

ENROLLED HOUSE  
BILL NO. 2490

BY: BASTIN and WIDENER of  
the HOUSE

and

ROBINSON of the SENATE

AN ACT RELATING TO INSURANCE; EXEMPTING CERTAIN MONEY AND BENEFITS FROM CERTAIN LEGAL PROCESS OR SEIZURE; PROVIDING EXCEPTIONS; PROVIDING FOR ASSIGNMENTS; PROVIDING SCOPE OF APPLICATION; AMENDING 36 O.S. 1991, SECTION 1423, WHICH RELATES TO THE INSURANCE AGENTS LICENSING ACT; PROVIDING THAT LICENSED AGENTS SHALL BE ENTITLED TO CERTAIN COMMISSIONS; PROVIDING EXCEPTIONS; PROVIDING FOR CIVIL ACTIONS; AMENDING 36 O.S. 1991, SECTION 6206, WHICH RELATES TO THE INSURANCE ADJUSTERS LICENSING ACT; PROVIDING THAT CERTAIN INFORMATION IS EXEMPT FROM DISCLOSURE AS PUBLIC RECORDS; AMENDING 59 O.S. 1991, SECTION 1954, WHICH RELATES TO THE OKLAHOMA RENTAL-PURCHASE ACT; MODIFYING CERTAIN DISCLOSURE REQUIREMENTS RELATING TO DEPOSITS AND INSURANCE; MODIFYING PROHIBITED PROVISIONS; MODIFYING REINSTATEMENT PROVISION REQUIREMENTS; DECLARING CERTAIN NEGLIGENCE AND CHARGES THEREFOR TO BE THE RESPONSIBILITY OF THE CONSUMER; PROVIDING FOR CERTAIN PAYMENTS; REPEALING 36 O.S. 1991, SECTION 3631, WHICH RELATES TO EXEMPTION OF LIFE INSURANCE PROCEEDS FROM ATTACHMENT BY CREDITORS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3631.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured or any beneficiary under any policy of insurance issued by a life, health or accident insurance company, under any policy issued by a mutual benefit association, or under any plan or program of annuities and benefits, shall:

1. Inure exclusively to the benefit of the person for whose use and benefit the money or benefits are designated in the policy, plan or program;

2. Be fully exempt from execution, attachment, garnishment or other process;

3. Be fully exempt from being seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered; and

4. Be fully exempt from all demands in any bankruptcy proceeding of the insured or beneficiary.

B. The exemptions provided by subsection A of this section shall apply without regard to whether:

1. The power to change the beneficiary is reserved to the insured; or

2. The insured or the insured's estate is a contingent beneficiary.

C. The exemptions provided by subsection A of this section do not apply to:

1. Premium payments made in fraud of creditors subject to the applicable statute of limitations for the recovery of the premium payments;

2. Fines imposed for violation of state or federal statutes; or

3. A debt of the insured or beneficiary secured by a pledge of the policy or its proceeds.

D. This section shall not prevent the proper assignment of any money or benefits to be paid or rendered under an insurance policy, or any rights under the policy, by the insured or owner in accordance with the terms of the policy. A policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

E. Wherever any policy of insurance or plan or program of annuities and benefits mentioned in subsection A of this section shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void.

F. This section shall apply to money or benefits to be paid or rendered to an insured or a beneficiary under any policy, plan or program provided for in subsection A of this section without regard to whether the policy was issued or the plan or program was established before, on, or after September 1, 1992.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1423, is amended to read as follows:

Section 1423. A. Every agent or limited insurance representative who solicits or negotiates an application for insurance of any kind shall, in any controversy between the insured or his beneficiary and the insurer, be regarded as representing the insurer and not the insured or his beneficiary. This provision shall not affect the apparent authority of an agent.

B. Every surplus lines insurance broker who solicits an application for insurance of any kind shall, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, be regarded as representing the insured or his beneficiary and not the insurer. Any company which directly or through its agents delivers in this state to any insurance broker, a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, shall be deemed to have authorized such broker to receive on its behalf, payment of any premium which is due on such policy of insurance at the time of its issuance or delivery.

