ENROLLED SENATE
BILL NO. 915

By: Taylor and Haney of the Senate

and

Hamilton (James) and Steidley of the House

An Act relating to business regulatory entities; amending 2 O.S. 1991, Section 1301-107, as amended by Section 1, Chapter 139, O.S.L. 1993 (2 O.S. Supp. 1993, Section 1301-107), which relates to the Oklahoma Forestry Code; authorizing sale and purchase from specified fund; amending Section 77, Chapter 189, O.S.L. 1993, which relates to bond proceeds; modifying appropriation of proceeds; transferring certain funds from the State Insurance Commissioner Revolving Fund; amending 36 O.S. 1991, Section 1425, as amended by Section 38, Chapter 270, O.S.L. 1993 (36 O.S. Supp. 1993, Section 1425), which relates to the State Insurance Commissioner Revolving Fund; deleting provisions for transfers of certain fund; authorizing State Insurance Department to implement a special education program under certain circumstances; amending 40 O.S. 1991, Section 462, which relates to inspection of amusement rides; providing an operative date; and declaring an emergency.

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

STATE DEPARTMENT OF AGRICULTURE

SECTION 1. AMENDATORY 2 O.S. 1991, Section 1301-107, as amended by Section 1, Chapter 139, O.S.L. 1993 (2 O.S. Supp. 1993, Section 1301-107), is amended to read as follows:

Section 1301-107. A. The Forestry Division, in connection with the enforcement of this act and other forest and forest fire laws, shall have the following powers, authority and duties:

1. To enforce the provisions of this code and other forest and forest protection laws of this state;

2. To prevent, detect, extinguish and investigate forest fires in this state and to do all things necessary in the exercise of such powers, authority and duties;

3. To provide forest fire fighting crews, who shall be under the control and direction of forest rangers and other designated agents of the Division in specified protection areas;

4. To appoint district foresters, assistant district foresters, investigators, rangers and other employees;

5. To use the resources of the Division on state-owned parks and other state-administered lands to prevent and suppress fires and

to establish fire fighting crews who shall be authorized to suppress fires on state lands;

6. To be reimbursed on an actual cost basis for all services provided to state parks and other lands administered by the State of Oklahoma;

7. To investigate cases of forest timber theft; ~~and~~

8. To make available for sale surplus state vehicles directly to rural fire departments or municipal fire departments, in cities or towns under ten thousand (10,000) population. State vehicles may be offered for sale only after approval is given in writing by the Department of Central Services and evaluation is made of each vehicle and a price set by the Department of Central Services. The Forestry Division may only receive the amount authorized by the Department of Central Services for the sale of the vehicle; and

9. To purchase equipment from the Rural Fire Defense Equipment Revolving Fund's inventory, when advantageous to the state, and shall reimburse the Revolving Fund.

B. Forest rangers, and the fire fighting crews under their control and direction, may enter upon any lands for the purpose of preventing and suppressing forest fires and to enforce the provisions of this act and other forest fire and forest protection laws of this state.

C. Forest rangers, employees of the Division and all persons, federal and state agencies who are under contract or agreement with the Division to assist in fire fighting operations as well as persons, federal or state agencies, firms, companies or corporations called upon by forest rangers or other authorized employees of the Division to assist in fire fighting under the direction or supervision of employees of the Division may, in the performance of their duties, set backfires, dig trenches, cut firelines and carry on all customary activities in the fighting of forest fires without incurring liability to any person.

D. 1. The Director may appoint, subject to the approval of the Board, special officers who shall have the power and authority to arrest. Such special officers shall furnish bond in the sum of Two Thousand Five Hundred Dollars ($2,500.00), payable to the Treasurer of the state and credited to the General Revenue Fund, conditioned upon the faithful discharge of their duties as such special officers, such bonds to be approved by the Division. Such special officers shall have power and authority throughout the state, under the direction and control of the Division, to enforce the criminal provisions contained in this act and in other laws relating to forests and forest fires.

2. Such special officers shall have power and authority to make arrests with or without warrants for violations of the criminal provisions of this act and of other laws relating to forests and forest fires to the same extent and under the same limitations and duties as do peace officers under the provisions of Title 22, Chapter 3 of the Oklahoma Statutes.

3. In connection with the enforcement of the said criminal provisions, such special officers and other state investigators or law enforcement officers may go upon all premises, posted or otherwise, when necessary for the enforcement of such laws. All such special officers shall be ex officio forest rangers and shall be under the control and direction of the Division; except, the Director may at any time, for cause, remove any powers and authority of arrest conferred by him. Such special officers shall have the same right and authority to carry arms as do the sheriffs of this state. The compensation of such special officers shall be fixed and paid by the Division from its funds.

SECTION 2. AMENDATORY Section 77, Chapter 189, O.S.L. 1993, is amended to read as follows:

Section 77. There is hereby appropriated to the State Department of Agriculture from the proceeds of the sale of bonds deposited in the Oklahoma Building Bonds of 1992 Fund (A) in the State Treasury the sum of One Million Dollars ($1,000,000.00) or so much thereof as may be necessary for the following projects and in the following amounts:

| | |
|---|---|
| ~~Dry Fire Hydrants~~ | ~~$ 350,000.00~~ |
| Forestry Division | ~~100,000.00~~ |
| | $ 200,000.00 |
| Rural Fire Equipment Grants | ~~550,000.00~~ |
| | 800,000.00 |
| Total - State Department of Agriculture | $1,000,000.00 |

STATE INSURANCE DEPARTMENT

SECTION 3. TRANSFER The Director of State Finance, on the effective date of this act, shall transfer the sum of Four Hundred Sixty-eight Thousand Dollars ($468,000.00) from the State Insurance Commissioner Revolving Fund of the State Treasury for the fiscal year ending June 30, 1994, to the Special Cash Fund of the State Treasury for the fiscal year ending June 30, 1995.

SECTION 4. 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.~~ I. 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.~~ J. 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.~~ K. 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.~~ L. 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.

SECTION 5. The State Insurance Department is authorized to implement a special consumer education program, subject to funds available, for the purpose of promoting greater consumer awareness.

DEPARTMENT OF LABOR

SECTION 6. AMENDATORY 40 O.S. 1991, Section 462, is amended to read as follows:

Section 462. A. No person shall operate an amusement ride without a certificate of inspection. On or before March 1 of each year, an operator or owner shall apply for a certificate of inspection on a form furnished by the Commissioner of Labor.

B. All amusement rides shall be inspected before they are originally put into operation for the use of the public, and thereafter, at least once each calendar year, unless authorized to operate under a temporary certificate. Amusement rides must also be inspected each time they are disassembled and reassembled.

C. The owner or operator may make application to the Commissioner for less frequent inspections than are required under subsection B of this section. The Commissioner, upon investigation and/or hearing of the matter, may grant a waiver, provided equal public safety is maintained. Such waiver shall provide specific requirements for inspection in lieu of the requirements of subsection B of this section. The Commissioner shall promulgate rules for the determination of a waiver provided such rules place an affirmative responsibility on the owner/operator for the preservation of public safety.

D. The Commissioner of Labor may cause the inspection herein provided for to be made by his safety inspectors or by any qualified amusement ride inspector employed by an insurance company.

~~D.~~ E. If, after inspection, an amusement ride is found to comply with the rules and regulations of the Commissioner of Labor, the Commissioner of Labor shall issue a certificate of inspection which shall authorize the operator or owner to operate the rides.

SECTION 7. This act shall become operative July 1, 1994.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 1994.

President of the Senate

Passed the House of Representatives the 20th day of May, 1994.

Speaker of the House of Representatives