

Chapter 69.

Domestic Stock And Mutual Insurers.

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Subchapter 1. General Provisions.

23-69-101. Scope.

Sections 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156 shall apply only to domestic stock insurers and domestic mutual insurers transacting, or proposing to transact, insurance on the legal reserve plan.

23-69-102. Definitions.

As used in §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, unless the context otherwise requires:

- (1) A "stock" insurer is an incorporated insurer with capital divided into shares and owned by its stockholders;
- (2) A "mutual" insurer is an incorporated insurer without permanent capital stock and the governing body of which is elected as provided in §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156.

23-69-103. Inapplicability of general corporation statutes.

The statutes of this state relating to the powers and procedures of corporations other than insurance corporations shall not apply to domestic stock insurers and domestic mutual insurers, except as stated in § 23-69-128.

23-69-104. Powers of company not enlarged.

Nothing in §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156 shall be construed to authorize any company to engage in any kind of insurance business not authorized by its articles of incorporation nor to authorize any foreign or alien company to engage in any kind of insurance business in this state not covered by its certificate of authority to do business in this state.

23-69-105. Incorporation.

- (a) This section applies to stock and mutual insurers hereafter incorporated in this state.
- (b) One (1) or more persons may act as the incorporator or incorporators of a stock or mutual insurer by delivering articles of incorporation to the Insurance Commissioner for filing.
- (c) The incorporator or incorporators shall execute articles of incorporation in duplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state and show:
 - (1) The name of the corporation. If a mutual, the word "mutual" may be a part of the name. An alternative name may be specified for use in jurisdictions wherein

- conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein;
- (2) The duration of its existence, which may be perpetual;
 - (3) The kinds of insurance, as defined in the Arkansas Insurance Code, which the corporation is formed to transact;
 - (4) If a stock corporation, its authorized capital stock, the number of shares of stock into which divided, the par value of each share, which par value shall be at least one dollar (\$1.00). Shares without par value shall not be authorized;
 - (5) If a stock corporation, the extent, if any, to which shares of its stock shall be subject to assessment;
 - (6) If a mutual corporation, other than a life insurer, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. The liability shall be as stated in the articles of incorporation but shall not be less than one (1) nor more than six (6) times the premium for the member's policy at the annual premium rate for a term of one (1) year;
 - (7) The number of directors, not less than three (3), who shall constitute the board of directors and conduct the affairs of the corporation and the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than one (1) year after the date of incorporation;
 - (8) The name of the city or town and county in this state in which is to be located its home office and principal place of business;
 - (9) Such other provisions, not inconsistent with law, deemed appropriate by the incorporator or incorporators; and
 - (10) The name and residence address of each incorporator.

23-69-106. Articles of incorporation - Filing and approval.

- (a)(1) The incorporator or incorporators of a proposed domestic insurer incorporated under this subchapter, particularly §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, shall deliver the duplicate originals of the articles of incorporation thereof to the Insurance Commissioner together with the filing fees therefor specified in § 23-61-401 or any companion rule and regulation of the commissioner.
 - (2) If the commissioner finds that the articles comply with law, he or she shall endorse his or her approval upon each set of the articles and issue his or her certificate of incorporation.
 - (3) He or she shall thereupon place one (1) set of the articles on file in his or her office, and return the other set of the articles, for the records of the corporation, together with his or her certificate of incorporation, to the incorporator or incorporators or to the representative or representatives of the incorporator or incorporators.
- (b) If the commissioner finds that the proposed articles of incorporation do not comply with law or that the corporation, if organized, could not meet the requirements for a certificate of authority under § 23-63-202 or other provisions of the Arkansas Insurance Code, the commissioner shall refuse to approve the articles of incorporation

and shall return the duplicate sets thereof to the incorporator or incorporators, together with a written statement of his or her reasons for the nonapproval. The filing fee paid pursuant to subsection (a) of this section shall not be returnable.

- (c) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the commissioner, but it shall not transact business as an insurer until it has applied for and received from the commissioner a certificate of authority as provided by the Arkansas Insurance Code.
- (d) A copy of the certificate of incorporation, certified by the commissioner, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

23-69-107. Articles of incorporation - Amendment.

- (a) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.
- (b) A domestic mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.
- (c)(1) Upon adoption of an amendment the insurer shall make in duplicate under its corporate seal a certificate, sometimes referred to as "articles of amendment", setting forth the amendment and the date and manner of the adoption thereof. The certificate shall be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds.
- (2) The insurer shall deliver to the Insurance Commissioner the duplicate originals of the certificate, together with the filing fee specified therefor in § 23-61-401 or by rule and regulation.
- (3) If he or she finds that the certificate and amendments comply with law, the commissioner shall endorse his or her approval upon each of the duplicate originals, place one (1) set on file in his or her office, and return the remaining set to the insurer for its corporate records.
- (4) The amendment shall be effective when the commissioner has endorsed his or her approval on the certificate of amendment and placed it on file in his or her office.
- (d) If the commissioner finds that the proposed amendment or certificate does not comply with law, the commissioner shall not approve it and shall return the duplicate certificate of amendment to the insurer together with his or her written statement of reasons for nonapproval. The filing fee shall not be returnable.
- (e)(1) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he or she has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such reduction.
- (2) If any reduction of capital stock is effectuated, the insurer may require return of

the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as the stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of the reduction.

23-69-108. Officers.

- (a)(1) Every domestic stock or mutual insurer shall have a president, who shall be a director, and a secretary and a treasurer. They shall be chosen by the board of directors and shall hold their offices until their respective successors are chosen and qualify.
- (2) Every domestic stock insurer or mutual insurer may also have one (1) or more vice presidents, who need not be directors; assistant secretaries and assistant treasurers, who need not be directors; and such other officers, agents, and factors as may be deemed necessary.
- (b) All officers, agents, and factors shall be chosen in such manner, hold their offices for such terms, and have powers and duties as may be prescribed by the bylaws or determined by the board of directors.
- (c) Any person may hold two (2) or more offices, except that the president shall not be also the secretary or an assistant secretary of the insurer.

23-69-109. Pecuniary interest of officers, directors, employees, etc.

- (a) Any officer or director, any member of any committee, or any employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds:
 - (1) Shall not deposit or invest the funds except in the insurer's corporate name;
 - (2) Shall not borrow the funds of the insurer;
 - (3) Shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of the insurer except as a stockholder or member;
 - (4) Shall not take or receive to his or her own use any fee, brokerage commission, gift, or other consideration for or on account of any transaction made by or on behalf of the insurer.
- (b) No insurer shall guarantee any financial obligation of any of its officers or directors.
- (c) This subsection shall not prohibit a director or officer, member of a committee, or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.
- (d) The Insurance Commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (a) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private, professional, or business capacity of the director or the corporation or firm.

23-69-110. Vacancies on the board of directors.

- (a) Vacancies on the board of directors may be filled by the remaining members of the board, and each person so elected shall be a director until his or her successor is elected by the stockholders or members, at the next annual meeting of stockholders or members, or at any special meeting of stockholders or members called for that purpose and held prior thereto.
- (b) This section shall not apply to insurers organized and duly licensed to transact business prior to January 1, 1960, if the bylaws or articles of incorporation of the insurers provide for other methods of filling vacancies on the board of directors.

23-69-111. Corporate powers and duties.

- (a) An insurance corporation formed under §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, or existing on January 1, 1960, and of a type which might be formed under §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, shall have the same capacity to act possessed by individuals, but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.
- (b) Without affecting the authority contained in subsection (a) of this section, every insurance corporation formed under §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156 shall have the following corporate powers:
 - (1) To have succession by its corporate name for the period stated in its articles;
 - (2) To sue and be sued in a corporate name;
 - (3) To adopt, use, and alter a corporate seal, which shall show the year of incorporation;
 - (4) To acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;
 - (5) To transact insurance;
 - (6) To conduct its affairs through its directors, officers, employees, agents, and representatives thereunto authorized;
 - (7) To make bylaws not inconsistent with law for the exercise of its corporate powers; for the management, regulation, and government of its affairs and property, including, but not limited to, transfer of its stock and calling and holding of meetings of its directors, stockholders, or members; and to modify or amend the bylaws;
 - (8) To exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in the articles; and
 - (9) To dissolve and wind up, or be dissolved and wound up, in the manner provided by law.
- (c) An insurer shall have power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

23-69-112. Initial qualifications - Domestic mutuals.

- (a) When newly organized, a domestic mutual insurer may be authorized to transact any one (1) of the kinds of insurance listed in §§ 23-62-101 - 23-62-108.
- (b) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under the Arkansas Insurance Code and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at an adequate rate approved by the Insurance Commissioner, and must have surplus funds on hand as of the date the insurance coverages are to become effective in amounts equal to or exceeding those surplus funds required of a foreign mutual insurer in §§ 23-63-205 and 23-63-207.

23-69-113. Formation of nonlife mutual insurer - Bond required.

- (a) Before soliciting any applications for insurance required under § 23-69-112 as qualification for the certificate of authority, the incorporator or incorporators of the proposed insurer shall file with the Insurance Commissioner a corporate surety bond or other acceptable securities in the penal sum of one hundred thousand dollars (\$100,000) in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:
 - (1) For the prompt return to applicant members of all premiums collected in advance;
 - (2) For payment of all indebtedness of the corporation; and
 - (3) For payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within one (1) year from and after the date of its certificate of incorporation.
- (b) In lieu of a bond, the incorporator or incorporators may deposit with the commissioner one hundred thousand dollars (\$100,000) in acceptable securities or United States Government bonds, negotiable and payable to the bearer, with a market value at all times of not less than one hundred thousand dollars (\$100,000) to be held in trust upon the same conditions as required for the bond or other securities.
- (c) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.
- (d) This section shall not apply to mutual insurers licensed on or before August 13, 2001.

