STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 170 BY: HOOPER of the SENATE

and

BENSON of the HOUSE

AS INTRODUCED

AN ACT RELATING TO INSURANCE; DEFINING TERMS; AUTHORIZING INSURANCE COMMISSIONER TO CONDUCT CERTAIN EXAMINATIONS OF INSURERS; PROVIDING FOR SCHEDULING, SCOPE AND FREQUENCY OF EXAMINATION AND INVESTIGATION OF CERTAIN PERSONS; ALLOWING ACCEPTANCE OF CERTAIN REPORTS IN LIEU OF EXAMINATION OF CERTAIN INSURERS; STATING PROCEDURE FOR CONDUCTING EXAMINATION; PROVIDING FOR ACCESS TO INFORMATION, SUBPOENA POWER AND RETAINING OF CERTAIN PROFESSIONALS; CONSTRUING ACT; PROVIDING FOR CERTAIN EXAMINATION REPORTS, CONTENTS THEREOF, FILING PROCEDURES AND REVIEW; PROVIDING FOR CERTAIN ORDERS, HEARINGS AND RELATED PROCEDURES; STATING CERTAIN INFORMATION AND RECORDS MAY NOT BE DISCLOSED; MAKING EXAMINATION REPORTS CONFIDENTIAL EXCEPT UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING INITIATION OF CERTAIN PROCEEDINGS OR ACTIONS; REQUIRING CERTAIN DOCUMENTS BE GIVEN CONFIDENTIAL TREATMENT; PROHIBITING CERTAIN CONFLICT OF INTEREST AND NOTING EXCEPTIONS; ALLOWING RETENTION OF CERTAIN PROFESSIONALS; PROVIDING FOR PAYMENT OF CERTAIN CHARGES AND EXPENSES; PROVIDING IMMUNITY

FROM CERTAIN ACTIONS AND LIABILITY; CLARIFYING EFFECT OF IMMUNITY; PROVIDING FOR CERTAIN AWARD IN CIVIL ACTION; REPEALING 36 O.S. 1981, SECTIONS 308 AND 309, AS AMENDED BY SECTIONS 1 AND 2, CHAPTER 149, O.S.L. 1984, AND 310 (36 O.S. SUPP. 1990, SECTIONS 308 AND 309), WHICH RELATE TO EXAMINATION AND AUDIT OF INSURERS; 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 309.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Commissioner" means the Insurance Commissioner;

2. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative or regulatory authority of the Commissioner;

3. "Department" means the Insurance Department;

4. "Examiner" means any individual or firm having been authorized by the Commissioner to conduct an examination under this act;

5. "Insurer" means every person engaged in the business of making contracts of insurance or indemnity including not-for-profit hospital service and medical indemnity corporations; and

6. "Person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner or any of his examiners may conduct an examination under this act of any company as often as the Commissioner in his sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every three (3) years. In scheduling and determining the nature, scope and frequency of the examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the Commissioner exercises discretion under this subsection.

B. For purposes of completing an examination of any company under this act, the Commissioner may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the company.

C. In lieu of an examination under this act of any foreign or alien insurer licensed in this state, the Commissioner may accept an examination report on such company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:

1. The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioner' Financial Regulation Standards and Accreditation Program; or

2. The examination is performed with the participation of one or more examiners who are employed by such an accredited state

insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Upon determining that an examination should be conducted, the Insurance Commissioner or his designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate.

B. Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subsection A of this section timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the Commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or

authority shall be conducted pursuant to Section 619 of Title 36 of the Oklahoma Statutes.

C. The Commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

D. When making an examination under this act, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

E. Nothing contained in this act shall be construed to limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

F. Nothing contained in this act shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may, in his sole discretion, deem appropriate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from such facts.

B. No later than thirty (30) days following completion of the examination, the examiner in charge shall file with the Insurance Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than then (10) days to make a written submission or written rebuttal with respect to any matters contained in the examination report.

C. Within then (10) days of the end of the period allowed for the receipt of written submissions or written rebuttals, the Insurance Commissioner shall fully consider and review the report, together with any written submissions or written rebuttals and any relevant portions of the examiners' workpapers and enter an order:

1. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure such violation;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection A of this section; or

3. Calling for an investigatory hearing with notice pursuant to the Administrative Procedures Act to the company for purposes of obtaining additional documentation, data, information and testimony.

D. 1. All orders entered pursuant to paragraph 1 of subsection C of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to the Administrative Procedures Act, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

2. Any hearing conducted pursuant to paragraph 3 of subsection C of this section by the Commissioner or authorized representative, shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face to the filed examination report or raise by or as a result of the Commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within thirty (30) days of the conclusion of any such hearing, the Commissioner shall enter an order pursuant to paragraph 1 of subsection C of this section.

3. The Commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the

investigation whether under the control of the Department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner or his representative shall be under oath and preserved for the record.

4. Nothing contained in this section shall require the Department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

5. The hearing shall proceed with the Commissioner or his representative posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. Cross examination shall be conducted only by the Commissioner or his representative. The company and the Department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. 1. Upon the adoption of the examination report under paragraph 1 of subsection C of this section, the Commissioner shall continue to hold the content of the examination report as private and confidential information for a period of two (2) days except to the extent provided in subsection B of this section. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

2. Nothing contained in this act shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

3. In the event the Commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

F. All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this act shall be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in subsection E of this section. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No examiner may be appointed by the Insurance Commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

1. A policyholder or claimant under an insurance policy;

2. A grantor of a mortgage or similar instrument on such examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

3. An investment owner in shares of regulated diversified investment companies; or

4. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

B. Notwithstanding the requirements of this section, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any insurer or person examined under the provisions of this act shall pay the proper charges incurred in such examination, including the actual expense of the Insurance Commissioner or the expenses and compensation of his authorized representative and the expense and compensation of assistants and examiners employed therein. All expenses incurred in such examination shall be verified by affidavit and a copy shall be filed and kept in his office.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No cause of action shall arise nor shall any liability be imposed against the Insurance Commissioner, the Commissioner's authorized representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this act, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

C. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection A of this section.

D. A person identified in subsection A of this section shall be entitled to an award of attorney's fees and costs if they are the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of their activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

SECTION 8. REPEALER 36 O.S. 1981, Sections 308 and 309, as amended by Sections 1 and 2, Chapter 149, O.S.L. 1984, and 310 (36 O.S. Supp. 1990, Sections 308 and 309), are hereby repealed.

SECTION 9. This act shall become effective September 1, 1991.

43-1-107 JY