

ENGROSSED HOUSE
BILL NO. 1983

BY: BENSON and COX of the
HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO INSURANCE; AMENDING 36 O.S. 1991,
SECTION 311, WHICH RELATES TO ANNUAL STATEMENTS BY
INSURANCE COMPANIES; REQUIRING THAT STATEMENTS BE
PREPARED IN ACCORDANCE WITH CERTAIN GUIDELINES;
AMENDING 36 O.S. 1991, SECTIONS 1651, 1653, 1654,
1655, 1656 AND 1661, WHICH RELATE TO SUBSIDIARIES
OF INSURERS; MODIFYING DEFINITION; PROVIDING TIME
LIMITATION FOR CONCLUSION OF CERTAIN DISCOVERY
PROCEEDINGS; AUTHORIZING THE INSURANCE COMMISSIONER
TO RETAIN THE SERVICES OF CERTAIN PERSONNEL AT THE
EXPENSE OF AN ACQUIRING PARTY; ELIMINATING CERTAIN
MAILING REQUIREMENTS; MODIFYING CERTAIN
REGISTRATION REQUIREMENTS; REQUIRING REGISTRATION
SUMMARY STATEMENTS; REQUIRING THE REPORTING OF
CERTAIN ADDITIONAL INFORMATION; PROVIDING THAT
FAILURE TO FILE TIMELY STATEMENTS, SUMMARIES, AND
ADDITIONAL INFORMATION IS VIOLATION OF LAW;
MODIFYING STANDARDS FOR TRANSACTIONS WITH
AFFILIATES; MODIFYING FACTORS FOR DETERMINATION OF
ADEQUACY OF SURPLUS; MODIFYING PROVISIONS
PERTAINING TO DIVIDENDS AND OTHER DISTRIBUTIONS;
REMOVING CERTAIN LIMITATION ON AUTHORITY OF THE
INSURANCE COMMISSIONER TO ORDER THE PRODUCTION OF

CERTAIN INFORMATION; AUTHORIZING THE INSURANCE COMMISSIONER TO SEEK INJUNCTIVE RELIEF IN CERTAIN CIRCUMSTANCES AND PROVIDING PROCEDURE THEREFOR; PROHIBITING THE VOTING OF SECURITIES IN CERTAIN CIRCUMSTANCES; PROVIDING FOR THE SEIZURE OR SEQUESTRATION OF VOTING SECURITIES IN CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; PROVIDING MAXIMUM AMOUNT OF CERTAIN PENALTY; AUTHORIZING REDUCTION OF CERTAIN PENALTY IN CERTAIN CIRCUMSTANCES; PROVIDING FACTORS TO BE CONSIDERED IN DETERMINING AMOUNT OF CIVIL FORFEITURE; AUTHORIZING CERTAIN CEASE AND DESIST ORDERS; PROVIDING PROCEDURE FOR INSTITUTING CRIMINAL ACTION AND PENALTIES FOR CONVICTION; AUTHORIZING THE INSURANCE COMMISSIONER TO TAKE POSSESSION OF PROPERTY IN CERTAIN CIRCUMSTANCES; PROVIDING FOR RECOVERY OF DISTRIBUTIONS IN CERTAIN CIRCUMSTANCES; PROVIDING FOR CERTAIN LIABILITY; PROVIDING FOR CERTAIN APPEALS; CREATING THE BUSINESS TRANSACTED WITH PRODUCER CONTROLLED INSURER ACT; PROVIDING SHORT TITLE; DEFINING TERMS; PROVIDING SCOPE OF APPLICATION OF ACT; PROVIDING CIRCUMSTANCES IN WHICH ACT APPLIES; REQUIRING CERTAIN WRITTEN CONTRACTS AND SPECIFYING MINIMUM REQUIREMENTS; REQUIRING AUDIT COMMITTEES; PROVIDING REPORTING REQUIREMENTS; REQUIRING CERTAIN WRITTEN NOTICE; AUTHORIZING CERTAIN ACTIONS BY THE INSURANCE COMMISSIONER AND RECEIVERS; PROVIDING TIME PERIOD FOR COMPLIANCE WITH CERTAIN PROVISIONS OF THE BUSINESS TRANSACTED WITH PRODUCER CONTROLLED INSURER ACT; PROVIDING CERTAIN IMMUNITY AND INDEMNITY FOR CERTAIN ACTS ARISING UNDER ARTICLE 19