23-69-114. Formation of nonlife mutual insurer - Applications for insurance.

- (a) Upon receipt of the Insurance Commissioner's approval of the bond or deposit as provided in § 23-69-113, the directors and officers of the proposed domestic mutual insurer may commence solicitation of the requisite applications for insurance policies as they may accept, and they may receive deposits of premiums thereon.
- (b) All applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.
- (c) All applications shall provide that:
 - (1) Insurance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

- (2) No insurance is in effect unless and until the certificate of authority has been issued; and
- (3) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than one (1) year after the date of the certificate of incorporation.
- (d) All qualifying premiums collected shall be in cash.
- (e) Solicitation for qualifying applications for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subdivision (c)(3) of this section to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under § 23-64-101 et seq.

23-69-115. Trust deposit of premiums - Issuance of policies - Mutual insurers.

- (a) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with § 23-69-114(c)(3). The corporation shall file an executed copy of the trust agreement with the Insurance Commissioner.
- (b) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which the applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by the policies shall be effective as of the date of the certificate of authority, or thereafter as provided by the policies.

23-69-116. Failure to complete organization - Mutual insurers.

If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one (1) year from and after the date of its certificate of incorporation, the corporation shall be dissolved by the Insurance Commissioner. The commissioner shall then return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under § 23-69-115.

23-69-117. Additional kinds of insurance - Mutual insurers.

A domestic mutual insurer, after being authorized to transact one (1) kind of insurance, may be authorized by the Insurance Commissioner to transact such additional kinds of insurance as are permitted under § 23-63-204, while otherwise in compliance with the Arkansas Insurance Code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further to the additional expendable surplus

requirements of § 23-63-207 applicable to such a stock insurer.

23-69-118. Membership - Mutual insurers.

- (a) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of membership, and the policy shall so specify.
- (b) Any person, government, or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of a corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of the membership and shall not be personally liable upon any contract of insurance for acting in a representative capacity.
- (c) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which the corporation is organized and as such granted as the rights and powers expressly conferred by its articles of incorporation.

23-69-119. Bylaws - Mutual insurers.

- (a)(1) A domestic mutual insurer shall have bylaws consistent with the provisions of § 23-69-111(b)(7).
- (2) The initial board of directors of a domestic mutual insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting.
- (3) The members shall have power to make, modify, and revoke bylaws.
- (b) The bylaws shall provide:
 - (1) That each member is entitled to one (1) vote upon each matter coming to a vote at meetings of members or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by the member, or upon other reasonable factors. A member shall have the right to vote in person or by his or her written proxy. No proxy shall be made irrevocable or for longer than a reasonable period of time;
 - (2) For election of directors by the members and the number, qualifications, terms of office, and powers of directors;
 - (3) The time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of the meeting;
 - (4) The number, designation, election, terms, and powers and duties of the respective corporate officers;
 - (5) For deposit, custody, disbursement, and accounting for corporate funds; and
 - (6) For any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.
- (c) No provision in the bylaws for determining a quorum of members at any meeting

thereof of less than a majority of all the insurer's members shall be effective unless approved by the Insurance Commissioner. This subsection shall not affect any other provision of law requiring the vote of a larger percentage of members for a specified purpose.

- (d)(1) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto.
- (2) The commissioner shall disapprove any bylaw provision deemed by him or her to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof.
- (3) The insurer shall not, after receiving written notice of the disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

23-69-120. Meetings of stockholders or members.

- (a) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state or in such other place within the State of Arkansas as shall be specified by its articles of incorporation, or articles of association.
- (b) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.
- (c) Each insurer shall hold an annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than five (5) days' prior notice shall be given of the meeting in the manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.
- (d) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors, upon not less than five (5) days' notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business of which notice was not so given shall be transacted at the meeting. The bylaws may also provide for the calling of special meetings by a designated committee of the board of directors, by one (1) or more designated officers of the insurer, or by a specified proportion of the stockholders or members.
- (e) If more than fifteen (15) months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call a meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-third (1/3) of the voting power of all stockholders or members, it shall be the duty of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix in the written notice thereof, not less than five (5) nor more than sixty (60) days after the receipt of the request. If the secretary fails to issue the call, the director, stockholders, or members making the request may do so.
- (f) A stockholders' or members' meeting held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

- (1) The presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders, or of all members shall constitute a quorum;
- (2) The stockholders or members present at an organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;
- (3) If any necessary officer fails to attend the meeting, any stockholder or member present may be elected to act temporarily in lieu of the absent officer;
- (4) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the adjourned meeting, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and
- (5) An annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

23-69-121. Stockholders' voting rights.

- (a) Unless otherwise provided in the articles of incorporation or an amendment thereof, every stockholder of record of a domestic stock insurer shall be entitled, at each meeting of stockholders thereof and upon each proposal presented at the meeting, to one (1) vote for each share of stock standing in his or her name on the books of the insurer.
- (b)(1) The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding forty (40) days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect.
- (2) However, in lieu of closing the stock transfer books as described in this section, the bylaws may fix or authorize the board of directors to fix in advance a date, not exceeding forty (40) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect as a record date for the determination of the stockholders entitled to notice of, and to vote at, the meeting, or entitled to receive payment of any dividend or to any allotment of rights, or to exercise the rights in respect of any change, conversion, or exchange of capital stock. In such cases the stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to the notice of, and to vote at, the meeting or to receive payment of such a dividend, or to receive such an allotment of rights, or to exercise those rights, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any record fixed as described in this section.

23-69-122. Proxies - Stock insurers.

- (a) Every proxy of a stockholder of an insurer shall be revocable at will, and this provision cannot be waived.

- (b) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.
- (c) The Insurance Commissioner shall have the authority to:
 - (1) Regulate the solicitation of proxies by any person;
 - (2) Require the disclosure of information deemed relevant to an understanding of issues and matters with respect to which proxies are, or are proposed to be, solicited;
 - (3) Specify general requirements as to form and contents of proxies;
 - (4) Determine the length of time for which proxies may be effective unless sooner revoked;
 - (5) Prohibit solicitations of proxies which do not comply with such rules and regulations as the commissioner may issue hereunder, or as to which disclosures required by the rules and regulations are not made;
 - (6) Prohibit the making or use of false or misleading statements or the distribution of any false or misleading material with respect to the solicitation of any proxy or with respect to any election or election contest; and
 - (7) Issue such other rules and regulations respecting proxies and elections as the commissioner may deem necessary or appropriate in the public interest or for the protection of stockholders of insurers.
- (d) Rules and regulations issued by the commissioner under authority of this section shall be made or amended as provided in § 23-61-108.
- (e) Insofar as may be practical, rules and regulations with respect to proxies, consents, or authorizations then currently approved or formulated by the National Association of Insurance Commissioners, or its successor organization, shall be followed.

23-69-123. Buying of vote or proxy - Corrupt and dishonest practices prohibited.

- (a) No person shall buy or sell a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any meeting.
- (b) Violation of this section shall be punishable as provided in § 23-60-108.

23-69-124. Contingent liability of nonlife mutual members.

- (a)(1) Each member of a domestic mutual insurer other than a life insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.
- (2) Termination of the policy of any member shall not relieve the member of contingent liability for his or her proportion, if any, of the obligations of the insurer which accrued while the policy was in force.
- (3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.
- (b)(1) If at any time the assets of a domestic mutual insurer other than a life insurer are

less than its liabilities and the minimum amount of surplus required to be maintained by it by the Arkansas Insurance Code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the twelve (12) months preceding the date notice of the assessment was mailed to them, and the members shall be liable to the insurer for the amount so assessed.

- (2) The assessment shall be for such an amount as is required to cure the deficiency and to provide a reasonable amount of working funds above the minimum amount of surplus, but working funds so provided shall not exceed five percent (5%) of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.
- (3) In levying an assessment on policies providing for contingent liability, the assessment shall be computed on the basis of premiums earned on the policies.
- (4) No member shall have an offset against any assessment for which he or she is liable, on account of any claim for unearned premium or loss payable.

23-69-125. Contingent liability and assessability of policies - Mutual insurers.

- (a)(1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the Insurance Commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.
- (2) No domestic mutual legal reserve life insurer shall at any time issue policies providing for or subject to contingent liability or assessment of members.
- (b)(1) The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for the authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked.
- (2) This subsection does not apply to domestic mutual legal reserve life insurers.

23-69-126. Participating policies.

- (a) A domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same classifications.
- (b) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. This subsection shall not apply as to life policy dividends payable for a dividend year in advance, contingent upon payment of the premium for the year.

23-69-127. Consideration for stock.

- (a) Shares of stock of a domestic stock insurer shall be issued for a consideration having a value in the judgment of the insurer's board of directors of not less than the par value of the stock so issued.
- (b) In the absence of fraud, or willful over-valuation or under-valuation in the transaction, the judgment of the directors as to the value of any consideration shall be conclusive.

23-69-128. Transfer of stock.

The provisions of chapter 8 of the Uniform Commercial Code, § 4-8-101 et seq., to the extent applicable, shall apply as to stock of a domestic stock insurer.

23-69-129. Dividends to stockholders.

- (a) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from net profits on its business.
- (b) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under § 23-69-132.
- (c) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

23-69-130. Dividends to mutual policyholders.

