

1 State of Arkansas *As Engrossed: S3/23/15 S3/25/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

SENATE BILL 881

4

5 By: Senator Rapert

6 By: Representative Collins

7

8

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.*

22

23

24

Subtitle

25 TO MODIFY THE FINANCIAL AND REGULATORY
26 INSURANCE LAWS IN THIS STATE.

27

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

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

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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 trustee 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 supervision 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:

5 (A) Includes at least one (1) insurer registered under §
6 23-63-514;

7 (B) Has premiums written in at least three (3) countries;

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

11 (D) Based on a three-year rolling average, the total
12 assets of the insurance holding company system are at least fifty billion
13 dollars (\$50,000,000,000), or the total gross written premiums of the
14 insurance holding company system are at least ten billion dollars
15 (\$10,000,000,000).

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

20 (m) Enterprise Risk Filing.

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

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

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

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

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

36

1 SECTION 11. Arkansas Code § 23-63-515(a)(2), concerning certain
2 restrictions for material transactions of a domestic insurer, is amended to
3 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22
 23 SECTION 12. Arkansas Code § 23-63-516 is amended to read as follows:
 24 23-63-516. Examination.

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

1 insurer by the ultimate controlling party, by any entity or combination of
2 entities within the insurance holding company system, or by the insurance
3 holding company system on a consolidated basis.

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

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

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

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

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

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

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

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

36 (e) Production.

1 (1)(A) If an insurer fails to comply with an order of the
2 commissioner, the commissioner may examine the insurer's affiliates to obtain
3 the information.

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

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

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

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

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

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

22
23 SECTION 13. Arkansas Code § 23-63-517 is amended to read as follows:
24 23-63-517. Confidential treatment.

25 (a)(1) All information, and documents, and copies thereof obtained by
26 or disclosed to the Insurance Commissioner or any other person in the course
27 of an examination or investigation made pursuant to under § 23-63-516 and all
28 information reported pursuant to under §§ 23-63-514 and 23-63-515 shall be
29 given confidential treatment and shall not be subject to subpoena or
30 discovery or admissible in evidence in any private civil action and shall not
31 or be made public by the commissioner, under the Arkansas Freedom of
32 Information Act of 1967, § 25-19-101 et seq., or any other public records
33 law, or by the National Association of Insurance Commissioners, or any other
34 person, except to insurance departments of other states. However, the
35 commissioner is authorized to use the documents, materials, or other
36 information in the furtherance of any regulatory or legal action brought as

1 part of the commissioner's duties.

2 (2) The information, documents, and copies thereof of the
3 information shall not be subject to subpoena or be made public without the
4 prior written consent of the insurer to which it pertains unless the
5 commissioner, after giving the insurer and any of the insurer's affiliates
6 that may be affected, notice and an opportunity to be heard to the insurer
7 and its affiliates who would be affected thereby, determines that the
8 interests of policyholders, shareholders, or the public will be served by the
9 publication thereof of the information.

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

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

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

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

36 (3)(A) The commissioner may receive documents, materials, or

1 information, including otherwise confidential and privileged documents,
2 materials, or information, from the National Association of Insurance
3 Commissioners and its affiliates and subsidiaries and from regulatory and law
4 enforcement officials of other foreign or domestic jurisdictions.

5 (B) Documents, materials, or information received by the
6 commissioner under subdivision (c)(3)(A) of this section shall be maintained
7 as confidential or privileged under the laws of the source jurisdiction if
8 the commissioner is provided with notice or receives the documents,
9 materials, or information with the understanding that the information is
10 confidential or privileged.

11 (4)(A) If the commissioner intends to share or use information
12 with the National Association of Insurance Commissioners, the commissioner
13 shall enter into a written agreement with the National Association of
14 Insurance Commissioners governing the sharing and use of the information
15 provided under this section.

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

18 (i) Specify the procedures and protocols regarding
19 the confidentiality and security of information that is shared with the
20 National Association of Insurance Commissioners and its affiliates and
21 subsidiaries, including procedures and protocols for sharing by the National
22 Association of Insurance Commissioners with other state, federal, or
23 international regulators;

24 (ii) Specify that ownership of the information
25 shared with the National Association of Insurance Commissioners and its
26 affiliates and subsidiaries, remains with the commissioner, and that the
27 National Association of Insurance Commissioners' use of the information is
28 subject to the direction of the commissioner;

29 (iii) Require prompt notice to be given to an
30 insurer whose confidential information is shared and in the possession of the
31 National Association of Insurance Commissioners under this section is subject
32 to a request or subpoena to the National Association of Insurance
33 Commissioners to disclose or produce the confidential information; and

34 (iv) Require the National Association of Insurance
35 Commissioners and its affiliates and subsidiaries to consent to intervention
36 by an insurer in any judicial or administrative action in which the National

1 Association of Insurance Commissioners and its affiliates and subsidiaries
2 may be required to disclose confidential information of the insurer shared
3 with the National Association of Insurance Commissioners and its affiliates
4 and subsidiaries, under this section.

5 (d) The sharing of information by the commissioner under this section
6 does not constitute a delegation of regulatory authority or rulemaking, and
7 the commissioner is solely responsible for the administration, execution, and
8 enforcement of the provisions of this section.

