

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 772

By: Brown of the Senate

and

Bass of the House

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 1991, Sections 1425, as amended by Section 38, Chapter 270, O.S.L. 1993, 4003.1, 4030.1, 4426, as amended by Section 2, Chapter 136, O.S.L. 1993, 4501, as amended by Section 1, Chapter 304, O.S.L. 1992, and 6060, as amended by Section 1, Chapter 165, O.S.L. 1993 (36 O.S. Supp. 1993, Sections 1425, 4426, 4501 and 6060), which relate to insurance agents, policies, payment of proceeds, group insurance, and coverage for mammography screening; prohibiting agents from receiving ownership interest in policies unless certain condition is met; stating time period for returning premiums and moneys if certain policies are canceled; setting interest rate and time of accrual for certain premiums and moneys not returned and certain proceeds held in non-interest bearing accounts; modifying scope of certain mandate; modifying definition of groups eligible for certain insurance; exempting certain coverage from deductibles, co-payments and co-insurance limits; stating purpose; defining terms; stating venue of certain acts; defining certain acts as insurance business with certain exceptions; prohibiting doing insurance business unless authorized with certain exception; requiring certain information be submitted to Insurance Commissioner; providing civil penalty; authorizing Commissioner to take certain actions for certain violations; requiring district court grant injunctive relief without bond under certain conditions; providing for hearing and related procedures for issuance of cease and desist order; providing for appeal and promulgation of rules; allowing Commissioner to proceed under certain provisions without regard to prior proceedings; stating conditions for issuing cease and desist order, ex parte; providing for emergency cease and desist order and related hearing, procedures, judicial review and recovery of attorney fees; authorizing Commissioner to take certain action for violation of cease and desist order and providing for related hearing, penalties and judicial review; authorizing Commissioner to take certain action for failure to pay penalties; providing for service of process; providing for promulgation of rules; granting discretion for proceeding under certain provisions; repealing 36 O.S. 1991, Section 6103, which relates to unauthorized insurance business;

providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1425, as amended by Section 38, Chapter 270, O.S.L. 1993 (36 O.S. Supp. 1993, Section 1425), is amended to read as follows:

Section 1425. The Commissioner shall not issue, continue, or permit to continue any license of an insurance agent, surplus lines insurance broker, or limited insurance representative except in compliance with the following:

A. Application shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner.

B. 1. The application for an insurance agent, managing general agent, or limited insurance representative license shall be accompanied by a written appointment. The appointment shall be made by an officer of the insurer designating the applicant as an insurance agent, managing general agent, or limited insurance representative for such lines of insurance as the applicant will be authorized to write for said insurer. All appointments for any licensee shall be submitted on behalf of the appointing insurer on a form prescribed by the Commissioner and shall remain in force until the renewal date. The renewal dates may be staggered throughout the year for appointments of agents, managing general agents, and limited insurance representatives by notifying the various companies in writing of the expiration and renewal date being assigned to agents and limited insurance representatives of said companies by the Commissioner and by making appropriate adjustment in said annual appointment fee.

2. For the renewal licensure of an applicant, the applicant shall submit either a letter from the appointing insurer verifying acceptance of responsibility for the actions of the applicant in the scope of that person's employment, or submit an errors and omissions policy acceptable to the Commissioner, or, if errors and

omissions coverage is provided by the insurer for agents by utilizing a blanket errors and omissions policy for coverage, a copy of the policy providing the errors and omissions coverage shall be on file with the Commissioner of insurance. The insurer providing coverage shall submit a list of all agents covered by such policy when renewal applications are to be submitted. Provided, however, in the case of title insurance, scope of employment shall be limited to the issuance of commitments and policies and other duties only as specifically expressed in the agency contract.

C. Every applicant for licensing as an insurance agent, managing general agent, or limited insurance representative pursuant to the provisions of the Insurance Agents Licensing Act, except a partnership or corporation, shall be eighteen (18) years of age or older.

D. An applicant shall not be a full-time employee of the government of the United States or of the executive or administrative branches of the government of this state or any county or municipality in this state. The provisions of this subsection shall not apply to applicants for life or accident and health insurance agents' licenses or limited representatives. For the purpose of this subsection, a teacher shall not be considered a full-time employee of the executive or administrative branches of the government of the state or of any county or municipality in the state.