- (a) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.
- (b) A dividend otherwise proper may be payable out of the savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

23-69-131. Unauthorized dividends prohibited.

- (a) Any director of a domestic stock or mutual insurer who votes for or concurs in the declaration or payment of a dividend, other than as authorized under § 23-69-129 or § 23-69-130, to stockholders or members shall upon conviction be guilty of a misdemeanor and shall be jointly and severally liable, together with other directors likewise voting for or concurring, for any loss sustained by the insurer.
- (b) Any stockholder receiving such a dividend shall be liable in the amount thereof to the insurer.
- (c) The Insurance Commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid a dividend other than as so authorized.

23-69-132. Borrowed surplus.

- (a) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement 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. No commission or promotion expense shall be paid in connection with the loan.
- (b) Money so borrowed, together with the interest thereon, if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but, until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.
- (c)(1) Any loan to an insurer shall be subject to the Insurance Commissioner's approval.
 - (2) The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement.
 - (3) The loan and agreement shall be deemed approved unless, within fifteen (15) days after the date of filing, the insurer is notified of the commissioner's disapproval and the reasons therefor.
 - (4) The commissioner shall disapprove any proposed loan or agreement if he or she finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.
- (d) Any loan to an insurer or substantial portion thereof shall be repaid by the insurer when no longer necessary for the purpose originally intended. No repayment of the loan shall be made by an insurer unless it is approved by the commissioner in advance.
- (e) This section shall not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions nor to loans secured by pledge or mortgage of assets.

23-69-133. Stockholders' liability.

- (a) Every holder of shares of stock of a domestic stock insurer not fully paid shall be personally liable to the insurer's creditors for the insurer's debts to an amount equal to the amount unpaid on the shares held by him or her.
- (b) Anything in §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156 to the contrary notwithstanding, a holder of shares who has acquired the shares in good faith without knowledge that they were not paid in full or to the extent stated in the certificate for the shares shall not be liable either to the insurer or to its creditors for any amount beyond that shown by the certificate to be unpaid on the shares represented thereby.
- (c) Any holder who derives his or her title through such a holder and who is not himself or herself a party to any fraud affecting the issuance of the shares shall have all the rights of the former owner.

23-69-134. Maintenance of home office and records.

- (a) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.
- (b) Every domestic insurer shall have and maintain its assets in this state, except as to:
 - (1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state;
 - (2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (d) of this section;
 - (3) Such securities of the insurer that are readily marketable and have a maturity of one (1) year or less from the date of purchase and that are kept in safekeeping in a federally chartered bank, bank and trust company, or national bank association domiciled outside the State of Arkansas, provided that:
 - (A) The insurer shall maintain in its possession a safekeeping receipt for those securities evidencing uncontested ownership; and
 - (B) At no time shall the insurer hold pursuant to this subdivision (b)(3) securities in an aggregate amount in excess of the greater of:
 - (i) Ten percent (10%) of its assets; or
 - (ii) Forty percent (40%) of its surplus if a life or accident and health insurer or of its surplus to policyholders if other than a life or accident and health insurer; and
 - (4) In the discretion of the Insurance Commissioner, custodied securities may be held or managed inside or outside the state by a bank custodian as defined by and subject to the requirements imposed on bank custodians by rules of the State Insurance Department governing the holding and transferring of securities through Federal Reserve book entry. In addition, custodied securities may be held or managed inside or outside the state by a securities brokerage firm meeting the following qualifications:
 - (A) The securities broker-dealer firm must be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintain membership in the Securities Investor Protection Corporation, and demonstrate by its most recent audited financial statement and regulatory filings:
 - (i) Tangible net worth equal to or greater than one hundred million dollars (\$100,000,000) and regulatory net capital in an amount determined by the commissioner; or
 - (ii) Tangible net worth equal to or greater than fifty million dollars (\$50,000,000), along with:
 - (a) Regulatory net capital in an amount determined by the commissioner; and
 - (b) Securities Investor Protection Corporation excess insurance coverage equal to or greater than the market value of the insurers'

securities held by the custodian and in the form approved by the commissioner;

- (B) The deposited securities with the qualified broker-dealer must be governed by a written custodial agreement governing the insurer's deposit of the insurer's securities such that the qualified broker-dealer agrees that:
- (i) The qualified broker-dealer shall exercise the same due care that is expected of a fiduciary with the responsibility for the safeguarding of the insurer's custodied securities and for compliance with all provisions of the custodial agreement, whether the insurer's custodied securities are in the custodian's possession or have been deposited or redeposited by the custodian with a subcustodian;
 - (ii) The qualified broker-dealer shall indemnify the insurer for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers and employees or burglary, robbery, hold-up, theft, or mysterious disappearance, including loss by damage or destruction. In the event of such loss, the custodian must promptly replace the custodied securities or the value thereof, and the value of any loss of rights or privileges resulting from the loss of custodied securities;
 - (iii) Custodied securities shall be segregated at all times from the proprietary assets of the broker-dealer. The broker-dealer's official records shall separately identify custodied securities owned by the insurer;
 - (iv) All custodied securities that are registered shall be registered in the name of the insurer or in the name of a nominee of the insurer or in the name of the custodian or its nominee or, if in a depository corporation, in the name of the depository corporation or its nominee;
 - (v) All activities involving the insurer's custodied securities shall be subject to the insurer's instructions, and the custodied securities shall be withdrawable upon demand by the insurer or by the commissioner at any time;
 - (vi) The custodian shall furnish upon request by the insurer or by the commissioner a confirmation of all purchases, sales, or transfers of custodied securities to or from the account of the insurer, reports of custodied securities sufficient to verify information reported in the insurer's annual statement filed with the State Insurance Department, and supporting schedules and information required in any audit of the insurer's financial statement;
 - (vii) The insurer or its designee or the commissioner shall at all times be entitled to examine all records maintained by the broker-dealer relating to the insurer's custodied securities;
 - (viii) The custodian shall not use any of the insurer's custodied securities for the broker-dealer's benefit, and none of the insurer's custodied securities shall be loaned, pledged, or hypothecated to any person or organization;
 - (ix) The broker-dealer shall maintain securities all risks coverage or other insurance satisfactory to the commissioner at levels considered reasonable and customary for the custodian banking industry covering the broker-

dealer's duties and activities as custodian for the insurer's assets and shall describe the nature and extent of the insurance protection. Any change in the insurance protection during the term of the custodial agreement shall be promptly disclosed to the insurer;

(x) The broker-dealer is authorized and instructed by the insurer to honor any requests made by the department for information concerning the insurer's custodied securities. The department, from time to time, may request and the custodian shall furnish a detailed listing of the insurer's custodied securities and an affidavit by the broker-dealer certifying the custodian's safekeeping responsibilities relative to the custodied securities. The broker-dealer's response to such requests shall be made directly to the department and shall encompass all of the insurer's custodied securities; and

(xi) Any other requirements provided by rules and regulations of the commissioner; and

(5)(A) Government money market mutual fund or class one money market mutual fund shares held or managed by a securities broker-dealer firm which meets the standards prescribed in subdivision (b)(4)(A) of this section, subject to any limitations on domestic insurer investments of this nature which may be otherwise contained in the Arkansas Insurance Code. Provided further that no such money market mutual fund shares owned by the insurer shall be required to be issued in certificated form, nor held by the insurer in a custodian account.

(B) For purposes of this subsection:

(i) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the "Purposes and Procedures Manual of the NAIC Securities Valuation Office" or any successor publication;

(ii) "Government money market mutual fund" means a money market mutual fund that at all times:

(a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication;

(iii) "Money market mutual fund" means a mutual fund that meets the conditions of 17 C.F.R. Part 270.2a-7, under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended or renumbered; and

(iv) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended.

(c)(1) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the

commissioner under the Arkansas Insurance Code, or for such other reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of the removal, or concealment of the records or assets or material part thereof from the commissioner is prohibited.

- (2) Any person who removes or attempts to remove the records or assets or the material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove them from this state, or who conceals or attempts to conceal them from the commissioner, in violation of this subsection, shall upon conviction be guilty of a felony punishable by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the penitentiary for not more than five (5) years or by both fine and imprisonment in the discretion of the court.
 - (3) Upon any removal or attempted removal of the records or assets, or upon retention of the records or assets or material part thereof outside this state beyond the period specified in the commissioner's consent under which the records were so removed, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of § 23-68-101 et seq.
- (d) This section shall not be deemed to prohibit or prevent an insurer from:
- (1) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping in those offices the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by the office, as long as the records and assets are made readily available at the office for examination by the commissioner at his or her request;
 - (2) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;
 - (3) Maintaining its home office, records, and assets in another state, provided:
 - (A) The insurer shall keep in its home office complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kinds of insurance transacted;
 - (B) The insurer was maintaining its home office in another state upon January 1, 1960;
 - (C) All records and assets of the insurer are made readily available at the home office for examination by the commissioner at his or her request; and
 - (D) The insurer shall maintain a principal place of business in this state where service of process may be made as provided in §§ 23-79-204 and 23-79-205.

23-69-135. Evidence of disbursement required.

- (a) No insurer shall make any disbursement of one thousand dollars (\$1,000) or more unless evidenced by a voucher, bill, or other document correctly describing the consideration for the payment or evidenced by a check, draft, or receipt endorsed or signed by or on behalf of the person receiving the money.
- (b) If the disbursement is for services and reimbursement, the voucher shall describe the

services and the expenditures.

23-69-136. Situs of personal property for taxation.

For the purpose of state, county, and municipal taxation, the situs of all personal property belonging to a domestic insurer and located in this state shall be at the home office of the insurer.