C. Every licensed agent shall be entitled to commissions on all premiums collected for group insurance policies negotiated by said agent on behalf of an insurer and an insurer shall be required to

pay such commissions to the agent, except entitlement to commissions shall automatically terminate without notice, effective on the date of the occurrence of any of the following events:

1. The agent's license to engage in accident and health insurance business is terminated or revoked by the State of Oklahoma or any other public authority for cause. As used in this paragraph, "cause" shall be defined as perpetration by the agent of fraud or embezzlement;

2. Material breach of the agent's contract with the account or insurer, excluding production requirements;

3. Termination of the agent's "Agent of Record" relationship with the employer or account; or

4. Death of the agent, unless the contract between the insurer states otherwise or the right to the commission has vested.

Recovery of such commissions shall be through civil action. In any action brought pursuant to this subsection, the court may award reasonable attorneys fees to the prevailing party.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 6206, is amended to read as follows:

Section 6206. A. The Commissioner shall license as an adjuster only an individual who has fully complied with the provisions of the Insurance Adjusters Licensing Act, including the furnishing of evidence satisfactory to the Commissioner that:

1. he is at least eighteen (18) years of age; and

2. he is a bona fide resident of this state or is a resident of a state or country which permits adjusters who are residents of this state to act as adjusters in such other state or country; and

3. if he is a nonresident of the United States, he has complied with all federal laws pertaining to employment and the transaction of business in the United States; and

4. he is a trustworthy person; and

5. he has had experience or special education or training of sufficient duration and extent with reference to the handling of loss claims pursuant to insurance contracts to make him competent to fulfill the responsibilities of an adjuster; and

6. he has successfully passed an examination as required by the Commissioner or has been exempted from examination, in accordance with the provisions of Section 6208 of this title; and

7. if the application is for a public adjuster's license, the applicant has filed the bond required by Section 6214 of this title.

B. Residence addresses and telephone listings for insurance adjusters and public adjusters on file with the Insurance Department are exempt from disclosure as public records.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 1954, is amended to read as follows:

Section 1954. A. The disclosures required by the Oklahoma Rental-Purchase Act:

1. Shall be made clearly and conspicuously;

2. Shall be in writing, a copy of which shall be delivered to the lessee;

3. May use terminology different from that employed in the Oklahoma Rental-Purchase Act if it conveys substantially the same meaning;

4. May be supplemented by additional information or explanations supplied by the lessor;

5. Shall comply with the provisions of the Oklahoma Rental-Purchase Act although rendered inaccurate by any act, occurrence, or agreement, subsequent to the required disclosure;

6. Shall be made to the person who signs the rental-purchase agreement, except that in a transaction involving more than one

lessee, a disclosure statement or a copy of the agreement need not be given to more than one of the lessees;

7. Shall be made by the lessor specified on the rental-purchase license.

B. A rental-purchase agreement shall disclose the following items, as applicable:

1. Whether the property is new or used;

2. The period and amount of payments;

3. The total number of payments necessary and the total amounts to be paid to acquire ownership of the merchandise;

4. The amount and purpose of any other payment, charge or fee in addition to the regular periodic payments;

5. Whether the consumer is liable for loss or damage to the rental property, and if so, the maximum amount for which the consumer may be liable;

6. The amount of any ~~security~~ deposit required by lessor and the conditions under which it shall be ~~returned~~ refundable or nonrefundable;

7. If applicable, that the lessee may purchase from the lessor insurance to cover the property or a waiver of liability for damage to or destruction of the property, and the amount of any such ~~charges~~ charge or fee. The insurance or waiver of liability coverage may be offered to the lessee at any time during the term of the rental-purchase agreement;

8. That the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement.

C. A rental-purchase agreement may not contain a provision:

1. Requiring a confession of judgment;

2. Authorizing a lessor or an agent of the lessor to commit a breach of the peace in the repossession of rental property;

3. Waiving any defense, counterclaim, or right the lessee may have against the lessor or an agent of the lessor;

4. Requiring the purchase of insurance from the lessor to cover the rental property; provided, however, that the lessor may offer to the lessee any such insurance if it is clearly and conspicuously disclosed on the face of the agreement of insurance, in print not less than 8 point bold face type, that the purchase of any such insurance by the lessee from the lessor is optional. Lessors offering any such insurance must comply with the rules and regulations governing the offering for sale and sale of insurance in the State of Oklahoma, and the offering for sale and sale of such insurance shall be governed and regulated by the State of Oklahoma Commissioner of Insurance;

