

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/23/15 S3/25/15
A Bill

SENATE BILL 881

By: Senator Rapert
By: Representative Collins

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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



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

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

(A) Its state of domicile; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)~~(iii) Certify ~~either~~;

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

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

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

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

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

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

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

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

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

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

(a) The lines of business involved;

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

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

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

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

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

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

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

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

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

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

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

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

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

making application for accreditation;

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

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

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

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

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

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

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

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

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

(D) Agree to:

(i) Submit to the jurisdiction of this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

revoking the certification.

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

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

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

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

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

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

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

(E) For obligations incurred by a certified reinsurer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

recoverables proportionate to its own book of business.

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

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

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

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

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

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

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

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

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

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

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

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

(1) *Cash;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-62-309. Applicability – Reinsurance agreements.

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

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

23-63-116. Retaliatory tax credit.

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

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

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

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

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

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

(i) Long-term care policies;

(ii) Lifelong-term care hybrid policies; or

(iii) Annuity long-term care hybrid products.

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

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

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

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

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

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

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

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

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

(11) "Internationally active insurance group" means an insurance holding company system that:

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

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

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

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

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

(m) Enterprise Risk Filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Production.

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

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

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

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

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

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

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

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

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

part of the commissioner's duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Subject to:

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

(ii) Subpoena; or

(iii) Discovery; or

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

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

23-63-531. Supervisory colleges.

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

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

(A) Initiating the establishment of a supervisory college;

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

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

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

(E) Establishing a crisis management plan.

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

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

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

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

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

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

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

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

(2) However, the commissioner may otherwise acknowledge another

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Governance, risk assessment, and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) bearing ~~Bear~~ interest at a fixed rate, with mandatory principal and interest due at specified times, and if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for ~~a period of~~ five (5) fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half ($1\frac{1}{2}$) times its average annual fixed charges applicable to the period and if, during either of the last two (2) years of the period, the net earnings have been not less than one and one-half ($1\frac{1}{2}$) times its fixed charges for the year.

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

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

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

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

(2) The securities are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-63-840. Collateralized mortgage obligations Mortgage-backed securities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

amended to add an additional section to read as follows:

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

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Writes direct business only in this state;
- (2) Writes direct annual premiums of two million dollars (\$2,000,000) or less; and
- (3) Assumes no reinsurance more than five percent (5%) of direct premium written.

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

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

- (B) A record required to be kept by this subsection may be maintained:
- (i) ~~in~~ In its original form, electronically, or as a hard copy; and
 - (ii) By an agent or broker's insurance company on

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

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

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

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

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

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

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

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

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

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

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

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

(B) ~~be the~~ The basis of any setoff;

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

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

Subchapter 4 — Risk Management and Own Risk Assessment Act

23-69-401. Title.

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

23-69-402. Findings and intent.

(a) The General Assembly finds that:

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

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

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

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

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

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

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

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

23-69-403. Definitions.

As used in this subchapter:

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

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

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

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

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

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

23-69-404. Risk management framework.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-69-407. Exemption – Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-69-409. Confidentiality.

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

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

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

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

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

(B) Subpoena; or

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

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

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

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

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

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

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

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

including members of any supervisory college as defined in § 23-63-531; and

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

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

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

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

(B) The written agreement shall:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Shall not be subject to:

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

(B) Subpoena; or

(C) Discovery or admissible in evidence in any private

civil action.

23-69-410. Sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-84-101. Title – Definitions.

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

(b) As used in this chapter:

(1) "Accident and health insurance" means:

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

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

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

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

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

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

(4) "Deposit-type contract" means:

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

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

contract" specified in the valuation manual;

(5) "Life insurance" means:

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

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

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

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

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

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

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

(b) Health annual statements; and

(c) Fraternal annual statements; and

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

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

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

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

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

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

(b) Health annual statements; and

(c) Fraternal annual statements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operative date of the valuation manual; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) General.

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

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

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

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

associated with the policies and contracts.

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

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

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

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

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

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

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

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

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

requirements applicable to a company domiciled in this state;

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

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

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

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

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

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

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

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

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

(1) General.

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

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

(i) Are computed appropriately;

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

(iii) Are consistent with prior reported amounts;

and

(iv) Comply with applicable laws of this state.

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

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

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

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

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

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

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

(A) An opinion governed by this subsection shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The valuation manual shall specify:

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

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

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

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

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

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

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

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

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

of those procedures;

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

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

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

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

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

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

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

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

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

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

(e) The commissioner may:

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

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

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

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

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

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

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

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

(3) Incorporates assumptions that are:

(A) Prescribed by the valuation manual; or

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

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

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

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

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

manual shall:

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

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

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

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

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

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

23-84-117. Experience reporting.

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

23-84-118. Confidentiality.

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

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

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

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

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

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

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

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

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

to:

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

(ii) Subpoena; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Cited by the company in its marketing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee issued or assumed by the company after the operative date of the valuation manual meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.

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

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

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

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

/s/Rapert