

ENROLLED SENATE
BILL NO. 171

BY: HOOPER of the SENATE

and

GLOVER of the HOUSE

AN ACT RELATING TO INSURANCE; CREATING THE MANAGING GENERAL AGENTS ACT; PROVIDING SHORT TITLE; DEFINING TERMS; REQUIRING MANAGING GENERAL AGENT TO BE LICENSED AS AN INSURANCE AGENT OR BROKER; AUTHORIZING INSURANCE COMMISSIONER TO REQUIRE BOND AND ERRORS AND OMISSIONS POLICY; REQUIRING WRITTEN CONTRACT BEFORE MANAGING GENERAL AGENT MAY PLACE BUSINESS WITH AN INSURER AND SPECIFYING MINIMUM PROVISIONS TO BE INCLUDED IN CONTRACT; PROHIBITING CERTAIN ACTS; REQUIRING INSURER HAVE AN INDEPENDENT FINANCIAL EXAMINATION OF EACH MANAGING GENERAL AGENT; REQUIRING PERIODIC ON-SITE REVIEW; REQUIRING NOTICE OF APPOINTMENT OR TERMINATION OF MANAGING GENERAL AGENT AND OF DETERMINATION THAT AGENT OR BROKER HAS BECOME A MANAGING GENERAL AGENT; PROHIBITING CERTAIN APPOINTMENT; MAKING ACTS OF MANAGING GENERAL AGENT SAME AS ACTS OF INSURER; PROVIDING FOR CERTAIN PENALTIES AFTER HEARING; CLARIFYING EFFECT OF ACT; REQUIRING CERTAIN COMPLIANCE; PROVIDING FOR ADOPTION OF RULES AND REGULATIONS; AMENDING SECTION 16, CHAPTER 251, O.S.L. 1986, AS AMENDED BY SECTION 1, CHAPTER 238, O.S.L. 1989 (36 O.S. SUPP. 1990, SECTION 1254), WHICH RELATES TO THE CLAIMS RESOLUTION ACT; PROHIBITING CERTAIN INSURERS FROM DENYING CLAIMS WITHOUT CERTAIN REPORT; PROHIBITING CERTAIN COMPENSATION PLAN; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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 1471 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Managing General Agents Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1472 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;
2. "Insurer" means any person licensed pursuant to the Oklahoma Insurance Code to transact insurance;
3. a. "Managing General Agent" or "MGA" means any person who:

- (1) negotiates and binds ceding reinsurance contracts on behalf of an insurer, or
 - (2) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and
 - (3) acts as an agent for such insurer, whether known as a managing general agent, manager or other similar term, and
 - (4) directly or indirectly, with or without the authority of the insurer, whether separately or together with affiliates, produces and underwrites an amount of gross direct written premium equal to or greater than five percent (5%) of the policyholder surplus, as reported in the last annual statement of the insurer in any one quarter or year together with the following:
 - (a) adjusts or pays claims in excess of an amount determined by the Insurance Commissioner, or
 - (b) negotiates reinsurance on behalf of the insurer.
- b. Notwithstanding subparagraph a of this paragraph, the following persons shall not be considered to be managing general agents for the purpose of this act:
- (1) an employee of the insurer,
 - (2) a U.S. Manager of the United States branch of an alien insurer,
 - (3) an underwriting manager which, pursuant to contract:
 - (a) manages all the insurance operations of the insurer,
 - (b) is under common control with the insurer, subject to the holding company regulatory act, and
 - (c) whose compensation is not based on the volume of premiums written, and
 - (4) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of an attorney;

4. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1473 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer unless such person is licensed as an agent or broker pursuant to Section 1421 et seq. of Title 36 of the Oklahoma Statutes.

B. No person shall act in the capacity of a managing general agent, representing an insurer domiciled in this state with respect to risks located outside this state, unless such person is licensed as an agent or broker pursuant to Section 1421 et seq. of Title 36 of the Oklahoma Statutes. Provided, such license may be a nonresident license.

C. The Insurance Commissioner may require a bond in the amount acceptable to him for the protection of the insurer.

D. The Insurance Commissioner may require the managing general agent to maintain an errors and omissions policy.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1474 of Title 36, unless there is created a duplication in numbering, reads as follows:

No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1. The insurer may terminate the contract for cause upon thirty (30) days' written notice to the managing general agent and the Insurance Commissioner. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

2. The managing general agent shall render accounts to the insurer detailing all transactions and shall remit all funds due under the contract to the insurer on not less than a monthly basis;

3. All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three (3) months' estimated claims payment and allocated loss adjustment expenses;

4. Separate records of business written by the managing general agent shall be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer. The Insurance Commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the Commissioner. Such records shall be retained according to the provisions of paragraph 5 of subsection A of Section 1428 of Title 36 of the Oklahoma Statutes;

5. The contract may not be assigned in whole or part by the managing general agent;

6. The contract shall contain appropriate underwriting guidelines including:

- a. the maximum annual premium volume,
- b. the basis of the rates to be charged,
- c. the types of risks which may be written,
- d. maximum limits of liability,
- e. applicable exclusions,
- f. territorial limitations,
- g. policy cancellation provisions, and
- h. the maximum policy period;

7. The insurer shall have the right to cancel or not renew any policy of insurance subject to applicable laws and regulations;