OF THE INSURANCE CODE; CREATING THE REINSURANCE INTERMEDIARY ACT; PROVIDING SHORT TITLE; DEFINING TERMS; REQUIRING LICENSURE; REQUIRING WRITTEN AUTHORIZATION FOR CERTAIN TRANSACTIONS AND REQUIRING CERTAIN PROVISIONS IN THE AUTHORIZATION; REQUIRING THAT CERTAIN RECORDS BE KEPT; PROVIDING FOR ACCESS AND RIGHT TO COPY AND AUDIT ACCOUNTS AND RECORDS; SPECIFYING DUTIES OF INSURERS; REQUIRING CERTAIN WRITTEN CONTRACTS AND REQUIRING CERTAIN MINIMUM PROVISIONS THEREIN; PROHIBITING CERTAIN ACTS; SPECIFYING DUTIES OF REINSURERS; PROVIDING EXAMINATION AUTHORITY OF THE INSURANCE COMMISSIONER; PROVIDING PENALTIES AND LIABILITIES; PROVIDING FOR RULES AND REGULATIONS; PROHIBITING USE OF NONCOMPLYING REINSURANCE INTERMEDIARIES ON AND AFTER CERTAIN DATE; CREATING THE CREDIT FOR REINSURANCE ACT; PROVIDING SHORT TITLE; PROVIDING ALLOWABLE CREDIT FOR CEDING DOMESTIC INSURERS; ALLOWING A REDUCTION IN LIABILITY FOR REINSURANCE IN CERTAIN CIRCUMSTANCES; PROVIDING FOR CERTAIN SECURITY; PROVIDING FOR RULES AND REGULATIONS; SPECIFYING AFFECTED REINSURANCE AGREEMENTS; REPEALING 36 O.S. 1991, SECTIONS 1658 AND 1659, WHICH RELATE TO VIOLATIONS AND PENALTIES UNDER ARTICLE 16A OF THE INSURANCE CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR NONCODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 311, is amended to read as follows:

Section 311. A. Each insurer authorized to do business under the provisions of this Code shall, annually, on or before the last day of February, file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners (NAIC), statements which shall exhibit its financial condition on the thirty-first day of December of the previous year and its business of that year. For good cause shown, the Insurance Commissioner may extend the time within which such statements may be filed. The statements shall be in such general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the Insurance Commissioner. In addition, the statements shall be prepared in accordance with the NAIC annual statement instruction handbooks and follow the accounting procedures and practices prescribed by the NAIC accounting practices and procedure manuals. The assets and liabilities shall be computed and allowed substantially in accordance with the laws of this state. Such statements shall be subscribed and sworn to by the president and secretary and other proper officers. And if the Insurance Commissioner finds that the facts warrant, and that all laws applicable to said insurer are fully complied with, he shall issue to said company a license, or certificate of authority, subject to all requirements and conditions of the law, to transact business in this state, specifying in said certificate the particular kind or kinds of insurance it is authorized to transact, and said certificate shall expire on the last day of February next after its issue. Provided, however, that any certificate of authority shall continue in full force and effect until the new certificate be issued or specifically refused; however, the continuance shall not exceed a period of six (6) months. The annual statement of an

insurer of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its United States business, or other officer duly authorized. Any amendments and addendums to the annual statement subsequently filed with the Commissioner shall also be filed with the National Association of Insurance Commissioners, and the insurer shall pay the applicable filing fees.

B. In the absence of actual malice, or gross negligence, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners' employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement shall be acting as agents of the Commissioner under the authority of this section and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or disseminating of the data and information collected from the filings required under this section.

C. All financial analysis ratios and examination synopses pertaining to insurance companies, which are submitted to the Commissioner by the National Association of Insurance Commissioners' Insurance Regulatory Information System, are confidential records which may not be available for public inspection and may not be disclosed by the Commissioner.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1651, is amended to read as follows:

Section 1651. As used in this act, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) Affiliate. An "affiliate" of, or person "affiliated" with, the specific person, is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) Commissioner. The term "Commissioner" shall mean the Insurance Commissioner, his deputies, or the Insurance Department, as appropriate.

(c) Control. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ~~twenty-five percent (25%)~~ ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact in the manner provided in Section 4(i). The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) Insurance Holding Company System. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(e) Insurer. The term "insurer" shall have the same meaning as set forth in 36 Oklahoma Statutes, Section 103, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto

Rico, the District of Columbia, or a state or political subdivision of a state.

(f) Person. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.

(i) Voting Security. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1653, is amended to read as follows:

Section 1653. (a) Filing Requirements. No person other than the issuer shall make a tender offer for, request or invite tenders of, or enter into any agreement to exchange, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer or of any other person controlling a domestic insurer, if such other person, either directly or through his affiliates, is substantially engaged in the business of insurance, if, after the consummation of such action, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer. No person shall enter into an agreement to merge with or otherwise to acquire control of a

domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner prescribed in subsection (d) of this section.

(b) Content of Statement. The statement to be filed with the Commissioner as required by subsection (a) of this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person, referred to in this section as the "acquiring party", by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be effected, and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions.

Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Information in a form acceptable to the Commissioner as to the financial condition of each acquiring party for the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than ninety (90) days prior to the filing of the statement; provided, however, in the case of an acquiring party which is an insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited; except an audit may be required if the need for an audit is determined by the Commissioner.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) of this section which each acquiring party

proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) of this section during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) Copies of all tender offers for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and, if distributed, of additional soliciting material relating thereto.

(10) Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the Commissioner may require that the information called for by paragraphs (1) through (10) of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the Commissioner may require that the information called for by paragraphs (1) through (10) of this subsection be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative Filing Materials. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, Public Law 22, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, Public Law 291, or under a

state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) of this section may utilize such documents in furnishing the information called for by that statement.

(d) Approval by Commissioner: Hearings.

(1) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section are unfair and unreasonable;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or,

(vi) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders or the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in clause (1) of this subsection shall be held within thirty (30) days after the statement required by subsection (a) of this section is filed, and at least twenty (20) days' notice thereof shall be given by the Commissioner to the person filing the statement. Not less than fourteen (14) days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner. The insurer shall give notice to its securityholders. The Commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. ~~Any such merger or other acquisition of control shall be deemed approved unless the Commissioner has, within thirty (30) days after the conclusion of such hearing, entered his order disapproving the merger or other acquisition of control.~~ At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants 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 acquisition of control.

~~(e) Mailings to Shareholders; Payment of Expenses. All statements, amendments, or other material filed pursuant to subsections (a) or (b) of this section, and all notices of public hearings held pursuant to subsection (d) of this section shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, the Commissioner may require such person to file with the Commissioner an acceptable bond or other deposit in an amount to be determined by the Commissioner.~~

~~(f) Exemptions.~~ The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the Commissioner by order shall exempt therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

~~(g)~~ (f) Jurisdiction; Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Commissioner and transmitted by certified mail with return receipt requested by the Commissioner to such person at his last-known address.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 1654, is amended to read as follows:

Section 1654. (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and every individual who controls an insurer shall annually register with the Commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register thirty (30) days after it becomes subject to registration, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy to the Commissioner of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form ~~provided by the Commissioner~~ prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

- (i) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (ii) the identity and relationship of every member of the insurance holding company system;
- (iii) the following agreements in force, relationships subsisting, and transactions currently outstanding or which

have occurred during the previous calendar year between
such insurer and its affiliates:

(1) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(2) purchases, sales or exchanges of assets;

(3) transactions not in the ordinary course of business;

(4) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(5) all management and service contracts and all cost-sharing arrangements, ~~other than cost allocation arrangements based upon generally accepted accounting principles; and,~~

(6) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(7) dividends and other distributions to shareholders;
and

(8) consolidated tax allocation agreements.

(iv) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner; and

(v) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to ~~Section 4~~ subsection (b) of

this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of Section 1655 of this title, each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of Registration. The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated Filing. The Commissioner may require two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement, so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(g) Alternative Registration. The Commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under ~~this act~~ Section 1651 et seq. of this title.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Summary of Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(k) Reporting Dividends to Shareholders. Subject to subsection (e) of Section 1655 of this title, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(l) Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer where such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(m) Violations. The failure to file a registration statement, any summary of the registration statement thereto, or any additional information required by this section within the time specified for such filing shall be a violation of this section.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 1655, is amended to read as follows:

Section 1655. (a) Transactions with Affiliates. Material transactions by registered insurers with their affiliates shall be subject to the provisions of Section 1604 of this title. The board of directors will be charged with exercising that degree of care which a prudent man would have exercised under similar circumstances. Material transactions shall be subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and
- (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Commissioner's Approval Required.

- (1) The prior written approval of the Commissioner shall be required for the following transactions between a domestic insurer and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than five percent (5%) of the insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is lesser, as of the latest statutory financial statement filed with the

Commissioner; provided, however, that the Commissioner must give his decision of either approval or disapproval within thirty (30) days after receiving written notification from the insurer of the proposed transaction and his failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction;

(2) The prior written approval of the Commissioner shall be required for any transactions between a domestic insurer and its affiliates where the insurer is found by the Commissioner to be in unsound condition or in such condition as to render its further transaction of insurance in Oklahoma hazardous to its policyholders or to the people of Oklahoma; provided, however, that the Commissioner must give his decision of either approval or disapproval within ninety (90) days after written notification by the insurer and his failure to disapprove the proposed transaction within ninety (90) days shall constitute approval of the transaction; ~~and~~

(3) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

(i) loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of

the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (b) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding; (ii) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer; (iii) all management agreements, service contracts and all cost-sharing arrangements; and

(4) The Insurance Commissioner shall promulgate reasonable rules and regulations governing the form and content of the notice required pursuant to subsection (b) of this section.

(c) Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to the effective date of this section.