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

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

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

18 (A) Subject to:

19 (i) The Freedom of Information Act of 1967, § 25-19-
20 101 et seq.;

21 (ii) Subpoena; or

22 (iii) Discovery; or

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

24
25 SECTION 14. Arkansas Code Title 23, Chapter 63, Subchapter 5, is
26 amended to add additional sections to read as follows:

27 23-63-531. Supervisory colleges.

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

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

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

35 (B) Clarifying the membership and participation of other
36 supervisors in the supervisory college;

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

3 (D) Coordinating the ongoing activities of the supervisory
4 college, including planning meetings, supervisory activities, and procedures
5 to share information; and

6 (E) Establishing a crisis management plan.

7 (b)(1)(A) A domestic insurer subject to this section is liable for and
8 shall pay any reasonable expenses, including reasonable travel expenses, of
9 the commissioner's participation in a supervisory college under subsection
10 (c) of this section.

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

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

18 (c)(1) In order to assess the business strategy, financial, legal, and
19 regulatory position, risk exposure, risk management, and governance
20 processes, and as part of the examination of individual insurers according to
21 § 23-63-516, the commissioner may participate in a supervisory college with
22 other regulators that are charged with supervision of the insurer or its
23 affiliates, including other state, federal, and international regulatory
24 agencies.

25 (2) The commissioner may enter into agreements according to §
26 23-63-517(c) providing the basis for cooperation among the commissioner, the
27 other regulatory agencies, and the activities of the supervisory college.

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

31
32 23-63-532. Group-wide supervision of internationally active insurance
33 groups.

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

36 (2) However, the commissioner may otherwise acknowledge another

1 regulatory official as the group-wide supervisor when the internationally
2 active insurance group:

3 (A) Does not have substantial insurance operations in the
4 United States;

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

7 (C) Has substantial insurance operations in the United
8 States and this state, but the commissioner has determined under subsections
9 (b) and (f) of this section that the other regulatory official is the
10 appropriate group-wide supervisor.

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

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

18 (2)(A) The commissioner may determine that the group-wide
19 supervisor identified in subdivision (b)(1) of this section is the
20 appropriate group-wide supervisor for an internationally active insurance
21 group that conducts substantial insurance operations concentrated in this
22 state.

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

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

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

32 (ii) The place of domicile of the top-tiered
33 insurers in the insurance holding company system of the internationally
34 active insurance group;

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

1 (iv) Whether or not another regulatory official is
2 acting or seeks to act as the group-wide supervisor under a regulatory system
3 that the commissioner determines to be:

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

6 (b) Otherwise sufficient in terms of providing
7 for group-wide supervision, enterprise risk analysis, and cooperation with
8 other regulatory officials; and

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

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

16 (4) The acknowledgment of the group-wide supervisor shall be
17 made after consideration of the factors listed in subdivision (b)(2)(C) of
18 this section in cooperation with and subject to the acknowledgment of other
19 regulatory officials involved with supervision of members of the internally
20 active insurance group after consultation with the internationally active
21 insurance group.

22 (c)(1) Notwithstanding any other law, when another regulatory official
23 is acting as the group-wide supervisor of an internationally active insurance
24 group, the commissioner shall acknowledge that regulatory official as the
25 group-wide supervisor.

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

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

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

35 (d)(1) Under § 23-63-516, the commissioner may collect from an insurer
36 registered under § 23-63-514 any information necessary to determine whether

1 or not the commissioner may act as the group-wide supervisor of an
2 internationally active insurance group or if the commissioner may acknowledge
3 another regulatory official to act as the group-wide supervisor.

4 (2) Before issuing a determination that an internationally
5 active insurance group is subject to group-wide supervision by the
6 commissioner, the commissioner shall notify the insurer registered under §
7 23-63-514 and the ultimate controlling person within the internationally
8 active insurance group.

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

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

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

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

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

26 (B) Reasonable and effective mitigation measures are in
27 place;

28 (2) Request information from any member of an internationally
29 active insurance group subject to the commissioner's supervision that the
30 commissioner determines is necessary and appropriate to assess enterprise
31 risk, including without limitation information concerning members of the
32 internationally active insurance group's:

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

34 (B) Capital adequacy; and

35 (C) Material intercompany transactions;

36 (3) Coordinate and, through the authority of the regulatory

1 officials of the jurisdictions where members of the internationally active
2 insurance group are domiciled, compel development and implementation of
3 reasonable measures designed to ensure that the internationally active
4 insurance group is able to timely recognize and mitigate enterprise risks to
5 members of the internationally active insurance group that are engaged in the
6 business of insurance;

7 (4) Communicate with other state, federal, and international
8 regulatory agencies for members of the internationally active insurance group
9 and share relevant information subject to § 23-63-517, through supervisory
10 colleges under § 23-63-531, or otherwise permitted;

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

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

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

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

30 (1) The commissioner's cooperation is not a violation of this
31 state's law; and

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

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

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

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

8 (i) A registered insurer subject to this section is liable for and
9 shall pay the reasonable expenses of the commissioner's participation in the
10 administration of this section, including the engagement of attorneys,
11 actuaries, and any other professionals, and all reasonable travel expenses.