23-69-137. Management and exclusive agency contracts.

- (a)(1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the Insurance Commissioner.
- (2) The contract shall be deemed approved unless disapproved by the commissioner within twenty (20) days after the date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within the twenty (20) days.
- (3) Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.
- (b) The commissioner shall disapprove any contract if he or she finds that it:
 - (1) Subjects the insurer to excessive charges;
 - (2) Is to extend for an unreasonable length of time;
 - (3) Does not contain fair and adequate standards of performance; or
 - (4) Contains other inequitable provisions which impair the proper interests of stockholders or members of the insurer.
- (c) The provisions of this section shall not apply to contracts of domestic licensees governed by the provisions of:
 - (1) Sections 23-63-514 and 23-63-515 of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.;
 - (2) The Managing General Agents Act, § 23-64-401 et seq.; and
 - (3) Section 23-63-105 concerning service contracts to perform administrative functions.

23-69-138. Impairment of capital or assets.

- (a)(1) If a stock or mutual insurer becomes impaired or insolvent, the Insurance Commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within thirty (30) days after service of the notice. The commissioner may, after a hearing, suspend the insurer from soliciting or writing any new coverages in this state until the deficiency is made good.
- (2) For purposes of this section, "insolvent" or "impairment" shall be defined as those terms are used in § 23-68-101 et seq.
- (b) The deficiency may be made good in cash or in assets eligible under provisions of § 23-63-801 et seq., which refers to investments, for the investment of the insurer's funds or if a stock insurer, by reduction of the insurer's capital to an amount not

below the minimum required for the kinds of insurance thereafter to be transacted or by amendment of its certificate of authority to cover only such kinds of insurance thereafter for which the insurer has sufficient capital, if a stock insurer, or surplus, if a mutual insurer, under the Arkansas Insurance Code.

- (c) If the deficiency is not made good and proof thereof filed with the commissioner within the thirty-day period, the insurer shall be deemed insolvent, and the commissioner shall institute delinquency proceedings against it under § 23-68-101 et seq. However, if the deficiency exists because of increased loss reserves required by the commissioner, or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his or her discretion and upon application and good cause shown, extend for not more than an additional thirty (30) days the period within which the deficiency may be so made good and the proof thereof so filed. However, acquisitions or changes of control of an impaired or insolvent domestic insurer which is or which has applied to become an affiliate or subsidiary of a depository institution pursuant to federal law shall comply with the time periods set forth therein to restore capital or surplus.

23-69-139. Assessment of stockholders or members.

- (a) Any insurer receiving the Insurance Commissioner's notice mentioned in § 23-69-138(a):
- (1)(A) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount or surplus in addition.
- (B) If any stockholder fails to pay a lawful assessment after notice given to him or her in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder, and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under § 23-69-138, after deducting from the proportionate interest the amount of the unpaid assessment.
- (C) The insurer may pay for or issue fractional shares under this subsection;
- (2) If a mutual insurer, shall levy such an assessment upon members as is provided for under § 23-69-124.
- (b) Neither this section nor § 23-69-138 shall be deemed to prohibit the insurer from curing any deficiency through any lawful means other than those referred to in those sections.

23-69-140. Mutualization of stock insurers.

- (a) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the Insurance Commissioner after a

hearing thereon.

- (b) The commissioner shall not approve any plan, procedure, or mutualization unless:
 - (1) It is equitable to stockholders and policyholders;
 - (2) It is subject to approval by the holders of not less than three-fourths (3/4) of the insurer's outstanding capital stock having voting rights and by not less than two-thirds (2/3) of the insurer's policyholders who vote on the plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;
 - (3) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than one (1) year;
 - (4) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;
 - (5) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by § 23-69-148 as to rights of nonconsenting stockholders, with respect to consolidation or merger of insurance corporations;
 - (6) The plan provides for definite conditions to be fulfilled by a designated early date upon which the mutualization will be deemed effective; and
 - (7) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in the states.
- (c) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under § 23-68-101 et seq., or to formations of or conversions to domestic mutual holding companies under other provisions of this act. Further, with regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction; and the order shall be final upon entry, pursuant to federal law. Further, any restoration of capital or surplus or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.

23-69-141. Converting mutual insurer to stock insurer.

- (a) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the Insurance Commissioner after a hearing thereon.
- (b) The commissioner shall not approve any plan or procedure unless:
 - (1) It is equitable to the insurer's members;
 - (2) It is subject to approval by vote of not less than three-fourths (3/4) of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, the right to vote may be limited to members who hold policies other than term or group policies, and

- whose policies have been in force for not less than one (1) year;
- (3) The equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner. The equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;
 - (4) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within three (3) years prior to the date the plan was submitted to the commissioner;
 - (5) The plan gives to each policyholder of the insurer, as specified in subdivision (b)(4) of this section, a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the insurer within a designated reasonable period and to apply upon the purchase thereof the amount of his or her equity in the insurer as determined under subdivision (b)(3) of this section;
 - (6) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others, but at not more than double the par value of the shares;
 - (7) The plan provides for payment to each policyholder not electing to apply his or her equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in the amount of not less than fifty percent (50%) of the amount of his or her equity not so used for the purchase of stock. The cash payment, together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer; and
 - (8) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half (1/2) of the required capital.
- (c) With regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and the order shall be final upon entry, pursuant to federal law. Further, any restoration of capital, surplus, or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.
- (d) This section shall not apply to formations of, or insurer conversions to, domestic mutual holding companies under other provisions of the Arkansas Insurance Code.

23-69-142. Mergers and consolidations and acquisition by exchange of stock.

- (a)(1) A domestic stock insurer may merge or consolidate with one (1) or more domestic or foreign stock insurers authorized to transact insurance in this state, by complying with the other applicable provisions of this chapter, and subject to subsections (a) and (b) of this section.
- (2) Further, any domestic stock insurance company may adopt a plan of exchange of the outstanding stock of its stockholders for the consideration herein designated to be paid or provided by a person which acquires the stock, in the manner provided

in this chapter by complying with the other applicable provisions of this chapter, subject to subsections (a) and (b) of this section.

- (3) The plan of exchange may provide that the acquiring person, as consideration for the stock of a domestic insurer:
 - (A) Transfer shares of its stock;
 - (B) Transfer other securities issued by it;
 - (C) Pay cash therefor;
 - (D) Pay or provide other consideration; or
 - (E) Pay or provide any combination of the foregoing types of consideration.
- (b)(1) "Acquiring person" as used in this section and §§ 23-69-146 and 23-69-147 means any individual, any stock insurance corporation incorporated under the Arkansas Insurance Code or under prior laws of this state relating to the incorporation of domestic insurance corporations, any stock corporation incorporated under the Arkansas Business Corporation Act, § 4-26-101 et seq., or under prior laws of this state authorizing the establishment of business corporations and any foreign or alien stock corporation qualified to do business in Arkansas, and any foreign or alien stock insurance company authorized to do business in Arkansas.
- (2) "Acquiring person" shall also be deemed to include a depository institution or any affiliate thereof as appropriate under applicable federal law.
- (c) No merger or consolidation or exchange of stock shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the Insurance Commissioner and approved in writing by him or her after a hearing thereon. With regard to proposed affiliations between a depository institution, or any affiliate thereof, and an insurer, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and these orders shall be final upon entry, pursuant to federal law. Further, any restoration of capital or surplus or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period. The commissioner shall give such approval within a reasonable time after the filing unless he or she finds such a plan or agreement:
 - (1) Is contrary to law;
 - (2) Is inequitable to the stockholders of any domestic insurer involved; or
 - (3) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.
- (d) No director, officer, agent, or employee of any insurer party to merger, consolidation, or exchange of stock shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the plan or agreement.
- (e) If the commissioner does not approve a plan or agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.
- (f) If any domestic insurer involved in the proposed merger, consolidation, or exchange of stock is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two (2) other states in which the insurer has in force the larger amounts of insurance, to participate

in the hearing provided for under subsection (c) of this section, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

- (g) Any plan or proposal through which one (1) insurer or other acquiring person acquires or proposes to acquire a controlling interest of the capital stock of the domestic insurer is deemed to be a plan or proposal of merger, consolidation, or exchange of stock for purposes of this section and is subject to the requirements of subsections (c)-(f) of this section.

23-69-143. Mergers and consolidations - Mutual insurers.

- (a) A domestic mutual insurer may merge or consolidate with another mutual or stock insurer under the applicable procedures prescribed by § 23-69-144, except as provided in this section.
- (b) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds (2/3) of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the Insurance Commissioner. If a life insurer, the right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than one (1) year.
- (c) No merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him or her in writing after a hearing thereon. The commissioner shall give approval within a reasonable time after the filing unless he or she finds such a plan or agreement:
 - (1) Is inequitable to the policyholders of any domestic insurer involved; or
 - (2) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.
- (d) If it is proposed to merge or consolidate a mutual insurer into or with a stock insurer, the provisions of § 23-69-141, referring to converting a mutual insurer, shall apply as to the rights and equities of the members of the mutual insurer to the fullest extent deemed by the commissioner to be feasible and reasonable.
- (e) If the commissioner does not approve the plan or agreement, he or she shall so notify the insurers in writing specifying his or her reasons therefor.
- (f) Section 23-69-142(f) shall also apply as to mergers and consolidations of the mutual insurers.
- (g) With regard to proposed transactions affecting an affiliate or subsidiary of a depository institution, the hearing shall be concluded and the order issued within the sixty-day period preceding the effective date of the transaction, and these orders shall be final upon entry, pursuant to federal law. Further, any restoration of capital, surplus, or special surplus required for approval of the transaction affecting the depository institution's affiliate or subsidiary shall also be accomplished within the same sixty-day period.
- (h) This section shall not apply to formations of, or insurer conversions to, domestic mutual holding companies under other provisions of the Arkansas Insurance Code.