E. All applications shall be accompanied by the applicable fees. An appointment shall terminate upon failure to pay the prescribed annual renewal fee.

The Insurance Commissioner shall collect in advance the following fees and licenses:

1. For filing appointment of Insurance Commissioner as agent for service of process ..... \$10.00
2. Miscellaneous:
  - a. Certificate of Commissioner, under seal ..... \$3.00

- b. Agent's study manual:
  - Life, Accident & Health ..... not to exceed  
\$30.00
  - Property and Casualty ..... not to exceed  
\$30.00
- c. for filing Agency Articles of  
Incorporation ..... \$20.00
- 3. Examination for license:
  - a. For each examination covering  
laws and one line of insurance .... \$30.00
  - b. For each examination covering  
laws and two or more lines  
of insurance ..... \$40.00
- 4. Licenses:
  - a. Agent's license,  
each year, regardless of number  
of companies represented ..... \$30.00
  - b. Agent's license for sale or  
solicitation of separate  
accounts or agreements, as  
provided for in Section 6061  
of this title ..... \$30.00
  - c. Limited insurance  
representative license, each year.. \$20.00
  - d. Temporary license as agent ..... \$20.00
  - e. Managing general agent's  
license, each year ..... \$30.00
  - f. Surplus lines broker's license,  
each year ..... \$50.00
  - g. Insurance vending machine,  
each machine, each year ..... \$50.00
  - h. Insurance consultant's license,  
resident or nonresident,  
each year..... \$50.00
- 5. Filing notice of appointment of agent,  
managing general agent, or limited

insurance representative by insurer,  
each license of each agent  
or representative, each year ..... \$20.00

6. Renewal fee for all licenses shall be the same as the initial license fee.
7. The fee for a duplicate license shall be one-half (1/2) the fee of an original license.
8. Late application for the renewal of a license shall require a fee of double the original license fee.

F. The fees and monies received by the Insurance Commissioner pursuant to the provisions of paragraphs 1 and 2 of subsection E of this section shall be deposited with the State Treasurer, who shall place the same to the credit of the State Insurance Commissioner Revolving Fund for the purpose of fulfilling and accomplishing the conditions and purposes of this act.

The fees and monies received by the Insurance Commissioner pursuant to the provisions of paragraphs 3 through 8 of subsection E of this section shall be paid into the State Treasury to the credit of the General Revenue Fund of the state.

G. There is hereby created in the State Treasury the State Insurance Commissioner Revolving Fund which shall be a continuing fund not subject to fiscal year limitations. The revolving fund shall consist of fees and monies received by the Insurance Commissioner as required by law to be deposited in said fund and any other funds not dedicated in the Oklahoma Insurance Code. The revolving fund shall be used to fund the general operations of the Insurance Commissioner's Office for the purpose of fulfilling and accomplishing the conditions and purposes of this act. All expenditures from said revolving fund shall be on claims approved by the Insurance Commissioner and filed with the Director of State Finance for payment.

H. At the close of the fiscal year ending June 30, 1988, and at the close of each fiscal year thereafter any unencumbered and unexpended monies in the State Insurance Commissioner Revolving Fund in excess of Five Hundred Thousand Dollars (\$500,000.00) shall be transferred to the General Revenue Fund of the state.

I. All fees, fines, monies, and license fees authorized by the provisions of this section and not dedicated by the provisions of subsection F of this section to the State Insurance Commissioner Revolving Fund shall be paid into the State Treasury to the credit of the General Revenue Fund of this state.

J. Prior to issuance of a license as an insurance consultant or surplus lines insurance broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in an amount of not less than Five Thousand Dollars (\$5,000.00) and not more than Forty Thousand Dollars (\$40,000.00) with an authorized corporate surety approved by the Commissioner. The exact amount of the bond shall be determined pursuant to the rules and regulations of the Commissioner and shall be based upon the actual or reasonably estimated premium for policies issued in connection with the services of the licensee. The surety shall notify the Commissioner of any changes in the bond of any licensee. The aggregate liability of the surety for any and all claims on a bond required by the provisions of this subsection shall in no event exceed the amount of the bond. No such bond shall be terminated unless at least thirty (30) days' prior written notice of the termination is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the licensee shall notify the surety within ten (10) working days.

