

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1605

By: Cox

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 1991, Section 309.2, which relates to examinations of insurers; modifying frequency of examination of foreign insurers; authorizing the Insurance Commissioner to accept examinations by accredited states on foreign insurers; amending 36 O.S. 1991, Section 711, which relates to reinsurance; deleting duplicate language; amending 36 O.S. 1991, Section 1106, which relates to surplus lines insurance; modifying requirements for surplus lines insurers; amending 36 O.S. 1991, Section 1513, which relates to real property held by an insurer; modifying valuation on certain property; requiring certain property to be in compliance by a certain date; amending 36 O.S. 1991, Section 1622, which relates to investments by insurers secured by mortgages or deeds of trust; modifying limits for mortgage loans; adding additional limits; requiring certain loans to be in compliance by a certain date; amending 36 O.S. 1991, Section 1653, as amended by Section 3, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1992, Section 1653), which relates to acquisition of control of or merger with domestic insurers; modifying content requirements for certain statements; authorizing the Insurance Commissioner to waive certain audit requirement in certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 309.2, is amended to read as follows:

Section 309.2 A. The Insurance Commissioner or any of his examiners may conduct an examination under Sections 1 through 7 of this act of any company as often as the Commissioner deems appropriate but shall at a minimum, conduct an examination of every domestic insurer licensed in this state not less frequently than once every three (3) years. The Commissioner shall, at a minimum, conduct an examination of every foreign insurer licensed in this state not less frequently than once every five (5) years. The Commissioner may accept examinations conducted by accredited

states on foreign insurers domiciled in such states. 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. The Commissioner may also make such examinations, upon the request of five or more persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition.

B. For purposes of completing an examination of any company under Sections 1 through 7 of this act, the Commissioner may examine or investigate any person, or the business of any person, insofar 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 Sections 1 through 7 of 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 Commissioners' 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 2. AMENDATORY 36 O.S. 1991, Section 711, is amended to read as follows:

~~Section 711. A. Except as provided for in subsection C of this section, an insurer shall reinsure its risks, or any part thereof, only in solvent insurers having surplus to policyholders not less in amount than the paid-in capital required under this Code of a domestic stock insurer authorized to transact like kinds of insurance. A domestic limited stock life, accident and health insurer may accept reinsurance of the risks of other such limited stock life, accident and health insurers and of mutual benefit associations.~~

~~B. An insurer shall so reinsure in such alien insurers only as either (1) are authorized to transact insurance in at least one state of the United States, or (2) have in the United States a duly authorized attorney-in-fact to accept service of legal process against the insurer as to any liability which might arise on account of such reinsurance.~~

~~C. No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance nor increase the amount it is authorized to have at risk unless:~~

~~1. the reinsurance is in insurers either authorized to do business in this state; or~~

~~2. it is demonstrated by the ceding insurer to the satisfaction of the Commissioner that such reinsurer maintains the standards and meets the financial requirements applicable to an admitted insurer; or~~

~~3. to the extent of deposits by or funds withheld from the reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder, if such deposits or funds are held subject to withdrawal by, and under the control of the ceding insurer or are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer.~~

~~In addition to other restrictions provided for in this subsection, no~~ No credit shall be allowed, as an asset or as a

deduction from liability, to any ceding insurer for reinsurance nor increase the amount it is authorized to have at risk unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

~~D.~~ B. This section shall not apply to insurance of ocean marine risks or marine protection and indemnity risks.

~~E. As used in this section, the terms "deposits" and "funds" include securities authorized as general investments by Article 15 of the Insurance Code.~~

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1106, is amended to read as follows:

Section 1106. If the amount of insurance required to protect the interest of the assured cannot be procured from authorized insurers, such amount, hereinafter designated as "surplus line", may be procured from unauthorized insurers subject to the following conditions:

1. The unauthorized insurer must have a certificate of approval from the Commissioner, and meet all relevant statutory requirements, including the following:

- a. the insurer is financially stable, and
- b. the insurer is controlled by persons possessing competence, experience and integrity, and
- c. the insurer, if a foreign insurer, ~~is licensed in two or more states or~~ posts a special deposit in an amount to be determined by the Commissioner, or
- d. the insurer, if an alien insurer, is listed on the National Association of Insurance Commissioners Non-Admitted Insurers Quarterly Listing.