23-69-144. Agreement or adoption of plan for merger, consolidation, or plan of

exchange of shares.

- (a) The directors, or a majority of them, of the corporations as desire to merge or consolidate or adopt a plan of exchange of shares pursuant to § 23-69-142 or § 23-69-143 shall enter into an agreement or adopt a plan signed by them and under the corporate seals of the respective corporations prescribing the terms and conditions of the merger or consolidation or plan of exchange of shares, the mode of carrying the same into effect, provisions with respect to abandonment, the effective date of the proposal or method of determination thereof and stating such other facts as are deemed applicable among those necessary to be set out in articles of incorporation, as provided in § 23-69-105, as well as the manner and basis of any issuance, conversion, or exchange of shares of stock involved in the proposal, and with such other details and provisions as are deemed necessary or desirable.
- (b)
 - (1) The agreement of merger or consolidation shall be submitted to the stockholders, in the case of a stock insurer, or members, in the case of a mutual insurer, of each corporation at meetings thereof and called for the purpose of taking it into consideration. A plan of exchange of shares shall be submitted to the stockholders of the insurer to be acquired at a meeting thereof called for that purpose.
 - (2) Notice shall be given of the time, place, and object of the meeting to each stockholder or member of record, whether entitled to vote or not.
 - (3) At the meeting, the agreement or plan shall be considered and a vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the agreement or plan.
 - (4) If the votes of stockholders, in the case of a stock insurer, holding stock of the corporation entitling them to exercise at least a majority of the voting power, or such other proportion of the stockholders as may be prescribed in the corporation's articles of incorporation for votes on such a proposal, or, in the case of a mutual insurer, the votes of the number or proportion of members of the insurer as required under § 23-69-143(b), shall be for the adoption of the agreement or plan, then that fact shall be certified in the agreement or plan by the secretary or assistant secretary of each corporation, under the seal thereof.
 - (5) The agreement or plan so adopted and certified shall be signed by each constituent corporation under its seal and the hands of its president or a vice president and its secretary or an assistant secretary and acknowledged before an officer authorized by the laws of Arkansas to take acknowledgment of deeds.
- (c)
 - (1) The agreement or plan, adopted and certified as provided in subsections (a) and (b) of this section, shall be filed in duplicate originals with the Insurance Commissioner, and thence shall be taken and deemed to be the agreement and act of merger or consolidation or plan of exchange of shares of the constituent corporations, and, in the case of a consolidation, as the certificate of incorporation of the consolidated corporations.
 - (2) A copy of the agreement or plan certified by the commissioner shall be evidence of the performance of all antecedent acts and conditions necessary to the merger and consolidation or plan of exchange of shares and of the existence of the consolidated corporation.
 - (3) One (1) of the duplicate originals, bearing the file marks of the commissioner,

shall be filed for record in the office of the clerk of the county court of the county in which the principal office or place of business of the merged or consolidated corporation adopting the plan of exchange, as specified in the merger or consolidation agreement or plan of exchange, is located.

- (d) Any agreement of merger or consolidation or plan of exchange may be abandoned in conformity with the terms thereof as approved by the commissioner. However, in such event, due notice of the abandonment shall be immediately transmitted to the stockholders or members of all domestic insurance corporations which are parties thereto within ten (10) days of the abandonment in a manner and form as prescribed or approved by the commissioner. With regard to proposed affiliations between a depository institution, or any affiliate thereof, and an insurer, the hearing may be cancelled and the matter concluded and the notice of abandonment issued within the period required by federal law.

23-69-145. Effect of merger or consolidation.

- (a) When the agreement of merger or consolidation as filed with the Insurance Commissioner as required under § 23-69-144, becomes effective, the separate existence of the constituent corporations shall cease, and they shall become a single corporation in accordance with the agreement, possessing all rights, privileges, powers, franchises, and immunities of a public as well as of a private nature and being subject to all the liabilities and duties of each of the corporations so merged or consolidated, and all, and singular, the rights, privileges, powers, franchises, and immunities of each of the corporations and all property, real, personal, and mixed, and all debts owing on whatever account and all other things in action of or belonging to each of the corporations shall be vested in the surviving or consolidated corporation. All property, rights, privileges, powers, franchises, and immunities and all and every other interest shall be thereafter the property of the surviving or consolidated corporation as effectually as they were of the several and respective constituent corporations.
- (b) However, all rights of creditors and all liens upon the property of any of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by the lien at the time of the merger or consolidation. All debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to the surviving or consolidated corporation and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

23-69-146. Effect of exchange under plan of exchange.

- (a)(1) When the plan of exchange of shares, as filed with the Insurance Commissioner as required under § 23-69-144, becomes effective, the exchange provided for therein is considered to have been consummated, and each shareholder of the domestic stock insurance company acquired ceases to be a shareholder of the company.
- (2) The ownership of all shares of the issued and outstanding stock of the company, except shares payment of the value of which is required to be made by the company under § 23-69-148, vests in the acquiring person automatically without any physical transfer or deposit of certificates representing the shares.

- (3) All shares, payment of the value of which is required to be made by the company under § 23-69-148, are considered no longer outstanding shares of the company.
 - (4) The acquiring person thereupon becomes the sole shareholder of the domestic stock insurance company and has all the rights, privileges, immunities, and powers and, except as otherwise provided, is subject to all of the duties and liabilities to the extent provided by law of a shareholder of an insurance company organized under the laws of this state.
- (b)(1) Certificates representing shares of the domestic insurance company to be acquired prior to the plan of exchange becoming effective, except certificates representing shares payment of the value of which is required under § 23-69-148, shall, after the plan of exchange becomes effective, represent:
- (A) Shares of the issued and outstanding capital stock or other securities issued by the acquiring persons; and
 - (B) The right, if any, to receive cash or other consideration upon such terms as are specified in the plan of exchange.
- (2) However, the plan of exchange may specify that all certificates shall, after the plan of exchange becomes effective, represent only the right to receive shares of stock or other securities issued by the acquiring person, or cash or other consideration or any combination thereof upon such terms as are specified in the plan of exchange.

23-69-147. Acquiring and acquired corporations under a plan of exchange to be separate.

The domestic stock insurance company acquired under a plan of exchange and the acquiring person are, in all respects, separate and distinct entities with neither entity having any liability to the creditors or policyholders, if any, or shareholders of the other, for any acts or omissions of the officers, directors, shareholders, or representatives of either or both entities.

23-69-148. Nonconsenting stockholders.

- (a) If any stockholder entitled to vote in any domestic insurer on a proposal to merge or consolidate, or on a proposal to adopt a plan of exchange as provided in §§ 23-69-101 - 23-69-103, 23-69-105 - 23-69-141, 23-69-143, and 23-69-149 - 23-69-156, votes against the same and, at or prior to the taking of the vote, shall object thereto in writing or if any stockholder of record in the corporation, not entitled to vote thereon, at or prior to the taking of the vote, shall object thereto in writing, and if, in either case, the stockholder, within twenty (20) days after the taking of the vote, shall demand in writing that the surviving, consolidated, or acquired corporation make payment of the fair cash value of his or her stock, the surviving, consolidated, or acquired corporation, within thirty (30) days after the agreement of merger or consolidation or plan of exchange becomes effective as provided in § 23-69-144, shall pay to the objecting stockholder the fair cash value of his or her stock as of the day before the vote was taken.
- (b)(1) In case of disagreement as to the fair cash value, any stockholder, or the surviving or consolidated or acquired corporation, within sixty (60) days after the agreement or

plan has become effective as described in this section and upon notice to the opposite party, may petition the circuit court of the county in which the principal office of the surviving, consolidated, or acquired corporation is established to appoint, and the court shall appoint, three (3) appraisers to appraise the value of the stock.

(2) The award of the appraisers, or a majority of them, if no written objection thereto is filed by either party within ten (10) days after the award has been filed in court, shall be final and conclusive.

(3) If an objection is filed, it shall be tried summarily by the court and judgment rendered thereon.

(c) If the amount determined by the court as provided for in subsection (b) of this section is in excess of the amount as the surviving, consolidated, or acquired corporation shall have offered to pay as the fair cash value of the stock, the court shall assess against the surviving, consolidated, or acquired corporation the costs of the proceeding, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers, as it deems equitable. Otherwise, the costs and fees to the appraisers shall be assessed one-half (1/2) against the corporation and one-half (1/2) against the stockholder.

(d) Any party shall have the right to appeal from any judgment of the court according to then-existing laws.

(e) Unless the merger, consolidation, or plan of exchange is abandoned, any stockholder, on the making of the demand in writing as described in this section, shall cease to be a stockholder in the constituent corporation and shall have no rights with respect to the stock except the right to receive payment therefor as described in this section. Upon payment of the agreed fair cash value of the stock or of the value of the stock under final judgment, the stockholder shall transfer his or her stock to the surviving, consolidated, or acquired corporation. In the event the surviving, consolidated, or acquired corporation fails to pay the amount of the judgment within twenty (20) days after the judgment has become final, the judgment may be collected and enforced in the manner prescribed by law for the enforcement of judgments.