All surety protection required by the provisions of this section is to inure to the benefit of any party aggrieved by the acts of a consultant or broker arising pursuant to his conduct as a licensed insurance consultant or surplus lines insurance broker.

K. The Commissioner shall issue an insurance agent's license, managing general agent's license, insurance consultant's license, or a limited insurance representative's license to any duly qualified resident or nonresident of this state, whether an individual, partnership, or corporation, as follows:

1. An applicant may qualify as a resident if he resides in this state. Any license issued pursuant to any such application

claiming residency in this state for licensing in this state shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or other jurisdiction or ceases to be a resident of this state. However, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify as a resident in such other state and may hold a license from each state;

2. a. An applicant may qualify for a license pursuant to the provisions of the Insurance Agents Licensing Act as a nonresident only if he holds a resident agent's license in any state of the United States, a province of Canada, or any other foreign country, in which he claims residency and with which the Commissioner has executed a reciprocal licensing agreement. The applicant shall provide to the Commissioner an original certification of licensure status from the resident state of the applicant. A license issued to a nonresident of this state shall grant the same rights and privileges afforded a resident licensee, except as otherwise provided for by law. A corporation or partnership otherwise qualified to hold a license as a nonresident agent shall be licensed pursuant to the provisions of this section:

- (1) if the principal purpose of the corporation or partnership is the transacting of insurance business,
- (2) if said corporation or partnership is not a subsidiary or affiliate of a corporation or partnership not so qualified, and
- (3) if such corporation or partnership does not own stock in or is not a partner in any corporation

or partnership licensed as a resident pursuant to Section 1424 of this title.

- b. The Commissioner shall not issue a license to any nonresident applicant until said applicant files with the Commissioner his designation of the Commissioner as the person upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the insurance business of the applicant in this state. This designation shall constitute an agreement that said service of process is of the same legal force and validity as personal service of process in this state upon the nonresident licensee. Service of process upon any such licensee in any such action or proceeding in any court of competent jurisdiction of this state may be made by serving the Commissioner with three copies thereof and by paying to the Commissioner a fee of Ten Dollars (\$10.00). The Commissioner shall forward a copy of the process by mail with return receipt requested to the licensee at his last-known address of record or principal place of business, and the Commissioner shall keep a record of all process so served upon him.
- c. Service of process upon any such licensee in any action or proceeding instituted by the Commissioner pursuant to the provisions of this Code shall be made by the Commissioner by mailing the process by mail with return receipt requested to the licensee at his last-known address of record or principal place of business.

Service of process upon any nonresident licensee is sufficient, provided notice of the service and a copy of the process are sent within ten (10) days thereafter to the licensee at his last-known address of record or principal place of business by mail with return receipt requested.

If the Commissioner revokes or suspends any nonresident's license through a formal proceeding pursuant to the provisions of this Code, the Commissioner shall promptly notify the appropriate Commissioner of the licensee's state of residence of the action and of the particulars thereof.

- d. A nonresident of this state may be licensed without taking a written examination if the Commissioner of the state of residence of the applicant certifies by facsimile signature and seal that the applicant has passed a similar written examination, or has been a continuous holder, prior to the time said written examination was required, of a license similar to the license for which application is being made in this state.
- e. When, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of the other state or jurisdiction in addition to or in excess of those imposed on nonresidents pursuant to the provisions of the Insurance Agents Licensing Act, the same requirements shall be imposed upon such residents of the other state or jurisdiction;

3. An applicant for a surplus lines insurance broker's license shall be licensed in this state as a resident insurance agent qualified as to the line or lines of insurance to be written;

4. An applicant for any license required by the provisions of the Insurance Agents Licensing Act shall be deemed by the Commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation;

- 5. a. It shall be unlawful for any person whose license to act as an insurance agent, limited insurance representative, managing general agent, insurance consultant, or surplus lines insurance broker has

been suspended, revoked, surrendered, or refused to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, insurance consultant, or surplus lines insurance broker. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.

