

SHORT TITLE: Insurance; modifying time period for reporting to Insurance Department dividends to shareholders; adding factor for determining adequacy of surplus; modifying definition; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 477

By: Fisher

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 1654 and 1655, as amended by Sections 4 and 5, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1994, Sections 1654 and 1655), which relate to registration of insurers and standards for certain transactions; modifying time period for reporting to Insurance Department dividends to shareholders; modifying gender references; adding factor for consideration in determining adequacy of surplus; modifying definition and determination of extraordinary dividend or distribution; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1654, as amended by Section 4, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1994, Section 1654), is amended to read as follows:

Section 1654. (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and every individual who controls an insurer shall annually register with the Insurance Commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in

this section. Any insurer which is subject to registration under this section shall register thirty (30) days after it becomes subject to registration, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy to the Commissioner of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

- (i) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (ii) the identity and relationship of every member of the insurance holding company system;
- (iii) the following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the previous calendar year between such insurer and its affiliates:
  - (1) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
  - (2) purchases, sales or exchanges of assets;
  - (3) transactions not in the ordinary course of business;
  - (4) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability,

- other than insurance contracts entered into in the ordinary course of the insurer's business;
- (5) all management and service contracts and all cost-sharing arrangements;
  - (6) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;
  - (7) dividends and other distributions to shareholders; and
  - (8) consolidated tax allocation agreements.
- (iv) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner; and
- (v) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of

each such change or addition, provided, however, that subject to subsection (c) of Section 1655 of this title, each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of Registration. The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated Filing. The Commissioner may require two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement, so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(g) Alternative Registration. The Commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under Section 1651 et seq. of this title.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report

under this section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Summary of Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(k) Reporting Dividends to Shareholders. ~~Subject to subsection (e) of Section 1655 of this title, each registered~~ Every domestic insurer that is a member of a holding company system shall report to the Commissioner Insurance Department all dividends and other distributions to shareholders within fifteen (15) five (5) business days following the declaration and at least ten (10) days, commencing from date of receipt by the Department, prior to payment thereof.

(l) Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer where such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(m) Violations. The failure to file a registration statement, any summary of the registration statement thereto, or any additional information required by this section within the time specified for such filing shall be a violation of this section.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 1655, as amended by Section 5, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1994, Section 1655), is amended to read as follows:

Section 1655. (a) Transactions with Affiliates. Material transactions by registered insurers with their affiliates shall be

subject to the provisions of Section 1604 of this title. The board of directors will be charged with exercising that degree of care which a prudent ~~man~~ person would have exercised under similar circumstances. Material transactions shall be subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and
- (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Insurance Commissioner's Approval Required.

- (1) The prior written approval of the Commissioner shall be required for the following transactions between a domestic insurer and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than five percent (5%) of the insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is ~~lesser~~ less, as of the latest statutory financial statement filed with the Commissioner; provided, however, that the Commissioner must ~~give his decision of~~ either ~~approval~~ approve or ~~disapproval~~ disapprove within thirty (30) days after receiving written notification from the insurer of the proposed transaction and ~~his~~ failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction;

(2) The prior written approval of the Commissioner shall be required for any transactions between a domestic insurer and its affiliates where the insurer is found by the Commissioner to be in unsound condition or in such condition as to render its further transaction of insurance in Oklahoma hazardous to its policyholders or to the people of Oklahoma; provided, however, that the Commissioner must ~~give his decision of~~ either ~~approval~~ approve or ~~disapproval~~ disapprove within ninety (90) days after written notification by the insurer and ~~his~~ failure to disapprove the proposed transaction within ninety (90) days shall constitute approval of the transaction;

(3) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

(i) loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: (a) with respect to nonlife insurers,

the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (b) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding;

(ii) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(iii) all management agreements, service contracts and all cost-sharing arrangements; and

(4) The Insurance Commissioner shall promulgate reasonable rules and regulations governing the form and content of the notice required pursuant to subsection (b) of this section.

(c) Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to the effective date of this section.

(d) Adequacy of Surplus. For purposes of Section 1651 et seq. of this title, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria;
- (2) the extent to which the insurer's business is diversified among the several lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves; ~~and~~
- (10) the quality and liquidity of investments in subsidiaries made pursuant to Section 1652 of this title. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants; and
- (11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

(e) Dividends and Other Distributions. No insurer subject to registration under Section 1654 of this title shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) thirty (30) days after the Commissioner has received notice of the declaration thereof and has

not within such period disapproved such payment, or (ii) the Commissioner shall have approved such payment within such thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~lesser~~ greater of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. ~~In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.~~

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of such dividend or distribution or (ii) the Commissioner has not disapproved such payment within the thirty-day period referred to above.

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

