

ENGROSSED SENATE  
BILL NO. 639

By: Hendrick of the Senate

and

Cox of the House

An Act relating to insurance; defining term; stating application of act and of conflicting provisions; making certain National Association of Insurance Commissioners' formulas regarding surplus inapplicable to single state insurers; stating requirement for minimum surplus in regard to policyholders; stating requirement for expendable surplus; requiring annual actuarial opinion be filed certifying adequacy of unearned premium, loss, and loss expense reserves and defining term; stating filing date and qualifications of actuary; authorizing use by certain insurers of present value discounting for computing reserves; amending 36 O.S. 1991, Section 1509, which relates to inadequate reserves and present value discounting; making provisions inapplicable to single state insurers; providing for codification; and providing an effective date.

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 612.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "single state insurer" means a domestic insurer which:

1. Writes business only in this state;
2. Assumes no reinsurance; and
3. Writes physicians, hospitals or legal professional liability insurance.

B. This section shall apply only to single state insurers which shall be governed by its provisions to the extent provided herein. Single state insurers shall be governed by all other provisions of Title 36 of the Oklahoma Statutes only to the extent that such provisions are not in conflict with the provisions of this section. No law relating to insurance enacted after the effective date of this act shall supersede the provisions of this section unless so expressly stated therein.

C. No provision of the National Association of Insurance Commissioners' annual statement instruction handbooks or of the National Association of Insurance Commissioners' accounting practices and procedures manuals which require that the sufficiency of the "surplus as regards policyholders" of an insurer be determined by reference to any formula, whether denominated "risk-based capital" or otherwise, which formula is designed to calculate a minimum level of capital and surplus related to the amounts and types of risks assumed by such insurer, shall be applicable to any single state insurer.

D. 1. A single state insurer shall possess and maintain surplus in regard to policyholders, which is defined as the aggregate of the capital and surplus if a stock insurer, or surplus if a mutual or reciprocal insurer, in an amount at least equal to

the greater of Five Hundred Thousand Dollars (\$500,000.00) or twenty percent (20%) of gross annual written premiums.

2. In addition to the minimum surplus in regard to policyholders as required by paragraph 1 of this subsection, each single state insurer shall possess at the time of initial authorization expendable surplus funds in an amount of not less than one-half (1/2) of the minimum surplus in regard to policyholders, as required by paragraph 1 of this subsection.

E. 1. A single state insurer shall maintain adequate unearned premium, loss, and loss expense reserves. Single state insurers shall file an annual actuarial opinion certifying to the adequacy of these reserves. For purposes of this subsection, "adequate" means that such insurers' reserves fall within a range of values that make reasonable provision for losses and loss expenses.

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the single state insurer with the Insurance Commissioner on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society. An actuarial opinion that meets the requirements of this subsection shall be accepted by the Insurance Commissioner as conclusive evidence of the adequacy of such reserves.

F. Single state insurers may use present value discounting for computing reserves for physicians' and hospitals' professional liability insurance and legal professional liability insurance. Section 1509 of Title 36 of the Oklahoma Statutes shall not apply to single state insurers.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1509, is amended to read as follows:

Section 1509. A. If the Insurance Commissioner determines in writing that an insurer's unearned premium reserve, however computed is inadequate, ~~he~~ the Commissioner may require the insurer to

compute ~~such~~ the reserve or any part thereof according to ~~such~~ other method or methods as are prescribed in this article.

B. If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the Insurance Commissioner, in writing, shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

C. 1. Insurers shall not use present value discounting for computing reserves for property and casualty insurance, except for physicians' and hospitals' professional liability insurance written on an occurrence basis. Property and casualty insurers which elect to use present value discounting for computing reserves on physicians' and hospitals' professional liability insurance shall file initially, and thereafter annually, an actuarial opinion certifying to the adequacy of such reserves which shall include an analysis of the propriety of loss payout patterns, interest rate assumptions used in developing the discount and the adequacy of the insurer's rates. Additionally, such actuary shall consider the quality and liquidity of the insurer's assets and the nature and extent of the insurer's reinsurance program. In no event shall the interest rate used to compute the discounted reserves exceed the insurer's average yield on invested assets for the year, less one percent (1%).

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the insurer on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society.

3. Insurers discounting reserves pursuant to this subsection shall invest and maintain their funds only in cash; securities described in the following sections of this Code:

- a. Section 1607 (securities of or guaranteed by the United States),
  - b. Section 1608 (state and Canadian public obligations),
  - c. Section 1609 (county, municipal and district obligations),
  - d. Section 1610 (public improvement bonds),
  - e. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record,
  - f. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record, and
  - g. Section 1620 (deposits, banks, savings and loans);
- and any other investment specifically approved by the Commissioner.

4. This subsection applies to reserves established in connection with incidents of loss occurring on or after January 1, 1989. The investment limitations prescribed by this subsection shall be applicable on or after January 1, 1989.

D. During any period of reserve strengthening mandated by the Insurance Commissioner pursuant to the provisions of this section, no insurer shall pay dividends or other benefits which would not be normal payments under the terms of a policy to any stockholder or policyholder of ~~such the~~ insurer and ~~such the~~ insurer shall be subject to any additional reasonable restrictions as the Commissioner shall deem prudent.

E. Insurers shall report, on a form prescribed by the Insurance Commissioner and filed with their annual statement, all funds collected through policy fees or assessments which were collected in response to a written request to increase inadequate reserves from the Commissioner made pursuant to the provisions of this section.

F. This section shall not apply to single state insurers, as defined in Section 1 of this act.

SECTION 3. This act shall become effective November 1, 1995.

Passed the Senate the 14th day of March, 1995.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_, 1995.

Speaker of the House of Representatives