.

17 (c)(1) Credit shall be allowed when the reinsurance is ceded to an  
18 assuming insurer ~~which that~~ is accredited by the Insurance Commissioner as a  
19 reinsurer in this state.

20 ~~(2) An accredited~~ To be eligible for accreditation by the  
21 Insurance Commissioner under subdivision (c)(1) of this section, a reinsurer  
22 ~~is one which shall:~~

23 (A) ~~Files~~ File with the Insurance Commissioner evidence of  
24 its submission to this state's jurisdiction;

25 (B) ~~Submits~~ Submit to this state's authority to examine  
26 its books and records;

27 (C) ~~Is~~ Be licensed to transact insurance or reinsurance in  
28 at least one (1) state, or, in the case of a United States branch of an alien  
29 assuming insurer, ~~is~~ be entered through and licensed to transact insurance or  
30 reinsurance in at least one (1) state; ~~and~~

31 (D) ~~Files~~ File annually with the ~~commissioner~~ Insurance  
32 Commissioner a copy of its annual statement filed with the insurance  
33 department of its state of domicile and a copy of its most recent audited  
34 financial statement ~~and either;~~ and

35 ~~(i)(E)(i)~~ Maintains Demonstrate to the satisfaction of the  
36 Insurance Commissioner that the reinsurer has adequate financial capacity to

1 meet the reinsurer's reinsurance obligations and is otherwise qualified to  
 2 assume reinsurance from domestic insurers.

3 (ii) A reinsurer is considered to meet the  
 4 requirements under subdivision (c)(2)(E)(i) of this section if, at the time  
 5 of application to the Insurance Commissioner, the reinsurer maintains a  
 6 surplus regarding policyholders in an amount not less than twenty million  
 7 dollars (\$20,000,000) and whose accreditation has not been denied by the  
 8 ~~commissioner~~ Insurance Commissioner within ninety (90) days of its submission  
 9 applying; or

10 ~~(ii) Maintains a surplus regarding policyholders in~~  
 11 ~~an amount less than twenty million dollars (\$20,000,000) and whose~~  
 12 ~~accreditation has been approved by the commissioner.~~

13 ~~(2) No credit shall be allowed a domestic ceding insurer if the~~  
 14 ~~assuming insurer's accreditation has been revoked by the commissioner after~~  
 15 ~~notice and hearing.~~

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

22 (A) Maintains a surplus regarding policyholders in an  
 23 amount not less than twenty million dollars (\$20,000,000); and

24 (B) Submits to the authority of this state to examine its  
 25 books and records.

26 (2) The requirement of subdivision (d)(1)(A) of this section  
 27 does not apply to reinsurance ceded and assumed pursuant to pooling  
 28 arrangements among insurers in the same holding company system.

29 (e)(1)(A) Credit shall be allowed ~~when~~ if the reinsurance is ceded to  
 30 an assuming insurer ~~which~~ that maintains a trust fund in a qualified United  
 31 States financial institution, as defined in § 23-62-307(b), for the payment  
 32 of the valid claims of its United States ceding insurers, their assigns, and  
 33 their successors in interest.

34 (B) To enable the ~~commissioner~~ Insurance Commissioner to  
 35 determine the sufficiency of the trust fund, the assuming insurer shall  
 36 report annually to the ~~commissioner~~ Insurance Commissioner information

1 substantially the same as that required to be reported on the National  
2 Association of Insurance Commissioners annual statement form by licensed  
3 insurers.

4 (C) The assuming insurer shall submit to examination of  
5 its books and records by the ~~commissioner~~ Insurance Commissioner and bear the  
6 expense of examination.

7 (2)~~(A)~~ A credit for reinsurance shall not be granted under this  
8 section unless the form of the trust and any amendments to the trust have  
9 been approved by:

10 ~~(i)~~(A) The insurance commissioner of the state where the  
11 trust is domiciled; or

12 ~~(ii)~~(B) The insurance commissioner of another state who,  
13 ~~pursuant to~~ under the terms of the trust instrument, has accepted principal  
14 regulatory oversight of the trust.

15 ~~(B)~~~~(i)~~(3)(A) The form of the trust and any trust amendments also  
16 shall be filed with the insurance commissioner of every state in which the  
17 ceding insurer beneficiaries of the trust are domiciled.

18 ~~(ii)~~(B) The trust instrument shall provide that contested  
19 claims shall be valid and enforceable upon the final order of any court of  
20 competent jurisdiction in the United States.

21 ~~(iii)~~(C) The trust shall vest legal title to its assets in  
22 its trustees for the benefit of the assuming insurer's United States ceding  
23 insurers, their assigns, and their successors in interest.

24 ~~(iv)~~(D) The trust and the assuming insurer shall be  
25 subject to examination as determined by the ~~commissioner~~ Insurance  
26 Commissioner.

27 ~~(G)~~~~(i)~~(4)(A) The trust shall remain in effect for as long as the  
28 assuming insurer has outstanding obligations due under the reinsurance  
29 agreements subject to the trust.

30 ~~(ii)~~(B) ~~No later than~~ By February 28 of each year, the  
31 trustees of the trust shall:

32 ~~(a)~~(i) Report to the ~~commissioner~~ Insurance  
33 Commissioner in writing the balance of the trust;

34 ~~(b)~~(ii) List the trust's investments at the  
35 preceding year's end; and

36 ~~(c)~~(iii) Certify ~~either~~:

1 (a) ~~the~~ The date of termination of the trust,  
2 if so planned; or

3 (b) ~~that~~ That the trust will not expire ~~prior~~  
4 ~~to~~ before the following December 31.

5 (f) An assuming insurer is subject to the requirements, as applicable,  
6 for the following categories:

7 ~~(3)(A)(1)(A)~~ The trust fund for a single assuming insurer shall  
8 consist of funds in trust in an amount not less than the assuming insurer's  
9 liabilities attributable to reinsurance ceded by United States ceding  
10 insurers, ~~and~~.

11 (B) ~~in addition, the~~ Except as provided in subdivision  
12 (f)(2) of this section, the assuming insurer shall maintain a trustee  
13 surplus of ~~not less than~~ at least twenty million dollars (\$20,000,000);

14 (2)(A) The commissioner with principal regulatory oversight of  
15 the trust may authorize a reduction in the assuming insurer's required  
16 trustee surplus if the Insurance Commissioner finds that:

17 (i) The assuming insurer has permanently  
18 discontinued underwriting new business secured by the trust for at least  
19 three (3) years; and

20 (ii) In light of reasonably foreseeable adverse loss  
21 development and based on an assessment of the risk, the assuming insurer's  
22 new required surplus level is adequate to protect United States ceding  
23 insurers, policyholders, and claimants.

24 (B)(i) The risk assessment may involve an actuarial  
25 review, including an independent analysis of reserves and cash flows.

26 (ii) The risk assessment shall consider any  
27 applicable material risk factors, including without limitation:

28 (a) The lines of business involved;

29 (b) The stability of the incurred loss  
30 estimates; and

31 (c) The effect of the surplus requirements on  
32 the assuming insurer's liquidity or solvency.

33 (C) The minimum required trustee surplus shall not be  
34 reduced to an amount less than thirty percent (30%) of the assuming insurer's  
35 liabilities attributable to reinsurance ceded by United States ceding  
36 insurers covered by the trust;

1 ~~(B)(i)(3)(A)~~ In the case of a group, including incorporated and  
 2 individual unincorporated underwriters:

3 ~~(a)(i)~~ For reinsurance ceded under reinsurance  
 4 agreements with an inception, amendment, or renewal date on or after ~~August~~  
 5 ~~1, 1995~~ January 1, 1993, the trust shall consist of a trustee account in an  
 6 amount not less than the ~~group's~~ underwriters' several liabilities  
 7 attributable to business ceded by United States domiciled ceding insurers to  
 8 any ~~member~~ underwriter of the group;

9 ~~(b)(ii)~~ For reinsurance ceded under reinsurance  
 10 agreements with an inception date on or before ~~July 31, 1995~~ December 31,  
 11 1992, and not amended or renewed after that date, notwithstanding the other  
 12 provisions of this act, the trust shall consist of a trustee account in an  
 13 amount not less than the ~~group's~~ underwriters' several insurance and  
 14 reinsurance liabilities attributable to business written in the United  
 15 States; and

16 ~~(e)(iii)~~ In addition to ~~the other~~ the trusts under  
 17 this subdivision ~~(e)(3)(B)~~ (f)(3)(A), the group shall maintain in trust a  
 18 trusteed surplus of which one hundred million dollars (\$100,000,000) shall be  
 19 held jointly for the benefit of the United States domiciled ceding insurers  
 20 of any member of the group for all years of account.

21 ~~(ii)(B)~~ The incorporated members of the group shall not be  
 22 engaged in any business other than underwriting as a member of the group and  
 23 shall be subject to the same level of regulation and solvency control by the  
 24 group's domiciliary regulator as are the unincorporated members.

25 ~~(iii)(C)~~ Within ninety (90) days after its financial  
 26 statements are due to be filed with the group's domiciliary regulator, the  
 27 group shall provide to the ~~commissioner~~ Insurance Commissioner:

28 ~~(a)(i)~~ An annual certification by the group's  
 29 domiciliary regulator of the solvency of each underwriter member; or

30 ~~(b)(ii)~~ If a certification is unavailable, financial  
 31 statements, prepared by independent public accountants, of each underwriter  
 32 member of the group; and

33 (4) In the case of a group of incorporated underwriters under  
 34 common administration, the group shall:

35 (A) Have continuously transacted an insurance business  
 36 outside the United States for at least three (3) years immediately before

1 making application for accreditation;

2 (B) Maintain aggregate policyholders' surplus of at least  
3 ten billion dollars (\$10,000,000,000);

4 (C) Maintain a trust fund in an amount that is not less  
5 than the group's several liabilities attributable to business ceded by United  
6 States domiciled ceding insurers to any member of the group under reinsurance  
7 contracts issued in the name of the group;

8 (D) Maintain a joint trusteed surplus of which one hundred  
9 million dollars (\$100,000,000) shall be held jointly for the benefit of  
10 United States domiciled ceding insurers of any member of the group as  
11 additional security for these liabilities; and

12 (E) Within ninety (90) days after its financial statements  
13 are due to be filed with the group's domiciliary regulator, make available to  
14 the commissioner an annual certification of each underwriter member's  
15 solvency by the member's domiciliary regulator and financial statements of  
16 each underwriter member of the group prepared by its independent public  
17 accountant.

18 (g)(1) Credit shall be allowed when the reinsurance is ceded to an  
19 assuming insurer that has been certified by the Insurance Commissioner as a  
20 reinsurer in this state and secures its obligations under the requirements of  
21 this section.

22 (2) In order to be eligible for certification, the assuming  
23 insurer shall:

24 (A) Be domiciled and licensed to transact insurance or  
25 reinsurance in a qualified jurisdiction, as determined by the Insurance  
26 Commissioner under subdivision (g)(4) of this section;

27 (B) Maintain minimum capital and surplus, or its  
28 equivalent, in an amount to be determined by rule adopted by the  
29 commissioner;

30 (C) Maintain financial strength ratings from at least two  
31 (2) rating agencies deemed acceptable as determined by rule adopted by the  
32 commissioner;

33 (D) Agree to:

34 (i) Submit to the jurisdiction of this state;

35 (ii) Appoint the Insurance Commissioner as its agent  
36 for service of process in this state;

1 (iii) Provide security for one hundred percent  
2 (100%) of the assuming insurer's liabilities attributable to reinsurance  
3 ceded by United States ceding insurers if it resists enforcement of a final  
4 United States judgment; and

5 (iv) Meet any additional filing requirements as  
6 determined by rule adopted by the Insurance Commissioner concerning an  
7 initial application for certification and on an ongoing basis; and

8 (E) Satisfy any other requirements for certification  
9 deemed necessary by rule adopted by the Insurance Commissioner.

10 (3)(A) A certified reinsurer may be an association, including an  
11 incorporated underwriter and an individual unincorporated underwriter.

12 (B) In order to be eligible for certification, an  
13 association that meets the requirements in subdivision (g)(2) of this section  
14 shall:

15 (i) Satisfy the association's minimum capital and  
16 surplus requirements through the capital and surplus equivalents or net of  
17 liabilities of the association and the association's members, including a  
18 joint central fund that may be applied to any unsatisfied obligation of the  
19 association or any of the association's members, in an amount determined by  
20 the Insurance Commissioner to provide adequate protection;

21 (ii) The incorporated members of the association  
22 shall not be engaged in any business other than underwriting as a member of  
23 the association and shall be subject to the same level of regulation and  
24 solvency control by the association's domiciliary regulator as are the  
25 unincorporated members; and

26 (iii) Within ninety (90) days after its financial  
27 statements are due to be filed with the association's domiciliary regulator,  
28 the association shall provide to the Insurance Commissioner an annual  
29 certification by the association's domiciliary regulator of the solvency of  
30 each underwriter member, or if a certification is unavailable, financial  
31 statements, prepared by independent public accountants, of each underwriter  
32 member of the association.

33 (4)(A) The Insurance Commissioner shall create and publish a  
34 list of qualified jurisdictions under which an assuming insurer that is  
35 licensed and domiciled in the jurisdictions is eligible to be considered for  
36 certification by the commissioner as a certified reinsurer.



1 (B) In order to determine whether or not the domiciliary  
2 jurisdiction of an assuming insurer that is not in the United States is  
3 eligible to be recognized as a qualified jurisdiction, the Insurance  
4 Commissioner shall:

5 (i) Evaluate the appropriateness and effectiveness  
6 of the reinsurance supervisory system of the jurisdiction, both initially and  
7 on an ongoing basis; and

8 (ii) Consider the rights, benefits, and the extent  
9 of reciprocal recognition afforded by the foreign jurisdiction to reinsurers  
10 licensed and domiciled in the United States.

11 (C) A qualified jurisdiction shall agree to share  
12 information and cooperate with the Insurance Commissioner with respect to all  
13 certified reinsurers domiciled within that jurisdiction.

14 (D) A jurisdiction shall not be recognized as a qualified  
15 jurisdiction if the Insurance Commissioner has determined that the  
16 jurisdiction does not adequately and promptly enforce final United States  
17 judgments and arbitration awards.

18 (E) Additional factors may be considered in the discretion  
19 of the Insurance Commissioner.

20 (5)(A) A list of qualified jurisdictions shall be published  
21 through the National Association of Insurance Commissioners committee  
22 process.

23 (B) The Insurance Commissioner shall consider this list in  
24 determining qualified jurisdictions.

25 (C) If the Insurance Commissioner approves a jurisdiction  
26 as qualified that does not appear on the list of qualified jurisdictions, the  
27 Insurance Commissioner shall provide thoroughly documented justification  
28 according to criteria to be developed by promulgation of rules by the  
29 Insurance Commissioner.

30 (D) United States jurisdictions that meet the requirement  
31 for accreditation under the National Association of Insurance Commissioners  
32 financial standards and accreditation program shall be recognized as  
33 qualified jurisdictions.

34 (E) If a certified reinsurer's domiciliary jurisdiction  
35 ceases to be a qualified jurisdiction, the Insurance Commissioner has the  
36 discretion to suspend the reinsurer's certification indefinitely, instead of

1 revoking the certification.

2 (6)(A) The Insurance Commissioner shall assign a rating to each  
3 certified reinsurer, giving due consideration to the financial strength  
4 ratings that have been assigned by rating agencies deemed acceptable to the  
5 Insurance Commissioner.

6 (B) The Insurance Commissioner shall publish a list of all  
7 certified reinsurers and their ratings.

8 (7)(A) A certified reinsurer shall secure obligations assumed  
9 from United States ceding insurers under this section at a level consistent  
10 with its rating, as determined in rules promulgated by the Insurance  
11 Commissioner.

12 (B) In order for a domestic ceding insurer to qualify for  
13 full financial statement credit for reinsurance ceded to a certified  
14 reinsurer, the certified reinsurer shall maintain security in a form  
15 acceptable to the Insurance Commissioner and consistent with § 23-62-306 or,  
16 in the case of a multibeneficiary trust, according to subsection (e) of this  
17 section.

18 (C)(i) If a certified reinsurer maintains a trust to fully  
19 secure its obligations subject to subsection (e) of this section and chooses  
20 to secure its obligations incurred as a certified reinsurer in the form of a  
21 multibeneficiary trust, the certified reinsurer shall maintain separate trust  
22 accounts for its obligations incurred under reinsurance agreements issued or  
23 renewed as a certified reinsurer with reduced security as permitted by this  
24 section.

25 (ii) The certified reinsurer shall agree that the  
26 certified reinsurer has bound itself, by the language of the trust and  
27 agreement with the commissioner with principal regulatory oversight of each  
28 of the trust accounts, to fund, upon termination of any of the trust  
29 accounts, out of the remaining surplus of the trust any deficiency of any  
30 other of the trust accounts.