12
13 SECTION 15. Arkansas Code § 23-63-814(b), concerning investment by an
14 insurer in secured and unsecured obligations, is amended to read as follows:

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

19 (1) Are rated, or expected to be rated, by the Securities
20 Valuation Office of the National Association of Insurance Commissioners, if
21 not otherwise exempt under the Purposes and Procedures Manual of the
22 Securities Valuation Office of the National Association of Insurance
23 Commissioners; or

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

33
34 SECTION 16. Arkansas Code § 23-63-815(a), concerning investment by an
35 insurer in preferred or guaranteed stock, is amended to read as follows:

36 (a) An insurer may invest in preferred or guaranteed stocks or shares

1 of any solvent institution existing under the laws of the United States or of
2 Canada, or of any state or province thereof, if ~~all of the prior obligations~~
3 ~~and prior preferred stocks, if any, of the institution at the date of the~~
4 ~~acquisition of the investment by the insurer are eligible as investments~~
5 ~~under this subchapter and if:~~

6 (1) The net earnings of the institution available for its
7 fixed charges during each of the last two (2) years have been, and during
8 each of the last five (5) years have averaged, not less than one and one-half
9 ~~(11/2)~~(1½) times the sum of its average annual fixed charges, if any, its
10 average annual maximum contingent interest, if any, and its average annual
11 preferred dividend requirements; or

12 (2) The securities are:

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

15 (B) Exempt under the Purposes and Procedures Manual of the
16 Securities Valuation Office of the National Association of Insurance
17 Commissioners.

18
19 SECTION 17. Arkansas Code § 23-63-824 is amended to read as follows:
20 23-63-824. Foreign securities.

21 (a) An insurer may ~~make~~ acquire investments, ~~in aggregate amounts not~~
22 ~~exceeding five percent (5%) or, with prior approval of the Insurance~~
23 ~~Commissioner, ten percent (10%) of its assets, and not over three percent~~
24 ~~(3%) of its assets in any one (1) investment, in securities or engage in~~
25 investment practices with entities or institutions of or in a foreign country
26 jurisdictions possessing characteristics and of a quality similar to the
27 investment required pursuant to §§ 23-63-801, 23-63-833, and 23-63-835 of
28 substantially the same type that an insurer may acquire under this subchapter
29 for investments in the United States if, as a result of and after giving
30 effect to the investment:

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

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

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

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

6 (3) The insurer does not hold more than three percent (3%) of
7 its admitted assets in investments of any kind issued, assumed, accepted,
8 insured, or guaranteed by a single foreign entity or institution.

9 (b) Except as provided in § 23-63-805, an insurer may acquire
10 investments, or engage in investment practices denominated in foreign
11 currencies, when the investments are foreign investments under subsection (a)
12 of this section, or the investments are limited to foreign currency exposure
13 as a result of the termination or expiration of a hedging transaction
14 concerning investments denominated in a foreign currency if, as a result of
15 and after giving effect to the investment:

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

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

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

27 (A) Enters into at least one (1) transaction under § 23-
28 63-841; and

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

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

36

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

2 23-63-840. ~~Collateralized mortgage obligations~~ Mortgage-backed
3 securities.

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

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

22 (2) The specific investment within that collateralized mortgage
23 obligation is not a zero coupon class, residual interest, or a class
24 designated as principal or interest only;

25 (3)(A) The obligation, participation certificate, or loan is
26 fully guaranteed or insured, as to principal and interest, by the United
27 States, an agency or instrumentality of the United States, or any state or
28 territory of the United States or any agency thereof.

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

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

35 (B) The aggregate value of any one (1) issue of an
36 obligation under subdivision (a)(4)(A) of this section shall not exceed three

1 percent (3%) of the insurer's admitted assets.

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

5 (2) The aggregate value of an insurer's investments under
6 subdivision (a)(4)(A) of this section shall not exceed fifteen percent (15%)
7 of the insurer's admitted assets unless the insurer received prior approval
8 from the Insurance Commissioner for a specified amount not to exceed thirty
9 percent (30%) of the insurer's admitted assets.

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

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

22 ~~(3) If upon enactment, the immediate application of this~~
23 ~~provision would have the effect of reducing the admitted asset value of~~
24 ~~assets held by a particular insurer, the insurer may continue to reflect as~~
25 ~~admitted those assets that would be admissible but for the enactment of this~~
26 ~~provision, until the annual statement filing for the year ended December 31,~~
27 ~~2004.~~

28 ~~(b) An insurer may invest up to ten percent (10%) of its assets in~~
29 ~~zero coupon, residual interest, or principal or interest only classes of~~
30 ~~collateralized mortgage obligations, provided that the underlying mortgages~~
31 ~~pledged to the repayment of principal and interest of the collateralized~~
32 ~~mortgage obligation are in themselves unconditionally guaranteed as to timely~~
33 ~~repayment of principal and interest by the United States or any agency or~~
34 ~~instrumentality of the United States.~~

35
36 SECTION 19. Arkansas Code Title 23, Chapter 63, Subchapter 8, is

1 amended to add an additional section to read as follows:

2 23-63-842. Asset-backed securities – Definitions.

3 (a) As used in this section:

4 (1)(A) “Asset-backed security” means any security or other
5 instrument representing or evidencing an interest in, a loan to, a
6 participation in a loan to, or any other right to receive payments from a
7 borrower included in a pool of obligations held by an issuer that has a
8 primary business activity of the acquisition and holding of financial assets,
9 directly or through a trustee, for the benefit of the issuer.