The Commissioner may withdraw a certificate of approval or refuse to renew a certificate upon finding that the insurer no longer meets the criteria for approval set out herein;

2. The insurance must be procured through a licensed surplus line broker, hereinafter in this article referred to as the "broker"; and

3. The amount of insurance required to protect the interest of the assured is not procurable, after diligent effort has been made to do so, from a majority of the insurers accessible to the broker which are authorized to transact that kind and class of insurance in this state, and the placing of insurance with an unauthorized insurer must not be for the purpose of securing advantages either as to premium rate or terms of the insurance contract.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 1513, is amended to read as follows:

Section 1513. A. Real property acquired pursuant to a mortgage loan or contract for sale shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition. In addition, the company may make improvements to such property, provided however, the cost of such improvements plus the acquisition costs and unpaid principal of the defaulted loan or contract shall not exceed the lesser of four percent (4%) of the admitted assets or surplus of the company in regard to policyholders.

B. Other real property held by an insurer shall ~~not~~ be valued at an amount ~~in excess of fair value as determined by recent appraisal~~ not to exceed the lower of current market value or cost plus capitalized improvements less normal depreciation. In lieu of writing down investment real estate or taking part of the value as nonadmitted when market value is less than book value, an insurer may establish a reserve for specific properties as a liability. If valuation is based on an appraisal more than three (3) years old, the Insurance Commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

Real property held by an insurer prior to September 1, 1993, shall be in compliance with the limitations of this section by December 31, 1997. Insurers shall maintain accurate and adequate

records reflecting the provisions of this section and submit such records with quarterly and annual statements.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 1622, is amended to read as follows:

Section 1622. A. An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved, unencumbered real property located in the United States, or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than twenty-one (21) years, inclusive of the term which may be provided by an enforceable option of renewal, in improved, unencumbered real property located in the United States.

B. Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving mineral, oil or timber rights, rights-of-way, sewer rights, rights in walls, nor by reason of any liens for taxes or assessments not delinquent, nor by reason of building restrictions or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, if in any event the security for such loan is a first lien upon such real property and if there is no condition or right of reentry or forfeiture under which, in the case of real property other than leaseholds, such lien can be cut off, subordinated, or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan.

C. No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the lesser of eighty percent (80%) of the value or purchase price of the real property or leasehold securing the same, except that such loan or loans may equal the amount of any guaranty by the United States of America or by any agency or instrumentality of the United States of America or by any private insurance company licensed as an authorized insurer by the Insurance Department of the State of Oklahoma to write mortgage

insurance. Additionally, no single mortgage loan to any individual shall exceed four percent (4%) of the company's admitted assets, with no more than twenty-five percent (25%) of the company's admitted assets invested in total aggregate amount in mortgage loans. The calculation of admitted assets is based on the insurer's annual statement as of December 31 last preceding the date of investment, or as shown by a current financial statement on file with the Commissioner.

Mortgage loans made or acquired by an insurer prior to December 31, 1992, shall be in compliance with the limitation provided in this subsection for total aggregate investment of admitted assets in mortgage loans by December 31, 1997. Mortgage loans made or acquired by an insurer on or after December 31, 1992, but prior to September 1, 1993, shall be in compliance with the limitations for investment of admitted assets in single mortgage loans to individuals and total aggregate investments of admitted assets in mortgage loans provided in this subsection by December 31, 1997. Insurers shall maintain accurate and adequate records reflecting the provisions of this section and submit such records with quarterly and annual statements.

D. No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

E. No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths (4/5) of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 1653, as amended by Section 3, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1992, 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~~ Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years for each

such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement. However, the Commissioner has the discretionary ability to waive the audit requirements set forth in this section based upon review of substantially similar financial disclosure statements submitted by the acquiring party.

(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. 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) 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.

(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 7. This act shall become effective September 1, 1993.

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