(d) Adequacy of Surplus. For purposes of ~~this act~~ Section 1651 et seq. of this title, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria;
 - (2) the extent to which the insurer's business is diversified among the several lines of insurance;
 - (3) the number and size of risks insured in each line of business;
 - (4) the extent of the geographical dispersion of the insurer's insured risks;
 - (5) the nature and extent of the insurer's reinsurance program;
 - (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
 - (7) the recent past and projected future trend in the size of the insurer's ~~surplus as regards policyholders~~ investment portfolio;
 - (8) the surplus as regards policyholders maintained by other comparable insurers;
 - (9) the adequacy of the insurer's reserves; and
 - (10) the quality and liquidity of investments in subsidiaries made pursuant to Section 1652 of this title.
- The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(e) Dividends and Other Distributions. No insurer subject to registration under Section 1654 of this title shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) thirty (30) days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the Commissioner shall have approved such payment within such thirty-day

period. ~~Nothing in this paragraph shall be construed to prohibit or curtail the payment or redemption of surplus fund certificates.~~

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~greater~~ lesser of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net ~~investment~~ income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of such dividend or distribution or (ii) the Commissioner has not disapproved such payment within the thirty-day period referred to above.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 1656, is amended to read as follows:

Section 1656. (a) Power of Commissioner. ~~Subject to the limitation contained in this section and in~~ In addition to the

powers which the Commissioner has under Sections ~~308 and 309~~ 309.1 through 309.7 of the Insurance Code, relating to the examination of insurers, the Commissioner shall also have the power to order any insurer registered under Section 4 1654 of this title to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between the insurer and its affiliates. In the event such insurer fails to comply with such order, the Commissioner shall have the power to examine such affiliates to obtain such information at the expense of such noncomplying insurer.

~~(b) Purpose and Limitation of Examination. The Commissioner shall exercise his power under subsection (a) above only if the examination of the insurer under Sections 308 and 309 of the Insurance Code is inadequate or the interests of the policyholders of such insurer may be adversely affected.~~

~~(e)~~ Use of Consultants. The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

~~(d)~~ (c) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination in accordance with Section ~~309~~ 309.6 of the Insurance Code.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1658.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

(a) Injunctions. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of Article 16A of the Insurance Code or of any rule, regulation or order issued by the Commissioner hereunder, the Commissioner may apply to the district court of Oklahoma County for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate Article 16A of the Insurance Code 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.

(b) Voting of securities, when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the Commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of Article 16A of the Insurance Code or of any rule, regulation or order issued by the Commissioner hereunder, the insurer or the Commissioner may apply to the district court of Oklahoma County to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 1653 of Title 36 of the Oklahoma Statutes or any rule, regulation or order issued by the Commissioner thereunder to enjoin the voting of any security so

acquired, to void any vote of such security already cast at any meeting of shareholders 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.

(c) Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of Article 16A of the Insurance Code or any rule, regulation or order issued by the Commissioner hereunder, the district court of Oklahoma County may, on such notice as the court deems appropriate, upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such order with respect thereto as may be appropriate to effectuate the provisions of Article 16A of the Insurance Code. Notwithstanding any other provisions of law, for the purposes of Article 16A of the Insurance Code the sites of the ownership of the securities of domestic insurers shall be deemed to be in this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1658.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

(a) Any insurer failing, without just cause, to file any registration statement, summary, or other information as required in Article 16A of the Insurance Code shall be required, after notice and hearing, to pay a penalty of Two Hundred Dollars (\$200.00) for each day's delay, to be recovered by the Commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section shall be Twenty Thousand Dollars (\$20,000). The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 1654 or subsection (e) of Section 1655 of Title 36 of the Oklahoma Statutes, or which violate Article 16A of the Insurance Code, shall pay, in their individual capacity, a civil forfeiture of not more than Five Thousand Dollars (\$5,000.00) per violation, after notice and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the Commissioner that any insurer subject to Article 16A of the Insurance Code or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 1655 of Title 36 of the Oklahoma Statutes and which would not have been approved had such approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of Article 16A of the Insurance Code, the Commissioner may submit such information to the district attorney for Oklahoma County for appropriate action. Any insurer which willfully violates Article 16A of the Insurance Code may be fined not more than Ten Thousand Dollars (\$10,000.00). Any individual

convicted of willfully violating a provision of Article 16A of the Insurance Code may be fined in the individual capacity of such person not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not more than three (3) years or be subject to both such fine and imprisonment.

(e) Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of his duties under Article 16A of the Insurance Code, upon conviction thereof, shall be imprisoned for not more than three (3) years or fined Five Thousand Dollars (\$5,000.00) or be subject to both such fine and imprisonment. Any fines imposed shall be paid by the officer, director or employee in the individual capacity of such person.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1659.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Whenever it appears to the Commissioner that any person has committed a violation of Article 16A of the Insurance Code which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the Commissioner may proceed as provided in Section 1901 et seq. of Title 36 of the Oklahoma Statutes to take possession of the property of such domestic insurer and to conduct the business thereof.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1659.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order

shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary or subsidiaries to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one (1) year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c) and (d) of this section.