10 (B) “Asset-backed security” does not include an investment
11 authorized by any other provision of this subchapter; and

12 (2) “Financial asset” means a single asset or a pool of assets
13 consisting of interest-bearing obligations or other contractual obligations
14 representing or constituting the right to receive payment from the asset or
15 pool of assets.

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

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

24 (c) Investments in asset-backed securities under subsection (b) of
25 this section shall not exceed twenty percent (20%) of the insurer’s admitted
26 assets.

27
28 SECTION 20. Arkansas Code § 23-63-1302(7), concerning the definition
29 of "negative trend" in the Risk-Based Capital Act, is amended to read as
30 follows:

31 (7) “Negative trend” means, with respect to a life or accident
32 and health insurer or a fraternal benefit society, a negative trend over a
33 period, as determined according to the trend test calculation included in the
34 RBC instructions for a life or accident and health insurer or RBC
35 instructions for a fraternal benefit society;

36

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

4 (15) "Fraternal benefit society" means an insurance company or
5 society organized and licensed under Arkansas Code Title 23, Chapter 74.
6

7 SECTION 22. Arkansas Code § 23-63-1303(b), concerning the RBC reports
8 required under the Risk-Based Capital Act, is amended to read as follows:

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

14 (1) The risk ~~with respect to~~ for the insurer's assets;

15 (2) The risk of adverse insurance experience ~~with respect to~~ for
16 the insurer's liabilities and obligations;

17 (3) The interest rate risk ~~with respect to~~ for the insurer's
18 business; and

19 (4) Other business and relevant risks as determined in each case
20 by applying ~~the factors in the way stated in the~~ RBC instructions.
21

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

25 (B) If a life or accident and health insurer or a
26 fraternal benefit society, the life or accident and health insurer or the
27 fraternal benefit society has total adjusted capital that is greater than or
28 equal to its company action level RBC but less than the product of its
29 authorized control level RBC and ~~two and five tenths (2.5)~~ three (3) and has
30 a negative trend; or
31

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

35 (b) In the event of a mandatory control level event:

36 (1)(A) ~~With respect to~~ For a life insurer or a fraternal benefit

1 society, the commissioner shall take ~~the actions necessary~~ action to place
2 the life insurer or the fraternal benefit society under regulatory control
3 under § 23-68-101 et seq.

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

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

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

15
16 SECTION 25. Arkansas Code § 23-63-1310(c), concerning exemptions under
17 the Risk-Based Capital Act, is amended to read as follows:

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

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

22 (2) Writes direct annual premiums of two million dollars
23 (\$2,000,000) or less; and

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

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

30
31 SECTION 27. Arkansas Code § 23-64-220(c)(1)(B), concerning the
32 condition a record is stored, is amended to read as follows:

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

36 (ii) By an agent or broker's insurance company on

1 behalf of the agent or broker, relieving the agent or broker's obligation to
 2 maintain the record.

3
 4 SECTION 28. Arkansas Code § 23-64-220(c)(2), concerning the type of
 5 records that are required to be retained by a licensee, is amended to read as
 6 follows:

7 (2) As used in this subsection, "usual and customary records"
 8 means:

- 9 (A) Applications;
 10 (B) Memoranda;
 11 ~~(C) Notations of telephone conversations or other~~
 12 ~~communications;~~
 13 ~~(D) Billing information;~~
 14 ~~(E) Correspondence;~~
 15 ~~(F)~~(C) Policy information; and
 16 ~~(G)~~(D) Claims files; ~~and~~
 17 ~~(H) Any other records detailing insurer information or~~
 18 ~~insurance policies or contracts bound through the agent or broker.~~

19
 20 SECTION 29. Arkansas Code § 23-69-132(a), concerning the borrowing
 21 procedure of a domestic stock or mutual insurer of surplus, is amended to
 22 read as follows:

23 (a)(1)(A) A domestic stock or mutual insurer may borrow ~~money~~ cash or
 24 other admitted assets satisfactory to the Insurance Commissioner to defray
 25 the expenses of its organization, provide it with surplus funds, or for any
 26 purpose of its business, upon entering a written agreement that the ~~money is~~
 27 cash or other admitted assets are required to be repaid only out of the
 28 insurer's surplus in excess of that stipulated in the agreement.

29 (B) The agreement described in subdivision (a)(1) of this
 30 section may provide for interest which shall or shall not constitute a
 31 liability of the insurer as to its funds other than the excess or surplus, as
 32 stipulated in the agreement.

33 (2) ~~No~~ A commission or promotion expense shall not be paid in
 34 connection with the loan.

35
 36 SECTION 30. Arkansas Code § 23-69-132(b), concerning the treatment of

1 borrowed surplus by a domestic stock or mutual insurer, is amended to read as
2 follows:

3 (b)(1) Money Cash or other admitted assets satisfactory to the
4 commissioner ~~se~~ borrowed under subsection (a) of this section, together with
5 the interest thereon, if ~~se~~ stipulated to in the agreement, shall not form a
6 part of be:

7 (A) Included in the insurer's legal liabilities except as
8 to its surplus in excess of the amount thereof stipulated to in the
9 agreement;; or

10 (B) be the The basis of any setoff;.

