

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1347

By: Anthony of the House

and

Douglass of the Senate

COMMITTEE SUBSTITUTE

(Insurance - disclosing material acquisitions and
dispositions of assets - requiring certain actuary
opinions - prepaid funeral benefits - codification -
effective date -
emergency)

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 306.1 of Title 36, unless there
is created a duplication in numbering, reads as follows:

The Insurance Commissioner shall maintain, as confidential, any
documents or information received from the National Association of
Insurance Commissioners or insurance departments of other states
which is confidential in such other jurisdictions. It is within the
power of the Insurance Commissioner to share information, including
otherwise confidential information, with the National Association of
Insurance Commissioners or insurance departments of other states so
long as such other jurisdictions agree to maintain the same level of
confidentiality as is required under the laws of this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every insurer domiciled in this state shall file a report with the Insurance Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of the Oklahoma Insurance Code.

B. The report required in subsection A of this section is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.

C. One complete copy of the report, including any exhibits or other attachments, shall be filed with the National Association of Insurance Commissioners.

D. All reports obtained by or disclosed to the Insurance Commissioner pursuant to this section shall be confidential, shall not be subject to subpoena and shall not be made public by the Commissioner, the National Association of Insurance Commissioners, or any other person, except as follows:

1. The Insurance Commissioner may share such information with insurance departments of other states pursuant to Section 1 of this act;

2. The Insurance Commissioner may release such information with the prior written consent of the insurer to which it pertains; and

3. The Insurance Commissioner may publish all or any part of the information, without prior written consent, in the manner the Commissioner may deem appropriate if the Commissioner, after giving the insurer who would be affected notice and an opportunity to be

heard, determines that the interest of policyholders, shareholders or the public will be served by publication.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No acquisitions or dispositions of assets need be reported pursuant to Section 2 of this act if the acquisitions or dispositions are not material. For purposes of Section 2 of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent annual statement filed with the Insurance Commissioner pursuant to Section 311 of Title 36 of the Oklahoma Statutes.

B. 1. Asset acquisitions subject to Section 2 of this act include every purchase, lease, exchange, merger, consolidation, succession or any other acquisition.

2. Asset dispositions subject to Section 2 of this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

C. 1. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- a. date of the transaction,
- b. manner of acquisition or disposition,
- c. description of the assets involved,
- d. nature and amount of the consideration given or received,
- e. purpose of, or reason for, the transaction,

- f. manner by which the amount of consideration was determined,
- g. gain or loss recognized or realized as a result of the transaction, and
- h. names of the persons from whom the assets were acquired or to whom they were disposed.

2. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if:

- a. the insurer has less than One Million Dollars (\$1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and
- b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to Section 2 of this act if the nonrenewals, cancellations or revisions are not material. For purposes of Section 2 of this act, a material nonrenewal, cancellation or revision is one that affects:

- a. as respects property and casualty business, including accident and health business written by a property and casualty insurer:

- (1) more than fifty percent (50%) of the insurer's total ceded written premium, or
 - (2) more than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves;
- b. as respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and
- c. as respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
- (1) an authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers, or
 - (2) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

2. However, no filing shall be required if:

- a. as respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or
- b. as respects life, annuity, and accident and health business: the total reserve credit taken for business ceded represents, on an annualized basis, less than

ten percent (10%) of the statutory reserve requirement prior to any cession.

B. 1. The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

- a. effective date of the nonrenewal, cancellation or revision,
- b. the description of the transaction with an identification of the initiator thereof,
- c. purpose of, or reason for, the transaction, and
- d. if applicable, the identity of the replacement reinsurers.

2. Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if:

- a. the insurer has less than One Million Dollars (\$1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and
- b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1997, every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Insurance Commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported accounts and comply with applicable laws of this state. The Commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

B. 1. Beginning January 1, 1997, every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection A of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

2. The Commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

C. Each opinion required by subsection B of this section shall be governed by the following provisions:

1. A memorandum, in form and substance acceptable to the Commissioner as specified by rule, shall be prepared to support each actuarial opinion; or

2. If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified by rule, or the Commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.