(b) No such distribution shall be recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under subsection (a) of this section such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to such subsection, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1659.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any person aggrieved by any act, determination, rule, regulation or order, or any other action of the Commissioner pursuant to Article 16A of the Insurance Code, may appeal therefrom under the procedures of the Administrative Procedures Act.

SECTION 12. AMENDATORY 36 O.S. 1991, Section 1661, is amended to read as follows:

Section 1661. The initial fee for registration required by the provisions of Section 1654 of this title shall be Two Hundred Fifty Dollars (\$250.00) and an additional fee of One Hundred Dollars (\$100.00) shall be payable on ~~July 15th~~ May 1 of each calendar year thereafter so long as such registration continues. All monies collected by the Commissioner from the fees herein provided for shall be deposited, upon receipt, with the State Treasurer, who shall place the same to the credit of the State Insurance Commissioner Revolving Fund, under and subject exclusively to the control of the Commissioner for the purpose of fulfilling and accomplishing the conditions and purposes of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1671 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 13 through 19 of this act may be cited as the "Business Transacted with Producer Controlled Insurer Act".

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1672 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Business Transacted with Producer Controlled Insurer Act:

1. "Accredited State" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC);

2. "Control" or "Controlled" has the meaning ascribed in subsection (c) of Section 1651 of Title 36 of the Oklahoma Statutes;

3. "Controlled Insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer;

4. "Controlling Producer" means a producer who, directly or indirectly, controls an insurer;

5. "Licensed Insurer" or "Insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this act:

- a. all risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and Section 6451 et seq. of Title 36 of the Oklahoma Statutes,
- b. all residual market pools and joint underwriting authorities or associations, and
- c. all captive insurers. For the purposes of the Business Transacted with Producer Controlled Insurer

Act, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates; and

6. "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1673 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Business Transacted with Producer Controlled Insurer Act shall apply to licensed insurers as defined in Section 14 of this act, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of Article 16A of the Insurance Code, to the extent they are not superseded by this act, shall continue to apply to all parties within holding company systems subject to this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1674 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Applicability of section.

1. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer

is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

2. Notwithstanding paragraph 1 of this subsection, the provisions of this section shall not apply if:

a. the controlling producer:

(1) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance, and

(2) accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds, and

b. the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

B. Required contract provisions. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

1. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled

insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

2. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

3. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;

4. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

5. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

6. The contract shall not be assigned in whole or in part by the controlling producer;

7. The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed

with the controlled insurer by a producer other than the controlling producer;

8. The rate and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph 7 of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

9. If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection C of this section;

10. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

11. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the

controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured and commission schedules.

C. Audit Committee. Every controlled insurer shall have an Audit Committee of the Board of Directors composed of independent directors. The Audit Committee shall annually meet with management, the insurer's licensed public accountant or a certified public accountant holding a permit to practice in this state and an independent casualty actuary or other independent loss reserve specialist acceptable to the Commissioner to review the adequacy of the insurer's loss reserves.

D. Reporting requirements.

1. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Commissioner an opinion of an independent casualty actuary,

or such other independent loss reserve specialist acceptable to the Commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the producer; and

2. The controlled insurer shall annually report to the Commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1675 of Title 36, unless there is created a duplication in numbering, reads as follows:

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1676 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. If the Commissioner believes that the controlling producer or any other person has not materially complied with the Business Transacted with Producer Controlled Insurer Act, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the Commissioner may order the controlling producer to cease placing business with the controlled insurer; and

2. If it was found that because of such material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the Commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

B. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Section 1903 of Title 36 of the Oklahoma Statutes, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this act, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

C. Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided for in the Insurance Code.

D. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1677 of Title 36, unless there is created a duplication in numbering, reads as follows:

Controlled insurers and controlling producers who are not in compliance with Section 16 of this act as of September 1, 1992, shall have until November 1, 1992, to come into compliance with said section and shall comply with Section 17 of this act beginning with all policies written or renewed on or after December 1, 1992.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1937 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section the persons entitled to protection under this section are:

1. The receiver, assistant receiver, and retained counsel responsible for the conduct of a delinquency proceeding under Article 19 of the Insurance Code, including present and former receivers; and

2. Their employees meaning all present and former assistant receivers and attorneys for the receiver appointed by the Insurance Commissioner and all persons whom the Commissioner, assistant receiver or retained counsel have employed to assist in a delinquency proceeding under Article 19 of the Insurance Code. Attorneys, accountants, auditors and other professional persons or firms, who are retained by the receiver as independent contractors and their employees shall not be considered employees of the receiver for purposes of this section.