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

16

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

19 Subchapter 4 — Risk Management and Own Risk Assessment Act

20

21 23-69-401. Title.

22 This subchapter shall be known and may be cited as the "Risk Management
23 and Own Risk Assessment Act".

24

25 23-69-402. Findings and intent.

26 (a) The General Assembly finds that:

27 (1) The Insurance Commissioner requires an insurer or insurance
28 group to submit confidential and privileged information to the State
29 Insurance Department to allow the commissioner to evaluate the financial
30 condition and stability of the insurer or insurance group to protect the
31 public;

32 (2) An insurer or insurance group may be reluctant to provide
33 this information to the commissioner due to the sensitive nature of the
34 information that is specific to the insurer or insurance group's
35 identification of risks material, including proprietary and trade secrets of
36 the insurer or insurance group filing the report; and

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

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

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

7 (2) An insurer or insurance group is able to share its own risk
8 and solvency assessment with the commissioner to enable the commissioner to
9 assess the financial stability of an insurer or insurance group to meet
10 policyholder obligations;

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

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

18
19 23-69-403. Definitions.

20 As used in this subchapter:

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

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

28 (3) "Own risk and solvency assessment" means a confidential
29 internal assessment, appropriate to the nature, scale, and complexity of an
30 insurer or insurance group, conducted by that insurer or insurance group of
31 the material and relevant risks associated with the insurer's or insurance
32 group's current business plan and the sufficiency of capital resources to
33 support those risks;

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

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

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

9
10 23-69-404. Risk management framework.

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

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

17
18 23-69-405. Own risk and solvency assessment – Requirements.

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

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

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

27
28 23-69-406. Own risk and solvency assessment summary.

29 (a)(1)(A) Upon request, an insurer shall submit to the Insurance
30 Commissioner no more than one (1) time a year beginning January 1, 2017, an
31 own risk and solvency assessment summary report, or any combination of
32 filings applicable to the insurer or the insurance group of which the insurer
33 is a member of, that together contain the information described in the Own
34 Risk and Solvency Assessment Guidance Manual.

35 (B) An insurer may submit a comparable report that
36 provides the most recent and substantially similar information under

1 subdivision (a)(1)(A) of this section to a commissioner in another state or
2 to the supervisor or regulator of a foreign jurisdiction provided by the
3 insurer or another member of an insurance group of which the insurer is a
4 member.

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

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

16 (1) The insurer applies the enterprise risk management process
17 described in the insurer's own risk and solvency assessment summary report;
18 and

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

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

24
25 23-69-407. Exemption – Applicability.

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

27 (1) The insurer has annual direct written and unaffiliated
28 assumed premiums, including international direct and assumed premiums, but
29 excluding premiums reinsured with the Federal Crop Insurance Corporation and
30 National Flood Insurance Program, of less than five hundred million dollars
31 (\$500,000,000); and

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

1 (b)(1) If an insurer qualifies for an exemption under subdivision
2 (a)(1) of this section and the insurance group of which the insurer is a
3 member does not qualify for an exemption under subdivision (a)(2) of this
4 section, then an own risk and solvency assessment summary report required
5 under § 23-69-406 shall include every insurer that is a member of the
6 insurance group.

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

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

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

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

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

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

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

33 (1) Maintain a risk management framework, conduct an own risk
34 and solvency assessment, and file an own risk and solvency assessment summary
35 report based on an insurer's unique circumstances, including without
36 limitation, the type and volume of business written, ownership and

1 organizational structure, federal agency requests, and international
2 supervisor requests; or

3 (2) Maintain a risk management framework, conduct an own risk
4 and solvency assessment, and file an own risk and solvency assessment summary
5 report if the insurer:

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

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

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

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

21
22 23-69-408. Own risk and solvency assessment summary report – Content.

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

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

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

34
35 23-69-409. Confidentiality.

36 (a) Any documents, materials, or other information, including an own

1 risk and solvency assessment summary report, in the possession of or under
2 the control of the State Insurance Department that are obtained by, created
3 by, or disclosed to the Insurance Commissioner or any other person under this
4 subchapter is recognized as being proprietary and containing trade secrets.

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

7 (2) The information required under this subchapter is not
8 subject to:

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

11 (B) Subpoena; or

12 (C) Discovery or admissible in evidence in any private
13 civil action.

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

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

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

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

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

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

35 (B) Proprietary and trade secret documents and materials
36 with other state, federal, and international financial regulatory agencies,

1 including members of any supervisory college as defined in § 23-63-531; and
2 (C) Any relevant information with the National Association
3 of Insurance Commissioners, or any third-party consultants designated by the
4 commissioner; and

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

12 (3) Shall maintain as confidential or privileged any documents,
13 materials, or information received with notice or the understanding that it
14 is confidential or privileged under the laws of the jurisdiction that is the
15 source of the document, material, or information;

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

19 (B) The written agreement shall:

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

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

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

35 (iv) Prohibit the National Association of Insurance
36 Commissioners or third-party consultant from storing the information shared

1 under this subchapter in a permanent database after the underlying analysis
2 is completed;

3 (v) Require prompt notice to be given to an insurer
4 whose confidential information in the possession of the National Association
5 of Insurance Commissioners or a third-party consultant under this subchapter
6 is subject to a request or subpoena to the National Association of Insurance
7 Commissioners or a third-party consultant for disclosure or production; and

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

15 (5) If an agreement involves a third-party consultant, shall
16 provide that an insurer's written consent is required before sharing the
17 requested information.

