

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1317

By: Bastin

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 332, 344, 348.1, 901.3, 902, 902.2, 903, 904, 905, 907, 907.1, 931, 933, 934, 935, 937, 1108 and 3611.1, as amended by Section 4, Chapter 65 O.S.L. 1992 (36 O.S. Supp. 1992, Section 3611.1), which relate to the Insurance Code; prohibiting use of rating organizations; removing references to rating organizations; eliminating licensing of rating organization; repealing 36 O.S 1991, Sections 928, 929, 930 and 936, which relate to rating organizations; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 332, is amended to read as follows:

Section 332. A. The State Board for Property and Casualty Rates is hereby vested with the duty and authority of enforcing and administering all applicable provisions of the Insurance Code pertaining to the jurisdiction of the Board. The Board may make reasonable rules and regulations necessary for effectuating such provisions of this Code.

B. The Board shall have powers and authority expressly conferred upon it by or reasonably implied from the provisions of this Code. The Board shall have the power to approve, disapprove, or approve with modifications, filings submitted to it.

C. The Board may conduct such examinations and investigations of insurance matters, within the scope of its authority, as it may deem proper to secure information useful in the lawful administration of the applicable provisions of the Insurance Code.

D. The Insurance Commissioner on behalf of the Board shall have the authority to employ actuaries, statisticians, accountants, attorneys, auditors, investigators or any other technicians as the Insurance Commissioner may deem necessary or beneficial to examine any filings for rate revisions made by insurers ~~or rating organizations~~ and to examine such records of the insurers ~~or rating organizations~~ as may be deemed appropriate in conjunction with the filing for a rate revision in order to determine that the rates or other filings are consistent with the terms, conditions, requirements and purposes of the Insurance Code, and to verify, validate and investigate the information upon which the insurer ~~or rating organization~~ relies to support such filing.

1. The Commissioner shall maintain a list of technicians qualified pursuant to rules adopted by the Board who are proficient in the lines of insurance for which the Board approves rates. Upon request of the Commissioner or the Board, the Commissioner shall employ the next available technician in rotation on the list, proficient in the line or lines of insurance being reviewed.

2. All reasonable expenses incurred in such filing review shall be paid by the insurer ~~or rating organization~~ making the filing.

E. The Commissioner shall employ for the Board examiners to ensure that the rates which have been approved by or filed with the Board are the rates which are being used by the insurer ~~or by the~~

~~insurers whose rating organization has had a rate approval or rate filing.~~

1. Any insurer examined pursuant to the provisions of this section shall pay all reasonable charges incurred in such examination, including the actual expense of the Commissioner or the expenses and compensation of his authorized representative and the expense and compensation of assistants and examiners employed therein.

2. All expenses incurred in such examination shall be verified by affidavit and a copy shall be filed and kept in the office of the Insurance Commissioner.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 344, is amended to read as follows:

Section 344. A. The Board may take depositions, subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation.

B. Witness fees and mileage, if claimed, shall be allowed at the rate paid in civil cases in district court. Such fees shall be paid by the person at whose request the subpoena is issued or, if issued at the request of the Board or the Commissioner, by the insurer ~~or rating organization~~ which is the subject of the hearing or investigation. The fees established by this section shall be paid within five (5) days after the conclusion of the hearing or investigation. Any disputes regarding the amount of such fees shall be resolved by the Board.

C. The subpoena shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the Board shall forthwith report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court of the county in which the individual was

required to appear, and such court shall forthwith cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

D. Any person who being under oath testifies falsely or makes any false affidavit during the course of any examination, investigation or hearing shall upon conviction thereof be guilty of perjury.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 348.1, is amended to read as follows:

Section 348.1 A. The Insurance Commissioner shall collect the following fees and licenses for the Board:

- 1. ~~Rating organizations, application fee~~
~~for issuance of license..... \$ 100.00~~
- ~~2.~~ Miscellaneous:
 - Certificate of Insurance Commissioner,
under seal..... \$ 10.00
 - Upon each transaction of filing of
documents required pursuant to the
provisions of Section 3610
of this title..... \$ 40.00
- ~~3.~~ 2. For each rate filing request:
 - ~~a.~~ For for an individual insurer..... \$ 80.00
 - ~~b.~~ ~~For an approved rating~~
~~organization:~~
 - ~~(1) Basic fee..... \$ 80.00~~
 - ~~(2) Additional fee for each~~
~~member or subscriber insurer.. \$ 10.00,~~
~~not to exceed..... \$1,000.00.~~

B. All fees and licenses collected by the Insurance Commissioner as provided in this section shall be paid into the State Treasury on a weekly basis to the credit of the Insurance

Commissioner's Revolving Fund for the purpose of carrying out and enforcing the provisions of Article 9 of the Insurance Code.