8. If the contract permits the managing general agent to settle claims on behalf of the insurer:

- a. all claims must be reported to the company in a timely manner,
- b. a copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (1) has the potential to exceed a threshold determined by the Insurance Commissioner or exceeds the limit set by the company, whichever is less,
 - (2) involves a coverage dispute,
 - (3) may exceed the managing general agent's claims settlement authority,

- (4) is open for more than six (6) months, or
- (5) is closed by payment of an amount set by the Insurance Commissioner or an amount set by the company, whichever is less,
- c. all claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis,
- d. any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination, and
- e. nothing in this section shall be construed to give the Insurance Commissioner authority to settle or adjust claims on behalf of the insurer;

9. Where electronic claim files are in existence, the contract shall address the timely transmission of the data;

10. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent on the lines of business written by the managing general agent until at least ninety-seven percent (97%) of the ultimate loss has been developed for those lines of business, based on an opinion of the actuary who certifies the adequacy of the loss reserves for the insurer;

11. The managing general agent shall not:

- a. bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded:
 - (1) a list of reinsurers with which such automatic agreements are in effect,
 - (2) the coverages and amounts or percentages that may be reinsured, and
 - (3) commission schedules,
- b. commit the insurer to participate in insurance or reinsurance syndicates,
- c. appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he is appointed,
- d. without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year,
- e. collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior

- approval is given, a report shall be promptly forwarded to the insurer,
- f. permit its sub-agent or sub-broker to serve on the insurer's board of directors,
 - g. jointly employ an individual who is employed with the insurer, or
 - h. appoint a sub-managing general agent.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1475 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The insurer shall have on file an independent financial examination, in a form acceptable to the Insurance Commissioner, of each managing general agent with which it has done business.

B. The insurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

C. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

D. Within thirty (30) days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the Insurance Commissioner. Notices of appointment of a managing general agent shall include:

1. A statement of duties which the applicant is expected to perform on behalf of the insurer;
2. The lines of insurance for which the applicant is to be authorized to act; and
3. Any other information the Commissioner may request.

E. An insurer shall review its books and records each quarter to determine if any agent or broker has become a managing general agent as defined in Section 2 of this act. If the insurer determines that an agent or broker has become a managing general agent, the insurer shall promptly notify the agent or broker and the Insurance Commissioner of such determination, and the insurer and agent or broker shall fully comply with the provisions of this act within thirty (30) days of such notification.

F. An insurer shall not appoint to its board of directors an officer, director, employee, sub-agent, sub-broker or controlling shareholder of its managing general agents. This subsection shall not apply to relationships governed by the insurance holding company act, Section 1651 et seq. of this title.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1476 of Title 36, unless there is created a duplication in numbering, reads as follows:

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf the agent is acting. A managing general agent may be examined as if the agent were the insurer.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1477 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If the Insurance Commissioner finds, after a hearing conducted in accordance with Article II of the Administrative Procedures Act, Section 309 et seq. of Title 75 of the Oklahoma Statutes, that any person had violated any provision of this act or rules promulgated pursuant thereto, the Commissioner may order:

1. For each separate violation, a penalty in an amount of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) for each occurrence;

2. Revocation or suspension of the agent's or broker's license; and

3. The managing general agent to reimburse the insurer, the rehabilitator or the liquidator of the insurer for any losses incurred by the insurer which were caused by a violation of this act committed by the managing general agent.

B. The decision, determination or order of the Commissioner pursuant to subsection A of this section shall be subject to judicial review pursuant to the Administrative Procedures Act and any applicable insurance laws and regulations.

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

D. Nothing contained in this act is intended to or shall, in any manner, limit or restrict the rights of policyholders, claimants and auditors.

E. No insurer may continue to utilize the services of a managing general agent on or after July 1, 1991, unless such utilization is in compliance with this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1478 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this act.

SECTION 9. AMENDATORY Section 16, Chapter 251, O.S.L. 1986, as amended by Section 1, Chapter 238, O.S.L. 1989 (36 O.S. Supp. 1990, Section 1254), is amended to read as follows:

Section 1254. 1. No insurer shall fail to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

2. No agent shall conceal from first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

3. No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

4. No insurer, except where there is a time limit specified in the policy, shall make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights.

5. No insurer shall request a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

6. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability.

7. No insurer transacting health insurance in this state shall deny payment to a claimant on the grounds that services, procedures or supplies provided by a treating physician or a hospital were not medically necessary unless said health insurer first obtains a report prepared and signed by a licensed health care provider, and preceded by a medical examination or claim review, stating that the services, procedures or supplies for which payment is being denied

were not medically necessary. The report shall detail which specific services, procedures and supplies were not medically necessary, in the opinion of the reviewing health care provider, and an explanation of that conclusion. A copy of each report of a reviewing health care provider shall be mailed by the health insurer, postage prepaid, to the claimant or the treating physician or hospital requesting same within fifteen (15) days after receipt of a written request. As used in this subsection, "physician" means a person holding a valid license to practice medicine and surgery, osteopathy, podiatry, chiropractic or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes.

8. No insurer transacting health insurance in this state shall compensate a reviewing health care provider on the basis of a percentage of the amount by which a claim is reduced for payment.

9. All payment or satisfaction of a claim for a motor vehicle which has been transferred by title to the insurer shall be paid by check or draft, payable on demand.

SECTION 10. This act shall become effective July 1, 1991.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 23d day of April, 1991.

President of the Senate

Passed the House of Representatives the 3d day of April, 1991.

Speaker of the House of Representatives