31 (D) The minimum trustee surplus requirements under  
32 subsection (e) of this section are not applicable to a multibeneficiary trust  
33 maintained by a certified reinsurer for the purpose of securing obligations  
34 incurred under this section, except that the trust shall maintain a minimum  
35 trustee surplus of ten million dollars (\$10,000,000).

36 (E) For obligations incurred by a certified reinsurer

1 under this section, if the security is insufficient, the Insurance  
2 Commissioner shall reduce the allowable credit by an amount proportionate to  
3 the deficiency and may impose further reductions in allowable credit if the  
4 commissioner finds a material risk of nonpayment of the certified reinsurer's  
5 obligations when due.

6 (F)(i) For purposes of this section, a certified reinsurer  
7 whose certification is terminated shall be treated as a certified reinsurer  
8 required to secure one hundred percent (100%) of its obligations.

9 (ii) As used in subdivision (g)(7)(F)(i) of this  
10 section, "terminated" means revocation, suspension, voluntary surrender, and  
11 inactive status.

12 (iii) If the Insurance Commissioner continues to  
13 assign a higher rating under this section to a certified reinsurer, the  
14 requirement to secure one hundred (100%) of a certified reinsurer's  
15 obligations if certification is terminated does not apply to a certified  
16 reinsurer in inactive status or to a reinsurer under a suspended  
17 certification.

18 (8) If an applicant for certification has been certified as a  
19 reinsurer in a National Association of Insurance Commissioners accredited  
20 jurisdiction, the Insurance Commissioner may defer to that jurisdiction's  
21 certification and to the assigned rating, and then the assuming insurer shall  
22 be considered a certified reinsurer in this state.

23 (9)(A) A certified reinsurer that ceases to assume new business  
24 in this state may request to maintain its certification in inactive status to  
25 continue to qualify for a reduction in security for its in-force business.

26 (B) An inactive certified reinsurer shall continue to  
27 comply with the requirements of this section.

28 (C) The Insurance Commissioner shall assign a rating that  
29 accounts for the reasons the reinsurer does not assume new business in this  
30 state.

31 ~~(f)~~(h) Credit shall be allowed when the reinsurance is ceded to an  
32 assuming insurer not meeting the requirements of subsection (b), subsection  
33 (c), subsection (d), ~~or~~ subsection (e), or subsection (g) of this section,  
34 but only as to the insurance of risks located in jurisdictions where the  
35 reinsurance is required by applicable law or regulation of that jurisdiction.

36 ~~(g)(1)(i)(1)~~ If the assuming insurer is not licensed, ~~or~~ accredited,

1 or certified to transact insurance or reinsurance in this state, the credit  
2 permitted by subsections (d), ~~and~~ (e), and (f) of this section shall not be  
3 allowed unless the assuming insurer agrees in the reinsurance agreements:

4 (A) That in the event of the failure of the assuming  
5 insurer to perform its obligations under the terms of the reinsurance  
6 agreement, the assuming insurer, at the request of the ceding insurer, shall:

7 (i) Submit to the jurisdiction of any court of  
8 competent jurisdiction in any state of the United States;

9 (ii) Comply with all requirements necessary to give  
10 the court jurisdiction; and

11 (iii) Abide by the final decision of the court or of  
12 any appellate court in the event of an appeal; and

13 (B) To designate the ~~commissioner~~ Insurance Commissioner  
14 or a designated attorney as its true and lawful attorney upon whom may be  
15 served any lawful process in any action, suit, or proceeding instituted by or  
16 on behalf of the ceding ~~company~~ insurer.

17 (2) This subsection is not intended to conflict with or override  
18 the obligation of the parties to a reinsurance agreement to arbitrate their  
19 disputes if the obligation is created in the agreement.

20 ~~(h)(j)~~ If the assuming insurer does not meet the requirements of  
21 subsection (b), subsection (c), or subsection (d) of this section, the credit  
22 permitted under subsection (e), (f), or (g) of this section shall not be  
23 allowed unless the assuming insurer agrees in the trust agreements to the  
24 following conditions:

25 (1) Notwithstanding any other provisions in the trust  
26 instrument, if the trust fund is inadequate because it contains an amount  
27 less than the amount required by subdivision (e)(3) of this section or if the  
28 grantor of the trust has been declared insolvent or placed into receivership,  
29 rehabilitation, liquidation, or similar proceedings under the laws of its  
30 state or country of domicile, then the trustee shall comply with an order of  
31 the insurance commissioner with regulatory oversight over the trust or with  
32 an order of a court of competent jurisdiction directing the trustee to  
33 transfer to the insurance commissioner with regulatory oversight all of the  
34 assets of the trust fund;

35 (2) The assets shall be distributed by and claims shall be filed  
36 with and valued by the insurance commissioner with regulatory oversight in

1 accordance with the laws of the state in which the trust is domiciled that  
2 are applicable to the liquidation of domestic insurance companies;

3 (3) If the insurance commissioner with regulatory oversight  
4 determines that the assets of the trust fund or any part thereof are not  
5 necessary to satisfy the claims of the United States ceding insurers of the  
6 grantor of the trust, the assets or a part of the assets shall be returned by  
7 the insurance commissioner with regulatory oversight to the trustee for  
8 distribution in accordance with the trust agreement; and

9 (4) The grantor shall waive any right otherwise available to it  
10 under any law of the United States that is inconsistent with this subsection.

11 (k)(1) If an accredited or certified reinsurer ceases to meet the  
12 requirements for accreditation or certification, the Insurance Commissioner  
13 may suspend or revoke the reinsurer's accreditation or certification after  
14 notice and an opportunity for a hearing.

15 (2) The suspension or revocation shall not take effect until  
16 after the Insurance Commissioner's order on hearing unless:

17 (A) The reinsurer waives the right to a hearing;

18 (B) The Insurance Commissioner's order is based on:

19 (i) Regulatory action by the reinsurer's domiciliary  
20 jurisdiction;

21 (ii) The voluntary surrender or termination of the  
22 reinsurer's eligibility to transact insurance or reinsurance business in its  
23 domiciliary jurisdiction or in the primary certifying state of the reinsurer  
24 under subdivision (g)(8) of this section; or

25 (iii) A finding by the commissioner of an emergency  
26 that requires immediate action and a court of competent jurisdiction has not  
27 stayed the commissioner's action.

28 (3) While a reinsurer's accreditation or certification is  
29 suspended, a reinsurance contract issued or renewed after the effective date  
30 of the suspension shall not qualify for credit except to the extent that the  
31 reinsurer's obligations under the contract are secured under § 23-62-306.

32 (4) If a reinsurer's accreditation or certification is revoked,  
33 credit for reinsurance shall not be granted after the effective date of the  
34 revocation except to the extent that the reinsurer's obligations under the  
35 contract are secured under subdivision (g)(7) of this section or § 23-62-306.

36 (l)(1)(A) A ceding insurer shall take steps to manage its reinsurance

1 recoverables proportionate to its own book of business.

2 (B) A domestic ceding insurer shall notify the Insurance  
3 Commissioner within thirty (30) days after reinsurance recoverables from any  
4 single assuming insurer or group of affiliated assuming insurers exceeds  
5 fifty percent (50%) of the domestic ceding insurer's last reported surplus to  
6 policyholders or after it is determined that reinsurance recoverables from  
7 any single assuming insurer or group of affiliated assuming insurers is  
8 likely to exceed this limit.

9 (C) The notification shall demonstrate to the Insurance  
10 Commissioner that the exposure is safely managed by the domestic ceding  
11 insurer.

12 (2)(A) A ceding insurer shall take steps to diversify its  
13 reinsurance program.

14 (B) A domestic ceding insurer shall notify the Insurance  
15 Commissioner within thirty (30) days after ceding to any single assuming  
16 insurer or group of affiliated assuming insurers more than twenty percent  
17 (20%) of the ceding insurer's gross written premium in the prior calendar  
18 year or after it has determined that the reinsurance ceded to any single  
19 assuming insurer or group of affiliated assuming insurers is likely to exceed  
20 this limit.

21 (C) The notification shall demonstrate to the Insurance  
22 Commissioner that the exposure is safely managed by the domestic ceding  
23 insurer.

24  
25 SECTION 2. Arkansas Code § 23-62-306 is amended to read as follows:

26 23-62-306. ~~Reduction~~ Asset or reduction from liability for reinsurance  
27 ceded by a domestic insurer to ~~an~~ assuming insurer – Noncompliant assuming  
28 insurer.

29 (a) An asset or a reduction from liability for the reinsurance ceded  
30 by a domestic insurer to an assuming insurer not meeting the requirements of  
31 § 23-62-305 shall be allowed in an amount not exceeding the liabilities  
32 carried by the ceding insurer.

33 (b) The reduction shall be in the amount of funds held by or on behalf  
34 of the ceding insurer, including funds held in trust for the ceding insurer,  
35 under a reinsurance contract with the assuming insurer as security for the  
36 payment of obligations thereunder, if the security is held:

1           (1) *In the United States subject to withdrawal solely by, and*  
2 *under the exclusive control of, the ceding insurer; or*

3           (2) *In the case of a trust, in a qualified United States*  
4 *financial institution as defined in § 23-62-307(b).*

5           (c) *The security may be in the form of:*

6           (1) *Cash;*

7           (2) *Securities listed by the Securities Valuation Office of the*  
8 *National Association of Insurance Commissioners, including those deemed*  
9 *exempt from filing as defined by the Purposes and Procedures Manual of the*  
10 *Securities Valuation Office, and qualifying as admitted assets;*

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

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

23           (4) *Any other form of security acceptable to the Insurance*  
24 *Commissioner.*

25  
26           SECTION 3. *Arkansas Code § 23-62-307 is amended to read as follows:*

27           23-62-307. *Qualified United States financial institutions.*

28           (a) *For purposes of ~~this subchapter~~ § 23-62-306(c)(3), a "qualified*  
29 *United States financial institution" means an institution that:*

30           (1) *Is organized or, in the case of a United States office of a*  
31 *foreign banking organization, licensed under the laws of the United States or*  
32 *any state thereof;*

33           (2) *Is regulated, supervised, and examined by United States*  
34 *federal or state authorities having regulatory authority over banks and trust*  
35 *companies; and*

36           (3) *Has been determined by either the Insurance Commissioner, or*

1 the Securities Valuation Office of the National Association of Insurance  
2 Commissioners, to meet such standards of financial condition and standing as  
3 are considered necessary and appropriate to regulate the quality of financial  
4 institutions whose letters of credit will be acceptable to the commissioner.

5 (b) A "qualified United States financial institution" means, for  
6 purposes of those provisions of this law specifying those institutions that  
7 are eligible to act as a fiduciary of a trust, an institution that:

8 (1) Is organized, or, in the case of a United States branch or  
9 agency office of a foreign banking organization, licensed under the laws of  
10 the United States or any state thereof and has been granted authority to  
11 operate with fiduciary powers; and

12 (2) Is regulated, supervised, and examined by federal or state  
13 authorities having regulatory authority over banks and trust companies.

14  
15 SECTION 4. Arkansas Code § 23-62-308 is amended to read as follows:  
16 23-62-308. Rules ~~and regulations~~.

17 The Insurance Commissioner may adopt rules ~~and regulations~~ implementing  
18 ~~the provisions of §§ 23-62-303 — 23-62-307~~ this subchapter.

19  
20 SECTION 5. Arkansas Code Title 23, Chapter 62, Subchapter 3, is  
21 amended to add an additional section to read as follows:

22 23-62-309. Applicability – Reinsurance agreements.

23 Sections 23-62-305 – 23-62-307 apply to any cession of a reinsurance  
24 agreement if that reinsurance agreement has an inception, anniversary, or  
25 renewal date not less than six (6) months after the effective date of this  
26 act.

27  
28 SECTION 6. Arkansas Code Title 23, Chapter 63, Subchapter 1, is  
29 amended to add an additional section to read as follows:

30 23-63-116. Retaliatory tax credit.

31 (a) A domestic property and casualty insurer that pays any other state  
32 or foreign country a tax, fine, penalty, deposit requirement or other  
33 material requirement, or any other fee that is determined by the Insurance  
34 Commissioner to be a retaliatory tax is entitled to a reduction or credit  
35 upon its gross premiums tax in the same amount paid to the other state or  
36 foreign country.



1 (b) This section does not apply to any of the following imposed by  
2 another state:

3 (1) An application fee, examination fee, license fee,  
4 appointment fee, or a continuation fee for an agent, adjuster, service  
5 representative, or consultant of a domestic property and casualty insurer; or

6 (2) An ad valorem tax on real or personal property or special purpose  
7 obligations, fees, or assessments.

8  
9 SECTION 7. Arkansas Code § 23-63-216(b)(1), concerning a market  
10 conduct annual statement filing, is amended to add an additional subdivision  
11 to read as follows:

12 (C) An insurer reports seven million dollars (\$7,000,000)  
13 or more in premiums for:

14 (i) Long-term care policies;

15 (ii) Lifelong-term care hybrid policies; or

16 (iii) Annuity long-term care hybrid products.

17  
18 SECTION 8. Arkansas Code § 23-63-503, concerning definitions in the  
19 Insurance Holding Company Regulatory Act, is amended to add additional  
20 subdivisions to read as follows:

21 (9)(A) "Enterprise risk" means any activity, circumstance,  
22 event, or series of events involving at least one (1) affiliate of an insurer  
23 that, if not remedied, are likely to have a material adverse effect on the  
24 financial condition or liquidity of the insurer or the insurer's insurance  
25 holding company as a whole.

26 (B) "Enterprise risk" includes without limitation any  
27 action that may cause:

28 (i) An insurer's risk-based capital to fall into  
29 company action level under:

30 (a) The Risk-Based Capital Act, § 23-63-1301  
31 et seq.; and

32 (b) Section 23-63-1501 et seq.; or

33 (ii) An insurer to be in a hazardous financial  
34 condition under State Insurance Department Rule 53;

35 (10) "Group-wide supervisor" means a regulatory official  
36 authorized to conduct and coordinate group-wide supervised activities who is

1 acknowledged by the commissioner under § 23-63-532 to have sufficient and  
2 significant contacts with the internationally active insurance group; and

3 (11) "Internationally active insurance group" means an insurance  
4 holding company system that includes at least one (1) insurer registered  
5 under § 23-63-514, that:

6 (A) Has premiums written in at least three (3) countries;

7 (B) Has a percentage of gross premiums written outside the  
8 United States of at least ten percent (10%) of the insurance holding company  
9 system's total gross written premiums; and

10 (C) Based on a three-year rolling average, the total  
11 assets of the insurance holding company system are at least fifty billion  
12 dollars (\$50,000,000,000), or the total gross written premiums of the  
13 insurance holding company system are at least ten billion dollars  
14 (\$10,000,000,000).

15  
16 SECTION 9. Arkansas Code § 23-63-514, concerning the registration of  
17 an insurer under the Insurance Holding Company Regulatory Act, is amended to  
18 add an additional subsection to read as follows:

19 (m) Enterprise Risk Filing.

20 (1) The ultimate controlling person of an insurer registered  
21 under this section, to the best of the ultimate controlling person's  
22 knowledge and belief, shall file an annual enterprise risk report that:

23 (A) Identifies the material risks within the insurance  
24 holding company system that may pose an enterprise risk to the insurer; and

25 (B) Is filed with the insurance commissioner of the lead  
26 state of the insurance holding company system as determined by the Financial  
27 Analysis Handbook, as adopted by the National Association of Insurance  
28 Commissioners.

29  
30 SECTION 10. Arkansas Code § 23-63-515(a)(1), concerning the standards  
31 for a registered insurer under the Insurance Holding Company Regulatory Act,  
32 is amended to add an additional subdivision to read as follows:

33 (F) The commissioner by rule may establish additional  
34 requirements for a cost sharing service agreement or a management agreement.

35  
36 SECTION 11. Arkansas Code § 23-63-515(a)(2), concerning certain

1 restrictions for material transactions of a domestic insurer, is amended to  
2 read as follows:

3           (2)(A) ~~The following transactions involving a~~ A domestic insurer  
4 subject to this subchapter and ~~any a~~ a person in its holding company system may  
5 not ~~be entered~~ enter into a transaction, as described in subdivision  
6 (a)(2)(B) of this section, unless the insurer has notified notifies the  
7 commissioner in writing of its intention ~~to enter into such a transaction~~ at  
8 least thirty (30) days ~~prior thereto~~ before, or ~~such shorter period~~ less, as  
9 the commissioner may permit, and the commissioner ~~has~~ does not ~~disapprove it~~  
10 within such a period disapprove of the transaction.