C. The fees, licenses, and taxes imposed by the Board upon persons, firms, associations, or corporations licensed pursuant to this section shall be payment in full with respect thereto of and in lieu of all demands for any and all state, county, district, and municipal license fees, license taxes, business privilege taxes, business privilege fees, and charges of every kind now or hereafter imposed upon all such persons, firms, associations, or corporations. This subsection shall not affect other fees, licenses and taxes imposed by the Insurance Code.

D. Any costs incurred by the Board or the Commissioner in the process of review and analysis of a filing shall be assessed against the company ~~or organization~~ making the filing.

E. All licenses for rating organizations shall expire September 1, 1993.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 901.3, is amended to read as follows:

Section 901.3 A. The Insurance Commissioner shall certify as complete, a filing which contains the following:

1. A memorandum briefly summarizing the gist of the filing;
2. An index to the filing;
3. A clear and concise statement of the action desired to be taken by the Board;
4. References to the sections of law and to rules and regulations which authorize the action desired to be taken by the Board or which support the information contained in the filing;
5. An explanation of the application of the filing factors, which are contained in subsection A of Section ~~18~~ 902.2 of this ~~act~~ title, together with assumptions and conclusions concerning such factors;

6. References to exhibits and other documents contained in the filing which are relied upon to support the action requested by the filing; and

7. Any other information required by the Commissioner or the Board.

~~B. If the filer is a rating organization, it is sufficient for such information to be provided in summary form for all the filer's members and subscribers.~~

~~C.~~ If a filing is incomplete, the Commissioner shall notify the filer, in writing, of the necessary materials required by this article, by rules and regulations of the Board or by orders adopted by the Board to complete the filing for certification. The time for certification of the filing shall be tolled pending receipt of such information from the filer. Upon receipt of the required information the time for completion of certification shall again begin to run.

~~D.~~ C. Upon certification of the completion of a filing by the Commissioner, the filing shall be placed on the agenda of the next regularly scheduled meeting of the Board. Following certification, no meeting regarding a filing shall be held unless the requirements of subsection A of Section ~~16~~ 901.4 of this ~~act~~ title are met.

~~E.~~ D. If the Commissioner fails or refuses to certify completion of a filing which meets or exceeds the requirements of this act, the company ~~or organization~~ making the filing may request, in writing, that the Board certify the filing. Certification by the Board shall have the same effect as if the Commissioner had certified the filing.

~~F.~~ E. Certification of the completion of the filing shall be accomplished within thirty (30) calendar days. If the filing is not certified to be complete or if a dispute occurs regarding the certification of completion of the filing, then the dispute or failure or refusal to certify completion shall be presented to the

Board at the next scheduled meeting for the Board's review and decision on certification.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 902, is amended to read as follows:

Section 902. A. The Board shall not approve rates for insurance which are excessive, inadequate, or unfairly discriminatory.

1. An excessive rate is one which:

- a. is unreasonably high for the insurance provided, or
- b. is unreasonable because (1) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable and (2) the rate is unreasonably high for the insurance provided.

2. An inadequate rate is one which:

- a. is (1) unreasonably low for the insurance provided and (2) the continued use of such rate endangers, or if continued would endanger, the solvency of the insurer, or
- b. is (1) unreasonably low for the insurance provided and (2) the continued use of such rate by the insurer has, or if continued would have, the effect of destroying competition or creating a monopoly, or
- c. is insufficient to cover projected losses, expenses and a reasonable margin for profit for the line of insurance coverage to be offered in this state by the filer.