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

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

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

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

32 (2) Shall not be subject to:

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

35 (B) Subpoena; or

36 (C) Discovery or admissible in evidence in any private

1 civil action.

2
3 23-69-410. Sanctions.

4 (a) An insurer failing without just cause to timely file the own risk
5 and solvency assessment summary report under this subchapter shall be
6 required, after notice and hearing, to pay a penalty of one hundred dollars
7 (\$100) for each day's delay, to be recovered by the Insurance Commissioner,
8 and the penalty so recovered shall be paid into the General Revenue Fund
9 Account of the State Apportionment Fund.

10 (b) The maximum penalty under this section is ten thousand dollars
11 (\$10,000).

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

15
16 SECTION 32. Arkansas Code § 23-81-201 is amended to read as follows:
17 23-81-201. Title.

18 This subchapter shall be known and may be cited as the "Standard
19 Nonforfeiture Law for Life Insurance".
20

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

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

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

1 Select Mortality Factors or for the 1980 Commissioner's Extended Term
2 Insurance Table.

3 (iii) If the commissioner approves by rule any
4 Commissioner's Standard Ordinary mortality table adopted by the National
5 Association of Insurance Commissioners for use in determining the minimum
6 nonforfeiture standard for policies issued on or after the operative date of
7 the valuation manual, then that minimum nonforfeiture standard shall
8 supersede the minimum nonforfeiture standard provided by the valuation
9 manual;

10
11 SECTION 34. Arkansas Code § 23-81-209(h)(2)(G), concerning the use of
12 industrial mortality tables, is amended to read as follows:

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

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

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

33
34 SECTION 35. Arkansas Code § 23-81-209(h)(2)(H), concerning the annual
35 nonforfeiture interest rate, is amended to read as follows:

36 (H)(i) The For a policy issued before the operative date

1 of the valuation manual, the nonforfeiture interest rate per annum for any
2 policy issued in a particular calendar year shall be equal to one hundred
3 twenty-five percent (125%) of the calendar year statutory valuation interest
4 rate for the policy as defined in this subchapter, rounded to the nearest
5 one-quarter of one percent (0.25%), provided the nonforfeiture interest rate
6 shall not be less than four percent (4%).

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

11
12 SECTION 36. Arkansas Code §§ 23-84-101 and 23-84-102 are amended to
13 read as follows:

14 23-84-101. Title – Definitions.

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

17 (b) As used in this chapter:

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

19 (A) A contract that incorporates morbidity risk and
20 provides protection against economic loss resulting from accident, sickness,
21 or medical conditions; and

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

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

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

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

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

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

34 (A) A contract that does not incorporate mortality or
35 morbidity risks; and

36 (B) The definition or description of "deposit-type

1 contract" specified in the valuation manual;

2 (5) "Life insurance" means:

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

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

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

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

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

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

21 (a) Life, accident, and health annual
22 statements;

23 (b) Health annual statements; and

24 (c) Fraternal annual statements; and

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

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

36 (i) At least three-fourths (3/4) of the members of

1 the National Association of Insurance Commissioners that vote on the change
2 to the valuation manual, but not less than a majority of the total
3 membership; and

4 (ii) Members of the National Association of
5 Insurance Commissioners representing jurisdictions totaling greater than
6 seventy-five percent (75%) of the direct premiums written as reported in the
7 annual statements most recently available before the vote in subdivision
8 (6)(B)(i) of this section for:

9 (a) Life, accident, and health annual
10 statements;

11 (b) Health annual statements; and

12 (c) Fraternal annual statements;

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

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

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

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

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

30 (B) Meets the requirements specified in the valuation
31 manual;

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

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

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

1 (B) Observed events of very significant size or magnitude
2 exist; and

3 (13) "Valuation manual" means the manual of valuation
4 instructions adopted by the National Association of Insurance Commissioners
5 that is approved for use under this chapter by the commissioner.

6
7 23-84-102. Valuation of reserves by ~~commissioner~~ Insurance
8 Commissioner.

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

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

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

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

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

35 (B) Sections 23-84-115 and 23-84-116 do not apply to a
36 policy or contract issued on or after January 1, 1960, and before the

1 operative date of the valuation manual; and

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

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

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

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

15 (2) Sections 23-84-114 – 23-84-116 shall apply.

16
17 SECTION 37. Arkansas Code § 23-84-103(a), concerning minimum valuation
18 standards, is amended to read as follows:

19 (a) Except as ~~otherwise~~ provided in §§ 23-84-104, ~~and~~ 23-84-105, and
20 23-84-114, the minimum standard for the valuation of all policies and
21 contracts issued prior to the operative date of § 23-81-213(a) shall be
22 provided by the laws in effect immediately prior to January 1, 1960.