- b. It shall be unlawful for any insurance agent, limited insurance representative, managing general agent, insurance consultant, or surplus lines insurance broker to assist, aid, or conspire with a person whose license as an insurance agent, limited insurance representative, managing general agent, insurance consultant, or surplus lines insurance broker has been suspended, revoked, surrendered, or refused to engage in any acts as an insurance agent, limited insurance representative, managing general agent, insurance consultant, or surplus lines insurance broker. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody;

6. It shall be unlawful for any person to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, surplus lines insurance

broker, or insurance consultant without being duly licensed, or for any partnership or corporation, or any person acting on behalf of a partnership or corporation, to violate any of the provisions of subsection B of Section 1424 of this title. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment;

7. a. After completion and filing of the application with the Commissioner, except as provided in Section 1426 of this title, the Commissioner shall subject each applicant for license as an insurance agent, surplus lines insurance broker, insurance consultant, or limited insurance representative to a written examination as to his competence to act as a licensee, which each applicant shall personally take and pass to the satisfaction of the Commissioner.
- b. If the applicant is a partnership or corporation, the examination shall be taken by each individual who is to act for the corporation or partnership as an agent, surplus lines insurance broker, limited insurance representative, or insurance consultant.
- c. Each examination for a license shall be approved for use by the Commissioner and shall reasonably test the knowledge of the applicant as to the lines of insurance, policies, and transactions to be handled pursuant to the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.
- d. Examination for licensing shall be at such reasonable times and places as are designated by the Commissioner.

- e. The Commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination among individuals examined.
  - f. The applicant shall pass the examination with a grade determined by the Commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten (10) days after the examination, the Commissioner shall inform the applicant and the appointing insurer, when applicable, as to whether or not the applicant has passed. Formal evidence of said licensing shall be issued by the Commissioner to the licensee within a reasonable time.
  - g. An applicant who has failed to pass the first examination for the license applied for may take a second examination within thirty (30) days following the first examination. Examination fees for subsequent examinations shall not be waived.
  - h. An applicant who has failed to pass the first two examinations for the license applied for shall not be permitted to take a subsequent examination until the expiration of six (6) months after the last previous examination. A current application, company appointments, and applicable fees shall be submitted with each request to take a subsequent examination;
8. a. If the Commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and promptly notify the applicant and the appointing insurer, when applicable, in writing, of the denial, stating the grounds therefor.
- b. If for any reason a license is not issued by the Commissioner, all fees accompanying the application for the license as insurance agent, surplus lines

insurance broker, insurance consultant, and limited insurance representative shall be deemed earned and shall not be refundable;

9. Every licensed agent shall notify the Commissioner of any change in his address as shown on the license as issued within ten (10) days after the change; and

10. Every licensed agent shall provide a place of business which is accessible to the public. The provisions of this section shall not prohibit the business of insurance in the residence of a licensed agent.

L. If an agent or agents choose to use a facsimile signature stamp in his or their business, then such stamp shall be proof that the agent or agents have authorized the signing of any documents relating to the business of insurance.

M. It shall be unlawful for any insurer to discriminate among or between the agents it has appointed. Any person or company convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment.

N. It shall be unlawful for any insurance agent to receive an ownership interest in any policy, by assignment or otherwise, unless the agent has an insurable interest in the life of the insured.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 4003.1, is amended to read as follows:

Section 4003.1 A. No policy of individual life insurance or any annuity shall be delivered or issued for delivery in this state unless it shall have printed thereon or attached thereto a notice stating in substance that, during a period of ten (10) days from the date the policy or annuity is delivered to the insured, it may be surrendered to the insurer together with a written request for cancellation of the policy or annuity and, in such event, the policy or annuity shall be void from the beginning and

the insurer will refund any premium or moneys paid therefor within thirty (30) days from the date of cancellation. If the insurer does not return any premiums or moneys paid therefor within thirty (30) days from the date of cancellation, the insurer shall pay interest on the proceeds which shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year, as certified to the Insurance Commissioner by the State Treasurer on the first regular business day in January of each year, plus two (2) percentage points, which shall accrue from the date of cancellation until the premiums or moneys are returned. In such event, the policy or annuity shall be deemed to have been canceled on the date the policy was placed in the U.S. mails in a properly addressed, postpaid envelope; or, if not so posted, on the date of delivery of such policy or annuity to the insurer.

B. This section shall not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in the policy.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 4030.1, is amended to read as follows:

Section 4030.1 A. Within ten (10) days after an insurer receives written notification of the death of a person covered by a policy of life insurance, the insurer shall provide to the claimant the necessary forms to be completed to establish proof of the death of the insured and, if required by the policy, the interest of the claimant. If the policy contains a provision requiring surrender of the policy prior to settlement, the insurer shall include a written statement to that effect with the forms to be completed. Forms to establish proof of death and proof of the interest of the claimant shall be approved by the Insurance Commissioner.