11           (B) A transaction that requires prior notice to the  
12 commissioner by a domestic insurer includes:

13           ~~(A)(i)~~ (i) Sales, purchases, exchanges, loans or  
14 extensions of credit, guarantees, or investments, provided ~~such~~ the  
15 transactions are equal to or exceed as of December 31 next-preceding:

16           ~~(i)(a)~~ (a) With respect to nonlife insurers, the  
17 lesser of three percent (3%) of the insurer's admitted assets or twenty-five  
18 percent (25%) of surplus as regards policyholders; and

19           ~~(i)(b)~~ (b) With respect to life insurers, three  
20 percent (3%) of the insurer's admitted assets;

21           ~~(B)(ii)~~ (ii) Loans or extensions of credit to any person  
22 who is not an affiliate, when the insurer makes the loans or extensions of  
23 credit with the agreement or understanding that the proceeds of the  
24 transactions, in whole or in substantial part, are to be used to make loans  
25 or extensions of credit to, to purchase assets of, or to make investments in,  
26 any affiliate of the insurer making the loans or extensions of credit,  
27 provided that the transactions are equal to or exceed as of December 31 next-  
28 preceding:

29           ~~(i)(a)~~ (a) With respect to nonlife insurers, the  
30 lesser of three percent (3%) of the insurer's admitted assets or twenty-five  
31 percent (25%) of surplus as regards policyholders; and

32           ~~(i)(b)~~ (b) With respect to life insurers, three  
33 percent (3%) of the insurer's admitted assets;

34           ~~(G)(iii)~~ (iii) Reinsurance agreements or modifications  
35 thereto in which the reinsurance premium, ~~or~~ a change in the insurer's  
36 liabilities, any projected reinsurance premium, or a change in the insurer's

1 liabilities in any of the next three (3) years, equals or exceeds five  
 2 percent (5%) of the insurer's surplus as regards policyholders, as of  
 3 December 31 next-preceding, including those agreements ~~which~~ that may require  
 4 as consideration the transfer of assets from an insurer to a nonaffiliate, if  
 5 an agreement or understanding exists between the insurer and nonaffiliate  
 6 that any portion of the assets will be transferred to one (1) or more  
 7 affiliates of the insurer;

8 ~~(D)~~ (iv) All management agreements, service  
 9 contracts, tax allocation agreements, and all cost sharing arrangements; ~~and~~

10 ~~(E)~~ (v) Any material transactions specified by  
 11 regulation ~~which~~ that the commissioner determines may adversely affect the  
 12 interests of the insurer's policyholders; and

13 (vi)(a) Any amendment or modification of an  
 14 affiliate agreement that is subject to the materiality standards under  
 15 subdivision (a)(1) of this section, including the reason for the amendment or  
 16 modification and the financial impact on the domestic insurer.

17 (b) A domestic insurer shall notify the  
 18 commissioner within thirty (30) days after a termination of a previously  
 19 filed agreement in a format that is acceptable to the commissioner, to  
 20 determine if further reporting or filing is required.

21  
 22 SECTION 12. Arkansas Code § 23-63-516 is amended to read as follows:  
 23 23-63-516. Examination.

24 (a) Power of Insurance Commissioner. Subject to the limitation  
 25 contained in this section and in addition to the powers ~~which~~ of the  
 26 Insurance Commissioner ~~has~~ under §§ 23-61-101 et seq., § 23-61-201 et seq.,  
 27 and § 23-61-301 et seq. ~~relating to the examination of~~ examine insurers, the  
 28 commissioner ~~shall also have the power to~~ may order any examine an insurer  
 29 registered under § 23-63-514 ~~to produce the records, books, or other~~  
 30 ~~information papers in the possession of the insurer or its affiliates as~~  
 31 ~~shall be necessary to ascertain the financial condition or legality of~~  
 32 ~~conduct of the insurer. In the event the insurer fails to comply with the~~  
 33 ~~order, the commissioner shall have the power to examine the affiliates to~~  
 34 ~~obtain the information~~ and the insurer's affiliates to ascertain the  
 35 financial condition of the insurer, including the enterprise risk to the  
 36 insurer by the ultimate controlling party, by any entity or combination of

1 entities within the insurance holding company system, or by the insurance  
2 holding company system on a consolidated basis.

3 (b)(1) Access to books and records. The commissioner may order an  
4 insurer registered under § 23-63-514 to produce books, records, or other  
5 information in the possession of affiliates as reasonably necessary to  
6 determine the registered insurer's compliance with this subchapter.

7 (2)(A) In order to determine compliance with this subchapter,  
8 the commissioner may order an insurer registered under § 23-63-514 to produce  
9 information not in the possession of the insurer if the insurer can obtain  
10 access to the information under contractual relationships, statutory  
11 obligations, or other methods.

12 (B)(i) If the insurer is unable to produce the information  
13 requested by the commissioner, the insurer shall provide an acceptable  
14 explanation to the commissioner and identify the holder of the information.

15 (ii) However, if it appears to the commissioner that  
16 the insurer's explanation is without merit, the commissioner, after notice  
17 and a hearing, may:

18 (a) Require the insurer to pay a penalty of  
19 one hundred dollars (\$100) per day until the commissioner receives the  
20 requested information; or

21 (b) Suspend or revoke the insurer's  
22 certificate of authority to transact business in this state.

23 ~~(b)(c)~~ Use of Consultants. The commissioner may retain at the  
24 insurer's expense ~~such~~ attorneys, actuaries, accountants, and other experts  
25 not otherwise a part of the commissioner's staff as ~~shall be~~ reasonably  
26 necessary to assist in ~~the conduct of the examination~~ an examination under  
27 subsection (a) of this section. Any person ~~so~~ retained as a consultant shall  
28 be under the direction and control of the commissioner and shall act in an  
29 advisory capacity.

30 ~~(e)(d)~~ Expenses. Each registered insurer producing for examination  
31 records, books, and papers ~~pursuant to~~ under subsection (a) of this section  
32 shall be liable for and shall pay the expense of the examination in  
33 accordance with §§ 23-61-101 et seq., § 23-61-201 et seq., and § 23-61-301 et  
34 seq.

35 (e) Production.

36 (1)(A) If an insurer fails to comply with an order of the

1 commissioner, the commissioner may examine the insurer's affiliates to obtain  
2 the information.

3 (B) The commissioner may issue subpoenas, administer  
4 oaths, and examine under oath any person for purposes of determining  
5 compliance with this section.

6 (2)(A) Upon the failure or refusal of a person to obey a  
7 subpoena, the commissioner may petition a court of competent jurisdiction,  
8 and upon a proper showing, the court may enter an order compelling the  
9 witness to appear and testify or to produce documentary evidence.

10 (B) Failure to obey the court order is punishable as  
11 contempt of court.

12 (3)(A) When subpoenaed, a person shall attend as a witness at  
13 the place specified in the subpoena anywhere in this state.

14 (B)(i) A person under subpoena is entitled to the same  
15 fees and mileage as a witness in a civil action in a circuit court in this  
16 state.

17 (ii) In order to receive reimbursement for fees,  
18 mileage, and actual expenses, if any, necessarily incurred by a person under  
19 subpoena, the fees, mileage, and actual expenses shall be itemized, charged  
20 to, and paid by the insurer being examined.

21  
22 SECTION 13. Arkansas Code § 23-63-517 is amended to read as follows:  
23 23-63-517. Confidential treatment.

24 (a)(1) All information, and documents, and copies thereof obtained by  
25 or disclosed to the Insurance Commissioner or any other person in the course  
26 of an examination or investigation made pursuant to under § 23-63-516 and all  
27 information reported pursuant to under §§ 23-63-514 and 23-63-515 shall be  
28 given confidential treatment and shall not be subject to subpoena and shall  
29 not or be made public by the commissioner under the Arkansas Freedom of  
30 Information Act of 1967, § 25-19-101 et seq., or any other public records  
31 law, or by the National Association of Insurance Commissioners, or any other  
32 person, except to insurance departments of other states.

33 (2) The information, documents, and copies thereof of the  
34 information shall not be subject to subpoena or be made public without the  
35 prior written consent of the insurer to which it pertains unless the  
36 commissioner, after giving the insurer and any of the insurer's affiliates

1 that may be affected, notice and an opportunity to be heard to the insurer  
2 and its affiliates who would be affected thereby, determines that the  
3 interests of policyholders, shareholders, or the public will be served by the  
4 publication thereof of the information.

5 (3) In that event, the commissioner may publish all or any part  
6 thereof of the information in such a the manner as he or she may deem the  
7 commissioner considers appropriate.

8 (b) The commissioner and any person who received documents, materials,  
9 or other information while acting on behalf of the commissioner or person  
10 with whom the commissioner shares the documents, materials, or other  
11 information under this section shall not be permitted or required to testify  
12 in a private civil action concerning confidential documents, materials, or  
13 information subject to subsection (a) of this section.

14 (c)(1) In order to assist in the performance of the commissioner's  
15 duties under this section, the commissioner may share documents, materials,  
16 or other information with other state, federal, and international regulatory  
17 agencies or law enforcement authorities, the National Association of  
18 Insurance Commissioners and its affiliates and subsidiaries, and members of  
19 any supervisory college if the recipient or recipients agree in writing to  
20 maintain the confidentiality and privileged status of the information and the  
21 recipient or recipients verify the existing legal authority to maintain the  
22 confidentiality of the information.

23 (2) Notwithstanding subdivision (c)(1) of this section, the  
24 commissioner may only share confidential and privileged documents, material,  
25 or information under § 23-63-514(m) with the state commissioners of those  
26 states that have similar statutes or rules that are substantially similar to  
27 subsection (a) of this section and that agree in writing not to disclose the  
28 information.

29 (3)(A) The commissioner may receive documents, materials, or  
30 information, including otherwise confidential and privileged documents,  
31 materials, or information, from the National Association of Insurance  
32 Commissioners and its affiliates and subsidiaries and from regulatory and law  
33 enforcement officials of other foreign or domestic jurisdictions.

34 (B) Documents, materials, or information received by the  
35 commissioner under subdivision (c)(3)(A) of this section shall be maintained  
36 as confidential or privileged under the laws of the source jurisdiction if

1 the commissioner is provided with notice or receives the documents,  
2 materials, or information with the understanding that the information is  
3 confidential or privileged.

4 (4)(A) If the commissioner intends to share or use information  
5 with the National Association of Insurance Commissioners, the commissioner  
6 shall enter into a written agreement with the National Association of  
7 Insurance Commissioners governing the sharing and use of the information  
8 provided under this section.

9 (B) The written agreement under subdivision (c)(4)(A) of  
10 this section shall:

11 (i) Specify the procedures and protocols regarding  
12 the confidentiality and security of information that is shared with the  
13 National Association of Insurance Commissioners and its affiliates and  
14 subsidiaries, including procedures and protocols for sharing by the National  
15 Association of Insurance Commissioners with other state, federal, or  
16 international regulators;

17 (ii) Specify that ownership of the information  
18 shared with the National Association of Insurance Commissioners and its  
19 affiliates and subsidiaries, remains with the commissioner, and that the  
20 National Association of Insurance Commissioners' use of the information is  
21 subject to the direction of the commissioner;

22 (iii) Require prompt notice to be given to an  
23 insurer whose confidential information is shared and in the possession of the  
24 National Association of Insurance Commissioners under this section is subject  
25 to a request or subpoena to the National Association of Insurance  
26 Commissioners to disclose or produce the confidential information; and

27 (iv) Require the National Association of Insurance  
28 Commissioners and its affiliates and subsidiaries to consent to intervention  
29 by an insurer in any civil or administrative action in which the National  
30 Association of Insurance Commissioners and its affiliates and subsidiaries  
31 may be required to disclose confidential information of the insurer shared  
32 with the National Association of Insurance Commissioners and its affiliates  
33 and subsidiaries, under this section.

34 (d) The sharing of information by the commissioner under this section  
35 does not constitute a delegation of regulatory authority or rulemaking, and  
36 the commissioner is solely responsible for the administration, execution, and



1 enforcement of the provisions of this section.

2 (e) A waiver of any applicable privilege or claim of confidentiality  
3 in the documents, materials, or information does not occur as a result of  
4 disclosure to the commissioner under this section or as a result of sharing  
5 the documents, materials, or information as authorized in this section.

6 (f)(1) Documents, materials, or other information shared under this  
7 section that are in the possession or control of the National Association of  
8 Insurance Commissioners shall remain confidential by law and are privileged.

9 (2) The information described under subdivision (f)(1) of this  
10 section is not:

11 (A) Subject to:

12 (i) The Freedom of Information Act of 1967, § 25-19-  
13 101 et seq.;

14 (ii) Subpoena; or

15 (iii) Discovery; or

16 (B) Admissible in evidence in any private civil action.

17  
18 SECTION 14. Arkansas Code Title 23, Chapter 63, Subchapter 5, is  
19 amended to add additional sections to read as follows:

20 23-63-531. Supervisory colleges.

21 (a)(1) The Insurance Commissioner may participate in a supervisory  
22 college for a domestic insurer registered under § 23-63-514 that is part of  
23 an insurance holding company system with international operations to  
24 determine compliance by the insurer with this section.

25 (2) The commissioner may participate in a supervisory college  
26 for a domestic insurer that includes without limitation:

27 (A) Initiating the establishment of a supervisory college;

28 (B) Clarifying the membership and participation of other  
29 supervisors in the supervisory college;

30 (C) Clarifying the functions of the supervisory college,  
31 the role of other regulators, and establishing a group-wide supervisor;

32 (D) Coordinating the ongoing activities of the supervisory  
33 college, including planning meetings, supervisory activities, and procedures  
34 to share information; and

35 (E) Establishing a crisis management plan.

36 (b)(1)(A) A domestic insurer subject to this section is liable for and

1 shall pay any reasonable expenses, including reasonable travel expenses, of  
2 the commissioner's participation in a supervisory college under subsection  
3 (c) of this section.

4 (B) The commissioner may establish a regular assessment to  
5 the domestic insurer for the expenses described in subdivision (b)(1)(A) of  
6 this section.

7 (2) For purposes of this section, a supervisory college may be  
8 convened as either a temporary or permanent forum for communication and  
9 cooperation between the regulators charged with the supervision of the  
10 domestic insurer or its affiliates.

11 (c)(1) In order to assess the business strategy, financial, legal, and  
12 regulatory position, risk exposure, risk management, and governance  
13 processes, and as part of the examination of individual insurers according to  
14 § 23-63-516, the commissioner may participate in a supervisory college with  
15 other regulators that are charged with supervision of the insurer or its  
16 affiliates, including other state, federal, and international regulatory  
17 agencies.

18 (2) The commissioner may enter into agreements according to §  
19 23-63-517(c) providing the basis for cooperation among the commissioner, the  
20 other regulatory agencies, and the activities of the supervisory college.

21 (3) This section does not delegate to the supervisory college  
22 any authority of the commissioner to regulate or supervise the domestic  
23 insurer or its affiliates within the commissioner's jurisdiction.

24  
25 23-63-532. Group-wide supervision of internationally active insurance  
26 groups.

27 (a)(1) The Insurance Commissioner may act as a group-wide supervisor  
28 for any internationally active insurance group under this section.

29 (2) However, the commissioner may otherwise acknowledge another  
30 regulatory official as the group-wide supervisor when the internationally  
31 active insurance group:

32 (A) Does not have substantial insurance operations in the  
33 United States;

34 (B) Has substantial insurance operations in the United  
35 States, but not in this state; or

36 (C) Has substantial insurance operations in the United

1 States and this state, but the commissioner has determined under subsections  
2 (b) and (f) of this section that the other regulatory official is the  
3 appropriate group-wide supervisor.

4 (3) An insurance holding company system that does not otherwise  
5 qualify as an internationally active insurance group may request that the  
6 commissioner make a determination or acknowledgment of a regulatory official  
7 as to a group-wide supervisor under this section.

8 (b)(1) In cooperation with other state, federal, and international  
9 regulatory agencies, the commissioner may identify a single group-wide  
10 supervisor for an internationally active insurance group.

11 (2)(A) The commissioner may determine that the group-wide  
12 supervisor identified in subdivision (b)(1) of this section is the  
13 appropriate group-wide supervisor for an internationally active insurance  
14 group that conducts substantial insurance operations concentrated in this  
15 state.

16 (B) However, the commissioner may acknowledge that a  
17 regulatory official from another jurisdiction is the appropriate group-wide  
18 supervisor for the internationally active insurance group.

19 (C) The commissioner shall determine the appropriate  
20 group-wide supervisor under subdivision (b)(2)(B) of this section by  
21 considering the following:

22 (i) The place of domicile of the insurers within the  
23 internationally active insurance group that hold the largest share of the  
24 group's written premiums, assets, or liabilities;

25 (ii) The place of domicile of the top-tiered  
26 insurers in the insurance holding company system of the internationally  
27 active insurance group;

28 (iii) The location of the executive offices or  
29 largest operational offices of the internationally active insurance group;

30 (iv) Whether or not another regulatory official  
31 acting or seeks to act as the group-wide supervisor under a regulatory system  
32 that the commissioner determines to be:

33 (a) Substantially similar to the system of  
34 regulation provided under the laws of this state; or

35 (b) Otherwise sufficient in terms of providing  
36 for group-wide supervision, enterprise risk analysis, and cooperation with

1 other regulatory officials; and

2 (v) Whether or not another regulatory official who  
3 is acting or seeking to act as the group-wide supervisor provides the  
4 commissioner with reasonably reciprocal recognition and cooperation.