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

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

36

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

3 (2) For ~~all~~ industrial life insurance policies issued on the
4 standard basis excluding any disability and accidental death benefits in such
5 policies, the 1941 Standard Industrial Mortality Table for policies issued
6 prior to the operative date of § 23-81-213(c) and, for policies issued on or
7 after the operative date of § 23-81-213(c), the commissioner's 1961 Standard
8 Industrial Mortality Table, or any industrial mortality table, adopted after
9 1980 by the National Association of Insurance Commissioners, that is approved
10 by regulations promulgated by the commissioner for use in determining the
11 minimum standard of valuation for the policies;
12

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

15 (a) Except as otherwise provided in §§ 23-84-107 and 23-84-110,
16 reserves according to the Insurance Commissioner's reserve valuation method,
17 for the life insurance and endowment benefits of policies providing for a
18 uniform amount of insurance and requiring the payment of uniform premiums,
19 shall be the excess, if any, of the present value at the date of valuation,
20 of such future guaranteed benefits provided for by the policies, over the
21 then-present value of any future modified net premiums therefor. The modified
22 net premiums for any policy shall be a uniform percentage of the respective
23 contract premiums for the benefits such that the present value, at the date
24 of issue of the policy, of all modified net premiums shall be equal to the
25 sum of the then-present value of benefits provided for by the policy and the
26 excess of subdivision (a)(1) of this section over subdivision (a)(2) of this
27 section, as follows:
28

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

31 (b) In no event shall the aggregate reserves for all policies,
32 contracts, and benefits be less than the aggregate reserves determined by the
33 ~~qualified~~ appointed actuary to be necessary to render the opinion required by
34 § 23-84-112.
35

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

1 23-84-109. Calculation of reserves – Standards of valuation.

2 (a) Reserves for ~~all policies and contracts issued prior to the~~
3 ~~applicable operative date of this chapter~~ before January 1, 1960, may be
4 calculated, at the option of the insurer, according to any standards which
5 produce greater aggregate reserves for all the policies and contracts than
6 the minimum reserves required by the laws in effect immediately prior to the
7 date.

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

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

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

27
28 SECTION 43. Arkansas Code § 23-84-110(a), concerning the calculation
29 of reserves, is amended to read as follows:

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

1 policy or contract, or the reserve calculated by the method actually used for
2 the policy or contract but using the minimum valuation standards of mortality
3 and rate of interest and replacing the valuation net premium by the actual
4 gross premium in each contract year for which the valuation net premium
5 exceeds the actual gross premium. The minimum valuation standards of
6 mortality and rate of interest referred to in this section are those
7 standards stated in §§ 23-84-103 and 23-84-104.

8
9 SECTION 44. Arkansas Code § 23-84-112 is amended to read as follows:
10 23-84-112. Actuarial opinion of reserves.

11 (a) Actuarial Opinion Prior to the Operative Date of the Valuation
12 Manual.

13 (1) General.

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

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

24 ~~(b)(2)~~ Actuarial Analysis of Reserves and Assets Supporting Such
25 Reserves.

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

1 associated with the policies and contracts.

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

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

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

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

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

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

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

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

33 ~~(4)(D)~~ In the case of an opinion required to be submitted
34 by a foreign or alien company, the commissioner may accept the opinion filed
35 by that company with the insurance supervisory official of another state if
36 the commissioner determines that the opinion reasonably meets the

1 requirements applicable to a company domiciled in this state;

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

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

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

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

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

21 ~~(i)(a)~~ With the written consent of the
22 company; or

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

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

33 (b) Actuarial Opinion of Reserves after the Operative Date of the
34 Valuation Manual.

35 (1) General.

36 (A) A company with an outstanding policy or contract in

1 this state that is subject to regulation by the commissioner annually shall
2 submit the opinion of an appointed actuary as to whether the reserves and
3 related actuarial items held in support of the policy or contract:

4 (i) Are computed appropriately;

5 (ii) Are based on assumptions that satisfy
6 contractual provisions;

7 (iii) Are consistent with prior reported amounts;

8 and

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

10 (B) The valuation manual shall prescribe the content and
11 scope of the opinion.

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

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

29 (A) A memorandum in the form and substance specified in
30 the valuation manual and acceptable to the commissioner shall be prepared to
31 support each actuarial opinion; and

32 (B) If the insurance company fails to provide a
33 supporting memorandum at the request of the commissioner within a period
34 specified in the valuation manual or the commissioner determines that the
35 supporting memorandum provided by the insurance company fails to meet the
36 standards prescribed by the valuation manual or is otherwise unacceptable to

1 the commissioner, the commissioner may engage a qualified actuary at the
2 expense of the company to review the opinion and the basis for the opinion
3 and prepare the supporting memorandum required by the commissioner.

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

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

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

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

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

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

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

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

28 (D) Disciplinary action by the commissioner against the
29 company or the appointed actuary shall be prescribed by rule of the
30 commissioner.

31
32 SECTION 45. Arkansas Code Title 23, Chapter 84, Subchapter 1, is
33 amended to add additional sections to read as follows:

34 23-84-114. Minimum standard for accident and health insurance.

35 (a) The Insurance Commissioner shall promulgate rules containing the
36 minimum standards that apply to the valuation of accident and health

1 insurance issued on or after January 1, 1960, but before the operative date
2 of the valuation manual.

3 (b) For accident and health insurance issued on or after the operative
4 date of the valuation manual, the standard prescribed in the valuation manual
5 is the minimum standard of valuation required under § 23-84-102(b).

6
7 23-84-115. Valuation of policy or contract issued on or after operative
8 date of the valuation manual.

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

13 (b) The valuation manual shall specify:

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

16 (A) The Insurance Commissioner's reserve valuation method
17 for life insurance contracts, other than annuity contracts, subject to § 23-
18 84-102(b);

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

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

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

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

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

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

35 (C) Procedures for corporate governance and oversight of
36 the actuarial function, and a process for appropriate waiver or modification

1 of those procedures;

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

4 (A) That is consistent with the minimum standard of
5 valuation before the operative date of the valuation manual; or

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

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

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

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

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

26 (A) Perform an actuarial examination of the company and
27 opine on the appropriateness of any reserve assumption or method used by the
28 company; or

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

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

36 (e) The commissioner may:

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

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

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

6
7 23-84-116. Requirements of principle-based valuation.

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

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

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

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

23 (3) Incorporates assumptions that are:

24 (A) Prescribed by the valuation manual; or

25 (B) For assumptions that are not prescribed by the
26 valuation manual:

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

29 (ii) To the extent that company data is not
30 available, relevant, or statistically credible, established utilizing other
31 relevant, statistically credible experience; and

32 (4) Provides margins for uncertainty, including adverse
33 deviation and estimation error, such that the greater the uncertainty, the
34 larger the margin and resulting reserve.

35 (b) A company using a principle-based valuation for one (1) or more
36 policies or contracts subject to this section as specified in the valuation

1 manual shall:

2 (1) Establish procedures for corporate governance and oversight
3 of the actuarial valuation function consistent with those described in the
4 valuation manual;

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

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

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

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

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

19
20 23-84-117. Experience reporting.

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

24
25 23-84-118. Confidentiality.

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

27 (1) A memorandum in support of an opinion submitted under § 23-
28 84-112 and any other documents, materials, and other information, including
29 without limitation all working papers and copies of working papers created,
30 produced, or obtained by or disclosed to the Insurance Commissioner or any
31 other person in connection with the memorandum;

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

1 (B) To the extent that an examination report or other
2 material prepared in connection with an examination under § 23-61-201 et seq.
3 is not held as private and confidential information under § 23-61-207, an
4 examination report or other material prepared in connection with an
5 examination made under § 23-84-115(d) is not confidential information under
6 this section;

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

16 (4) A principle-based valuation report developed under § 23-84-
17 116(b)(3) and any other document, material, and other information, including
18 without limitation all working papers and copies of working papers created,
19 produced, or obtained by or disclosed to the commissioner or any other person
20 in connection with the report;

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

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

35 (b)(1)(A) Except as provided in this section, a company's confidential
36 information is confidential by law and privileged and shall not be subject

1 to:

2 (i) The Freedom of Information Act of 1967, § 25-19-
3 101 et seq.;

4 (ii) Subpoena; or

5 (iii) Discovery or admissible in evidence in a
6 private civil action.

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

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

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

17 (i) With other state, federal, and international
18 regulatory agencies and with the National Association of Insurance
19 Commissioners and its affiliates and subsidiaries;

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

25 (iii) With state, federal, and international law
26 enforcement officials.

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

33 (4) The commissioner may receive documents, materials, data, and
34 other information, including otherwise confidential and privileged documents,
35 materials, data, or information, from the National Association of Insurance
36 Commissioners and its affiliates and subsidiaries, from regulatory or law

1 enforcement officials of other foreign or domestic jurisdictions, and from
2 the Actuarial Board for Counseling and Discipline or its successor and shall
3 maintain as confidential or privileged any document, material, data, or other
4 information received with notice or the understanding that it is confidential
5 or privileged under the laws of the jurisdiction that is the source of the
6 document, material, or other information.

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

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

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

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

20 (c) Notwithstanding subsection (b) of this section, any confidential
21 information of a company specified in subdivision (a)(1) or subdivision
22 (a)(4) of this section:

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

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

30 (3) Is no longer confidential information protected by this
31 section if any portion of a memorandum in support of an opinion submitted
32 under § 23-84-112 or a principle-based valuation report developed under § 23-
33 84-116(b)(3) is:

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

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

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

2
3 23-84-119. Single-state and small company exemptions.

4 (a)(1) The Insurance Commissioner may exempt specific product forms or
5 product lines of a domestic company that is licensed and doing business only
6 in this state from the requirements of §§ 23-84-115 – 23-84-117 if:

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

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

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

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

16 (B) Any reference to § 23-84-115 found in §§ 23-84-103 –
17 23-84-112 and 23-84-114 do not apply to the company.

18 (b)(1) A company that has less than three hundred million dollars
19 (\$300,000,000) of ordinary life premiums, that is licensed and doing business
20 in this state, and that is subject to the requirements of §§ 23-84-115 – 23-
21 84-118, may hold reserves based on the mortality tables and interest rates
22 defined by the valuation manual for net premium reserves using the
23 methodology defined in §§ 23-84-106 and 23-84-108 – 23-84-111 as applicable
24 to ordinary life insurance in lieu of the reserves required by §§ 23-84-115 –
25 23-84-118, if:

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

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

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

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