D. Every opinion shall be governed by the following provisions:

1. The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1996;

2. The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the Commissioner as specified by rule;

3. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the Commissioner may by rule prescribe;

4. In the case of an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

5. Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the Commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion; and

6. Disciplinary action by the Commissioner against the company or the qualified actuary shall be defined in rules by the Commissioner.

E. 1. Any memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection therewith, shall be kept confidential by the Commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the Commissioner as follows:

- a. with the written consent of the company, or
- b. to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material.

2. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

F. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in rules promulgated by the Insurance Commissioner.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 6125, as amended by Section 3, Chapter 267, O.S.L. 1993 (36 O.S. Supp. 1994, Section 6125), is amended to read as follows:

Section 6125. A. 1. The organization may retain from the first funds collected, the first ten percent (10%) of the purchase price of all contracts issued pursuant to paragraph 1 of subsection B of this section. Thereafter, one hundred percent (100%) of all funds collected pursuant to the provisions of contracts for prepaid funeral benefits, except for outer enclosures as defined by the Funeral Service Licensing Act, shall be placed in interest-bearing investments authorized by Article 16 of the Insurance Code, except to the extent the Insurance Commission may determine that a particular asset may be inappropriate for investment for prepaid funeral benefits.

2. For outer enclosures at the option of the organization the first thirty-five percent (35%) of the retail price of the outer enclosures collected may be retained by the organization. The remaining sixty-five percent (65%) of the retail price collected for the outer enclosures shall be invested as otherwise provided by this subsection pursuant to the provisions of contracts for prepaid funeral benefits.

3. The funds required to be deposited pursuant to paragraphs 1 and 2 of this subsection shall be deposited within ten (10) days of the end of the calendar month after the collection of said funds and shall be held in a trust fund in this state for the use, benefit, and protection of purchasers of contracts for prepaid funeral benefits. Nothing contained within this section shall be construed to prohibit an organization authorized to accept prepaid funds from transferring the funds held in trust from one trust depository to another if notice of the transfer is given to the Insurance Commissioner within ten (10) days before the transfer, and if the Insurance Commissioner does not object to the transfer on or before

the tenth day following the notice. This subsection shall not affect funds invested prior to November 1, 1988.

B. An organization authorized to accept prepaid funds shall be authorized to provide purchasers with a choice of either of the following types of contracts:

1. A contract for specific and described funeral merchandise and service at a guaranteed price. The provisions of this type of contract shall provide that interest paid by the organization upon monies deposited in trust shall be added to the principal and that principal and interest shall become available for disbursement to the organization upon the death of the beneficiary and if withdrawal of monies occurs prior to death, the net value, plus the amount withheld pursuant to paragraph 1 of subsection A of this section, shall be paid to the purchaser. Net value shall be determined as provided in subsection C of this section; or

2. A contract establishing a fund for prepaid funeral benefits. The provisions of this type of contract shall require an initial minimum deposit of Twenty-five Dollars (\$25.00) and shall grant the purchaser the right to add to the fund at his discretion. The provisions of this contract shall provide that the funds accumulated shall apply to the cost of the funeral services and merchandise selected and that any funds remaining unused shall be refunded to the purchaser or to his personal representative or designated beneficiary and if withdrawal of monies occurs prior to death, the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to subsection D of this section less taxes and administrative fees. This type of contract shall also bear upon it the language: "Exact Funeral Merchandise and Services to be Selected at Time of Death".

C. If an organization other than the organization with which the purchaser contracted provides funeral merchandise and services upon the death of the beneficiary of the contract, the organization

with whom the purchaser contracted shall forward, upon receipt of request in writing from the purchaser or ~~his~~ a personal representative, the net value of the contract to the organization which provided said merchandise and services or to the purchaser or his personal representative. The net value of the contract for purposes of this section shall be determined by adding the amount of all principal paid in pursuant to the provisions of the contract plus all interest payable pursuant to subsection D of this section less taxes and administrative fees.