5. Requiring the purchase of a waiver of liability from the lessor for damage to or destruction of the property; provided, however, that the lessor may offer to the lessee any such waiver of liability if it is clearly and conspicuously disclosed on the face of the waiver of liability agreement, in print not less than 8 point bold face type, that the purchase of any such waiver of liability by the lessee from the lessor is optional. The charge for any waiver of liability shall not exceed ~~the greater of~~ five percent (5%) of the rental payment or One Dollar (\$1.00), whichever is greater;

6. Requiring the payment of a late charge or reinstatement fee of more than Five Dollars (\$5.00). ~~Nothing herein shall prevent a lessor from charging a lesser amount, including daily late charges not exceeding One Dollar (\$1.00) per day, as long as;~~ provided, the total of both the late charge and the reinstatement fee for any one payment missed does not exceed Five Dollars (\$5.00) if payments are monthly, or Three Dollars (\$3.00) if payments are weekly or bi-weekly. If the payment is not paid by the close of business on

the due date, such payment shall be considered missed. Late charges, pickup charges, delivery charges, rent due and reinstatement fees may be held from the payment or may be accrued and collected when possible;

7. Requiring the payment of a delivery charge of more than Fifteen Dollars (\$15.00) for delivery of an item or items within fifteen (15) miles of the business location, or Thirty Dollars (\$30.00) for delivery of an item or items more than fifteen (15) miles from the business location. However, in the event a lessor delivers more than five (5) items to a lessee's dwelling, the delivery charge shall not exceed Forty-five Dollars (\$45.00) regardless of the delivery distance. Delivery charges are allowed only if the lessor actually delivers merchandise to the dwelling of the lessee;

8. Requiring the payment of a charge exceeding Fifteen Dollars (\$15.00) on any insufficient funds check;

9. Requiring a nonrefundable initial fee exceeding Ten Dollars (\$10.00). An initial fee may be charged only once on an agreement;

10. Requiring a pickup charge exceeding Ten Dollars (\$10.00) on late payments. If payments are monthly, a maximum of three pickup charges may be assessed in a six-month period. If payments are more frequent than monthly, a maximum of six pickup charges may be assessed in a six-month period. ~~A pickup charge is in lieu of any delinquency or reinstatement fee;~~ The pickup charges may be assessed and paid when the consumer makes the next scheduled payment or such charges may be accrued; and

11. Requiring the payment of any other additional charges of any nature whatsoever, other than those specified.

D. A rental-purchase agreement shall provide reinstatement rights as follows:

1. A consumer who fails to make a timely payment may reinstate a rental-purchase agreement without losing rights or options previously acquired, by ~~making all~~ arranging with the lessor to make the past due payments, paying any reinstatement fees or returning the property to the lessor, if the lessor so requests, within two (2) days after the due date of the payment and by arranging to pay any fees due or by returning the property within two (2) days if the lessor so requests. Provided, nothing herein shall prevent the lessor from modifying payment arrangements to allow the consumer to make the account current and to accrue any charges due or any rent due to be paid at some future agreed upon date. Partial payment agreements shall provide for the rent to be prorated with notice to the consumer of the next due date.

2. If the rental property is returned during the reinstatement period, other than through judicial process, the right to reinstate the agreement shall be extended for a period of not less than thirty (30) days after the date of the return of the property. Upon reinstatement, the lessor shall provide the lessee with the same rental property or substitute property of comparable quality and condition. If substitute property is provided, the lessor shall provide the lessee with the disclosures required in subsection B of this section. Notice of the right to reinstate shall be disclosed in the agreement.

E. An advertisement for a rental-purchase agreement that states the amount of a payment and the right to acquire ownership of any one particular item must clearly and conspicuously state:

1. That the transaction advertised is a rental-purchase agreement; and

2. The total amount and the number of payments necessary to acquire ownership.

F. Any consumer neglect of the merchandise resulting in reasonable repairs will be the responsibility of the consumer and charges for such repair may be received in payments agreed upon by the lessor according to an agreed upon payment schedule.

SECTION 5. REPEALER 36 O.S. 1991, Section 3631, is hereby repealed.

SECTION 6. This act shall become effective September 1, 1992.

Passed the House of Representatives the 14th day of May, 1992.

Speaker of the House of  
Representatives

Passed the Senate the 18th day of May, 1992.

President of the Senate