(f) Each stockholder in any of the constituent corporations at the time the merger or consolidation or plan of exchange becomes effective who is entitled to vote and who does not vote against the merger or consolidation or plan of exchange and object thereto in writing as described in this section, and each stockholder in each of the constituent corporations at the time the merger or consolidation or plan of exchange becomes effective who is not entitled to vote and who does not object thereto in writing as described in this section, shall cease to be a stockholder in the constituent corporation and shall be deemed to have assented to the merger or consolidation or plan of exchange and together with the stockholders voting in favor of the merger or consolidation or plan of exchange shall be entitled to receive certificates of stock in the surviving or consolidated corporations or other distribution, in the manner and on the terms specified in the agreement of merger or consolidation or plan of exchange.

(g) With regard to proposed affiliations between a depository institution, or any affiliate thereof, and a domestic stock insurer, the procedures for nonconsenting stockholders described in this section shall be concluded within the period required by federal law.

23-69-149. Assumption reinsurance - Stock insurers.

- (a) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of assumption reinsurance. However, no agreement shall become effective unless filed with the Insurance Commissioner and approved by him or her in writing after a hearing thereon. With regard to proposed transactions between a domestic stock insurer which is a subsidiary or affiliate of a depository institution, and another insurer, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.
- (b) The commissioner shall approve the agreement within a reasonable time after the filing unless he or she finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he or she shall so notify the insurer in writing specifying his or her reasons therefor.

23-69-150. Assumption reinsurance - Mutual insurers.

- (a) A domestic mutual insurer may reinsure all or substantially all of its insurance in force, or a major class thereof, with another insurer, stock or mutual, by an agreement of assumption reinsurance after compliance with this section. The agreement shall not become effective unless filed with the Insurance Commissioner and approved by him or her in writing after a hearing thereon. With regard to proposed transactions between a domestic mutual insurer which is a subsidiary or affiliate of a depository institution, and another insurer, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.
- (b) The commissioner shall approve the agreement within a reasonable time after filing if he or she finds it to be fair and equitable to each domestic insurer involved and that the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he or she shall so notify each insurer involved in writing specifying his or her reasons therefor.
- (c) The plan and agreement for the reinsurance must be approved by vote not less than two-thirds (2/3) of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, the right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than one (1) year.
- (d) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of the insurer pursuant to § 23-69-141, of his or her equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon the member's equity in the reserves, assets whether or not they are admitted assets, and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

23-69-151. Voluntary dissolution - Procedure.

- (a)(1) If while a domestic stock or mutual insurer is fully solvent and it is deemed by its board of directors to be in the best interests of the insurer and its stockholders or

members that the insurer should be dissolved, the board of directors may adopt a resolution to that effect and call a special meeting of its stockholders or members to consider and take action upon a proposal to dissolve the insurer corporation.

- (2) The meeting shall be held upon not less than thirty (30) days' written notice to the stockholders or members in advance of the meeting.
 - (3) The notice shall contain a statement of the dissolution proposal and be so given in the manner provided in the insurer's bylaws as for a special meeting of stockholders or members.
- (b) If, at the special meeting or any adjournment thereof, the holders of record of stock entitled to exercise two-thirds (2/3) of all the voting power on the proposal, or, if a mutual insurer, two-thirds (2/3) of the insurer's members present or represented by proxy at the meeting, shall by resolution consent that a dissolution shall take place, a copy of the resolution together with a list of the names and residences of the directors and officers, certified by the president or a vice president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the insurer, shall be filed in duplicate with the commissioner, one (1) copy of which, bearing the certificate of the Insurance Commissioner, shall be filed for record in the office of the county clerk of the county in which the office or principal place of business of the insurer is located in this state.
 - (c) The effective date of the dissolution shall be the date on which the copy of the consent provided for in subsection (b) of this section is filed with the commissioner.
 - (d) Whenever all the stockholders of record of a domestic stock insurer having power to vote on a proposal to dissolve, consent in writing to the dissolution, no meeting of stockholders shall be necessary, but on filing the consent, as provided in subsection (b) of this section, the commissioner shall issue a certificate of dissolution, which must be recorded with the county clerk of the county in which the insurer's principal place of business is located in this state.
 - (e) No dissolution shall be effectuated, however, until after the insurer has reinsured in another authorized insurer or has otherwise terminated all its insurance then in force nor, in the case of a domestic mutual insurer, until after the proposed plan of dissolution together with the proposed plan for distribution of assets among the insurer's members has been filed with and approved by the commissioner after having been found by him or her to be fair and equitable as to the members.

23-69-152. Dissolution - Directors to act as trustees.

- (a) Upon the dissolution of a domestic stock or mutual insurance corporation under the provisions of § 23-69-151, or upon the expiration of the period of its corporate existence, limited by its articles of incorporation, the directors of the corporation shall be trustees thereof with full power to settle the affairs, collect the outstanding debts, sell and convey the real and personal property of the corporation, and divide its assets among its stockholders or members as entitled thereto, after paying or adequately providing for the payment of its liabilities and obligations.
- (b) If a stock corporation, after paying or adequately providing for the liabilities and obligations of the holders of record holding stock in the corporation entitling them to exercise at least a majority of the voting power on a proposal to sell all the property

and assets of the corporation, the directors may sell the remaining assets or any part thereof to a corporation organized under the laws of this or any other state, and take in payment therefor the stock or bonds, or both, of the corporation and distribute them among the stockholders in proportion to their interest therein. However, if any stockholder within thirty (30) days after the mailing of notice to him or her of the sale shall demand in writing that the corporation shall pay to him or her the fair cash value of his interest in the assets sold, then the cash value shall be determined and shall be paid by the corporation within thirty (30) days after the date the demand was received by the corporation.

- (c) Vacancies in the number of trustees may be filled by the remaining trustees, but any trustee, in the case of a stock corporation, may be replaced on the vote of a majority of the stockholders.

23-69-153. Dissolution - Continuation for suits and settling business.

- (a) All domestic stock and mutual insurance corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued for the term of three (3) years from the expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their assets, but not for the purpose of continuing business as insurers.
- (b) However, as to any action, suit, or proceeding commenced by or against the corporation prior to the expiration or dissolution and with respect to any action, suit, or proceeding commenced by the corporation within three (3) years after the date of the expiration or dissolution, the corporation shall only for the purpose of the actions, suits, or proceedings so commenced be continued bodies corporate beyond the three-year period and until any judgments, orders, or decrees therein shall be fully executed.

23-69-154. Voluntary dissolution - Distribution of assets to stockholders.

- (a) The trustees in dissolution of a domestic stock insurer under § 23-69-151, after payment of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation.
- (b) After allowing for such expenses of distribution as may be reasonable, the trustees shall distribute the remaining assets of the corporation among its stockholders as entitled thereto.

23-69-155. Liquidation - Mutual member's share of assets.

- (a) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within thirty-six (36) months next preceding the date the liquidation was authorized or ordered, or the date of last termination of the insurer's certificate of authority, whichever date is the earlier.
- (b) The distributive share of each member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined

periods of his or her membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by the members, and a formula based upon the classification, for determining the equitable distributive share of each member. The classification and formula shall be subject to the approval of the Insurance Commissioner.

23-69-156. Extinguishment of unused corporate charters.

- (a) The corporate charter of any corporation formed under the laws of this state more than three (3) years prior to January 1, 1960, for the purpose of becoming an insurer and which corporation within the three-year period has not at any time actively engaged in business as a domestic insurer under a certificate of authority issued to it by the Insurance Commissioner under laws then in force, is extinguished and nullified.
- (b) The corporate charter of any other corporation formed under the laws of this state for the purpose of becoming an insurer, and which corporation during any period of thirty-six (36) consecutive months after January 1, 1960, is not actively engaged in business as a domestic insurer under a certificate of authority issued to it by the commissioner under laws currently in force, is automatically extinguished and nullified at the expiration of the thirty-six-month period.
- (c) The period during which a corporation referred to in subsection (b) of this section is the subject of delinquency proceedings under §§ 23-68-101 - 23-68-113 and 23-68-115 - 23-68-132 shall not be counted as part of any such thirty-six-month period.
- (d) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of the merged or consolidated domestic insurer shall automatically be extinguished and nullified.
- (e) In the event a domestic insurer assumption reinsures all of the ceding domestic insurer's business in force, or all except a token amount of the ceding domestic insurer's business, the commissioner, after notice and a hearing, shall make a determination and order that the ceding domestic insurer's corporate charter is extinguished or is continued in full force and effect. In making such a determination and order, the commissioner shall fully consider the equities to the stockholders, or members if the ceding domestic insurer is a mutual, and the policyholders of the ceding domestic insurer. With regard to proposed transactions of a domestic insurer which is a subsidiary or affiliate of a depository institution, the hearing shall be concluded and the order issued within the period required by federal law, and the order shall be final upon entry.

**Subchapter 2.
Stock Insurers - Insider Trading.**

23-69-201. Definition.

As used in this subchapter, unless the context otherwise requires, "equity security" means:

- (1) Any stock or similar security;

- (2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;
- (3) Any such warrant or right; or
- (4) Any other security which the Insurance Commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he or she may prescribe in the public interest or for the protection of investors, to treat as an equity security.

23-69-202. Application of §§ 23-69-204 - 23-69-206 to registered equity securities.

The provisions of §§ 23-69-204 - 23-69-206 shall not apply to equity securities of a domestic stock insurance company if:

- (1) The securities shall be registered, or shall be required to be registered, pursuant to § 12 of the Securities Exchange Act of 1934, as amended; or
- (2) The domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of §§ 23-69-204 - 23-69-206 except for the provisions of this subdivision (2).

23-69-203. Application of §§ 23-69-204 - 23-69-206 to foreign or domestic arbitrage transactions.

The provisions of §§ 23-69-204 - 23-69-206 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Insurance Commissioner may adopt in order to carry out the purposes of this subchapter.

23-69-204. Statement of owners of equity securities, directors, and officers.

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or officer of a domestic stock insurance company, shall file in the office of the Insurance Commissioner within ten (10) days after he or she becomes a beneficial owner, director, or officer a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of the company of which he or she is the beneficial owner. Within ten (10) days after the close of each calendar month, if there has been a change in the ownership during the month, that person shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his or her ownership at the close of the calendar month and such changes in his or her ownership as have occurred during the calendar month.

23-69-205. Prevention of unfair use of information by owners, directors, or officers.

- (a) For the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner of more than ten percent (10%) of any class of any equity security, director, or officer by reason of his or her relationship to the company, any profit realized by him or her from any purchase and sale, or any sale

and purchase, of any equity security of the company within any period of less than six (6) months, unless the security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of the beneficial owner, director, or officer in entering into the transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.

- (b) Suit to receive the profit may be instituted in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring the suit within sixty (60) days after request or shall fail to prosecute diligently the suit thereafter. However, no suit shall be brought more than two (2) years after the date the profit was realized.
- (c) This section shall not be construed to cover any transaction where the beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Insurance Commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

23-69-206. Restrictions on sale of equity securities.

- (a) It shall be unlawful for any beneficial owner of more than ten percent (10%) of any class of any equity security, director, or officer, directly or indirectly, to sell any equity security of the company if the person selling the security or his or her principal:
 - (1) Does not own the security sold; or
 - (2) If owning the security, does not deliver it against the sale within twenty (20) days thereafter or, within five (5) days after the sale, does not deposit it in the mails or other usual channels of transportation.
- (b) However, no person shall be deemed to have violated this section if he or she proves that, notwithstanding the exercise of good faith, he or she was unable to make the delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

23-69-207. Equity securities held in an investment account.

- (a) The provisions of § 23-69-205 shall not apply to any purchase and sale, or sale and purchase, and the provisions of § 23-69-206 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him or her in an investment account, by a dealer in the ordinary course of his or her business and incident to the establishment or maintenance by him or her of a primary or secondary market, otherwise than on an exchange as defined in the Securities Exchange Act of 1934 for such a security.
- (b) The Insurance Commissioner may, by such rules and regulations as he or she deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

23-69-208. Rules and regulations.

- (a) The Insurance Commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him or her by this subchapter and for such purpose may classify domestic stock insurance companies, securities, and other persons or matters within his or her jurisdiction.
- (b) No provision of this subchapter imposing any liability shall apply to any act done or omitted, in good faith, in conformity with any rule or regulation of the commissioner, notwithstanding that the rule or regulation, after the act or omission, may be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

**Subchapter 3.
Mutual Insurance Holding Companies.**

23-69-301. Title.

This subchapter shall be known and may be cited as the "Mutual Insurance Holding Company Act".

23-69-302. Purpose.

- (a)(1) The General Assembly finds and declares that it is in the public interest that a domestic mutual insurer be permitted to reorganize in a manner that preserves attributes of its mutuality while facilitating capital-raising abilities and corporate affiliations on terms and conditions that are fair and equitable to the mutual insurer's policyholders.
- (2) The General Assembly further finds that because policyholders of a mutual insurer have membership interests in the mutual insurer, the Insurance Commissioner should have broad authority in reviewing a reorganization and the procedures and criteria to be applied by the commissioner should be flexible within the parameters of this subchapter.
- (b) This subchapter shall be liberally construed to effect the legislative intent set forth in this section and shall not be interpreted to limit the powers granted to the commissioner by other laws.

23-69-303. Definitions.

For purposes of this subchapter, unless the context requires otherwise:

- (1) "Commissioner" means the Insurance Commissioner;
- (2) "Intermediate stock holding company" means a holding company of which at least a majority of the voting securities are owned by a mutual insurance holding company and which directly owns all the voting securities of a reorganized stock insurer;
- (3) "Mutual insurance holding company" means a holding company based on a mutual plan which at all times owns a majority of the voting securities of a single intermediate stock holding company or, if no such intermediate stock holding company exists, which owns a majority of the voting securities of a reorganized stock insurer;

- (4) "Reorganized stock insurer" means a stock insurer subsidiary which results from a reorganization of a domestic mutual insurer under § 23-69-304(a)(1) or (2) and in compliance with this subchapter; and
- (5) "Voting securities" means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management, other than securities having voting power only because of the occurrence of a contingency.

23-69-304. Formation of mutual insurance holding company.

- (a) A domestic mutual insurer, upon approval of the Insurance Commissioner, may reorganize by:
 - (1) Forming a mutual insurance holding company;
 - (2) Merging its policyholders' membership interests into the mutual insurance holding company; and
 - (3) Continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.
- (b) A domestic mutual insurer, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subdivision (a)(1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.
- (c) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subdivisions (a)(1) or (2) of this section shall be issued to the mutual insurance holding company or to a single intermediate stock holding company.
- (d)
 - (1) Policyholders of a domestic mutual insurer which has reorganized as described in subdivisions (a)(1) or (2) of this section shall be members of the mutual insurance holding company, and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company.
 - (2) The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization.
 - (3) The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals composing management any unfair advantage through or connected with the reorganization.
- (e)
 - (1) A mutual insurance holding company or an intermediate stock holding company formed under this subchapter shall not be authorized to transact the business of insurance.
 - (2) A mutual insurance holding company formed under this subchapter shall not issue stock.
 - (3) The commissioner shall have jurisdiction over a mutual insurance holding company and an intermediate stock holding company to ensure that policyholder's interests are protected.
 - (4) A mutual insurance holding company and an intermediate stock holding company

- shall be treated as domestic insurers subject to the conversion provisions of §§ 23-69-141 and 23-68-101 et seq. regarding the rehabilitation and liquidation of insurance companies.
- (5) The aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent (49%) of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.
 - (6) At least fifty percent (50%) of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers.
 - (7)(A) If any proceeding under § 23-68-101 et seq. regarding the rehabilitation and liquidation of insurance companies is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings.
(B) All of the assets of the mutual insurance holding company and intermediate stock holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy claims against the reorganized stock insurer.
 - (8) No distribution to members of a mutual insurance holding company may occur without prior written approval of the commissioner and only upon the commissioner's satisfaction that such a distribution is fair and equitable to policyholders as members of the mutual insurance holding company.
 - (9) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the commissioner's prior written approval.
 - (10) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the commissioner.

23-69-305. Filing of proposed reorganization plan.

A domestic mutual insurer shall file a proposed plan of reorganization approved by a vote of not less than two-thirds (2/3) of the members of its board of directors for review and approval with the Insurance Commissioner. The proposed plan of reorganization shall be accompanied by a nonrefundable fee of one thousand dollars (\$1,000). A plan of reorganization shall include the following, at a minimum:

- (1) An analysis of the benefits and risks attendant to the proposed reorganization, including the rationale and comparative benefits and risks of a demutualization;
- (2) A statement of how the plan is fair and equitable to the policyholders;
- (3) Information sufficient to demonstrate that the financial condition of the mutual insurer will not be diminished upon reorganization;
- (4) Provisions to ensure immediate membership in the mutual insurance holding company for all existing policyholders of the mutual insurer;
- (5) Provisions for membership interests for future policyholders of the reorganized stock insurer;
- (6) Provisions to ensure that, in the event of proceedings for rehabilitation or

- liquidation involving a stock insurer subsidiary of the mutual insurance holding company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurer subsidiary;
- (7) Provisions for periodic distribution of accumulated mutual insurance holding company earnings;
 - (8) Certified copies of the proposed articles of incorporation and bylaws of the mutual insurance holding company, intermediate stock holding company, and reorganized stock insurer or proposed amendments thereto as necessary to effectuate reorganization;
 - (9) A certification that the plan of reorganization has been duly adopted by a vote of not less than two-thirds (2/3) of the members of the board of directors of the mutual insurer;
 - (10) A certification adopted by not less than two-thirds (2/3) of the members of the board of directors of the mutual insurer that the plan of reorganization is fair and equitable to the policyholders;
 - (11) The names, addresses, and occupational information of all corporate officers and all members of the board of directors of the proposed mutual insurance holding company in the case of a reorganization described in § 23-69-304(a)(1);
 - (12) A description of the nature and content of the annual report and financial statement to be sent by the mutual insurance holding company to each member;
 - (13) A description of the number of members of the board of directors of the mutual insurance holding company required to be policyholders;
 - (14) A description of any plans for the initial sale of stock of the intermediate stock holding company or reorganized stock insurer;
 - (15) A form of the proposed notice to be mailed by the mutual insurer to its policyholders as required in § 23-69-308; and
 - (16) Any other information requested by the commissioner.

23-69-306. Hearings on proposed reorganization plan.

The Insurance Commissioner shall conduct a public hearing regarding a proposed plan of reorganization within one hundred twenty (120) days after the date the completed proposed plan of reorganization is filed under § 23-69-305, unless extended by the commissioner for good cause. Any interested person may appear or otherwise be heard at the public hearing. The commissioner, in his or her discretion, may continue the public hearing for a reasonable period of time not to exceed sixty (60) days. The mutual insurer shall give such reasonable notice of the public hearing as the commissioner, in his or her discretion, may require.

23-69-307. Approval of proposed reorganization plan.

- (a) The Insurance Commissioner shall issue an order approving or disapproving a proposed plan of reorganization within thirty (30) days after the close of the public hearing as required by § 23-69-306.
- (b) The commissioner shall not approve a proposed plan of reorganization unless he or she finds that:

- (1) The plan of reorganization is fair and equitable to the policyholders;
 - (2) The plan of reorganization does not deprive the policyholders of their property rights or due process of law; and
 - (3) The reorganized stock insurer would meet the minimum requirements to be issued a certificate of authority by the commissioner to transact the business of insurance in this state, and the continued operations of the reorganized stock insurer would not be hazardous to future policyholders and the public.
- (c) If the commissioner approves a plan of reorganization, the commissioner shall also publish notification of the issuance of the order in a legal newspaper in Pulaski County, Arkansas, and in the county of domicile of the mutual insurer if different from Pulaski County.
- (d) If the commissioner approves a plan of reorganization, the approval shall expire if the reorganization is not completed within one hundred eighty (180) days after the date of approval, unless extended by the commissioner for good cause, or within sixty (60) days if required by the Gramm-Leach-Bliley Act for depository corporation transactions.
- (e) If the commissioner disapproves a plan of reorganization, the commissioner shall issue an order setting forth specific findings for the disapproval.

23-69-308. Approval of reorganization plan by policyholders.

- (a)(1) Within forty-five (45) days after the date of the Insurance Commissioner's approval of a plan of reorganization under § 23-69-307, unless extended by the commissioner for good cause, the mutual insurer shall hold a meeting of its policyholders at a reasonable time and place to vote upon the plan of reorganization.
- (2) The mutual insurer shall give notice at least thirty (30) days before the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of reorganization will be voted upon at a regular or special meeting of the policyholders. The notice shall include:
- (A) A brief description of the plan of reorganization and a statement that the commissioner has approved the plan of reorganization; and
 - (B) A written proxy permitting the policyholder to vote for or against the plan of reorganization.
- (3) The entity to which any group insurance policy is issued, and not any person covered under the group insurance policy, shall be considered the policyholder for purposes of voting.
- (4) A plan of reorganization shall be approved only if not less than two-thirds (2/3) of the policyholders voting in person or by proxy at the meeting vote in favor of such plan of reorganization. Each policyholder shall be entitled to only one (1) vote, regardless of the number of policies owned by the policyholder. The commissioner shall supervise and direct the conduct of the vote on the plan of reorganization as necessary to ensure that the vote is fair and consistent with the requirements of this section.
- (b) If a mutual insurer complies substantially and in good faith with the notice requirements of this section, the mutual insurer's failure to give any policyholder any required notice does not impair the validity of any action taken under this section.

- (c) If the meeting of policyholders to vote upon the plan of reorganization is held coincident with the mutual insurer's annual meeting of the policyholders, only one (1) combined notice of meeting is required.
- (d) The form of any proxy shall be filed with and approved by the commissioner.
- (e) For purposes of voting, "policyholders" means the policyholders of the mutual insurer on the day the plan of reorganization is initially approved by the board of directors of the mutual insurer.

23-69-309. Issuance of certificate.

- (a) The Insurance Commissioner shall issue a certificate of authority to a reorganized stock insurer when the mutual insurer files with the commissioner a:
 - (1) Certificate stating that all of the conditions set forth in the plan of reorganization have been satisfied, so long as the board of directors of the mutual insurer has not abandoned the plan of reorganization under § 23-69-312; and
 - (2) Certificate from the mutual insurer setting forth the vote and certifying that the plan of reorganization was approved by not less than two-thirds (2/3) of the policyholders voting in person or by proxy on the plan of reorganization.
- (b)(1) The reorganization shall be effective upon the issuance of a certificate of authority by the commissioner.
- (2) Upon issuance of the certificate of authority, the insurer's articles of incorporation shall be treated as amended in compliance with § 23-69-107.

23-69-310. Appeal of final order.

Any person affected by a final order issued under this subchapter shall have the right to appeal the order to the Circuit Court of Pulaski County, Arkansas. The appeal shall be in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-69-311. Continuation of corporate existence.

Corporate existence of a mutual insurer reorganizing under this subchapter shall not terminate, but the reorganized stock insurer shall be deemed to be a continuation of the mutual insurer and to have been organized on the date the mutual insurer was originally organized.

23-69-312. Abandonment of reorganization plan.

By not less than a two-thirds (2/3) vote of the members of its board of directors and with the approval of the Insurance Commissioner, a mutual insurer may abandon a plan of reorganization at any time before the issuance of the certificate of authority by the commissioner. Upon such abandonment, all rights and obligations arising out of the plan of reorganization shall terminate and the mutual insurer shall continue to conduct its business as a domestic mutual insurer as though no plan of reorganization had ever been adopted.

23-69-313. Mergers and acquisitions.

- (a) Subject to applicable requirements of this subchapter and The Insurance Holding

Company Regulatory Act, § 23-63-501 et seq., a mutual insurance holding company may:

- (1) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed under this subchapter or any similar entity organized under laws of any other state;
 - (2) Either alone or together with one (1) or more intermediate stock holding companies or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this subchapter or the law of its state of organization;
 - (3) Together with one (1) or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;
or
 - (4) Acquire a stock insurance company through the merger of the stock insurance company with a stock insurance company subsidiary of the mutual insurance holding company.
- (b)(1) A merger or acquisition under this section is subject to the applicable procedures prescribed by the laws applying to domestic insurance companies, except as otherwise provided in this subsection.
- (2) The commissioner may retain, at the expense of the mutual insurance company, any attorneys, actuaries, accountants, economists, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition.
 - (3) The plan and agreement for merger shall be submitted to and approved by vote of two-thirds (2/3) of those members of any domestic mutual insurance holding company involved in the merger who vote either in person or by proxy thereon at a lawful meeting called for that purpose, after reasonable notice and in accordance with procedure approved by the commissioner.
 - (4) No such merger shall be effectuated unless the plan and agreement have been filed with the commissioner and approved by him or her in advance. The commissioner shall give such approval unless he or she finds that such a plan or agreement:
 - (A) Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or
 - (B) Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in this state.

23-69-314. Membership in a mutual insurance holding company.

A membership interest in a mutual insurance holding company does not constitute a security under the laws of this state.

23-69-315. Annual statements.

A mutual insurance holding company shall:

- (1) File with the Insurance Commissioner by March 1 of each year an annual

- statement consisting of an income statement, balance sheet, and cash flows prepared in accordance with generally accepted accounting practices and a confidential statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company; and
- (2) Have an annual audit by an independent certified public accountant in a form approved by the commissioner and shall file the audit on or before June 1 of each year for the year ending December 31 immediately preceding.

23-69-316. Power of Insurance Commissioner to order production of documents.

The Insurance Commissioner shall have the power to order production of any records, books, or other information and papers in the possession of a mutual insurance holding company or its affiliates as are reasonably necessary to ascertain the financial condition of the reorganized stock insurer or to determine compliance with this subchapter.

23-69-317. Applicability of provisions.

Nothing contained in this subchapter shall be construed to prohibit demutualization of a mutual insurance holding company under § 23-69-141.

23-69-318. Payment of compensation.

- (a)(1) No director, officer, employee, or agent of the mutual insurer and no other person shall receive any fee, commission, or other valuable consideration whatsoever, other than his or her usual regular salary and compensation, for in any manner aiding, promoting, or assisting in a plan of reorganization, except as set forth in the plan of reorganization approved by the Insurance Commissioner.
- (2) Subdivision (a)(1) of this section shall not prohibit a management-incentive compensation program which is contained in the plan of reorganization and approved by the commissioner to be adopted upon reorganization to the reorganized stock insurer or prohibit such a program to be later adopted by the reorganized stock insurer.
- (b) Subdivision (a)(1) of this section shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys, accountants, actuaries, and investment bankers for services performed in the independent practice of their professions, even though any such person is also a member of the board of directors of the mutual insurer.

23-69-319. Hiring of experts.

For purposes of determining whether a plan of reorganization meets the requirements of this subchapter or in connection with any other matters relating to development of a plan of reorganization, the Insurance Commissioner may engage the services of experts. All reasonable costs related to the review of a plan of reorganization or such other matters, including those costs attributable to the use of experts, shall be paid by the mutual insurer making the filing or initiating discussions with the commissioner about such matters.

23-69-320. Disclosure of confidential information.

All information, documents, and copies obtained by or disclosed to the Insurance Commissioner or any other person in the course of preparing, filing, and processing an application to reorganize under § 23-69-305, other than information or documents distributed to policyholders in connection with the meeting of policyholders under § 23-69-308, or filed or submitted as evidence in connection with the public hearing under § 23-69-306, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication, in which event he or she may publish all or any part in such manner as he or she may deem appropriate.

23-69-321. Injunctive orders.

Whenever it appears to the Insurance Commissioner that any person or any director, officer, employee, or agent of the person has committed or is about to commit a violation of this subchapter or of any rule, regulation, or order of the commissioner, the commissioner may apply to the circuit court of Pulaski County, Arkansas, for an order enjoining such person, director, officer, employee, or agent from violating or continuing to violate this subchapter or any such rule, regulation, or order and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

23-69-322. Promulgation of rules and regulations.

The Insurance Commissioner may adopt and promulgate rules and regulations and issue orders to carry out this subchapter.

23-69-323. Construction.

This subchapter is intended to supplement the Arkansas Insurance Code. Further, this subchapter is not intended to and shall not be construed to conflict with existing sections of the Arkansas Insurance Code, including, but not limited to, §§ 23-69-141, 23-70-123, 23-72-119, 23-73-117, 23-75-122, or other applicable sections of the Arkansas Insurance Code.