D. Funds deposited in trust pursuant to the provisions of either type of contract authorized by the provisions of this section shall earn for the account of the purchaser a rate of interest which is not less than the minimum rate of interest offered by the qualified depositories specified in subsection A of this section to their savings customers having interest-bearing accounts. The organization, in a nondiscriminatory manner, may pay or accrue interest for the accounts of purchasers at any rate greater than the minimum rate that the organization desires, provided, however, that the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to this subsection.

E. A purchaser of either of the types of contracts authorized by the provisions of this section may withdraw the net value of the contract by signing a statement requesting the withdrawal. The organization shall provide a copy of the statement to the Insurance Commissioner. The organization shall retain in its files a copy of the statement requesting the withdrawal. Withdrawal of funds deposited pursuant to the provisions of a contract authorized by the provisions of paragraph 1 of subsection B of this section shall void the obligation of the contracting organization to provide funeral merchandise and services at a guaranteed price. Withdrawal forms shall be retained on file for at least three (3) years by the organization.

F. Following the death of a beneficiary for whom a contract has been purchased, the organization shall prepare a statement, acknowledged by the purchaser if the purchaser is not the beneficiary, or by the personal representative of the purchaser if the purchaser is the beneficiary, setting forth the use of the funds deposited and the party to whom any unused funds were disbursed. A copy of this statement shall remain in the files of the organization for at least three (3) years and a copy shall be delivered to the trust depository. Copies of the statement shall also be sent to the Insurance Commissioner and the purchaser.

G. After thirty (30) days, a contract of either type authorized by the provisions of this section may become irrevocable and not subject to withdrawal prior to the death of the beneficiary if the purchaser signs an election making said contract irrevocable. This election shall not become effective until thirty (30) days after signing the original contract.

H. In no event shall more funds be withdrawn or paid pursuant to the provisions of one contract than were deposited with the organization and which were accumulated as interest. All funds deposited pursuant to the provisions of a contract authorized by the provisions of this section and deposited pursuant to the terms of this section and the interest earned on said funds shall be exempt from attachment, garnishment, execution, and the claims of creditors, receivers, or trustees in bankruptcy, until such time as the funds have been withdrawn from the trust account and paid to the organization or refunded to the purchaser.

I. Each organization subject to the provisions of this section shall furnish a bond in the form of a cash bond, letter of credit, or fidelity bond, to be approved by the Insurance Commissioner, in the amount of Three Hundred Thousand Dollars (\$300,000.00) or fifteen percent (15%) of all funds collected for prepaid funeral benefits, whichever is less.

J. Organizations contracting with purchasers for prepaid funeral benefits pursuant to paragraphs 1 and 2 of subsection B of this section shall be entitled to deduct from the principal and interest allocable to the contracts an administrative fee which shall not exceed the product of .001146 times the total contract fund including accrued interest per month or any major portion thereof.

K. No organization holding a permit issued pursuant to the provisions of Sections 6121 and 6124 of this title shall accept any funds except pursuant to the provisions of a contract for prepaid funeral or burial benefits authorized by the provisions of Sections 6121 through 6136 of this title, and no organization shall accept funds from a purchaser in excess of the contracted price of prepaid funeral or burial benefits purchased.

L. Any organization which knowingly commits any of the acts set forth in the first sentence of Section 6121 of this title without first having obtained a permit to engage in said activity from the Insurance Commissioner, or any organization which commits said acts while knowingly operating with an invalid or expired permit, upon conviction, shall be guilty of a misdemeanor. Each separate act performed without a valid permit shall be deemed a separate offense. The punishment upon conviction for such offense shall be a fine not to exceed One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, or both such fine and imprisonment.

SECTION 7. This act shall become effective July 1, 1995.

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.