B. If any legal action is commenced against the receiver or any employee, whether against him personally or in his official capacity, alleging property damage, property loss, personal injury or other civil liability caused by or resulting from any alleged act, error or omission of the receiver or any employee arising out of or by reason of their duties or employment, the receiver and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees or amounts due and owing or paid in satisfaction of or incurred in the defense of such legal action unless it is determined upon a final adjudication on the merits that the alleged act, error or omission of the receiver or employee giving rise to the claim did not arise out of or by reason of his duties or employment, or was caused by intentional or willful and wanton misconduct.

1. Attorneys' fees and any and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the

insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the receiver or employee to repay the attorneys' fees and expenses if it shall ultimately be determined upon a final adjudication on the merits that the receiver or employee is not entitled to immunity or indemnity under this section.

2. Any indemnification for expense payments, judgments, settlements, decrees, attorneys' fees, surety bond premiums or other amounts paid or to be paid from the insurer's assets pursuant to this section shall be an administrative expense of the insurer.

3. In the event of any actual or threatened litigation against a receiver or any employee for which immunity or indemnity may be available under this section, a reasonable amount of funds which in the judgment of the Insurance Commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until such time as all applicable statutes of limitation shall have run and all actual or threatened actions against the receiver or any employee have been completely and finally resolved, and all obligations of the insurer and the Commissioner under this section shall have been satisfied.

4. In lieu of segregation and reserving of funds, the Insurance Commissioner shall have the discretion to obtain a surety bond or make other arrangements which shall enable the Commissioner to fully secure the payment of all obligations under this section.

C. If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer must pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the Insurance Commissioner determines:

1. That the claim did not arise out of or by reason of the employee's duties or employment; or

2. That the claim was caused by the intentional or willful and wanton misconduct of the employee.

D. In any legal action in which the receiver is a defendant, that portion of any settlement relating to the alleged act, error or omission of the receiver shall be subject to the approval of the court before which the delinquency proceeding is pending. The court shall not approve that portion of the settlement if it determines:

1. That the claim did not arise out of or by reason of the receiver's duties or employment; or

2. That the claim was caused by the intentional or willful and wanton misconduct of the receiver.

E. Nothing contained or implied in this section shall operate, or be construed or applied to deprive the receiver or any employee of any immunity, indemnity, benefits of law, rights or any defense otherwise available.

F. 1. No legal action shall lie against the receiver or any employee based in whole or in part on any alleged act, error or omission which took place prior to September 1, 1992, unless suit is filed and valid service of process is obtained prior to September 1, 1993.

2. Subsections B, C, and D of this section shall apply to any suit which is pending on or filed after September 1, 1992, without regard to when the alleged act, error or omission took place.

SECTION 21. Sections 22 through 39 of this act shall constitute Article 51 of the Oklahoma Insurance Code.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5101 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 22 through 34 of this act shall be known and may be cited as the "Reinsurance Intermediary Act".

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5102 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Reinsurance Intermediary Act:

1. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

2. "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary;

3. "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the Oklahoma Insurance Code as an insurer;

4. "Licensed producer" means an agent, broker or reinsurance intermediary licensed in this state pursuant to the applicable provision of the Oklahoma Insurance Code;

5. "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in this section;

6. "Reinsurance intermediary broker" (RB) means any person, other than an officer or employee of the ceding insurer, firm, association or corporation, who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer;

7. "Reinsurance intermediary manager" (RM) means any person, firm, association or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as an RM, manager or other similar term.

The following persons shall not be considered RMs, with respect to a reinsurer, for the purposes of the Reinsurance Intermediary Act:

- a. an employee of the reinsurer,
- b. a U.S. manager of the United States branch of an alien reinsurer,
- c. an underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article 16A of the Insurance Code, and whose compensation is not based on the volume of premiums written, or
- d. the manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the Insurance Commissioner of the state in which the manager's principal business office is located;

8. "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the Oklahoma Insurance Code as an insurer with the authority to assume reinsurance;

9. "To be in violation" means failure by the reinsurance intermediary, insurer, reinsurer, or reinsurer for whom the reinsurance intermediary was acting to substantially comply with the provisions of the Reinsurance Intermediary Act; and

10. "Qualified United States financial institution" means an institution that:

- a. is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof,

- b. is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies, and
- c. has been determined by either the Commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5103 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person, firm, association or corporation shall act as an RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

1. In this state, unless such RB is a licensed producer in this state; or

2. In another state, unless such RB is a licensed producer in this state or another state having a law substantially similar to this law or such RB is licensed in this state as a nonresident reinsurance intermediary.

B. No person, firm, association or corporation shall act as an RM:

1. For a reinsurer domiciled in this state, unless such RM is a licensed producer in this state;

2. In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such RM is a licensed producer in this state; or

3. In another state for a nondomestic insurer, unless such RM is a licensed producer in this state or another state having a law

substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

C. The Commissioner may require an RM subject to the provisions of subsection B of this section to:

1. File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

2. Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

D. 1. The Commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of the Reinsurance Intermediary Act. Any such license issued to a firm or association shall authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries pursuant to the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.