5 (3) A commissioner who is identified under this section as the  
6 group-wide supervisor may determine that it is in the best interest of the  
7 internationally active insurance group to acknowledge another supervisor to  
8 serve as the group-wide supervisor.

9 (4) The acknowledgment of the group-wide supervisor shall be  
10 made after consideration of the factors listed in subdivision (b)(2)(C) of  
11 this section in cooperation with and subject to the acknowledgment of other  
12 regulatory officials involved with supervision of members of the internally  
13 active insurance group after consultation with the internationally active  
14 insurance group.

15 (c)(1) Notwithstanding any other law, when another regulatory official  
16 is acting as the group-wide supervisor of an internationally active insurance  
17 group, the commissioner shall acknowledge that regulatory official as the  
18 group-wide supervisor.

19 (2) However, the commissioner shall reconsider a determination  
20 or acknowledgement of a regulatory official as the group-wide supervisor if a  
21 material change in the internationally active insurance group results in:

22 (A) The internationally active insurance group's insurers  
23 domiciled in this state holding the largest share of the group's premiums,  
24 assets, or liabilities; or

25 (B) This state's becoming the place of domicile of the  
26 top-tiered insurer in the insurance holding company system of the  
27 internationally active insurance group.

28 (d)(1) Under § 23-63-516, the commissioner may collect from an insurer  
29 registered under § 23-63-514 any information necessary to determine whether  
30 or not the commissioner may act as the group-wide supervisor of an  
31 internationally active insurance group or if the commissioner may acknowledge  
32 another regulatory official to act as the group-wide supervisor.

33 (2) Before issuing a determination that an internationally  
34 active insurance group is subject to group-wide supervision by the  
35 commissioner, the commissioner shall notify the insurer registered under §  
36 23-63-514 and the ultimate controlling person within the internationally

1 active insurance group.

2 (3) The internationally active insurance group shall have at  
3 least thirty (30) days to provide the commissioner with any additional  
4 information requested by the commissioner to assist the commissioner to make  
5 a determination.

6 (4) The commissioner shall publish on the State Insurance  
7 Department's website and any other required public records website maintained  
8 by the state the identity of the internationally active insurance groups that  
9 the commissioner has determined are subject to group-wide supervision by the  
10 commissioner.

11 (e) If the commissioner is the group-wide supervisor for an  
12 internationally active insurance group, the commissioner may engage in any of  
13 the following group-wide supervision activities:

14 (1) Assess the enterprise risks within the internationally  
15 active insurance group to ensure that:

16 (A) The material financial condition and liquidity risks  
17 to the members of the internationally active insurance group that are engaged  
18 in the business of insurance that are identified by management; and

19 (B) Reasonable and effective mitigation measures are in  
20 place;

21 (2) Request information from any member of an internationally  
22 active insurance group subject to the commissioner's supervision that the  
23 commissioner determines is necessary and appropriate to assess enterprise  
24 risk, including without limitation information concerning members of the  
25 internationally active insurance group's:

26 (A) Governance, risk assessment, and management;

27 (B) Capital adequacy; and

28 (C) Material intercompany transactions;

29 (3) Coordinate and, through the authority of the regulatory  
30 officials of the jurisdictions where members of the internationally active  
31 insurance group are domiciled, compel development and implementation of  
32 reasonable measures designed to ensure that the internationally active  
33 insurance group is able to timely recognize and mitigate enterprise risks to  
34 members of the internationally active insurance group that are engaged in the  
35 business of insurance;

36 (4) Communicate with other state, federal, and international

1 regulatory agencies for members of the internationally active insurance group  
2 and share relevant information subject to § 23-63-517, through supervisory  
3 colleges under § 23-63-531, or otherwise permitted;

4 (5)(A) Enter into agreements with or obtain documentation from  
5 any insurer registered under § 23-63-514, any member of the internationally  
6 active insurance group, and any other state, federal, and international  
7 regulatory agencies for members of the internationally active insurance  
8 group, to provide the basis for the commissioner's role as group-wide  
9 supervisor, including provisions for resolving disputes with other regulatory  
10 officials.

11 (B) An agreement or documentation shall not serve as  
12 evidence in any proceeding that an insurer or member of an insurance holding  
13 company system not domiciled or incorporated in this state is doing business  
14 in this state or is otherwise subject to jurisdiction in this state; and

15 (6) Enter into other group-wide supervision activities that are  
16 consistent with the authorities and purposes in this section, as considered  
17 necessary by the commissioner.

18 (f) If the commissioner acknowledges that another regulatory official  
19 from a jurisdiction that is not accredited by the National Association of  
20 Insurance Commissioners is the group-wide supervisor, the commissioner may  
21 cooperate, through supervisory colleges or otherwise, with group-wide  
22 supervision undertaken by the group-wide supervisor if:

23 (1) The commissioner's cooperation is not a violation of state  
24 law; and

25 (2)(A) The regulatory official acknowledged as the group-wide  
26 supervisor also recognizes and cooperates with the commissioner's activities  
27 as a group-wide supervisor for other internationally active insurance groups.

28 (B) If recognition and cooperation are not reasonably  
29 reciprocal, the commissioner may refuse recognition and cooperation.

30 (g) The commissioner may enter into agreements with or obtain  
31 documentation from an insurer registered under § 23-63-514, any affiliate of  
32 the insurer, and other state, federal, and international regulatory agencies  
33 for members of the internationally active insurance group, that provide the  
34 basis for a regulatory official's role as group-wide supervisor.

35 (h) The commissioner may promulgate rules necessary for the  
36 administration of this section.

1        (i) A registered insurer subject to this section is liable for and  
2 shall pay the reasonable expenses of the commissioner's administration of  
3 this section, including the engagement of attorneys, actuaries, and any other  
4 professionals, and all reasonable travel expenses.

5  
6        SECTION 15. Arkansas Code § 23-63-814(b), concerning investment by an  
7 insurer in secured and unsecured obligations, is amended to read as follows:

8        (b) An insurer may invest in secured and unsecured obligations of the  
9 institutions, other than obligations described in subsection (a) of this  
10 section, that are not in default, as to principal or interest, if the  
11 obligations:

12                (1) Are rated, or expected to be rated, by the Securities  
13 Valuation Office of the National Association of Insurance Commissioners, if  
14 not otherwise exempt under the Purposes and Procedures Manual of the  
15 Securities Valuation Office of the National Association of Insurance  
16 Commissioners; or

17                (2) bearing Bear interest at a fixed rate, with mandatory  
18 principal and interest due at specified times, and if the net earnings of the  
19 issuing, assuming, or guaranteeing institution available for its fixed  
20 charges for a period of five (5) fiscal years next preceding the date of  
21 acquisition by the insurer have averaged per year not less than one and one-  
22 half (1½) times its average annual fixed charges applicable to the period and  
23 if, during either of the last two (2) years of the period, the net earnings  
24 have been not less than one and one-half (1½) times its fixed charges for the  
25 year.

26  
27        SECTION 16. Arkansas Code § 23-63-815(a), concerning investment by an  
28 insurer in preferred or guaranteed stock, is amended to read as follows:

29        (a) An insurer may invest in preferred or guaranteed stocks or shares  
30 of any solvent institution existing under the laws of the United States or of  
31 Canada, or of any state or province thereof, ~~if all of the prior obligations~~  
32 ~~and prior preferred stocks, if any, of the institution at the date of the~~  
33 ~~acquisition of the investment by the insurer are eligible as investments~~  
34 ~~under this subchapter and if:~~

35                (1) the The net earnings of the institution available for its  
36 fixed charges during each of the last two (2) years have been, and during

1 each of the last five (5) years have averaged, not less than one and one-half  
2 ~~(11/2)~~(1½) times the sum of its average annual fixed charges, if any, its  
3 average annual maximum contingent interest, if any, and its average annual  
4 preferred dividend requirements; or

5 (2) The securities are:

6 (A) Rated one (1) or two (2) by the Securities Valuation  
7 Office of the National Association of Insurance Commissioners; or

8 (B) Exempt under the Purposes and Procedures Manual of the  
9 Securities Valuation Office of the National Association of Insurance  
10 Commissioners.

11  
12 SECTION 17. Arkansas Code § 23-63-824 is amended to read as follows:  
13 23-63-824. Foreign securities.

14 (a) An insurer may ~~make~~ acquire investments, ~~in aggregate amounts not~~  
15 ~~exceeding five percent (5%) or, with prior approval of the Insurance~~  
16 ~~Commissioner, ten percent (10%) of its assets, and not over three percent~~  
17 ~~(3%) of its assets in any one (1) investment, in securities or engage in~~  
18 investment practices with entities or institutions of or in a foreign country  
19 jurisdictions possessing characteristics and of a quality similar to the  
20 investment required pursuant to §§ 23-63-801, 23-63-833, and 23-63-835 of  
21 substantially the same type that an insurer may acquire under this subchapter  
22 for investments in the United States if, as a result of and after giving  
23 effect to the investment:

24 (1) The aggregate amount of foreign domiciled investments held  
25 by the insurer under this subsection does not exceed twenty percent (20%) of  
26 the insurer's admitted assets;

27 (2) The aggregate amount of foreign investments held by the  
28 insurer under this subsection, domiciled in a single foreign jurisdiction,  
29 does not exceed:

30 (A) Ten percent (10%) of its admitted assets to a foreign  
31 jurisdiction that has a sovereign debt rating of "(1)" by the Securities  
32 Valuation Office of the National Association of Insurance Commissioners; or

33 (B) Three percent (3%) of its admitted assets to any other  
34 foreign jurisdiction; and

35 (3) The insurer does not hold more than three percent (3%) of  
36 its admitted assets in investments of any kind issued, assumed, accepted,



1 insured, or guaranteed by a single foreign entity or institution.

2 (b) Except as provided in § 23-63-805, an insurer may acquire  
3 investments, or engage in investment practices denominated in foreign  
4 currencies, when the investments are foreign investments under subsection (a)  
5 of this section, or the investments are limited to foreign currency exposure  
6 as a result of the termination or expiration of a hedging transaction  
7 concerning investments denominated in a foreign currency if, as a result of  
8 and after giving effect to the investment:

9 (1) The aggregate amount of investments held by the insurer  
10 under this subsection denominated in foreign currencies does not exceed ten  
11 percent (10%) of its admitted assets;

12 (2) The aggregate amount of investments held by the insurer  
13 under this subsection denominated in the foreign currency of a single foreign  
14 jurisdiction does not exceed three percent (3%) of its admitted assets as to  
15 a foreign jurisdiction that does not have a sovereign debt rating of "(1)" by  
16 the Securities Valuation Office of the National Association of Insurance  
17 Commissioners; and

18 (3) An investment shall not be considered denominated in a  
19 foreign currency if the acquiring insurer:

20 (A) Enters into at least one (1) transaction under § 23-  
21 63-841; and

22 (B) The business entity counterparty agrees or contracts  
23 to exchange all payments made on the foreign currency denominated investment  
24 for United States currency at a rate that effectively insulates the  
25 investment cash flows against future fluctuations in currency exchange rates  
26 during the time a contract is in effect.

27 ~~(b)(c)~~ Canadian securities that are eligible for investment under  
28 other provisions of this subchapter are not subject to this section.

29  
30 SECTION 18. Arkansas Code § 23-63-840 is amended to read as follows:

31 23-63-840. ~~Collateralized mortgage obligations~~ Mortgage-backed  
32 securities.

33 ~~(a)(1)~~ An insurer may invest in collateralized mortgage obligations  
34 provided that the underlying mortgages pledged to the repayment of principal  
35 and interest of the collateralized mortgage obligation are in themselves  
36 unconditionally guaranteed as to timely repayment of principal and interest

1 ~~by the United States or by any agency or instrumentality of the United~~  
2 ~~States, and provided that the specific investment right within that~~  
3 ~~collateralized mortgage obligation is not a zero coupon class, residual~~  
4 ~~interest, or a class designated as principal or interest only. Provided that~~  
5 ~~the aggregate amount of collateralized mortgage obligations secured by or~~  
6 ~~evidencing an interest in a single asset or single pool of assets held by a~~  
7 ~~trust or other business entity, then held by the insurer would not exceed~~  
8 ~~five percent (5%) of the insurer's total admitted assets mortgage-backed~~  
9 ~~securities, including without limitation, collateralized mortgage obligations~~  
10 ~~and other obligations for the payment of money secured by participation~~  
11 ~~certificates or loans secured, directly or indirectly, by real estate~~  
12 ~~mortgages or deeds of trust if, at the time the investment is made:~~

13 (1) The entity issuing the obligation is not in default in the  
14 payment of interest on the obligation;

15 (2) The specific investment within that collateralized mortgage  
16 obligation is not a zero coupon class, residual interest, or a class  
17 designated as principal and interest only;

18 (3)(A) The obligation, participation certificate, or loan is  
19 fully guaranteed or insured, as to principal and interest, by the United  
20 States, an agency or instrumentality of the United States, or any state or  
21 territory of the United States.

22 (B) The aggregate value of any one (1) issue of an  
23 obligation under subdivision (a)(3)(A) of this section shall not exceed five  
24 percent (5%) of the insurer's admitted assets; or

25 (4)(A) The obligation, participation certificate, or loan is  
26 held by the issuer directly or through a trustee for the benefit of the  
27 obligee.

28 (B) The aggregate value of any one (1) issue of an  
29 obligation under subdivision (a)(4)(A) of this section shall not exceed three  
30 percent (3%) of the insurer's admitted assets.

31 (b)(1) The aggregate value of an insurer's investments under  
32 subdivision (a)(3)(A) of this section shall not exceed fifty percent (50%) of  
33 the insurer's admitted assets.

34 (2) The aggregate value of an insurer's investments under  
35 subdivision (a)(4)(A) of this section shall not exceed fifteen percent (15%)  
36 of the insurer's admitted assets unless the insurer received prior approval

1 from the Insurance Commissioner for a specified amount not to exceed thirty  
2 percent (30%) of the insurer's admitted assets.

3 (c) An insurer may invest up to ten percent (10%) of its assets in  
4 zero coupon, residual interest, or principal-and-interest-only classes of  
5 mortgage-backed securities if the underlying mortgages pledged to the  
6 repayment of principal and interest of the mortgage-backed securities are  
7 unconditionally guaranteed as to timely repayment of principal and interest  
8 by the United States or any agency or instrumentality of the United States.

9 ~~(2)(d) For purposes of the "one person" diversification restriction~~  
10 ~~found in under § 23-63-805(1), collateral mortgage-backed securities issued~~  
11 ~~by the United States or any agency or instrumentality of the United States~~  
12 ~~shall not be considered investments in or loans upon the security of the~~  
13 ~~obligations, property, or securities of the United States or any such agency~~  
14 ~~or instrumentality of the United States.~~

15 ~~(3) If upon enactment, the immediate application of this~~  
16 ~~provision would have the effect of reducing the admitted asset value of~~  
17 ~~assets held by a particular insurer, the insurer may continue to reflect as~~  
18 ~~admitted those assets that would be admissible but for the enactment of this~~  
19 ~~provision, until the annual statement filing for the year ended December 31,~~  
20 ~~2004.~~

21 ~~(b) An insurer may invest up to ten percent (10%) of its assets in~~  
22 ~~zero coupon, residual interest, or principal or interest only classes of~~  
23 ~~collateralized mortgage obligations, provided that the underlying mortgages~~  
24 ~~pledged to the repayment of principal and interest of the collateralized~~  
25 ~~mortgage obligation are in themselves unconditionally guaranteed as to timely~~  
26 ~~repayment of principal and interest by the United States or any agency or~~  
27 ~~instrumentality of the United States.~~

28  
29 SECTION 19. Arkansas Code Title 23, Chapter 63, Subchapter 8, is  
30 amended to add an additional section to read as follows:

31 23-63-842. Asset-backed securities - Definitions.

32 (a) As used in this section:

33 (1)(A) "Asset-backed security" means any security or other  
34 instrument representing or evidencing an interest in, a loan to, a  
35 participation in a loan to, or any other right to receive payments from a  
36 borrower included in a pool of obligations held by an issuer that has a

1 primary business activity of the acquisition and holding of financial assets,  
2 directly or through a trustee, for the benefit of the issuer.

3 (B) "Asset-backed security" does not include an investment  
4 authorized by any other provision of this subchapter; and

5 (2) "Financial asset" means a single asset or a pool of assets  
6 consisting of interest-bearing obligations or other contractual obligations  
7 representing or constituting the right to receive payment from the asset or  
8 pool of assets.

9 (b)(1) An insurer may invest in asset-backed securities if the  
10 investment in any one (1) issue of asset-backed securities does not exceed  
11 two percent (2%) of the admitted assets of the investing insurance company as  
12 shown by the insurer's last annual statement or a recent quarterly financial  
13 statement filed with the Insurance Commissioner.

14 (2) Each issue secured by a unique pool of assets shall  
15 constitute a single issue regardless of any other obligations or securities  
16 issued by the same or any affiliated issuer.

17 (c) Investments in asset-backed securities under subsection (b) of  
18 this section shall not exceed twenty percent (20%) of the insurer's admitted  
19 assets.

20  
21 SECTION 20. Arkansas Code § 23-63-1302(7), concerning the definition  
22 of "negative trend" in the Risk-Based Capital Act, is amended to read as  
23 follows:

24 (7) "Negative trend" means, with respect to a life or accident  
25 and health insurer or a fraternal benefit society, a negative trend over a  
26 period, as determined according to the trend test calculation included in the  
27 RBC instructions for a life or accident and health insurer or RBC  
28 instructions for a fraternal benefit society;

29  
30 SECTION 21. Arkansas Code § 23-63-1302, concerning definitions in the  
31 Risk-Based Capital Act, is amended to add an additional subdivision to read  
32 as follows:

33 (15) "Fraternal benefit society" means an insurance company or  
34 society organized and licensed under Arkansas Code Title 23, Chapter 74.

35  
36 SECTION 22. Arkansas Code § 23-63-1303(b), concerning the RBC reports

1 required under the Risk-Based Capital Act, is amended to read as follows:

2 (b) A life or accident and health insurer's or a fraternal benefit  
3 society's RBC is determined according to the formula stated in the RBC  
4 instructions. The formula shall take into account and may adjust for the  
5 covariance among the following factors determined in each case by applying  
6 the factors as stated in the RBC instructions:

- 7 (1) The risk ~~with respect to~~ for the insurer's assets;  
8 (2) The risk of adverse insurance experience ~~with respect to~~ for  
9 the insurer's liabilities and obligations;  
10 (3) The interest rate risk ~~with respect to~~ for the insurer's  
11 business; and  
12 (4) Other business and relevant risks as determined in each case  
13 by applying ~~the factors in the way stated in the~~ RBC instructions.  
14

15 SECTION 23. Arkansas Code § 23-63-1304(a)(1)(B), concerning company  
16 action level events under the Risk-Based Capital Act, is amended to read as  
17 follows:

18 (B) If a life or accident and health insurer or a  
19 fraternal benefit society, the life or accident and health insurer or the  
20 fraternal benefit society has total adjusted capital that is greater than or  
21 equal to its company action level RBC but less than the product of its  
22 authorized control level RBC and ~~two and five tenths (2.5)~~ three (3) and has  
23 a negative trend; or  
24

25 SECTION 24. Arkansas Code § 23-63-1307(b)(1), concerning mandatory  
26 control level event under the Risk-Based Capital Act, is amended to read as  
27 follows:

28 (b) In the event of a mandatory control level event:  
29 (1)(A) ~~With respect to~~ For a life insurer or a fraternal benefit  
30 society, the commissioner shall take ~~the actions necessary~~ action to place  
31 the life insurer or the fraternal benefit society under regulatory control  
32 under § 23-68-101 et seq.

33 (B) In that event, the mandatory control level event is  
34 sufficient grounds for the commissioner to take action under § 23-68-101 et  
35 seq., and the commissioner shall have the rights, powers, and duties to the  
36 life insurer or the fraternal benefit society stated in § 23-68-101 et seq.

1           (C) If the commissioner takes action under an adjusted RBC  
2 report, the life insurer or the fraternal benefit society is entitled to the  
3 protections of § 23-68-101 et seq. pertaining to summary proceedings.

4           (D) The commissioner may forego action for up to ninety  
5 (90) days after the mandatory control level event if the commissioner finds  
6 there is a reasonable expectation that the mandatory control level event may  
7 be eliminated within the ninety-day period; and

8  
9           SECTION 25. Arkansas Code § 23-63-1310(c), concerning exemptions under  
10 the Risk-Based Capital Act, is amended to read as follows:

11           (c) The commissioner may exempt ~~from the application of this~~  
12 ~~subchapter~~ a domestic ~~property and casualty~~ insurer licensed to do business  
13 in this state ~~that~~ from this subchapter if the domestic insurer:

14                   (1) Writes direct business only in this state;

15                   (2) Writes direct annual premiums of two million dollars  
16 (\$2,000,000) or less; and

17                   (3) Assumes no reinsurance more than five percent (5%) of direct  
18 premium written.

19  
20           SECTION 26. DO NOT CODIFY. The operative date of the valuation manual  
21 under Arkansas Code, Title 23, Chapter 84, is the first January 1 of the year  
22 after the valuation manual is effective.

23  
24           SECTION 27. Arkansas Code § 23-64-220(c)(1)(B), concerning the  
25 condition a record is stored, is amended to read as follows:

26           (B) A record required to be kept by this subsection may be maintained:  
27                   (i) ~~in~~ In its original form, electronically, or as a  
28 hard copy; and

29                   (ii) By an agent or broker's insurance company on  
30 behalf of the agent or broker, relieving the agent or broker's obligation to  
31 maintain the record.

32  
33           SECTION 28. Arkansas Code § 23-64-220(c)(2), concerning the type of  
34 records that are required to be retained by a licensee, is amended to read as  
35 follows:

36                   (2) As used in this subsection, "usual and customary records"

1 means:

- 2 (A) Applications;
- 3 (B) Memoranda;
- 4 ~~(C) Notations of telephone conversations or other~~
- 5 ~~communications;~~
- 6 ~~(D) Billing information;~~
- 7 ~~(E) Correspondence;~~
- 8 ~~(F)(C) Policy information; and~~
- 9 ~~(G)(D) Claims files; and~~
- 10 ~~(H) Any other records detailing insurer information or~~
- 11 ~~insurance policies or contracts bound through the agent or broker.~~

12

13 SECTION 29. Arkansas Code § 23-69-132(a), concerning the borrowing

14 procedure of a domestic stock or mutual insurer of surplus, is amended to

15 read as follows:

16 (a)(1)(A) A domestic stock or mutual insurer may borrow ~~money~~ cash or

17 other admitted assets satisfactory to the Insurance Commissioner to defray

18 the expenses of its organization, provide it with surplus funds, or for any

19 purpose of its business, upon entering a written agreement that the ~~money is~~

20 cash or other admitted assets are required to be repaid only out of the

21 insurer's surplus in excess of that stipulated in the agreement.

22 (B) The agreement described in subdivision (a)(1) of this

23 section may provide for interest which shall or shall not constitute a

24 liability of the insurer as to its funds other than the excess or surplus, as

25 stipulated in the agreement.

26 (2) ~~No~~ A commission or promotion expense shall not be paid in

27 connection with the loan.

28

29 SECTION 30. Arkansas Code § 23-69-132(b), concerning the treatment of

30 borrowed surplus by a domestic stock or mutual insurer, is amended to read as

31 follows:

32 (b)(1) ~~Money~~ Cash or other admitted assets satisfactory to the

33 commissioner ~~is~~ borrowed under subsection (a) of this section, together with

34 the interest thereon, if ~~is~~ stipulated to in the agreement, shall not ~~form~~

35 ~~part of~~ be:

36 (A) Included in the insurer's legal liabilities except as

1 to its surplus in excess of the amount thereof stipulated to in the  
2 agreement; or

3 ~~(B) be the~~ The basis of any setoff.

4 ~~(2) but, until~~ Until the cash or other admitted assets are  
5 repaid, the financial statements filed or published by the insurer shall show  
6 as a footnote thereto the amount thereof of surplus borrowed, any remaining  
7 balance, then unpaid together and with any accrued interest thereon accrued  
8 ~~but~~ unpaid.

9  
10 SECTION 31. Arkansas Code Title 23, Chapter 69, is amended to add an  
11 additional subchapter to read as follows:

12 Subchapter 4 — Risk Management and Own Risk Assessment Act

13  
14 23-69-401. Title.

15 This subchapter shall be known and may be cited as the “Risk Management  
16 and Own Risk Assessment Act”.

17  
18 23-69-402. Findings and intent.

19 (a) The General Assembly finds that:

20 (1) The Insurance Commissioner requires an insurer or insurance  
21 group to submit confidential and privileged information to the State  
22 Insurance Department to allow the commissioner to evaluate the financial  
23 condition and stability of the insurer or insurance group to protect the  
24 public;

25 (2) An insurer or insurance group may be reluctant to provide  
26 this information to the commissioner due to the sensitive nature of the  
27 information that is specific to the insurer or insurance group’s  
28 identification of risks material, including proprietary and trade secrets of  
29 the insurer or insurance group filing the report; and

30 (3) The information required by the commissioner to evaluate the  
31 financial stability of an insurer or insurance group if disclosed to the  
32 public has the potential to cause harm to an insurer or insurance group.

33 (b) It is the intent of the General Assembly to ensure that:

34 (1) A method is established to clarify the requirements for an  
35 insurer or insurance group to maintain a risk management framework;

36 (2) An insurer or insurance group is able to complete a risk and



1 solvency assessment to prepare its own risk assessment to enable the  
2 commissioner to verify the financial stability of an insurer or insurance  
3 group to meet policyholder obligations;

4 (3) An insurer or insurance group's own risk assessment summary  
5 report remains confidential if filed with the commissioner, subject to the  
6 rules adopted by the commissioner, and shall not be published, made  
7 publically available, or subject to public disclosure; and

8 (4) The commissioner may only share an insurer or insurance  
9 group's own risk assessment summary report as stated in this subchapter and  
10 as necessary to assist the commissioner in performing his or her duties.

11  
12 23-69-403. Definitions.

13 As used in this subchapter:

14 (1) "Insurance group" means an insurer and the insurer's  
15 affiliates that are in an insurance holding company system, as defined in the  
16 Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;

17 (2) "Insurer" means the same as defined in § 23-62-402, except  
18 "insurer" does not include an agency, authority, commission, or other  
19 instrumentality of the United States or any state or territory of the United  
20 States;

21 (3) "Own risk and solvency assessment" means a confidential  
22 internal assessment by an insurer or insurance group that:

23 (A) Accounts for the nature, scale, and complexity of an  
24 insurer or insurance group;

25 (B) Reviews the material and relevant risks associated  
26 with an insurer or insurance group's current business plan; and

27 (C) Determines the sufficiency of the capital resources to  
28 support the relevant risks associated with an insurer or insurance group's  
29 current business plan;

30 (4)(A) "Own Risk and Solvency Assessment Guidance Manual" means  
31 the guidance manual developed and adopted by the National Association of  
32 Insurance Commissioners.

33 (B) A revision made by the National Association of  
34 Insurance Commissioners to the Own Risk and Solvency Assessment Guidance  
35 Manual shall be implemented on January 1 following the calendar year that the  
36 revision is adopted by the National Association of Insurance Commissioners;

1 and

2 (5) "Own risk and solvency assessment summary report" means a  
3 confidential and proprietary summary of an insurer or insurance group's own  
4 risk and solvency assessment.

5  
6 23-69-404. Risk management framework.

7 (a) An insurer shall establish and maintain a risk management  
8 framework to assist the insurer with identifying, assessing, monitoring,  
9 managing, and reporting on the insurer's material and relevant risks.

10 (b) An insurer may satisfy subsection (a) of this section if the  
11 insurance group that the insurer is a member of maintains a risk management  
12 framework that is applicable to the operations of the insurer.

13  
14 23-69-405. Own risk and solvency assessment – Requirements.

15 Except as provided in § 23-69-407, an insurer, or the insurance group  
16 that the insurer is a member of, shall perform an own risk and solvency  
17 assessment:

18 (1) According to the Own Risk and Solvency Assessment Guidance  
19 Manual or a comparable process; and

20 (2) Annually, or at any time a significant change to the risk  
21 profile of the insurer or the insurance group of which the insurer is a  
22 member occurs.

23  
24 23-69-406. Own risk and solvency assessment summary.

25 (a)(1)(A) Upon request, an insurer shall submit to the Insurance  
26 Commissioner at least one (1) time each year beginning January 1, 2017, an  
27 own risk and solvency assessment summary report, or any combination of  
28 filings applicable to the insurer or the insurance group of which the insurer  
29 is a member of, that together contain the information described in the Own  
30 Risk and Solvency Assessment Guidance Manual.

31 (B) An insurer may submit a comparable report that  
32 provides the most recent and substantially similar information under  
33 subdivision (a)(1)(A) of this section to a commissioner in another state or  
34 to the supervisor or regulator of a foreign jurisdiction provided by the  
35 insurer or another member of an insurance group of which the insurer is a  
36 member.

1 (2) Notwithstanding a request from the Insurance Commissioner,  
2 an insurer that is a member of an insurance group shall submit the reports  
3 required under subdivision (a)(1) of this section if the Insurance  
4 Commissioner is the lead state commissioner of the insurance group as  
5 determined by the procedures within the "Financial Analysis Handbook" adopted  
6 by the National Association of Insurance Commissioners.

7 (b) A report described in subdivision (a)(1)(A) of this section shall  
8 include an attestation of the chief risk officer or other executive of the  
9 insurer or insurance group that is responsible for the oversight of the  
10 insurer's enterprise risk management process that to the best of his or her  
11 belief and knowledge:

12 (1) The insurer applies the enterprise risk management process  
13 described in the insurer's own risk and solvency assessment summary report;  
14 and

15 (2) A copy of the report has been provided to the insurer's  
16 board of directors or other governing body of the insurer.

17 (c) A report under subdivision (a)(1) of this section shall be in  
18 English or translated to English before filing with the Insurance  
19 Commissioner.

20  
21 23-69-407. Exemption – Applicability.

22 (a) An insurer is exempt from this subchapter if:

23 (1) The insurer has annual direct written and unaffiliated  
24 assumed premiums, including international direct and assumed premiums, but  
25 excluding premiums reinsured with the Federal Crop Insurance Corporation and  
26 National Flood Insurance Program, of less than five hundred million dollars  
27 (\$500,000,000); and

28 (2) The insurance group of which the insurer is a member has  
29 annual direct written and unaffiliated assumed premiums, including  
30 international direct and assumed premiums, but excluding premiums reinsured  
31 with the Federal Crop Insurance and National Flood Insurance Program, of less  
32 than one billion dollars (\$1,000,000,000).

33 (b)(1) If an insurer qualifies for an exemption under subdivision  
34 (a)(1) of this section and the insurance group of which the insurer is a  
35 member does not qualify for an exemption under subdivision (a)(2) of this  
36 section, then an own risk and solvency assessment summary report required

1 under § 23-69-406 shall include every insurer that is a member of the  
2 insurance group.

3 (2) In order to meet the requirement under subdivision (b)(1) of  
4 this section, an insurer may submit more than one (1) own risk and solvency  
5 assessment summary reports for any combination of insurers if any combination  
6 of own risk and solvency assessment summary reports includes every insurer  
7 within the insurance group.

8 (c) If an insurer does not qualify for an exemption under subdivision  
9 (a)(1) of this section and the insurance group of which the insurer is a  
10 member does qualify for an exemption under subdivision (a)(2) of this  
11 section, then only an own risk and solvency assessment summary report  
12 applicable to the insurer is required under § 23-69-406.

13 (d)(1) An insurer that does not qualify for an exemption under  
14 subdivision (a)(1) of this section may request a waiver from the commissioner  
15 of the reporting requirements under this subchapter due to unique  
16 circumstances.

17 (2) In determining whether to grant a waiver to an insurer under  
18 subdivision (d)(1) of this section, the commissioner may:

19 (A) Consider the insurer's type and volume of business  
20 written, ownership and organizational structure, and any other factors the  
21 commissioner considers relevant to the insurer or insurance group of which  
22 the insurer is a member; or

23 (B) Coordinate with the insurance group's lead state  
24 commissioner and other domiciliary commissioners if the insurer is a member  
25 of an insurance group with insurers domiciled in more than one (1) state, to  
26 determine whether or not to grant the insurer's waiver request.

27 (e) Notwithstanding an exemption under this section the commissioner  
28 may require that an insurer:

29 (1) Maintain a risk management framework, conduct an own risk  
30 and solvency assessment, and file an own risk and solvency assessment summary  
31 report based on an insurer's unique circumstances, including without  
32 limitation, the type and volume of business written, ownership and  
33 organizational structure, federal agency requests, and international  
34 supervisor requests; or

35 (2) Maintain a risk management framework, conduct an own risk  
36 and solvency assessment, and file an own risk and solvency assessment summary

1 report if the insurer:

2 (A) Has risk-based capital for a company action level  
3 event under § 23-63-1304 or § 23-63-1504; or

4 (B) Meets at least one (1) of the standards of an insurer  
5 deemed to be in a hazardous financial condition, as defined in State  
6 Insurance Department Rule 53, or otherwise exhibits qualities of a troubled  
7 insurer as determined by the commissioner.

8 (f) If an insurer has qualified for an exemption under subsection (a)  
9 of this section, and subsequently no longer qualifies for that exemption due  
10 to changes in premiums as reflected in the insurer's most recent annual  
11 statement or in the most recent annual statements of the insurers within the  
12 insurance group of which the insurer is a member, then the insurer shall have  
13 one (1) year following the year the threshold is exceeded to comply with this  
14 subchapter.

15 (g) A domiciled insurer shall be subject to this subchapter unless the  
16 insurer is exempt under § 23-69-407.

17  
18 23-69-408. Own risk and solvency assessment summary report – Content.

19 (a)(1) An own risk and solvency assessment summary report shall be  
20 prepared pursuant to the Own Risk and Solvency Assessment Guidance Manual,  
21 subject to the requirements of subsection (b) of this section.

22 (2) An insurer shall maintain any documentation and supporting  
23 information used to prepare an own risk and solvency assessment summary  
24 report and make the documents and information available upon request of the  
25 Insurance Commissioner or during an examination.

26 (b) An own risk and solvency assessment summary report, and any  
27 additional requests for information, shall be reviewed under similar  
28 procedures currently in use during an analysis and examination of multistate  
29 or global insurers and insurance groups.

30  
31 23-69-409. Confidentiality.

32 (a) Any documents, materials, or other information, including an own  
33 risk and solvency assessment summary report, in the possession of or under  
34 the control of the State Insurance Department that are obtained by, created  
35 by, or disclosed to the Insurance Commissioner or any other person under this  
36 subchapter is recognized as being proprietary and containing trade secrets.

1 (b)(1) Any documents, materials, or other information submitted under  
2 this subchapter shall be confidential by law and privileged.

3 (2) The information required under this subchapter is not  
4 subject to:

5 (A) The Freedom of Information Act of 1967, § 25-19-101 et  
6 seq.;

7 (B) Subpoena; or

8 (C) Discovery or admissible in evidence in any private  
9 civil action.

10 (c)(1) Notwithstanding the limitations under this section, the  
11 commissioner may use the documents, materials, or other information to  
12 further any regulatory or legal action brought on behalf of the commissioner.

13 (2) The commissioner shall not otherwise make the documents,  
14 materials, or other information public without the prior written consent of  
15 the insurer.

16 (d) The commissioner or any person operating on behalf of the  
17 commissioner shall not be permitted or required to testify in any private  
18 civil action concerning any confidential documents, materials, or information  
19 under this subchapter.

20 (e) In order to assist in the performance of the regulatory duties of  
21 the commissioner, upon request, the commissioner:

22 (1) If the recipient agrees in writing to maintain the  
23 confidentiality and privileged status of the own risk and solvency assessment  
24 documents, materials, or other information and verifies in writing the legal  
25 authority to maintain confidentiality may share:

26 (A) Documents, materials, or other information of an own  
27 risk and solvency assessment, including confidential and privileged  
28 information, with other state, federal, and international financial  
29 regulatory agencies, including members of any supervisory college as defined  
30 in § 23-63-531;

31 (B) Proprietary and trade secret documents and materials  
32 with other state, federal, and international financial regulatory agencies,  
33 including members of any supervisory college as defined in § 23-63-531; and

34 (C) Any relevant information with the National Association  
35 of Insurance Commissioners, or any third-party consultants designated by the  
36 commissioner; and

1           (2) May receive documents, materials, or other own risk and  
2 solvency assessment information, including otherwise confidential and  
3 privileged documents, materials, or information, including proprietary and  
4 trade-secret information or documents, from regulatory officials of other  
5 foreign or domestic jurisdictions, including members of any supervisory  
6 college as defined in § 23-63-531, and from the National Association of  
7 Insurance Commissioners;

8           (3) Shall maintain as confidential or privileged any documents,  
9 materials, or information received with notice or the understanding that it  
10 is confidential or privileged under the laws of the jurisdiction that is the  
11 source of the document, material, or information;

12           (4)(A) Shall enter into a written agreement with the National  
13 Association of Insurance Commissioners or a third-party consultant to govern  
14 the sharing and use of information provided under this subchapter.

15           (B) The written agreement shall:

16           (i) Specify procedures and protocols regarding the  
17 confidentiality and security of information shared with the National  
18 Association of Insurance Commissioners or a third-party consultant under this  
19 subchapter, including procedures and protocols for sharing by the National  
20 Association of Insurance Commissioners with other state regulators from  
21 states in which the insurance group has domiciled insurers;

22           (ii) Provide that the recipient has agreed in  
23 writing to maintain the confidentiality and privileged status of the own risk  
24 and solvency assessment documents, materials, or other information, and has  
25 verified in writing the legal authority to maintain confidentiality;

26           (iii) Specify that ownership of information shared  
27 with the National Association of Insurance Commissioners or a third-party  
28 consultant under this subchapter remains with the commissioner and the  
29 National Association of Insurance Commissioners or a third-party consultant's  
30 use of the information is subject to the authority of the commissioner;

31           (iv) Prohibit the National Association of Insurance  
32 Commissioners or third-party consultant from storing the information shared  
33 under this subchapter in a permanent database after the underlying analysis  
34 is completed;

35           (v) Require prompt notice to be given to an insurer  
36 whose confidential information in the possession of the National Association

1 of Insurance Commissioners or a third-party consultant under this subchapter  
2 is subject to a request or subpoena to the National Association of Insurance  
3 Commissioners or a third-party consultant for disclosure or production; and

4 (vi) Require the National Association of Insurance  
5 Commissioners or a third-party consultant to consent to intervention by an  
6 insurer in any judicial or administrative action that the National  
7 Association of Insurance Commissioners or a third-party consultant may be  
8 required to disclose confidential information about the insurer shared with  
9 the National Association of Insurance Commissioners or a third-party  
10 consultant under this subchapter; and

11 (5) If an agreement involves a third-party consultant, may  
12 provide that an insurer's written consent is required before sharing the  
13 requested information.

14 (f) The sharing of information and documents by the commissioner under  
15 this subchapter does not constitute a delegation of regulatory authority or  
16 rulemaking, and the commissioner is solely responsible for the  
17 administration, execution, and enforcement of this subchapter.

18 (g) A waiver of any applicable privilege or claim of confidentiality  
19 in the documents, proprietary and tradeseecret materials, or other own risk  
20 and solvency assessment information shall not occur as a result of disclosure  
21 of the own risk and solvency assessment information or documents to the  
22 commissioner under this section or as a result of sharing under this  
23 subchapter.

24 (h) Documents, materials, or other information in the possession or  
25 control of the National Association of Insurance Commissioners or third-party  
26 consultants under this subchapter:

27 (1) Shall be confidential by law and privileged; and

28 (2) Shall not be subject to:

29 (A) Freedom of Information Act of 1967, § 25-19-101, et  
30 seq.;

31 (B) Subpoena; or

32 (C) Discovery or admissible in evidence in any private  
33 civil action.

34  
35 23-69-410. Sanctions.

36 (a) An insurer failing without just cause to timely file the own risk



1 and solvency assessment summary report under this subchapter shall be  
 2 required, after notice and hearing, to pay a penalty of one hundred dollars  
 3 (\$100) for each day's delay, to be recovered by the Insurance Commissioner,  
 4 and the penalty so recovered shall be paid into the General Revenue Fund  
 5 Account of the State Apportionment Fund.

6 (b) The maximum penalty under this section is ten thousand dollars  
 7 (\$10,000).

8 (c) The commissioner may reduce the penalty under this section if the  
 9 insurer demonstrates to the commissioner that the imposition of the penalty  
 10 would constitute a financial hardship to the insurer.

11  
 12 SECTION 32. Arkansas Code § 23-81-201 is amended to read as follows:  
 13 23-81-201. Title.

14 This subchapter shall be known and may be cited as the "Standard  
 15 Nonforfeiture Law for Life Insurance and Annuities".

16  
 17 SECTION 33. Arkansas Code § 23-81-209(h)(2)(F), concerning the use of  
 18 ordinary mortality tables, is amended to read as follows:

19 (F)(i) Any For a policy issued before the operative date  
 20 of the valuation manual, any Commissioner's Standard ~~ordinary~~ Ordinary  
 21 ~~mortality tables~~ Mortality Tables, adopted after 1980 by the National  
 22 Association of Insurance Commissioners, that are approved by regulation  
 23 promulgated by the commissioner for use in determining the minimum  
 24 nonforfeiture standard may be substituted for the ~~commissioner's~~ 1980  
 25 Commissioner's Standard Ordinary Mortality Table with or without Ten-Year  
 26 Select Mortality Factors or for the ~~commissioner's~~ 1980 Commissioner's  
 27 Extended Term Insurance Table.

28 (ii) For a policy issued on or after the operative  
 29 date of the valuation manual, the valuation manual shall provide the  
 30 Commissioner's Standard Ordinary mortality table for use in determining the  
 31 minimum nonforfeiture standard that may be substituted for the 1980  
 32 Commissioner's Standard Ordinary Mortality Table with or without Ten-Year  
 33 Select Mortality Factors or for the 1980 Commissioner's Extended Term  
 34 Insurance Table.

35 (iii) If the commissioner approves by rule any  
 36 Commissioner's Standard Ordinary mortality table adopted by the National

1 Association of Insurance Commissioners for use in determining the minimum  
2 nonforfeiture standard for policies issued on or after the operative date of  
3 the valuation manual, then that minimum nonforfeiture standard shall  
4 supersede the minimum nonforfeiture standard provided by the valuation  
5 manual;

6  
7 SECTION 34. Arkansas Code § 23-81-209(h)(2)(G), concerning the use of  
8 industrial mortality tables, is amended to read as follows:

9 (G)(i) Any For a policy issued before the operative date  
10 of the valuation manual, any Commissioner's Standard ~~Industrial~~ Industrial  
11 mortality tables, adopted after 1980 by the National Association of Insurance  
12 Commissioners, that are approved by regulations promulgated by the  
13 commissioner for use in determining the minimum nonforfeiture standard may be  
14 substituted for the ~~commissioner's~~ 1961 Commissioner's Standard Industrial  
15 Mortality Table or the ~~commissioner's~~ 1961 Commissioner's Industrial Extended  
16 Term Insurance Table.

17 (ii) For a policy issued on or after the operative  
18 date of the valuation manual, the valuation manual shall provide the  
19 Commissioner's Standard Industrial mortality table for use in determining the  
20 minimum nonforfeiture standard that may be substituted for the 1961  
21 Commissioner's Standard Industrial Mortality Table or the 1961 Commissioner's  
22 Industrial Extended Term Insurance Table.

23 (iii) If the commissioner approves by rule any  
24 Commissioner's Standard industrial mortality table adopted by the National  
25 Association of Insurance Commissioners for use in determining the minimum  
26 nonforfeiture standard for policies issued on or after the operative date of  
27 the valuation manual, then that minimum nonforfeiture standard supersedes the  
28 minimum nonforfeiture standard provided by the valuation manual;

29  
30 SECTION 35. Arkansas Code § 23-81-209(h)(2)(H), concerning the annual  
31 nonforfeiture interest rate, is amended to read as follows:

32 (H)(i) The For a policy issued before the operative date  
33 of the valuation manual, the nonforfeiture interest rate per annum for any  
34 policy issued in a particular calendar year shall be equal to one hundred  
35 twenty-five percent (125%) of the calendar year statutory valuation interest  
36 rate for the policy as defined in this subchapter, rounded to the nearest

1 one-quarter of one percent (0.25%), provided the nonforfeiture interest rate  
2 shall not be less than four percent (4%).

3 (ii) For a policy issued on and after the operative  
4 date of the valuation manual, the nonforfeiture interest rate per annum for  
5 any policy issued in a particular calendar year shall be provided by the  
6 valuation manual; and

7  
8 SECTION 36. Arkansas Code §§ 23-84-101 and 23-84-102 are amended to  
9 read as follows:

10 23-84-101. Title – Definitions.

11 (a) This chapter shall be known and may be cited as the "Standard  
12 Valuation Law for Life Insurance and Annuities".

13 (b) As used in this chapter:

14 (1) "Accident and health insurance" means:

15 (A) A contract that incorporates morbidity risk and  
16 provides protection against economic loss resulting from accident, sickness,  
17 or medical conditions; and

18 (B) The definition or description of "accident and health  
19 insurance" specified in the valuation manual;

20 (2) "Appointed actuary" means a qualified actuary who is  
21 appointed in accordance with the valuation manual to prepare the actuarial  
22 opinion required by § 23-84-112(b);

23 (3) "Company" means an entity that has written, issued, or  
24 reinsured a policy or contract:

25 (A) In this state and has at least one (1) policy or  
26 contract in force or in claim status; or

27 (B) In any state and is required to hold a certificate of  
28 authority to write a policy or contract in this state;

29 (4) "Deposit-type contract" means:

30 (A) A contract that does not incorporate mortality or  
31 morbidity risks; and

32 (B) The definition or description of "deposit-type  
33 contract" specified in the valuation manual;

34 (5) "Life insurance" means:

35 (A) A contract that incorporates mortality risk, including  
36 annuity and pure endowment contracts; and

1 (B) The definition or description of "life insurance"  
2 specified in the valuation manual;

3 (6) "Operative date of the valuation manual" means the date if  
4 approved by the Insurance Commissioner as the date for use under this chapter  
5 of the valuation manual or a change to the valuation manual that is:

6 (A) January 1 of the first calendar year following the  
7 first July 1 as of which all of the following have occurred:

8 (i) The valuation manual has been adopted by the  
9 National Association of Insurance Commissioners by an affirmative vote of at  
10 least forty-two (42) members or three-fourths (3/4) of the members voting,  
11 whichever is greater;

12 (ii) The Standard Valuation Law, as amended by the  
13 National Association of Insurance Commissioners in 2009, or legislation  
14 including substantially similar terms and provisions, has been enacted by  
15 states representing greater than seventy-five percent (75%) of the direct  
16 premiums written as reported for 2008 for:

17 (a) Life, accident, and health annual  
18 statements;

19 (b) Health annual statements; and

20 (c) Fraternal annual statements; and

21 (iii) The Standard Valuation Law, as amended by the  
22 National Association of Insurance Commissioners in 2009, or legislation  
23 including substantially similar terms and provisions, has been enacted by at  
24 least forty-two (42) of the following fifty-five (55) jurisdictions: The  
25 fifty (50) states of the United States, American Samoa, the American Virgin  
26 Islands, the District of Columbia, Guam, and Puerto Rico; or

27 (B) For a change to the valuation manual unless the change  
28 to the valuation manual specifies a later effective date, January 1 following  
29 the date when the change to the valuation manual has been adopted by the  
30 National Association of Insurance Commissioners by an affirmative vote  
31 representing:

32 (i) At least three-fourths (3/4) of the members of  
33 the National Association of Insurance Commissioners that vote on the change  
34 to the valuation manual, but not less than a majority of the total  
35 membership; and

36 (ii) Members of the National Association of

1 Insurance Commissioners representing jurisdictions totaling greater than  
2 seventy-five percent (75%) of the direct premiums written as reported in the  
3 annual statements most recently available before the vote in subdivision  
4 (6)(B)(i) of this section for:

5 (a) Life, accident, and health annual  
6 statements;

7 (b) Health annual statements; and

8 (c) Fraternal annual statements;

9 (7) "Policy or contract" means life insurance, accident and  
10 health insurance, or a deposit-type contract;

11 (8) "Policyholder behavior" means any action a policyholder,  
12 contract holder, or any other person with the right to elect options, such as  
13 a certificate holder, may take under a policy or contract, including without  
14 limitation lapse, withdrawal, transfer, deposit, premium payment, loan,  
15 annuitization, or benefit elections prescribed by the policy or contract, but  
16 excluding events of mortality or morbidity that result in benefits prescribed  
17 in their essential aspects by the terms of the policy or contract;

18 (9) "Principle-based valuation" means a reserve valuation that  
19 uses one (1) or more methods or one (1) or more assumptions determined by the  
20 insurer and is required to comply with § 23-84-116 as specified in the  
21 valuation manual;

22 (10) "Qualified actuary" means an individual who:

23 (A) Is qualified to sign the applicable statement of  
24 actuarial opinion in accordance with the American Academy of Actuaries'  
25 qualification standards for actuaries signing such statements; and

26 (B) Meets the requirements specified in the valuation  
27 manual;

28 (11) "Reserve" means the amount set aside by a company to cover  
29 all future liabilities under the company's policies or contracts;

30 (12) "Tail risk" means a risk that occurs because:

31 (A) The frequency of low probability events is higher than  
32 expected under a normal probability distribution; or

33 (B) Observed events of very significant size or magnitude  
34 exist; and

35 (13) "Valuation manual" means the manual of valuation  
36 instructions adopted by the National Association of Insurance Commissioners

1 that is approved for use under this chapter by the commissioner.

2  
3 23-84-102. Valuation of reserves by ~~commissioner~~ Insurance  
4 Commissioner.

5 (a) Except as provided in subdivision (a)(4) of this section, for a  
6 policy or contract issued before the operative date of the valuation manual:

7 (1)(A) The Insurance Commissioner shall annually value, or cause  
8 to be valued, the ~~reserve liabilities, hereinafter called "reserves",~~  
9 ~~reserves~~ for all outstanding life insurance policies and annuity and pure  
10 ~~endowment contracts of every life insurer doing business in this state issued~~  
11 ~~by a company on or after January 1, 1960, and before the operative date of~~  
12 ~~the valuation manual. The commissioner may certify the amount of the~~  
13 ~~reserves, specifying the mortality table or tables, rate or rates of~~  
14 ~~interest, and methods, which may be net level premium method or other used in~~  
15 ~~the calculation of the reserves.~~

16 (B) In calculating the reserves, the commissioner may use  
17 group methods and approximate averages for fractions of a year or otherwise;

18 ~~(b)(2)~~ In lieu of the valuation of the reserves required by this  
19 section of any foreign or alien insurer, the commissioner may accept any  
20 valuation made, or caused to be made, by the insurance supervisory official  
21 of any state or other jurisdiction when that valuation complies with the  
22 minimum standard provided in this section and if the official of the state or  
23 ~~jurisdiction accepts as sufficient and valid for all legal purposes the~~  
24 ~~certificate of valuation of the commissioner when the certificate states the~~  
25 ~~valuation to have been made in a specified manner according to which the~~  
26 ~~aggregate reserves would be at least as large as if they had been computed in~~  
27 ~~the manner prescribed by the law of that state or jurisdiction;~~

28 (3)(A) Sections 23-84-103 – 23-84-111, 23-84-113, and 23-84-114  
29 apply to a policy or contract issued on or after January 1, 1960, and before  
30 the operative date of the valuation manual.

31 (B) Sections 23-84-115 and 23-84-116 do not apply to a  
32 policy or contract issued on or after January 1, 1960, and before the  
33 operative date of the valuation manual; and

34 (4) The minimum standard for the valuation of a policy or  
35 contract issued before January 1, 1960, is the minimum standard in effect  
36 immediately before January 1, 1960.

1 (b) With regard to a policy or contract issued on or after the  
2 operative date of the valuation manual:

3 (1)(A) The commissioner shall annually value or cause to be  
4 valued the reserves for all outstanding policies or contracts of a company  
5 issued on or after the operative date of the valuation manual.

6 (B) In lieu of the valuation of the reserves required of a  
7 foreign or alien company, the commissioner may accept a valuation made or  
8 caused to be made by the public official or regulatory authority responsible  
9 for regulating insurance companies of another state or jurisdiction if the  
10 valuation complies with the minimum standard provided by this chapter; and

11 (2) Sections 23-84-115 and 23-84-116 apply.  
12

13 SECTION 37. Arkansas Code § 23-84-103(a), concerning minimum valuation  
14 standards, is amended to read as follows:

15 (a) Except as ~~otherwise~~ provided in §§ 23-84-104, ~~and~~ 23-84-105, and  
16 23-84-114, the minimum standard for the valuation of all policies and  
17 contracts issued prior to the operative date of § 23-81-213(a) shall be  
18 provided by the laws in effect immediately prior to January 1, 1960.  
19

20 SECTION 38. The introductory language of Arkansas Code § 23-84-103(b),  
21 concerning minimum valuation standards, is amended to read as follows:

22 (b) Except as otherwise provided in §§ 23-84-104, ~~and~~ 23-84-105, and  
23 23-84-114, the minimum standard for the valuation of all policies and  
24 contracts issued on or after the operative date of § 23-81-213(a) shall be  
25 the Insurance Commissioner's reserve valuation methods defined in §§ 23-84-  
26 106, 23-84-107, ~~and~~ 23-84-110, and 23-84-114, three and one-half percent  
27 (3.5%) interest, or in the case of policies and contracts, other than annuity  
28 and pure endowment contracts, five and one-half percent (5.5%) interest for  
29 single premium life insurance policies and four and one-half percent (4.5%)  
30 interest for all other policies issued on and after March 18, 1977, and the  
31 following tables:  
32

33 SECTION 39. Arkansas Code § 23-84-103(b)(2), concerning minimum  
34 valuation standards, is amended to read as follows:

35 (2) For ~~all~~ industrial life insurance policies issued on the  
36 standard basis excluding any disability and accidental death benefits in such

1 policies, the 1941 Standard Industrial Mortality Table for policies issued  
2 prior to the operative date of § 23-81-213(c) and, for policies issued on or  
3 after the operative date of § 23-81-213(c), the commissioner's 1961 Standard  
4 Industrial Mortality Table, or any industrial mortality table, adopted after  
5 1980 by the National Association of Insurance Commissioners, that is approved  
6 by regulations promulgated by the commissioner for use in determining the  
7 minimum standard of valuation for the policies;

8  
9 SECTION 40. The introductory language of Arkansas Code § 23-84-106(a),  
10 concerning the calculation of reserves, is amended to read as follows:

11 (a) Except as otherwise provided in §§ 23-84-107 and 23-84-110,  
12 reserves according to the Insurance Commissioner's reserve valuation method,  
13 for the life insurance and endowment benefits of policies providing for a  
14 uniform amount of insurance and requiring the payment of uniform premiums,  
15 shall be the excess, if any, of the present value at the date of valuation,  
16 of such future guaranteed benefits provided for by the policies, over the  
17 then-present value of any future modified net premiums therefor. The modified  
18 net premiums for any policy shall be a uniform percentage of the respective  
19 contract premiums for the benefits such that the present value, at the date  
20 of issue of the policy, of all modified net premiums shall be equal to the  
21 sum of the then-present value of benefits provided for by the policy and the  
22 excess of subdivision (a)(1) of this section over subdivision (a)(2) of this  
23 section, as follows:

24  
25 SECTION 41. Arkansas Code § 23-84-108(b), concerning the calculation  
26 of adequate reserves, is amended to read as follows:

27 (b) In no event shall the aggregate reserves for all policies,  
28 contracts, and benefits be less than the aggregate reserves determined by the  
29 ~~qualified~~ appointed actuary to be necessary to render the opinion required by  
30 § 23-84-112.

31  
32 SECTION 42. Arkansas Code § 23-84-109 is amended to read as follows:

33 23-84-109. Calculation of reserves – Standards of valuation.

34 (a) Reserves for ~~all~~ policies and contracts issued ~~prior to the~~  
35 ~~applicable operative date of this chapter~~ before January 1, 1960, may be  
36 calculated, at the option of the insurer, according to any standards which



1 produce greater aggregate reserves for all the policies and contracts than  
2 the minimum reserves required by the laws in effect immediately prior to the  
3 date.

4 (b) Reserves for any category of policies, contracts, or benefits as  
5 established by the Insurance Commissioner which are issued on or after ~~to the~~  
6 ~~applicable operative date of this chapter~~ January 1, 1960, may be calculated,  
7 at the option of the insurer, according to any standards which produce  
8 greater aggregate reserves for the category than those calculated according  
9 to the minimum standard provided in this chapter, but the rate or rates of  
10 interest used for policies and contracts, other than annuity and pure  
11 endowment contracts, shall not be ~~higher~~ greater than the corresponding rate  
12 or rates of interest used in calculating any nonforfeiture benefits provided  
13 ~~therein~~ in the policies or contracts.

14 (c)(1) Any insurer which at any time shall have adopted any standard  
15 of valuation producing greater aggregate reserves than those calculated  
16 according to the minimum standard provided in this chapter may adopt, with  
17 the approval of the commissioner, any lower standard of valuation, but not  
18 lower than the minimum provided in this chapter.

19 (2) However, for the purposes of this chapter, the holding of  
20 additional reserves previously determined by ~~a qualified~~ the appointed  
21 actuary to be necessary to render the opinion required by § 23-84-112 shall  
22 not be deemed to be the adoption of a higher standard of valuation.

23  
24 SECTION 43. Arkansas Code § 23-84-110(a), concerning the calculation  
25 of reserves, is amended to read as follows:

26 (a) If in any contract year the gross premium charged by ~~any life~~  
27 ~~insurer~~ a company on any policy or contract is less than the valuation net  
28 premium for the policy or contract calculated by the method used in  
29 calculating the reserve thereon, but using the minimum valuation standards of  
30 mortality and rate of interest, the minimum reserve required for the policy  
31 or contract shall be the greater of either the reserve calculated according  
32 to the mortality table, rate of interest, and method actually used for the  
33 policy or contract, or the reserve calculated by the method actually used for  
34 the policy or contract but using the minimum valuation standards of mortality  
35 and rate of interest and replacing the valuation net premium by the actual  
36 gross premium in each contract year for which the valuation net premium

1 exceeds the actual gross premium. The minimum valuation standards of  
2 mortality and rate of interest referred to in this section are those  
3 standards stated in §§ 23-84-103 and 23-84-104.  
4

5 SECTION 44. Arkansas Code § 23-84-112 is amended to read as follows:  
6 23-84-112. Actuarial opinion of reserves.

7 (a) Actuarial Opinion Prior to the Operative Date of the Valuation  
8 Manual.

9 (1) General.

10 (A) Every life insurance company doing business in this  
11 state shall annually submit the opinion of a qualified actuary as to whether  
12 the reserves and related actuarial items held in support of the policies and  
13 contracts specified by the Insurance Commissioner by regulation are computed  
14 appropriately, are based on assumptions which satisfy contractual provisions,  
15 are consistent with prior reported amounts, and comply with applicable laws  
16 of this state.

17 (B) By regulation, the commissioner shall define the  
18 specifics of this opinion and add any other items deemed to be necessary to  
19 its scope.

20 ~~(b)~~(2) Actuarial Analysis of Reserves and Assets Supporting Such  
21 Reserves.

22 ~~(1)~~(A) Except as exempted by or pursuant to regulation,  
23 every life insurance company shall also annually include in the opinion  
24 required by ~~subsection~~ subdivision (a)(1) of this section an opinion of the  
25 same qualified actuary as to whether the reserves and related actuarial items  
26 held in support of the policies and contracts specified by the commissioner  
27 by regulation, when considered in light of the assets held by the company  
28 with respect to the reserves and related actuarial items, including, but not  
29 limited to, the investment earnings on the assets and the considerations  
30 anticipated to be received and retained under the policies and contracts,  
31 make adequate provision for the company's obligations under the policies and  
32 contracts, including, but not limited to, the benefits under and expenses  
33 associated with the policies and contracts.

34 ~~(2)~~(B) The commissioner may provide by regulation for a  
35 transition period for establishing any higher reserves which the qualified  
36 actuary may deem necessary in order to render the opinion required by this

1 section.

2 ~~(e)~~(3) Requirements for Opinion Under ~~Subsection (b)~~ Subdivision  
3 (a)(2) of this Section. ~~Each~~ An opinion required by ~~subsection (b)~~  
4 subdivision (a)(2) of this section shall be governed by the following  
5 provisions:

6 ~~(1)~~(A) A memorandum, in form and substance acceptable to  
7 the commissioner as specified by regulation, shall be prepared to support  
8 each actuarial opinion; and

9 ~~(2)~~(B) If the insurance company fails to provide a  
10 supporting memorandum at the request of the commissioner within a period  
11 specified by regulation or the commissioner determines that the supporting  
12 memorandum provided by the insurance company fails to meet the standards  
13 prescribed by the regulations or is otherwise unacceptable to the  
14 commissioner, the commissioner may engage a qualified actuary at the expense  
15 of the company to review the opinion and the basis for the opinion and  
16 prepare such supporting memorandum as is required by the commissioner.

17 ~~(d)~~(4) Requirement for All Opinions Subject to this Subsection.  
18 ~~Every~~ An opinion required by this subsection shall be governed by the  
19 following provisions:

20 ~~(1)~~(A) The opinion shall be submitted with the annual  
21 statement reflecting the valuation of such reserve liabilities for each year  
22 ending on or after December 31, 1995;

23 ~~(2)~~(B) The opinion shall apply to all business in force  
24 including individual and group health insurance plans, in form and substance  
25 acceptable to the commissioner as specified by regulation;

26 ~~(3)~~(C) The opinion shall be based on standards adopted  
27 from time to time by the Actuarial Standards Board and on such additional  
28 standards as the commissioner may by regulation prescribe;

29 ~~(4)~~(D) In the case of an opinion required to be submitted  
30 by a foreign or alien company, the commissioner may accept the opinion filed  
31 by that company with the insurance supervisory official of another state if  
32 the commissioner determines that the opinion reasonably meets the  
33 requirements applicable to a company domiciled in this state;

34 ~~(5)~~(E) For the purposes of this section, "qualified  
35 actuary" means a member in good standing of the American Academy of Actuaries  
36 who meets the requirements set forth in such regulations;

1           ~~(6)~~(F) Except in cases of fraud or willful misconduct, the  
2 qualified actuary shall not be liable for damages to any person, other than  
3 the insurance company and the commissioner, for any act, error, omission,  
4 decision, or conduct with respect to the actuary's opinion;

5           ~~(7)~~(G) Disciplinary action by the commissioner against the  
6 company or the qualified actuary shall be defined in regulations by the  
7 commissioner; and

8           ~~(8)~~(A)(H)(i) Any memorandum in support of the opinion, and  
9 any other material provided by the company to the commissioner in connection  
10 therewith, shall be kept confidential by the commissioner and shall not be  
11 made public and shall not be subject to subpoena, other than for the purpose  
12 of defending an action seeking damages from any person by reason of any  
13 action required by this section or by regulations promulgated under this  
14 chapter.

15           ~~(B)~~(ii) However, the memorandum or other material  
16 may otherwise be released by the commissioner:

17                   ~~(i)~~(a) With the written consent of the  
18 company; or

19                   ~~(ii)~~(b) To the American Academy of Actuaries  
20 upon request stating that the memorandum or other material is required for  
21 the purpose of professional disciplinary proceedings and setting forth  
22 procedures satisfactory to the commissioner for preserving the  
23 confidentiality of the memorandum or other material.

24           ~~(G)~~(iii) Once any portion of the confidential  
25 memorandum is cited by the company in its marketing or is cited before any  
26 governmental agency other than a state insurance department or is released by  
27 the company to the news media, all portions of the confidential memorandum  
28 shall be no longer confidential.

29           (b) Actuarial Opinion of Reserves after the Operative Date of the  
30 Valuation Manual.

31                   (1) General.

32                   (A) A company with an outstanding policy or contract in  
33 this state that is subject to regulation by the commissioner annually shall  
34 submit the opinion of an appointed actuary as to whether the reserves and  
35 related actuarial items held in support of the policy or contract:

36                           (i) Are computed appropriately;

1 (ii) Are based on assumptions that satisfy  
2 contractual provisions;

3 (iii) Are consistent with prior reported amounts;  
4 and

5 (iv) Comply with applicable laws of this state.

6 (B) The valuation manual shall prescribe the content and  
7 scope of the opinion.

8 (2) Actuarial Analysis Of Reserves And Assets Supporting Such  
9 Reserves. A company with an outstanding policy or contract in this state  
10 that is subject to regulation by the commissioner, except as exempted in the  
11 valuation manual, annually shall include in the opinion required by  
12 subdivision (b)(1) of this section an opinion of the appointed actuary under  
13 subdivision (b)(1)(A) of this section as to whether the reserves and related  
14 actuarial items held in support of the policies and contracts specified in  
15 the valuation manual, when considered in light of the assets held by the  
16 company with respect to the reserves and related actuarial items, including  
17 without limitation the investment earnings on the assets and the  
18 considerations anticipated to be received and retained under the policies and  
19 contracts, make adequate provision for the company's obligations under the  
20 policies and contracts, including without limitation the benefits under and  
21 expenses associated with the policies and contracts.

22 (3) Requirements For Opinion Under Subdivision (b)(2) of this  
23 Section. The opinion required by subdivision (b)(2) of this section shall be  
24 governed by the following provisions:

25 (A) A memorandum in the form and substance specified in  
26 the valuation manual and acceptable to the commissioner shall be prepared to  
27 support each actuarial opinion; and

28 (B) If the insurance company fails to provide a  
29 supporting memorandum at the request of the commissioner within a period  
30 specified in the valuation manual or the commissioner determines that the  
31 supporting memorandum provided by the insurance company fails to meet the  
32 standards prescribed by the valuation manual or is otherwise unacceptable to  
33 the commissioner, the commissioner may engage a qualified actuary at the  
34 expense of the company to review the opinion and the basis for the opinion  
35 and prepare the supporting memorandum required by the commissioner.

36 (4) Requirement For All Opinions Subject to this Subsection.

1 (A) An opinion governed by this subsection shall:

2 (i) Be in form and substance as specified in the  
3 valuation manual and acceptable to the commissioner;

4 (ii) Be submitted with the annual statement  
5 reflecting the valuation of such reserve liabilities for each year ending on  
6 or after the operative date of the valuation manual;

7 (iii) Apply to all policies and contracts subject to  
8 subdivision (b)(2) of this section, plus other actuarial liabilities as may  
9 be specified in the valuation manual; and

10 (iv) Be based on standards adopted from time to time  
11 by the Actuarial Standards Board or its successor, and on such additional  
12 standards as may be prescribed in the valuation manual.

13 (B) In the case of an opinion required to be submitted by  
14 a foreign or alien company, the commissioner may accept the opinion filed by  
15 the company with the public official or regulatory authority responsible for  
16 regulating insurance companies of another state if the commissioner  
17 determines that the opinion reasonably meets the requirements applicable to a  
18 company domiciled in this state.