B. An insurer shall pay the proceeds of any benefits under a policy of life insurance not more than thirty (30) days after the insurer has received proof of death of the insured. If the proceeds are not paid within this period, the insurer shall pay

interest on the proceeds, at a rate which is not less than the current rate of interest on death proceeds on deposit with the insurer, from the date of death of the insured to the date when the proceeds are paid. Should the insurer hold its deposits in a non-interest bearing account, the rate of interest to be paid shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year, as certified to the Insurance Commissioner by the State Treasurer on the first regular business day in January of each year, plus two (2) percentage points, which shall accrue from the thirty-first day after receipt of proof of loss until the proceeds are paid.

Payment shall be deemed to have been made on the date a check, draft or other valid instrument which is equivalent to payment was placed in the U.S. mails in a properly addressed, postpaid envelope; or, if not so posted, on the date of delivery of such instrument to the beneficiary.

C. Subsection B of this section shall not apply to any life insurance policy issued before October 1, 1978, which contains specific provisions to the contrary.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 4426, as amended by Section 2, Chapter 136, O.S.L. 1993 (36 O.S. Supp. 1993, Section 4426), is amended to read as follows:

Section 4426. A. No long-term care insurance policy shall:

1. Be canceled, nonrenewed, or otherwise terminated on the grounds of age or the deterioration of the mental or physical health of the insured individual or certificate holder;

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

3. Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

B. 1. No long-term care insurance policy or certificate shall use a definition of "preexisting condition" which is more

restrictive than the following: Preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six (6) months preceding the effective date of coverage of an insured person.

2. No long-term care insurance policy or certificate shall exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

3. The definition of "preexisting condition" does not prohibit an insurer:

- a. from using an application form designed to elicit the complete health history of an applicant, and
- b. from underwriting, on the basis of the answers on that application, in accordance with that insurer's established underwriting standards.

4. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph 2 of subsection B of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph 2 of subsection B of this section.

C. Prior hospitalization/institutionalization:

1. No long-term care insurance policy may be delivered or issued in this state if such policy:

- a. conditions eligibility for any benefits on a prior hospitalization requirement,
- b. conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care, or
- c. conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care

or recuperative benefits on a prior institutionalization requirement.

2. a. A long-term care insurance policy containing post-confinement, post-acute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any required number of days of confinement.
- b. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

D. No law, rule or regulation shall establish loss ratio standards for long-term care insurance policies unless a specific reference to long-term care insurance policies is contained in such law, rule or regulation.

E. Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days after its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied with the policy, for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page of the policy or attached thereto, stating in substance, that the applicant shall have the right to return the policy or certificate within thirty (30) days after its delivery and to have the premium refunded if, after examination of the policy, or certificate, the applicant is not satisfied with the policy, for any reason. If the insurer does not return any premiums or moneys paid therefor within thirty (30) days from the date of cancellation, the insurer shall pay interest on the proceeds which shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year, as certified to the Insurance Commissioner by the State Treasurer on the first regular business day in January of each

year, plus two (2) percentage points, which shall accrue from the date of cancellation until the premiums or moneys are returned. In such event, the long-term care policy shall be deemed to have been canceled on the date the policy was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery of such policy or annuity to the insurer.

F. An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose. The Insurance Commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage. In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form. Such outline of coverage shall include, but not be limited to:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions and limitations contained in the policy;

3. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described;

4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

5. A description of the terms under which the policy or certificate may be returned and premium refunded; and

6. A brief description of the relationship of cost of care and benefits.

G. At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

1. An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

2. An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any, for each covered person;

3. Any exclusions, reductions and limitations on benefits of long-term care; and

4. If applicable to the policy type, the summary shall also include:

- a. a disclosure of the effects of exercising other rights under the policy,
- b. a disclosure of guarantees related to long-term care costs of insurance charges, and
- c. current and projected maximum lifetime benefit.

H. Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

1. Any long-term care benefits paid out during the month;

2. An explanation of any changes in the policy, e.g. death benefits or cash values, due to long-term care benefits being paid out; and

3. The amount of long-term care benefits existing or remaining.

I. No policy shall be advertised, marketed or offered as long-term care insurance unless it complies with the provisions of the Long-Term Care Insurance Act.

J. Policies or contracts issued by life care communities which are not licensed insurers in this state shall contain the following statement in conspicuous bold-face type on the front of the policy or contract: "The financial condition of the entity issuing this contract is not subject to review by or the jurisdiction of the Oklahoma Insurance Commissioner. This contract is not subject to the protection of any guaranty association."

SECTION 5. AMENDATORY 36 O.S. 1991, Section 4501, as amended by Section 1, Chapter 304, O.S.L. 1992 (36 O.S. Supp. 1993, Section 4501), is amended to read as follows:

Section 4501. Group accident and health insurance is hereby declared to be that form of accident and health insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of persons in such groups, and issued upon the following basis:

~~1. Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring at least ten employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partners if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein shall be deemed to include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials.~~

~~2. Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other~~

than that of obtaining insurance, insuring at least ten members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein shall be deemed to include retired employees-i

~~3.~~ 2. Under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions. The term "employees" as used herein shall be deemed to include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein shall be deemed to include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship-i

~~4.~~ 3. Under a policy issued to any persons or organizations to which a policy of group life insurance may be delivered in this state, to insure any class or classes of individuals that could be insured under such group life policy-i

~~5.~~ 4. Under a health insurance policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder insuring at least one employee of such employer for the benefit of persons other than the employer. The term "employee" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partners if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employee" as used herein shall be deemed to include retired

employees and their dependents and the dependents of employees eligible for Medicare. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials;

~~6.~~ 5. Under a policy issued to cover any other substantially similar group which, in the discretion of the Insurance Commissioner, may be subject to the issuance of a group accident and health policy or contract; and

~~7.~~ 6. Nothing in this article validates any charge or practice illegal under any rule of law or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such rule of law or regulation to any transaction not otherwise subject thereto.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 6060, as amended by Section 1, Chapter 165, O.S.L. 1993 (36 O.S. Supp. 1993, Section 6060), is amended to read as follows:

Section 6060. A. All individual and group health insurance policies providing coverage on an expense incurred basis, and all individual and group service or indemnity type contracts issued by a nonprofit corporation ~~and all self-insurers~~ which provide coverage for a female thirty-five (35) years old or older in this state, except for policies that provide coverage for specified disease or other limited benefit coverage, shall include the coverage specified by this section for a routine low-dose mammography screening in a reimbursement amount not to exceed Seventy-five Dollars (\$75.00) for the presence of occult breast cancer, ~~within the provisions of the policy and shall not be~~ subject to the policy deductible, co-payments and co-insurance limits of the plan.

B. 1. Any female thirty-five (35) through thirty-nine (39) years of age shall be entitled pursuant to the provisions of this section to coverage for a low-dose mammography screening.

2. Any female forty (40) years of age or older shall be entitled pursuant to the provisions of this section to coverage for an annual low-dose mammography.

C. For the purposes of this section, the term low-dose mammography means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The purpose of Sections 7 through 17 of this act is to subject certain persons and insurers to the jurisdiction of:

1. The Insurance Commissioner, including proceedings before the Commissioner; and
2. The courts of this state in suits by or on behalf of this state and insureds or beneficiaries under insurance contracts.

B. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The Legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by:

1. The maintenance of fair and honest insurance markets;
2. Protecting the premium tax revenues of this state;
3. Protecting authorized persons and insurers which are subject to strict regulation from unfair competition by unauthorized persons and insurers; and
4. Protecting against the evasion of the insurance regulatory laws of this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise indicated, the term "insurer" as used in Sections 7 through 17 of this act includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges, mutual benefit societies and insurance exchanges and syndicates.

B. The venue of any act listed in this section shall be Oklahoma County.

C. Any one of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract;

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

3. The taking or receiving of any application for insurance;

4. Maintaining any agency or office where any acts in furtherance of an insurance business are transacted, including but not limited to:

a. the execution of contracts of insurance with citizens of this or any other state,

b. maintaining files or records of contracts of insurance,

c. the processing of claims, and

d. the receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

6. Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in:

- a. the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof,
- b. the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts,
- c. inspection of risks,
- d. fixing of rates or investigation or adjustment of claims or losses,
- e. the transaction of matters subsequent to effectuation of the contract and arising out of it, or
- f. in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state;

Provided, the provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:

- a. any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or
- b. a multiple employer welfare arrangement as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., Section

1002(40)(A), as amended, that holds a valid license issued by the Insurance Commissioner or is exempt from state regulation pursuant to subsection B of Section 634 of Title 36 of the Oklahoma Statutes;

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;

9. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes; or

10. Any other transactions of business in this state by an insurer.

D. The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance;

2. Life, accident and health insurance or annuities provided to educational or scientific institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions or individuals engaged in the service of such institutions;

3. The lawful transaction of reinsurance by insurers; or

4. Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of Sections 7 through 17 of this act, "person" shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

B. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in Sections 7

through 17 of this act, except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state, this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

C. Any person which the Insurance Commissioner has reason to believe is doing any of the acts specified in Section 8 of this act, upon written request by the Commissioner, shall immediately provide to the Commissioner such information as requested in relation to such acts.

D. A person or entity who violates any provision of Sections 7 through 17 of this act is subject to a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each act of violation and for each day of violation to be recovered as provided in this section.

E. Whenever the Commissioner has reason to believe or it appears that any person or insurer has violated or is threatening to violate any provision of Sections 7 through 17 of this act or any rule promulgated pursuant thereto, or that any person or insurer acting in violation of Sections 7 through 17 of this act has engaged in or is threatening to engage in any unfair method of competition or any unfair or deceptive act or practice as defined by Section 1201 et seq. of Title 36 of the Oklahoma Statutes or any rule promulgated pursuant thereto, the Commissioner may:

1. Issue an ex parte cease and desist order under the procedures provided by Section 10 of this act;
  2. Institute in the district court of Oklahoma County a civil suit for injunctive relief to restrain the person from continuing the violation or threat of violation;
  3. Institute in the district court of Oklahoma County a civil suit to recover a civil penalty as provided for in this section;
- or

4. Exercise any combination of the acts provided for in this subsection.

F. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of Sections 7 through 17 of this act, the district court shall grant the injunctive relief and the injunction shall be issued without bond.

G. This section shall not be construed to limit the Insurance Commissioner to the remedies specified herein. It is the intent of the Legislature that persons engaging in the business of insurance without statutory authorization constitute an imminent peril to the public welfare and should immediately be stopped and enjoined from doing so, provided, the Insurance Commissioner and the State of Oklahoma should be able to choose at any time any available remedy or action to bring about such a result without regard to prior proceedings under this section.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. If the Insurance Commissioner has reason to believe or it appears that a person or insurer has violated or is threatening to violate the provisions of Sections 7 through 17 of this act or a rule promulgated pursuant thereto, or that a person or insurer acting in violation of Sections 7 through 17 of this act has engaged in or is threatening to engage in an unfair method of competition or an unfair or deceptive act or practice as defined in Section 1201 et seq. of Title 36 of the Oklahoma Statutes or a rule promulgated pursuant thereto, the Commissioner may set a hearing and shall serve on that person or insurer allegations of fact and a notice of hearing, in conformance with the Administrative Procedures Act and the Oklahoma Insurance Code, and the applicable rules thereof.

2. The hearing must be held not earlier than the fifth day or later than the 30th day after the date of service of the statement and notice unless the parties, with prior written approval of the  
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Commissioner, mutually agree to some other arrangements. Process may be served by registered mail, return receipt requested, to the person's last known address.

3. The hearing shall be conducted in the manner provided for contested cases under the Administrative Procedures Act and the Oklahoma Insurance Code, and the applicable rules thereof.

B. 1. After the hearing, the Commissioner may issue an order against the person or insurer charged with a violation requiring that the person or insurer immediately cease and desist from the violation.

2. A person aggrieved by a final order or decision of the Insurance Commissioner pursuant to Sections 7 through 17 of this act may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

C. The Insurance Commissioner may promulgate reasonable rules necessary to carry out this section.

D. The Insurance Commissioner may proceed under Sections 7 through 17 of this act or under any other applicable law without regard to prior proceedings.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner may issue a cease and desist order, ex parte, if:

1. The Commissioner believes:

- a. an unauthorized person is engaging in the business of insurance in violation of Section 9 of this act or in violation of a rule promulgated pursuant to Sections 7 through 17 of this act, or
- b. an unauthorized person engaged in the business of insurance acting in violation of Section 9 of this act is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Section 1201 et seq. of Title 36 of the Oklahoma

Statutes or in violation of any rule promulgated pursuant thereto; or

2. It appears to the Commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. On issuance of an emergency cease and desist order under Section 10 of this act, the Insurance Commissioner shall serve on the person affected by the order, by registered or certified mail, return receipt requested, to the person's last known address, an order that contains a statement of the charges and require the person immediately to cease and desist from the acts, methods or practices stated.

B. 1. If a person affected by an emergency cease and desist order seeks to contest that order, the person may request a hearing before the Commissioner. The person affected must request the hearing not later than the 30th day after the date on which the person receives the order. A request to contest an order must be in writing and directed to the Commissioner and must state the grounds for the request to set aside or modify the order.

2. On receiving the request for a hearing, the Commissioner shall serve notice of the time and place of the hearing at which the person requesting the hearing shall have the opportunity to show cause why the order should not be affirmed. The hearing is to be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

3. Pending the hearing, an emergency cease and desist order continues in full force and effect unless the order is stayed by the Commissioner.

4. The hearing on the order shall be conducted according to the procedures for contested cases under the Administrative Procedures Act.

5. At the hearing, the Commissioner shall affirm, modify or set aside in whole or in part the emergency cease and desist order.

C. A person aggrieved by a final order and decision of the Commissioner pursuant to Sections 7 through 17 of this act may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

D. The Commissioner may recover reasonable attorney's fees if judicial action is necessary for enforcement of the order.

E. A cease and desist order is final thirty-one (31) days after the date it is received if the person affected by the order does not request a hearing as provided by subsection B of this section.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. If the Insurance Commissioner reasonably believes that a person has violated a cease and desist order issued under Sections 7 through 17 of this act, the Commissioner may:

- a. initiate individual proceedings under this section pursuant to the Administrative Procedures Act,
- b. initiate proceedings to revoke the certificate of authority of the person affected by a ruling or action issued under Sections 7 through 17 of this act, or
- c. pursue any other action the Commissioner deems appropriate under applicable law.

2. In determining whether a cease and desist order has been violated, the Commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order. The hearing shall be conducted according to the procedure for contested cases under the Administrative Procedures Act.

B. After a hearing, if the Commissioner determines that a cease and desist order has been violated, the Commissioner may:

1. Impose a civil penalty of Twenty-five Thousand Dollars (\$25,000.00) for each act of violation;

2. Direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the Commissioner, to all Oklahoma residents, Oklahoma insureds, and entities operating in Oklahoma damaged by the violation or failure to comply; or

3. Both impose the penalty and direct restitution.

C. A person aggrieved by a final order or decision of the Commissioner pursuant to Sections 7 through 17 of this act may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes. The Commissioner may recover reasonable attorney's fees if judicial action is necessary to enforce an order.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

If a person fails to pay a penalty assessed under the provisions of Sections 7 through 17 of this act, the Insurance Commissioner may:

1. Institute in the district court of Oklahoma County a civil suit to recover the civil penalty; or

2. Pursuant to the Administrative Procedures Act, cancel or revoke any permit, license, certificate of authority, certificate of registration or other authorization issued pursuant to the Oklahoma Insurance Code.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. Service of process on a person as defined in Section 9 of this act in a civil suit for injunctive relief under Section 9 of this act or to recover a civil penalty under Section 13 of this

act shall be made by serving the Secretary of State as agent of the person.

2. Service of process shall be made pursuant to Section 2004 of Title 12 of the Oklahoma Statutes. The Insurance Commissioner shall not pay a fee. Persons served under the provisions of Sections 7 through 17 of this act shall not be considered foreign insurance companies.

B. Nothing contained in this section shall limit or abridge the right to serve any process upon any person in any other manner now or hereafter permitted by law.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may promulgate reasonable rules necessary to carry out the provisions of Sections 7 through 17 of this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6103.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may proceed solely under the provisions of Sections 7 through 17 of this act or under said provisions in conjunction with other applicable law.

SECTION 18. REPEALER 36 O.S. 1991, Section 6103, is hereby repealed.

SECTION 19. This act shall become effective September 1, 1994.

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