3. A rate shall not be unfairly discriminatory.

- a. A rate is not unfairly discriminatory because it is based in part upon the establishment or modification of classifications of risks based upon:
 - (1) the size of the risk,

- (2) the expense or difficulty in management of the risk,
- (3) the individual experience of the risk,
- (4) the location or dispersion of the risk, or
- (5) any other reasonable consideration attributable to the risk.

- b. A rate is not unfairly discriminatory in relation to another in the same class of business if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or with like expense factors but different loss exposures, if the rates reflect the differences with reasonable accuracy.
- c. A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.
- d. A rate shall never be based upon race, color, creed or national origin.

B. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

C. Nothing in this act shall be construed to require uniformity in insurance rates, classifications, rating plans, or practices.

D. Nothing in this act shall abridge or restrict the freedom of contract of insurers, agents, brokers or employees with reference to the commissions, compensation, or salaries to be paid to such agents, brokers, or employees by insurers.

E. No insurer, agent, or broker shall make, issue, or deliver, or knowingly permit the making, issuance, or delivery of any policy of insurance within the scope of this law contrary to pertinent filings which are in effect for the insurer as provided in this article, except upon the written application of the insured stating his reasons therefor and filed with the Board, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. In the event of noncompliance with this subsection, the Board may, in addition to any other penalty provided by law, order a return of premium to the policyholder; plus interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

F. The burden of compliance with the provisions of this act shall rest upon the insurer ~~or rating organization~~ in all matters involving a filing made pursuant to this act.

G. Nothing in this act shall be construed to require the Board, when considering a filing made in accordance with the provisions of this act, to determine that existing rates no longer meet the requirements of this article.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 902.2, is amended to read as follows:

Section 902.2 A. The Board when reviewing a filing shall give due consideration to the following when, in its discretion, it determines that such factor or factors are applicable:

1. Past loss experience within and outside this state;
2. Prospective loss experience within and outside this state;

3. Physical hazards insured;
4. Safety and loss prevention programs;
5. Underwriting practices and judgment;
6. Catastrophe hazards;
7. Reasonable underwriting profit and contingencies;
8. Dividends, savings or unabsorbed premium deposits allowed or returned to policyholders;
9. Past expenses within and outside this state;
10. Prospective expenses within and outside this state;
11. Existence of classification rates for a given risk;
12. Investment income within and outside this state;
13. Rarity or peculiarity of the risks within and outside this state;
14. All other relevant factors within and outside this state;
15. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business in this state for not less than the previous five (5) years; and
16. Whether existing rates continue to meet the standards of this article.

B. The Board shall determine the weight to be accorded each of the factors contained in subsection A of this section.

C. Past or prospective expenses within or outside this state pursuant to paragraphs 9 and 10 of subsection A of this section shall not include prohibited expenses for advertising or prohibited expenses for membership in organizations.

1. For the purpose of this subsection:

- a. "prohibited expenses for advertising" means the cost of advertising in any media the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office;
- b. "prohibited expenses for advertising" shall not mean:

- (1) any communication to customers and the public of information regarding an insurer's insurance products,
- (2) any communication to customers and the public of safety, safety education or loss prevention information,
- (3) periodic publications or reports to stockholders or members required by the certificate or bylaws of the insurer,
- (4) any communication with customers and the public which provides instruction in the use of the insurer's products and services, or
- (5) any communication with customers and the public for giving notice or information required by law or otherwise necessary;

c. "prohibited expenses for membership" means the cost of membership in any organization which conducts substantial efforts, including but not limited to prohibited expenses for advertising, the purpose of which is to influence legislation or to advocate support for or opposition to a candidate for public office; and

d. "prohibited expenses for membership" shall not mean the cost of membership in ~~rating organizations or other~~ organizations the primary purpose of which is to provide statistical information on losses.

