

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2791

By: Cox

AS INTRODUCED

An Act relating to insurance; creating Article 11A of the Insurance Code, relating to unauthorized alien insurers; prohibiting alien insurance coverage for property in this state without prior approval; requiring certain registration; providing that certain contracts are voidable; providing for service of process; making the Insurance Commissioner agent for service of process; providing for attorneys fees; providing for posting of bond; providing for violations; providing penalties; making unauthorized alien insurers subject to premium tax; making unauthorized alien insurers subject to rules and jurisdiction of the Insurance Commissioner; providing for codification; and declaring an emergency.

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

ARTICLE 11A. UNAUTHORIZED ALIEN INSURERS

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No alien insurer shall knowingly maintain insurance coverage for property present in this state or for a resident of this state without the previous written approval of the Insurance Commissioner.

B. An alien insurer knowingly maintaining insurance coverage for property present in this state or for a resident of this state prior to the effective date of this article and after January 1, 1990, shall within ninety (90) days from the effective date of this article register with the Insurance Commissioner.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1152 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A contract of insurance shall be deemed illegally effectuated for the purposes of this article if the unauthorized alien insurer has failed to comply with Section 1 of this act.

B. A contract of insurance in violation of this article shall be voidable in whole or in part at the instance of the insured.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1153 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Obtaining approval from or registering with the Insurance Commissioner, as provided in Section 1 of this act, shall be deemed to constitute an appointment by the insurer of the Insurance Commissioner as its agent for service of process, and shall constitute a waiver of any objection to the jurisdiction and venue of Oklahoma Courts and application of Oklahoma Law by the unauthorized alien insurer.

B. Such service of process shall be made by delivering to and leaving with the Insurance Commissioner three (3) copies thereof. At the time of such service the plaintiff shall pay Ten Dollars (\$10.00) to the Insurance Commissioner, taxable as costs in the action. The Insurance Commissioner shall forthwith mail by certified mail with return receipt requested one of the copies of

such process to the defendant at the principal place of business of the defendant as last known to the Insurance Commissioner, and shall keep a record of all process served.

C. Service of process in any such action or proceeding, in addition to the manner provided in this section, shall also be valid if served upon any person within Oklahoma who, in this state on the behalf of the insurer, is soliciting insurance, or making, issuing, or delivering any insurance policy, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, or is representing the insurer in adjusting an insurance claim.

D. Service of process upon such an insurer shall be as valid and effective as if served upon a defendant personally present in this state.

E. Means provided in this section for service of process upon such insurer shall not be deemed to prevent service of process upon such insurer by any other lawful means.

F. An insurer which has been so served shall have the right to appear in and defend such action and employee attorneys and other persons in this state to assist in its defense thereto or settlement thereof.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1154 of Title 36, unless there is created a duplication in numbering, reads as follows:

In any action against an insurer pursuant to Section 3 of this act, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract of insurance and it appears to the court that such refusal was vexatious and without reasonable cause, the court shall allow the plaintiff a reasonable attorneys fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed one-third (1/3)

of the amount which the judge or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such a fee be less than One Hundred Dollars (\$100.00). Failure of the insurer to defend any such action shall be deemed prima facie evidence that the failure of the insurer to make payment was vexatious and without reasonable cause.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1155 of Title 36, unless there is created a duplication in numbering, reads as follows:

In any action against an insurer pursuant to Section 3 of this act, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract of insurance and it appears to the court that such refusal was vexatious and without reasonable cause, the court shall require the insured to post a bond with the court in an amount equal to one and one-half (1 1/2) times the amount of the demand. Failure of the insurer prior to the commencement of the action to make payment in accordance with the terms of the contract of insurance shall be deemed prima facie evidence that the failure of the insurer to make payment was vexatious and without reasonable cause. Failure of the insurer prior to the commencement of the action to provide the insured with copies of adjuster and expert reports as to the nature and extent of damage and loss, upon written request by the insured, shall be deemed prima facie evidence that the failure of the insurer to make payment was vexatious and without reasonable cause.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1156 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each day an unauthorized alien insurer knowingly fails to comply with Section 1 of this act shall be deemed to constitute a separate violation.

B. A fine of up to Five Thousand Dollars (\$5,000.00) shall be assessed by the Insurance Commissioner for each separate violation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1157 of Title 36, unless there is created a duplication in numbering, reads as follows:

Unauthorized alien insurers are subject to premium tax and to the rules and jurisdiction of the Insurance Commissioner as relates to insurance contracts knowingly written on property present in this state or for residents of this state.

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.

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