2. If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the Commissioner as agent for service of process in the manner, and with the same legal effect, provided for by the Reinsurance Intermediary Act for designation of service of process upon unauthorized insurers; and also shall furnish the Commissioner with the name and address of a resident of this state upon whom notices or orders of the Commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the Commissioner in writing of every change in its designated agent for service of

process, and such change shall not become effective until acknowledged by the Commissioner.

E. The Commissioner may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, or that any controlling person of such applicant, is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the Commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the Oklahoma Open Records Act.

F. Licensed attorneys-at-law of this state when acting in their professional capacity as attorneys shall be exempt from this section.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5104 of Title 36, unless there is created a duplication in numbering, reads as follows:

Transactions between an RB and the insurer the RB represents in such capacity shall be entered into only pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that:

1. The insurer may terminate the authority of the RB at any time;

2. The RB shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the RB, and remit all funds due to the insurer within thirty (30) days of receipt;

3. All funds collected for the insurer's account shall be held by the RB in a fiduciary capacity in a bank which is a qualified U.S. financial institution;

4. The RB shall comply with Section 26 of this act;

5. The RB shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

6. The RB shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5105 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. For at least ten (10) years after the expiration of each contract of reinsurance transacted by an RB, the RB shall keep a complete record for each transaction showing:

1. The type of contract, limits, underwriting restrictions, classes or risks and territory;

2. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

3. Reporting and settlement requirements of balances;

4. Rate used to compute the reinsurance premium;

5. Names and addresses of assuming reinsurers;

6. Rates of all reinsurance commissions, including, but not limited to, the commissions on any retrocessions handled by the RB;

7. Related correspondence and memoranda;

8. Proof of placement;

9. Details regarding retrocessions handled by the RB, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

10. Financial records, including but not limited to, premium and loss accounts; and

11. If the RB procures a reinsurance contract on behalf of a licensed ceding insurer:

- a. directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk, or
- b. if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

B. The insurer shall have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5106 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An insurer shall not engage the services of any person, firm, association or corporation to act as an RB on its behalf unless such person is licensed as required by the Reinsurance Intermediary Act.

B. An insurer shall not employ an individual who is employed by an RB with which the insurer transacts business, unless such RB is under common control with the insurer and subject to Article 16A of the Insurance Code.

C. The insurer annually shall obtain a copy of statements of the financial condition of each RB with which the insurer transacts business.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5107 of Title 36, unless there is created a duplication in numbering, reads as follows:

Transactions between an RM and the reinsurer the RM represents in such capacity shall be entered into only pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the board of directors of the reinsurer. At least thirty (30) days before such insurer assumes or cedes business

through such producer, a true copy of the approved contract shall be filed with the Commissioner for approval. The contract shall, at a minimum, contain provisions that:

1. The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination;

2. The RM shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

3. All funds collected for the account of the reinsurer shall be held by the RM in a fiduciary capacity in a bank which is a qualified U.S. financial institution. The RM may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that the RM represents;

4. For at least ten (10) years after expiration of each contract of reinsurance transacted by the RM, the RM shall keep a complete record for each transaction showing:

- a. the type of contract, limits, underwriting restrictions, classes or risks and territory,
- b. period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks,
- c. reporting and settlement requirements of balances,
- d. rate used to compute the reinsurance premium,
- e. names and addresses of reinsurers,
- f. rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM,

- g. related correspondence and memoranda,
- h. proof of placement,
- i. details regarding retrocessions handled by the RM, as permitted by Section 30 of this act, including the identity of retrocessionaires and percentage of each contract assumed or ceded,
- j. financial records, including but not limited to, premium and loss accounts, and
- k. if the RM places a reinsurance contract on behalf of a ceding insurer:
 - (1) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk, or
 - (2) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative;

5. The reinsurer shall have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer;

6. The contract shall not be assigned in whole or in part by the RM;

7. The RM shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;

8. Set forth the rates, terms, and purposes of commissions, charges, and other fees which the RM may levy against the reinsurer;

9. If the contract permits the RM to settle claims on behalf of the reinsurer:

- a. all claims shall be reported to the reinsurer in a timely manner,

- b. a copy of the claim file shall be sent to the reinsurer at the request of the reinsurer as soon as it becomes known that the claim:
- (1) has the potential to exceed the lesser of an amount determined by the Commissioner or the limit set by the reinsurer,
 - (2) involves a coverage dispute,
 - (3) may exceed the claims settlement authority of the RM,
 - (4) is open for more than six (6) months, or
 - (5) is closed by payment of the lesser of an amount set by the Commissioner or an amount set by the reinsurer,
- c. all claim files shall be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate. The RM shall have reasonable access to and the right to copy the files on a timely basis,
- d. any settlement authority granted to the RM may be terminated for cause upon the written notice by the reinsurer to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;