19 (C) Except in cases of fraud or willful misconduct, the  
20 appointed actuary shall not be liable for damages to any person other than  
21 the company and the commissioner for any act, error, omission, decision, or  
22 conduct with respect to the appointed actuary's opinion under this  
23 subsection.

24 (D) Disciplinary action by the commissioner against the  
25 company or the appointed actuary shall be prescribed by rule of the  
26 commissioner.

27  
28 SECTION 45. Arkansas Code Title 23, Chapter 84, Subchapter 1, is  
29 amended to add additional sections to read as follows:

30 23-84-114. Minimum standard for accident and health insurance.

31 (a) The Insurance Commissioner shall promulgate rules containing the  
32 minimum standards that apply to the valuation of accident and health  
33 insurance issued on or after January 1, 1960, but before the operative date  
34 of the valuation manual.

35 (b) For accident and health insurance issued on or after the operative  
36 date of the valuation manual, the standard prescribed in the valuation manual

1 is the minimum standard of valuation required under § 23-84-102(b).

2  
3 23-84-115. Valuation of policy or contract issued on or after operative  
4 date of the valuation manual.

5 (a) Except as provided in this section, for a policy or contract  
6 issued on or after the operative date of the valuation manual, the standard  
7 prescribed in the valuation manual is the minimum standard of valuation  
8 required under § 23-84-102(b).

9 (b) The valuation manual shall specify:

10 (1) Minimum valuation standards and definitions for policies or  
11 contracts subject to § 23-84-102(b), including without limitation:

12 (A) The Insurance Commissioner's reserve valuation method  
13 for life insurance contracts, other than annuity contracts, subject to § 23-  
14 84-102(b);

15 (B) The commissioner's annuity reserve valuation method  
16 for annuity contracts subject to § 23-84-102(b); and

17 (C) Minimum reserves for all other policies or contracts  
18 subject to § 23-84-102(b);

19 (2) Which policies or contracts or types of policies or  
20 contracts are subject to the requirements of a principle-based valuation  
21 under § 23-84-116(a) and the minimum valuation standards consistent with  
22 those requirements;

23 (3) For policies and contracts subject to a principle-based  
24 valuation under § 23-84-116:

25 (A) Requirements for the format of reports to the  
26 commissioner under § 23-84-116(b)(3), including without limitation  
27 information necessary to determine if the valuation is appropriate and in  
28 compliance with this chapter;

29 (B) Assumptions for risks over which the company does not  
30 have significant control or influence; and

31 (C) Procedures for corporate governance and oversight of  
32 the actuarial function, and a process for appropriate waiver or modification  
33 of those procedures;

34 (4) For policies not subject to a principle-based valuation  
35 under § 23-84-116, a minimum valuation standard:

36 (A) That is consistent with the minimum standard of

1 valuation before the operative date of the valuation manual; or

2 (B) That requires reserves to be developed that quantify  
3 the benefits and guarantees and the funding associated with the policy or  
4 contract and its risks at a level of conservatism that reflects conditions  
5 that include unfavorable events that have a reasonable probability of  
6 occurring;

7 (5) Other requirements, including without limitation those  
8 relating to reserve methods, models for measuring risk, generation of  
9 economic scenarios, assumptions, margins, use of company experience, risk  
10 measurement, disclosure, certifications, reports, actuarial opinions and  
11 memorandums, and transition rules and internal controls; and

12 (6) The data and form of the data required under § 23-84-117,  
13 with whom the data must be submitted and, if desired, other requirements,  
14 including data analyses and reporting of data analyses.

15 (c) If a specific valuation requirement is not specified in the  
16 valuation manual or if in the opinion of the commissioner a specific  
17 valuation requirement in the valuation manual is not in compliance with this  
18 chapter, then the company shall comply with minimum valuation standards  
19 prescribed by the commissioner for the specific valuation requirement.

20 (d)(1) The commissioner may employ or contract with a qualified  
21 actuary at the expense of a company to;

22 (A) Perform an actuarial examination of the company and  
23 opine on the appropriateness of any reserve assumption or method used by the  
24 company; or

25 (B) Review and opine on a company's compliance with any  
26 requirement under this chapter.

27 (2) The commissioner may rely upon an opinion regarding  
28 provisions contained within this chapter of a qualified actuary employed or  
29 contracted with by a public official or regulatory authority responsible for  
30 regulating insurance companies of another state, district, or territory of  
31 the United States.

32 (e) The commissioner may:

33 (1) Require a company to change any assumption or method that in  
34 the opinion of the commissioner is necessary in order to comply with the  
35 requirements of the valuation manual or this chapter;

36 (2) Require a company to adjust the company's reserves; and



1 (3) Take other disciplinary action permitted by § 23-60-108.

2  
3 23-84-116. Requirements of principle-based valuation.

4 (a) A company shall establish reserves for a policy or contract using  
5 a principle-based valuation as specified in the valuation manual that:

6 (1)(A) Quantifies the benefits and guarantees and the funding  
7 associated with the policy or contract and their risks at a level of  
8 conservatism that reflects conditions that include unfavorable events that  
9 have a reasonable probability of occurring during the lifetime of the policy  
10 or contract.

11 (B) For a policy or contract with significant tail risk,  
12 the principle-based valuation shall reflect conditions appropriately adverse  
13 to quantify the tail risk;

14 (2) Incorporates assumptions, risk analysis methods, financial  
15 models, and management techniques that are consistent with, but not  
16 necessarily identical to, those utilized within the company's overall risk  
17 assessment process, while recognizing potential differences in financial  
18 reporting structures and any prescribed assumptions or methods;

19 (3) Incorporates assumptions that are:

20 (A) Prescribed by the valuation manual; or

21 (B) For assumptions that are not prescribed by the  
22 valuation manual:

23 (i) Established utilizing the company's available  
24 experience to the extent it is relevant and statistically credible; and

25 (ii) To the extent that company data is not  
26 available, relevant, or statistically credible, established utilizing other  
27 relevant, statistically credible experience; and

28 (4) Provides margins for uncertainty, including adverse  
29 deviation and estimation error, such that the greater the uncertainty, the  
30 larger the margin and resulting reserve.

31 (b) A company using a principle-based valuation for one (1) or more  
32 policies or contracts subject to this section as specified in the valuation  
33 manual shall:

34 (1) Establish procedures for corporate governance and oversight  
35 of the actuarial valuation function consistent with those described in the  
36 valuation manual;

1           (2)(A) Provide to the Insurance Commissioner and its board of  
2 directors an annual certification of the effectiveness of the internal  
3 controls with respect to the principle-based valuation.

4           (B) The controls shall be designed to assure that all  
5 material risks inherent in the liabilities and associated assets subject to  
6 the principle-based valuation are included in the valuation and that  
7 valuations are made in accordance with the valuation manual.

8           (C) The annual certification shall be based on the  
9 controls in place as of the end of the preceding calendar year; and

10          (3) Develop, and file with the commissioner upon request, a  
11 principle-based valuation report that complies with the standards prescribed  
12 in the valuation manual.

13          (c) A principle-based valuation may include a prescribed formulaic  
14 reserve component.

15  
16          23-84-117. Experience reporting.

17          For a policy or contract in force on or after the operative date of the  
18 valuation manual, a company shall submit mortality, morbidity, policyholder  
19 behavior, or expense and other data as prescribed in the valuation manual.

20  
21          23-84-118. Confidentiality.

22          (a) As used in this section, "confidential information" means:

23               (1) A memorandum in support of an opinion submitted under § 23-  
24 84-112 and any other documents, materials, and other information, including  
25 without limitation all working papers and copies of working papers created,  
26 produced, or obtained by or disclosed to the Insurance Commissioner or any  
27 other person in connection with the memorandum;

28               (2)(A) Except as provided in subdivision (a)(2)(B) of this  
29 section, all documents, materials, and other information, including without  
30 limitation all working papers and copies of working papers created, produced,  
31 or obtained by or disclosed to the commissioner or any other person in the  
32 course of an examination under § 23-84-115(d).

33               (B) To the extent that an examination report or other  
34 material prepared in connection with an examination under § 23-61-201 et seq.  
35 is not held as private and confidential information under § 23-61-207, an  
36 examination report or other material prepared in connection with an

1 examination made under § 23-84-115(d) is not confidential information under  
2 this section;

3 (3) A report, document, material, and other information  
4 developed by a company in support of or in connection with an annual  
5 certification by the company under § 23-84-116(b)(2) evaluating the  
6 effectiveness of the company's internal controls with respect to a principle-  
7 based valuation and any other document, material, and other information,  
8 including without limitation all working papers and copies of working papers  
9 created, produced, or obtained by or disclosed to the commissioner or any  
10 other person in connection with the report, document, material, and other  
11 information;

12 (4) A principle-based valuation report developed under § 23-84-  
13 116(b)(3) and any other document, material, and other information, including  
14 without limitation all working papers and copies of working papers created,  
15 produced, or obtained by or disclosed to the commissioner or any other person  
16 in connection with the report;

17 (5) Experience data, including a document, material, data, and  
18 other information submitted by a company under § 23-84-117, and any other  
19 document, material, data, and other information, including without limitation  
20 all working papers and copies of working papers created or produced in  
21 connection with the experience data that are created, produced, or obtained  
22 by or disclosed to the commissioner or any other person in connection with  
23 the experience data; and

24 (6) Experience materials, including experience data under  
25 subdivision (a)(5) of this section, and any potentially company-identifying  
26 or personally identifiable information that is provided to or obtained by the  
27 commissioner and any other documents, materials, data, and other information,  
28 including without limitation all working papers and copies of working papers  
29 created, produced, or obtained by or disclosed to the commissioner or any  
30 other person in connection with the experience materials.

31 (b)(1)(A) Except as provided in this section, a company's confidential  
32 information is confidential by law and privileged and shall not be subject  
33 to:

34 (i) The Freedom of Information Act of 1967, § 25-19-  
35 101 et seq.;

36 (ii) Subpoena; or

1 (iii) Discovery or admissible in evidence in a  
2 private civil action.

3 (B) However, the commissioner is authorized to use the  
4 confidential information in the furtherance of any regulatory or legal action  
5 brought against the company as a part of the commissioner's official duties.

6 (2) The commissioner and any other person who received  
7 confidential information while acting under the authority of the commissioner  
8 shall not be permitted or required to testify in any private civil action  
9 concerning the confidential information.

10 (3)(A) Except as provided in subdivision (b)(3)(B) of this  
11 section, in order to assist in the performance of the commissioner's duties,  
12 the commissioner may share confidential information:

13 (i) With other state, federal, and international  
14 regulatory agencies and with the National Association of Insurance  
15 Commissioners and its affiliates and subsidiaries;

16 (ii) In the case of confidential information  
17 specified in subdivision (a)(1) or subdivision (a)(4) of this section only,  
18 with the Actuarial Board for Counseling and Discipline or its successor upon  
19 request stating that the confidential information is required for the purpose  
20 of professional disciplinary proceedings; and

21 (iii) With state, federal, and international law  
22 enforcement officials.

23 (B) The commissioner shall not share confidential  
24 information with a recipient under subdivision (b)(3)(A)(i) or subdivision  
25 (b)(3)(A)(ii) of this section unless the recipient agrees and has the legal  
26 authority to agree to maintain the confidentiality and privileged status of  
27 the confidential information in the same manner and to the same extent as  
28 required of the commissioner.

29 (4) The commissioner may receive documents, materials, data, and  
30 other information, including otherwise confidential and privileged documents,  
31 materials, data, or information, from the National Association of Insurance  
32 Commissioners and its affiliates and subsidiaries, from regulatory or law  
33 enforcement officials of other foreign or domestic jurisdictions, and from  
34 the Actuarial Board for Counseling and Discipline or its successor and shall  
35 maintain as confidential or privileged any document, material, data, or other  
36 information received with notice or the understanding that it is confidential

1 or privileged under the laws of the jurisdiction that is the source of the  
2 document, material, or other information.

3 (5) The commissioner may enter into agreements governing sharing  
4 and use of information consistent with this subsection.

5 (6) A waiver of any applicable privilege or claim of  
6 confidentiality concerning confidential information shall not occur as a  
7 result of a disclosure of information to the commissioner under this section  
8 or as a result of sharing information authorized by this section.

9 (7) A privilege established under the law of any state or  
10 jurisdiction that is substantially similar to the privilege established under  
11 this subsection shall be available and enforced in any administrative, civil,  
12 or criminal proceeding in this state.

13 (8) This section applies to the employees, agents, consultants,  
14 and contractors of the National Association of Insurance Commissioners and a  
15 regulatory agency or law enforcement agency identified in this section.

16 (c) Notwithstanding subsection (b) of this section, any confidential  
17 information of a company specified in subdivision (a)(1) or subdivision  
18 (a)(4) of this section:

19 (1) May be subject to subpoena for the purpose of defending an  
20 action seeking damages from the appointed actuary submitting the related  
21 memorandum in support of an opinion submitted under § 23-84-112 or a  
22 principle-based valuation report developed under § 23-84-116(b)(3) based upon  
23 an action required of the appointed actuary by this chapter;

24 (2) May otherwise be released by the commissioner with the  
25 written consent of the company; and

26 (3) Is no longer confidential information protected by this  
27 section if any portion of a memorandum in support of an opinion submitted  
28 under § 23-84-112 or a principle-based valuation report developed under § 23-  
29 84-116(b)(3) is:

30 (A) Cited by the company in its marketing;

31 (B) Publicly volunteered to or before a governmental  
32 agency other than a state insurance department; or

33 (C) Released by the company to the news media.

34  
35 23-84-119. Single-state and small company exemptions.

36 (a)(1) The Insurance Commissioner may exempt specific product forms or

1 product lines of a domestic company that is licensed and doing business only  
2 in this state from the requirements of §§ 23-84-115 – 23-84-117 if:

3 (A) The commissioner has issued a written exemption to the  
4 company and has not subsequently revoked the exemption in writing; and

5 (B) The company computes reserves using assumptions and  
6 methods used before the operative date of the valuation manual in addition to  
7 any requirements established by the commissioner.

8 (2) If a company is granted an exemption under subdivision  
9 (a)(1) of this section:

10 (A) Sections 23-84-103 – 23-84-114 apply to the company;  
11 and

12 (B) Any reference to § 23-84-115 found in §§ 23-84-103 –  
13 23-84-112 and 23-84-114 do not apply to the company.

14 (b)(1) A company that has less than three hundred million dollars  
15 (\$300,000,000) of ordinary life premiums, that is licensed and doing business  
16 in this state, and that is subject to the requirements of §§ 23-84-115 – 23-  
17 84-118, may hold reserves based on the mortality tables and interest rates  
18 defined by the valuation manual for net premium reserves using the  
19 methodology defined in §§ 23-84-106 and 23-84-108 – 23-84-111 as applicable  
20 to ordinary life insurance in lieu of the reserves required by §§ 23-84-115 –  
21 23-84-118, if:

22 (A) In the event the company is a member of a group of  
23 life insurers, the group has combined ordinary life premiums of less than six  
24 hundred million dollars (\$600,000,000);

25 (B)(i) The company reported total adjusted capital of at  
26 least four hundred fifty percent (450%) of authorized control level risk-  
27 based capital in the most recent risk-based capital report.

28 (ii) Upon written request from a company that does  
29 not satisfy subdivision (b)(1)(B)(i) of this section, the commissioner may  
30 exempt the company from subdivision (b)(1)(B)(i) of this section;

31 (C) The appointed actuary has provided an unqualified  
32 opinion on the reserves in accordance with § 23-84-112; and

33 (D) The company has provided a certification by a  
34 qualified actuary that any universal life policy with a secondary guarantee  
35 issued or assumed by the company after the operative date of the valuation  
36 manual meets the definition of a nonmaterial secondary guarantee universal

1 life product as defined in the valuation manual.

2 (2) For purposes of subdivision (b)(1) of this section, ordinary  
3 life premiums are measured as direct premium plus reinsurance assumed from an  
4 unaffiliated company, as reported in the prior calendar year annual  
5 statement.

6 (3) A company that meets the requirements under subdivision  
7 (b)(1) of this section is also subject to the requirements of § 23-84-110.

8 (4)(A) On or before July 1 each year, a domestic company that  
9 meets all of the conditions required by this subsection may file a statement  
10 with the commissioner certifying that the conditions are met for the current  
11 calendar year based on premiums and other values from the financial  
12 statements of the prior calendar year.

13 (B) The commissioner may reject the statement on or before  
14 September 1 of the same calendar year and require the domestic company to  
15 comply with the valuation manual requirements for life insurance reserves.

16  
17 SECTION 46. DO NOT CODIFY. EFFECTIVE DATE. Sections 1 through 5 of  
18 this act shall apply to cessation under reinsurance agreements issued,  
19 renewed, or amended on or after six (6) months after the effective date of  
20 this act.

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22 /s/Rapert  
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