2. The Board shall promulgate rules and regulations for the implementation of this subsection.

SECTION 7. AMENDATORY 36 O.S. 1991, Section 903, is amended to read as follows:

Section 903. A. 1. Except as to inland marine risks which by general custom of the business are not written according to manual

rates or rating plans, every insurer governed by the provisions of this act shall file with the Board, ~~either directly or through a licensed rating organization of which it is a member or subscriber,~~ all rates and rating plans and classifications, class rates, rating schedules and all other supplementary rate information and every modification of any of the foregoing, which it uses or proposes to use in this state except as otherwise provided in this section. Effective September 1, 1993, rating organizations shall not be allowed to file rates, rating plans, classifications, class rates, rating schedules, or other supplementary rate information on behalf of insurers. Information from rating organizations shall not be used by insurers for any purpose provided for in this subsection and shall not be used by the Board for any purpose provided for in this subsection.

2. The Board shall send a notification of filing of rates to any person who annually requests, in writing, to be notified of filings pursuant to regulation of the Board.

3. The Attorney General shall be notified within ten (10) days, in writing, of each:

- a. filing of rates, whether for prior approval or for immediate use, and
- b. certification of completion of a filing.

4. The Attorney General shall be notified at least ten (10) days in advance, in writing, of each:

- a. meeting of the Board, and
- b. hearing conducted by the Board.

B. Rates, rating plans, classifications, schedules and other information shall be deemed approved thirty (30) calendar days following certification of completion of the filing as provided in this act unless, within the thirty (30) calendar-day period:

1. The Board by majority vote, approves, disapproves or approves with modification, the filing at one of its scheduled meetings or hearings;

2. The Board orders a formal hearing on the filing; or

3. The Board or the Commissioner, if a quorum of the Board is not available at the next regularly scheduled meeting, extends this period for one additional thirty (30) calendar-day period.

C. Nothing in this act shall be construed to require any filing for approval of rates, rating plans, classifications, schedules and other information approved by the Board prior to the effective date of this act.

D. Any formal hearing ordered by the Board shall be completed and a written order on the filing issued by the Board within ninety (90) calendar days from the date of the order setting the formal hearing, or the filing shall be deemed approved at the expiration of the ninety-day period.

E. 1. Rate filings on homeowner's insurance shall become effective when filed, or upon a future date specified in such filing, and shall remain effective unless the Board reviews and disapproves the filing because such rate is not in compliance with the standards set out in this act. Provided, if a rate filing is disapproved because it is excessive or unfairly discriminatory, the Board may order return of premium to the policyholders; plus interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

2. For purposes of this subsection, homeowner's insurance shall mean:

- a. insurance which combines, on an individual basis, property and liability insurance required to protect an individual's investment in his home or contents

thereof, commonly called homeowner's or renter's insurance and specifically including insurance on a farm dwelling and attached or detached garage and their contents,

- b. dwelling fire insurance, or
- c. individual fire insurance on dwelling contents.

3. Any such rate shall remain in effect as provided in subsection F of this section.

F. Filed rates, ~~whether~~ made by an insurer ~~or by a rating organization,~~ and whether or not prior approval is required under the flex rating, file and use or automatic rate reduction system, shall be effective for a period of not more than four (4) years from the effective date of the insurer's ~~or rating organization's~~ rate filing unless otherwise changed by the Board, or unless superceded by a subsequent filing approved pursuant to the procedures set out herein. At the end of the four-year period, the rates expire, and for an insurer to continue to write the insurance coverage to which the expired rates applied, a new rate filing is required. All rates in effect on or before September 1, 1991, shall expire September 1, 1995.

G. Rates or risks which are not by general custom of the business, or because of rarity or peculiar characteristics, written according to normal classification or rating procedure and which cannot be practicably filed before they are used, may be used before being filed. The Board may make such examination as it may deem advisable to ascertain whether any such rates meet the requirements of this act.

H. Whenever it shall be made to appear to the Board, either from its own information or from complaint of any party alleging to be aggrieved thereby, that there are reasonable grounds to believe that the rates on any or on all risks or classes of risks or kinds of insurance within the scope of this article are not in accordance

with the terms of this act, it shall be the duty of the Board to investigate and determine whether or not any or all of such rates meet the requirements of this act.

I. When investigating rates to determine whether or not they comply with the provisions of this act, the previously approved filing shall not be changed, altered, amended, or held in abeyance until after completion of the investigation and an opportunity for hearing in accordance with the provisions of this article. Following such hearing, the Board shall enter its order in accordance with the provisions of this act. The effective date of such order shall not be less than thirty (30) days nor more than sixty (60) days after the date of the order unless the Board determines that, in the public interest, a shorter or longer period is appropriate; provided, the filer has adequate time to implement such rate change. Any such order shall apply prospectively only and shall not affect premiums collected on new or renewal policies issued prior to the effective date of this order.

J. Under such rules and regulations as it shall adopt, the Board may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers ~~and rating organizations~~ affected thereby. The Board may make such examination as it may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in this act. This subsection shall not apply to workers' compensation filings.

K. Any filing with respect to fidelity, surety or guaranty bonds shall, however, be deemed approved from the date of filing and shall thereafter be subject to the provisions of subsection F of this section.

L. If the Board finds that a filing does not meet the requirements of this act, it shall send to the insurer ~~or rating organization~~ which made such filing, written notice of disapproval of such filing, specifying therein in what respects it finds that such filing fails to meet the requirements of this act and stating that such filing shall not become effective to the extent disapproved.

M. If within thirty (30) days after a rate has become effective for homeowner's insurance the Board finds that such filing does not meet the requirements of this act, it shall send to the ~~rating organization~~ or insurer which made such filing, a written notice of disapproval of such filing, specifying therein in what respect it finds that such filing fails to meet the requirements of this act and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Any such notice shall apply prospectively only and shall not affect premiums collected on new or renewal policies issued prior to the effective date of this notice. If a rate filing is disapproved because it is excessive or unfairly discriminatory the Board may order return of premium to the policyholder; plus interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

SECTION 8. AMENDATORY 36 O.S. 1991, Section 904, is amended to read as follows:

Section 904. A. All schedules and insurance rates and supporting information filed in accordance with the provisions of this article shall be open to inspection to the public after such filings are made.

B. Every ~~rating organization and every~~ insurer ~~which makes its own rates~~ shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it

may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

C. Every ~~rating organization and every insurer which makes its own rates~~ shall provide within the state reasonable means whereby any person, aggrieved by the application of its rating system, may be heard, in person or by his authorized representative, on his written request to revise the manner in which such rating system has been applied in connection with the insurance afforded him. If the ~~rating organization or~~ insurer fails to grant or reject such request, within thirty (30) days after it is made, this applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of ~~such rating organization or~~ such insurer on such request may, within thirty (30) days after written notice of such action, appeal to the Board, which, after a hearing held upon not less than ten (10) days written notice to the appellant and to such ~~rating organization or~~ insurer, may modify, affirm or reverse such action.

D. No insurer, agent, or broker, ~~or rating organization~~ may willfully withhold required information from or give false or misleading information to the Board.

E. No insurer, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled.

SECTION 9. AMENDATORY 36 O.S. 1991, Section 905, is amended to read as follows:

Section 905. A. Subject to the provisions of this article and when licensed by the Board, two or more insurers may cooperate or act in concert with each other:

~~1. As a rating organization, for the purpose of making rates, rating plans, or rating systems. No insurer or group of insurers~~

~~under the same general management and control shall be deemed to be a rating organization; and~~

2. ~~As~~ as an advisory organization, for the purpose of preparing policy forms, making underwriting rules, surveys, or inspections incident to but not including the making of rates, rating plans or rating systems, or collecting and furnishing to insurers or rating organizations loss or expense statistics or other statistical data, and acting in an advisory as distinguished from a ratemaking capacity.

B. Subject to the provisions of this article, two or more insurers may cooperate or act in concert with each other:

1. As a group or fleet of insurers operating under the same general management and control, for the purpose of conducting a complete insurance service; or

2. As a group, association, or other organization for the purpose of joint underwriting or joint reinsurance, or of equitable apportionment and proper rating of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods.

C. No insurer shall be required by this law to be a member or subscriber of any rating organization or stamping bureau.

SECTION 10. AMENDATORY 36 O.S. 1991, Section 907, is amended to read as follows:

Section 907. In addition to any powers hereinbefore expressly enumerated in this law, the Board shall have full power and authority to enforce by regulations, orders, or otherwise all and singular, the provisions of this law, and the full intent thereof. In particular it shall have the authority and power:

1. To examine all records of insurers, and advisory organizations ~~and rating organizations~~ and to require any insurer, agent, broker, and advisory organization, ~~and rating organization~~ to furnish under oath such information as it may deem necessary for the

administration of this law. The expense of such examination shall be paid by the insurer, or advisory organization, ~~or rating organization~~ examined. In lieu of such examination the Board may, in its discretion, accept a report of examination made by any other insurance supervisory authority;

2. To make and enforce such reasonable orders, rules, and regulations as may be necessary in making this law effective, but such orders, rules and regulations shall not be contrary to or inconsistent with the provisions of this law; and

3. To issue an order, after a full hearing to all parties in interest requiring any insurer, group, association, or organization of insurers and the members and subscribers thereof to cease and desist from any unfair or unreasonable practice.

SECTION 11. AMENDATORY 36 O.S. 1991, Section 907.1, is amended to read as follows:

Section 907.1 A. The Board shall monitor and examine the adequacy of rates of any insurer ~~and rating organization~~ in this state. In so doing, the Board shall:

1. Utilize existing relevant information, analytical systems and other sources; or

2. Cause or participate in the development of new relevant information, analytical systems and other sources.

B. The Board may require the maintenance and submission of records, memoranda or information relating to rates from such insurers ~~and rating organizations~~. The Board or any authorized representative of the Board may examine any such record, memoranda or information concerning rates. The application for the acceptance of any license or permit issued pursuant to the provision of this title shall be deemed consent for the inspection and examination of such records, memoranda or information.

C. The Board shall conduct such monitoring and examination required pursuant to this section within the Insurance Department,

at the place of business of such insurers ~~and rating organizations~~, in cooperation with other state insurance departments, through outside contractors or in any other appropriate manner.

D. The cost of such examination and monitoring shall be assessed against insurers ~~and rating organizations~~ on an equitable and practical basis established, after hearing, in a rule promulgated by the Board.

E. The monitoring and examinations required pursuant to the provisions of this section, shall be conducted in a reasonably economical manner.

F. Any monies collected from administrative fees, fines, penalties and assessments against insurers ~~and rating organizations~~ pursuant to this act shall be deposited to the credit of the Insurance Commissioner's Revolving Fund for the purpose of carrying out and enforcing the provisions of this article.

SECTION 12. AMENDATORY 36 O.S. 1991, Section 931, is amended to read as follows:

Section 931. A. Every group, association or other organization of insurers ~~or~~ but not including rating organizations, whether located within or outside this state, which assists insurers who make their own filings by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which do not make rate filings under this act, shall be known as an advisory organization.

B. Every advisory organization shall file with the Board:

1. A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing its activities;

2. A list of its members;

3. The name and address of a resident of this state upon whom notices or orders of the Board, or process issued at its direction, may be served; and

4. An agreement that the Board may examine such advisory organization in accordance with the provisions of this act.

C. If, after a hearing, the Board finds that the furnishing of such information, or assistance, involved any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this act, it may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act, and require the discontinuance of such act or practice.

D. No insurer which makes its own filings, ~~nor any rating organization~~ shall support its filings by statistics, or adopt ratemaking recommendations, furnished to it by an advisory organization which has not complied with this section, or with an order of the Board involving such statistics or recommendations issued under subsection C of this section. If the Board finds such insurer ~~or rating organization~~ to be in violation of this subsection it may issue an order requiring the discontinuance of such act or practice.

SECTION 13. AMENDATORY 36 O.S. 1991, Section 933, is amended to read as follows:

Section 933. A. The Board ~~shall, at least once in five (5) years, make or cause to be made an examination of each rating organization licensed in this state as provided in this act, and it~~ may, as often as it may deem expedient, make or cause to be made an examination of each advisory organization referred to in this act, and of each group, association, ~~or other organization,~~ referred to in this act. The reasonable cost of any such examination shall be paid by the ~~rating organization,~~ advisory organization, group, ~~or other organization,~~ examined upon presentation of a detailed account of such costs.

B. The officers, managers, agents and employees of such ~~rating organization,~~ advisory organization, group, association or other

organization may be examined, at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation.

C. In lieu of any such examination the Board may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

SECTION 14. AMENDATORY 36 O.S. 1991, Section 934, is amended to read as follows:

Section 934. A. The Board shall promulgate rules and statistical plans adapted to each of the rating systems on file, which may be modified, from time to time, and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available, at least annually, in such form and detail as may be necessary to aid it in determining whether rating systems comply with the standards set forth in this act.

1. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible to determination by a prorating of countrywide expense experience.

2. In promulgating such rules and plans, the Board shall give due consideration to the rating system on file and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

3. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

4. The Board may designate one or more ~~rating~~ advisory organizations or other agencies to assist it in gathering such experience and making compilations thereof, and such compilations

shall be made available, subject to reasonable rules promulgated by the Board, to insurers ~~and rating organizations~~.

B. Reasonable rules and plans may be promulgated by the Board for the interchange of data necessary for the application of rating plans.

C. In order to further uniform administration of rate regulatory laws, the Board and every insurer ~~and rating organization~~ may exchange information and experience data with insurance supervisory officials, and ~~insurers and rating organizations~~ in other states and may consult with them with respect to ratemaking and the application of rating systems.

D. The Board may make reasonable rules and regulations necessary to effect the purposes of this act.

SECTION 15. AMENDATORY 36 O.S. 1991, Section 935, is amended to read as follows:

Section 935. A. No person shall willfully withhold information from, or knowingly give false or misleading information to, the Board, or any statistical agency designated by the Board, ~~or any rating organization~~, which will affect the rates or premiums chargeable under this act.

B. A person convicted of violating this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than three (3) years or by both such fine and imprisonment.

SECTION 16. AMENDATORY 36 O.S. 1991, Section 937, is amended to read as follows:

Section 937. A. Any insurer ~~or rating organization~~ aggrieved by any order or decision of the Board, made without a hearing, may, within thirty (30) days after notice of the order to the insurer ~~or organization~~, make written request to the Board for a hearing thereon. The Board shall hear such party or parties within twenty

(20) days after receipt of such request and shall give not less than ten (10) days' written notice of the time and place of the hearing. Within fifteen (15) days after such hearing, the Board shall affirm, reverse or modify its previous action, specifying its reasons therefor. Pending such hearing and decision thereon, the Board may suspend or postpone the effective date of its previous action.

B. Nothing contained in this act shall require the observance at any hearing, of formal rules of pleading or evidence.

C. Except as otherwise provided in this act, any order or decision of the State Board for Property and Casualty Rates made pursuant to this act shall be subject to review by appeal to the Supreme Court of Oklahoma at the instance of any party in interest. Such party in interest may appeal from such order or decision by filing with the Clerk of the Supreme Court, within thirty (30) days from the date of such order or decision, a petition in error with a copy of the order or decision appealed from. The time limit prescribed herein for filing the petition in error may not be extended. The Supreme Court shall prescribe, by rule, the manner in which the record of the proceedings, sought to be reviewed, shall be perfected and the time for its completion. The appeal shall not stay the execution of any order or decision of the Board unless the Supreme Court shall, for cause shown, order that said decision or order be stayed pending such appeal, in which event the Court shall determine the terms and conditions upon which the same shall be stayed; provided, premiums collected prior to the effective date of the order of the Court imposing a stay shall be retained by the insurer unless the Court finds that such premiums were obtained by fraud, or unless otherwise ordered by the Court.

The Court may, in disposing of the issue before it, determine all issues of law and fact, and may modify, affirm or reverse the order or decisions of the Board in whole or in part.

SECTION 17. AMENDATORY 36 O.S. 1991, Section 1108, is amended to read as follows:

Section 1108. A. If after a hearing thereon the Insurance Commissioner finds that a particular insurance coverage or type, class, or kind of coverage is not readily procurable from authorized insurers, he may by order declare such coverage or coverages to be recognized surplus lines until the Insurance Commissioner's further order. The broker's affidavit provided for in Section 1107 of this ~~article~~ title shall not be required as to coverages while so recognized. Before holding any such hearing the Commissioner shall give notice to admitted insurers authorized to write such lines of insurance, ~~to rating organizations licensed to make rates for such lines of insurance~~ and to other interested persons in the manner provided by Article 3 of this Code.

B. Any such order shall be subject to modification, and the Insurance Commissioner shall so modify as to any coverage found by him to be no longer entitled to such recognition after a hearing held upon his own initiative or upon request of any insurance agent, surplus line broker, broker, insurer, ~~rating or~~ advisory organization, or other person.

SECTION 18. AMENDATORY 36 O.S. 1991, Section 3611.1, as amended by Section 4, Chapter 65, O.S.L. 1992 (36 O.S. Supp. 1992, Section 3611.1), is amended to read as follows:

Section 3611.1 A. As used in this section:

1. "Commissioner" means the Commissioner of Insurance;
2. "Medicare supplement policy" means a group or individual policy of accident and health insurance, or a subscriber contract of a nonprofit hospital service and medical indemnity corporation or a health maintenance organization which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. Such term does not include:

- a. a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or
- b. a policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:
 - (1) is composed of individuals all of whom are actively engaged in the same profession, trade or occupation,
 - (2) has been maintained in good faith for purposes other than obtaining insurance, and
 - (3) has been in existence for at least two (2) years prior to the date of its initial offering of such policy or plan to its members, or
- c. individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance; and

3. "Direct response Medicare supplement policy" means a policy of insurance which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare issued as a result of solicitation of individual insureds by mail or by mass media advertising.

B. The Commissioner shall issue reasonable regulations to establish minimum standards for benefit claims payment, marketing practices, compensation arrangements, and reporting practices for Medicare supplement policies.

C. A Medicare supplement policy may not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than "a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage".

D. A Medicare supplement policy shall be expected to return to the policyholder benefits which are reasonable in relation to the premium charged. The Commissioner shall issue regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims and earned premiums for the period of coverage for which rates are computed and in accordance with accepted actuarial principles and practices.

E. 1. No Medicare supplement policy or certificate issued pursuant to a group Medicare supplement policy shall be delivered or issued for delivery in this state unless an outline of coverage is provided to the applicant at the time application is made.

2. The Commissioner shall prescribe by regulation the contents and a standard form of an informational brochure for persons eligible for Medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. The Commissioner may require by regulation that the informational brochure be provided with the outline of coverage to any prospective insureds eligible for Medicare by reason of age. With respect to direct response policies, the Commissioner may require that the prescribed brochure and outline of coverage be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

3. The Commissioner may require notice provisions, designed to inform prospective insureds that particular insurance coverages are

not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare, other than:

- a. Medicare supplement policies,
- b. disability income policies,
- c. basic, catastrophic, or major medical expense policies,
- d. single premium, nonrenewable policies, or
- e. other policies defined by regulation of the Commissioner.

4. The Commissioner may adopt from time to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

- a. requiring refunds or credits if the policies or certificates do not meet loss ratio requirements,
- b. establishing a uniform methodology for calculating and reporting loss ratios,
- c. assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance, and
- d. establishing a policy for holding public hearings prior to approval of premium increases.

F. Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. A direct response policy issued to persons eligible for Medicare shall have a notice prominently

printed on the first page, or attached thereto, stating that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

G. The Insurance Commissioner shall have the authority to employ actuaries, statisticians, accountants, auditors, investigators, or any other technicians as the Insurance Commissioner may deem necessary or beneficial to examine any Medicare supplement filings made by insurers ~~or rating organizations~~ and to examine such records of the insurers ~~or rating organizations~~ as may be deemed appropriate in conjunction with the Medicare supplement filing in order to determine that the rates or other filings are consistent with the terms, conditions, requirements and purposes of the Insurance Code, and to verify, validate and investigate the information upon which the insurer ~~or rating organization~~ relies to support such filing.

1. The Commissioner shall maintain a list of technicians who are proficient in the line of Medicare supplement insurance. If the Commissioner determines that it is necessary to utilize the services of such a technician, the Commissioner shall employ the next available technician in rotation on the list.

2. All reasonable expenses incurred in such filing review shall be paid by the insurer ~~or rating organization~~ making the filing.

SECTION 19. REPEALER 36 O.S. 1991, Sections 928, 929, 930 and 936, are hereby repealed.

SECTION 20. This act shall become effective September 1, 1993.

44-1-5731 SD