10. If the contract provides for a sharing of interim profits by the RM, the interim profits shall not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to the provisions of the Reinsurance Intermediary Act;

11. The RM annually shall provide the reinsurer with a statement of the financial condition of the RM prepared by an independent certified accountant;

12. The reinsurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the RM;

13. The RM shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract; and

14. The acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf the RM is acting.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5108 of Title 36, unless there is created a duplication in numbering, reads as follows:

The RM shall not:

1. Bind retrocessions on behalf of the reinsurer, except that the RM may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

2. Commit the reinsurer to participate in reinsurance syndicates;

3. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim or net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent (1%)

of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be forwarded promptly to the reinsurer;

6. Jointly employ an individual who is employed by the reinsurer; or

7. Appoint a sub-RM.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5109 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A reinsurer shall not engage the services of any person, firm, association or corporation to act as an RM on its behalf unless such person is licensed as required by the Reinsurance Intermediary Act.

B. The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which such reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the Commissioner.

C. If an RM establishes loss reserves, the reinsurer annually shall obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

E. Within thirty (30) days of termination of a contract with an RM, the reinsurer shall provide written notification of such termination to the Commissioner.

F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by Article 16A of the Insurance Code or, if applicable, the Business Transacted with Producer Controlled Insurer Act.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5110 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A reinsurance intermediary shall be subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commissioner.

B. An RM may be examined as if the RM were the reinsurer.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5111 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A reinsurance intermediary, insurer or reinsurer found by the Commissioner, after a hearing conducted in accordance with the Administrative Procedures Act, to be in violation of any provision of the Reinsurance Intermediary Act, shall:

1. For each separate violation, pay a penalty in an amount not exceeding Five Thousand Dollars (\$5,000.00); and

2. Be subject to revocation or suspension of license.

B. In addition, if a violation of the Reinsurance Intermediary Act is committed by a reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

C. The decision, determination, or order of the Commissioner pursuant to this section shall be subject to judicial review pursuant to the Administrative Procedures Act.

D. Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided in the Oklahoma Insurance Code.

E. Nothing contained in the Reinsurance Intermediary Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to such persons.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5112 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner may promulgate and adopt reasonable rules and regulations for the implementation and administration of the provisions of the Reinsurance Intermediary Act.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5113 of Title 36, unless there is created a duplication in numbering, reads as follows:

No insurer or reinsurer shall continue to utilize the services of a reinsurance intermediary on and after September 1, 1992, unless utilization is in compliance with the provisions of the Reinsurance Intermediary Act.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5121 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 35 through 39 of this act shall be known and may be cited as the "Credit for Reinsurance Act".

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5122 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection B, C, D, E or F of this section. If meeting the

requirements of subsection D or E of this section, the requirements of subsection G of this section must also be met.

B. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state.

An accredited reinsurer is one which:

1. Files with the Insurance Commissioner evidence of its submission to this state's jurisdiction;

2. Submits to this state's authority to examine its books and records;

3. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; and

4. Files annually with the Insurance Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement, and either:

a. maintains a surplus as regards policyholders in an amount which is not less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has not been denied by the Insurance Commissioner within ninety (90) days of its submission, or

b. maintains a surplus as regards policyholders in an amount less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has been approved by the Insurance Commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Insurance Commissioner after notice and hearing.

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

1. Maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars (\$20,000,000.00); and

2. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of this subsection does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

E. 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Section 23 of this act, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Insurance Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the Insurance Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than Twenty Million Dollars (\$20,000,000.00). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United

States and, in addition, the group shall maintain a trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of Ten Billion Dollars (\$10,000,000,000.00), the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Insurance Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

3. Such trust shall be established in a form approved by the Insurance Commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their

assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Insurance Commissioner. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

4. No later than February 28 of each year the trustees of the trust shall report to the Insurance Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

F. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsections B, C, D or E of this section but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

G. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections D and E of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

2. To designate the Insurance Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any

lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

The provisions of this section are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5123 of Title 36, unless there is created a duplication in numbering, reads as follows:

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 36 of this act shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in Section 23 of this act. This security may be in one or more of the following forms:

1. Cash;
2. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; and
3. Any other form of security acceptable to the Insurance Commissioner.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5123 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may promulgate and adopt rules and regulations implementing the provisions of the Credit for Reinsurance Act.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5124 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Credit for Reinsurance Act shall apply to all cessions on and after September 1, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after September 1, 1992.

SECTION 40. NONCODIFICATION Section 21 of this act shall not be codified in the Oklahoma Statutes.

SECTION 41. REPEALER 36 O.S. 1991, Sections 1658 and 1659, are hereby repealed.

SECTION 42. This act shall become effective September 1, 1992.

Passed the House of Representatives the 2nd day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate