

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 327

By: Taylor and Henry of the
Senate

and

Benson of the House

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending Section 3, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2002), which relates to limited liability companies; amending 36 O.S. 1991, Sections 110, as last amended by Section 1, Chapter 249, O.S.L. 1996, 303, 306, 307, 309.1, 309.2, as amended by Section 1, Chapter 79, O.S.L. 1993, 309.3, 309.5, 309.6, 309.7, 311, as last amended by Section 2, Chapter 79, O.S.L. 1993, 311.1, as amended by Section 36, Chapter 270, O.S.L. 1993, 313, 317, 319, 320, 321.1, as amended by Section 1, Chapter 294, O.S.L. 1994, 335, 346, 351, 619, 621, 622, 624, 629, 632, 901.3, Section 22, Chapter 349, O.S.L. 1993, 902.1, 902.2, as last amended by Section 3, Chapter 129, O.S.L. 1994, 908, 936, 1103, 1113, 1115, 1116, as amended by Section 2, Chapter 65, O.S.L. 1992, 1118, 1206, 1207, 1208, 1209, 1210, 1211, 1213, 1219, as amended by Section 1, Chapter 74, O.S.L. 1992, 1253, as renumbered by

Section 20, Chapter 342, O.S.L. 1994, and as last amended by Section 5, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 1254, as last amended by Section 5, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994, 1255, as amended by Section 6, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994, 1256, as last amended by Section 7, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994, 1259, 1226 and 1258, as renumbered by Section 20, Chapter 342, O.S.L. 1994, and as last amended by Sections 8, 9 and 10, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, Section 15, Chapter 342, O.S.L. 1994, 1422, as amended by Section 17, Chapter 339, O.S.L. 1995, 1425 and 1425.1, as last amended by Sections 4 and 5, Chapter 246, O.S.L. 1996, 1426, 1427, 1428, as amended by Section 2, Chapter 248, O.S.L. 1993, 1448, 1450, 1452, as amended by Section 6, Chapter 129, O.S.L. 1994, 1462, 1464, Section 1, Chapter 142, O.S.L. 1994, 1653, as last amended by Section 7, Chapter 79, O.S.L. 1993, Section 8, Chapter 178, O.S.L. 1992, Section 7, Chapter 246, O.S.L. 1996, 2105, 2611, Section 26, Chapter 76, O.S.L. 1992, 3612, 4101.1, 4112, 4427, as amended by Section 4, Chapter 136, O.S.L. 1993, Section 32, Chapter 178, O.S.L. 1992, Section 36, Chapter 178, O.S.L. 1992, as amended by Section 1, Chapter 86, O.S.L. 1994, 6002, 6031, 6032, Sections 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, Chapter 294, O.S.L. 1994, 6202, 6218, 6403, 6422 and 6460 (36 O.S. Supp. 1996, Sections 110, 309.2, 311, 311.1, 321.1,

901.5, 902.2, 1116, 1219, 1250.4, 1250.5, 1250.6, 1250.7, 1250.11, 1250.13, 1250.14, 1250.15, 1422, 1425, 1425.1, 1428, 1452, 1629, 1653, 1658.2, 1927.1, 2726.1, 4427, 5111, 5122, 6103.2, 6103.3, 6103.4, 6103.5, 6103.6, 6103.7, 6103.8, 6103.9, 6103.10 and 6103.11), which relate to regulation of business of insurance; amending 54 O.S. 1991, Sections 144 and 307, which relate to limited partnerships; amending 59 O.S. 1991, Sections 1305, as last amended by Section 1, Chapter 357, O.S.L. 1995, 1310, as amended by Section 3, Chapter 357, O.S.L. 1995, 1315, as amended by Section 49, Chapter 274, O.S.L. 1995 and 1332, as last amended by Section 5, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Sections 1305, 1310, 1315 and 1332), which relate to bail bondsmen; amending 85 O.S. 1991, Section 177, as last amended by Section 3, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1996, Section 177), which relates to Workers' Compensation Administration Fund; clarifying language; eliminating prohibition against limited liability company conducting business of insurance; eliminating condition placed on certain exception to Insurance Code relating to banks; providing for computation of time periods prescribed by Insurance Code and related rules; modifying design and use of seal; making certain records confidential with certain exceptions; modifying duties of Insurance Commissioner relating to complaints and records; expanding definition of certain term; modifying and clarifying provisions relating to examination of insurers; authorizing employees to exercise certain

duties; decreasing number of persons required to make request for examination; deleting obsolete language; providing for supplementation of certain handbooks and manuals by rule; providing for notice in writing of conflict of interest of examiner; modifying provisions relating to cause of action and related award; modifying certain filing date; providing for temporary certificate of authority; allowing Insurance Commissioner to disclose certain confidential information in receivership proceedings; modifying penalties relating to filings; providing for certain enforcement and recording of certain penalties and fees; stating requirements for orders and notices; conforming notice and hearing provisions to Administrative Procedures Act with certain exceptions; making appointment of independent hearing examiner discretionary; clarifying language relating to assessment of fees and costs; providing for judicial review; modifying fees; modifying restriction on investment in certain mutual funds and retirement or pension plans; clarifying language relating to certain proceedings; modifying hearing requirement for certain sanctions and clarifying language relating thereto; modifying requirements for serving legal process on Insurance Commission and related fee; deleting obsolete language and modifying interest rate and penalty relating to premium taxes; conforming language; requiring additional language in certain statement; modifying basis for certain geographic areas; authorizing the Commissioner to refund to

applicants certain fees; allowing Commissioner to return certain portion; directing the Commissioner to promulgate rules; providing for waiver of right to certain hearings; modifying penalty relating to rates and rate filings; modifying conditions which must be fulfilled prior to taking certain disciplinary action; authorizing Insurance Commissioner to make certain request of Attorney General; eliminating authorization to waive certain fine and certain immunity or privilege; granting access to certain files for certain persons; modifying time periods for certain responses; adding penalty; modifying time periods for acknowledging receipt of certain notification, advising claimant of acceptance or denial of claim, extending deadlines, completing investigation, and giving claimant certain notice; specifying standard for determining certain fees and providing for deposit of fees modifying penalty for violation of Unfair Claims Settlement Practices Act; modifying provisions relating to licensure of insurance agents; requiring licensure of certain persons; stating business which certain licensees may conduct; stating licensure requirements for agencies; prohibiting licensure for purpose of writing controlled business; defining term; stating requirements and restrictions for paying commissions for certain services; requiring certain information be included on license; stating term of license; providing for appointment of agents and limited insurance representatives; stating exemptions from licensure; requiring persons

receiving exclusive agency contract overrides to be licensed as agent; modifying requirements for information which licensees must provide to Commissioner; requiring termination of certain appointments to be in writing; requiring certain insurers to appoint licensed property and casualty agents; modifying penalty for unpaid license renewal fees; authorizing Commissioner to deem appointment terminated if certain fees are unpaid; providing for additional use of certain fees; deleting certain application, examination and licensure provisions; modifying continuing education requirements; restating deleted application, examination and licensure provisions with certain modifications; modifying exemptions from examination requirement; deleting and restating provision relating to imposition of certain requirements on residents who are applicants or licensees in other states; modifying certain notice provisions relating to certain sanctions and administrative actions; modifying period during which Commissioner has jurisdiction over former licensee; modifying bond provisions for third-party administrators; requiring certain information of administrators; modifying certain investment requirement; requiring statement relating to tender offer include certain additional information; increasing penalty for violation of provisions relating to subsidiaries of insurers; modifying priority of distribution of claims; providing for payment of certain claims; authorizing Commissioner to waive certain

requirements relating to stock insurer serving as receiver of an insolvent company; authorizing Commissioner to approve amended articles of incorporation for certain purpose; construing provision relating to obligation to reinsurance agreement; making certain requirement to file suit discretionary; expanding method by which Commissioner may serve cease and desist order; restricting activity of person licensed as an emergency adjuster; eliminating prohibition against limited partnership from carry on the business of insurance; modifying provision for certain persons to be bail bondsmen; providing for certain orders from the Commissioner; providing for jurisdiction of Commissioner over licensed bondsmen for certain period; authorizing award of certain fees in connection with bond forfeitures; repealing 36 O.S. 1991, Sections 107.2, 310.1, 310.2, 312, 314, 315, 316, 318, 341.1, 344, 623, 903.1, 1259, as amended by Section 12, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994, 1424, as last amended by Section 3, Chapter 246, O.S.L. 1996, 1424.2, 1426.1, 1429, 1453, Sections 11 and 19, Chapter 178, O.S.L. 1992, 1812, 2615, 2620, 2663, 2683, 2691.13, Section 36, Chapter 76, O.S.L. 1992, 3623 and 6152 (36 O.S. Supp. 1996, Sections 1250.12, 1424, 1659.3, 1677 and 2736.1), which relate to State Board for Property and Casualty Rates Administrator, reports required of property and casualty insurers, administrative hearings, application of Administrative Procedures Act, service of process, filing of rate increases

for 1988, licensure of agents, abrogation of certain licenses and certificates, renewal of policy by certificate or endorsement, and licenses for limited insurance representatives; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2002), is amended to read as follows:

Section 2002. A limited liability company may be organized under ~~this act~~ Section 2000 et seq. of this title and may conduct business in any state for any lawful purpose, except the business of banking and insurance.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 110, as last amended by Section 1, Chapter 249, O.S.L. 1996 (36 O.S. Supp. 1996, Section 110), is amended to read as follows:

Section 110. No provision of the Oklahoma Insurance Code, Section 101 et seq. of this title, shall apply to:

1. Nonprofit hospital service and medical indemnity corporations, except as stated in Sections 601 et seq. and 2601 et seq. of this title; ~~or~~
2. Fraternal benefit societies, except as stated in Section ~~2701~~ 2701.1 et seq. of this title; ~~or~~
3. Farmers' mutual fire insurance associations, except as stated in Section 2801 et seq. of this title; ~~or~~
4. Mutual benefit associations, except as stated in Section 2401 et seq. of this title; ~~or~~
5. Domestic burial associations; ~~or~~

6. Any domestic association organized subject to the supervision or by the authority of any incorporated Grange Order of Patrons of Husbandry, when the association is formed exclusively for the mutual benefit of the members of such order. Effective January 1, 1982, The Oklahoma State Union of the Farmers' Educational and Cooperative Union of America shall comply with all provisions of the Oklahoma Insurance Code; ~~or~~

7. Trust companies organized pursuant to the provisions of Title 6 of the Oklahoma Statutes except that the title insurance and surety insurance business of such trust companies shall be subject to the Oklahoma Insurance Code; ~~or~~

8. Soliciting agents of mutual insurance corporations or associations, operating only in this state, that issue no stock or other form of security, do not operate for profit, and have none of their funds inure to the benefit of individuals except in the form of less expensive insurance and necessary expenses of operation, if provisions are made in the bylaws of the insurer for the election of any soliciting agents by a majority of the policyholders in the area where the soliciting agent solicits insurance; ~~or~~

9. The Mutual Aid Association of the Church of the Brethren or the Mutual Aid Association of the Mennonite and Brethren in Christ; ~~or~~

10. Incorporated or unincorporated banking associations having been in existence for over fifteen (15) years and consisting of more than seventy-five (75) member banks within this state for issuance of blanket fidelity bonds for banks within this state for each bank's own use, or any nonprofit trust sponsored by such associations' member banks providing employee benefits such as life, health, accident, disability, pension and retirement benefits for banks, bank holding companies and subsidiaries thereof, the associations' employees and associate members, ~~if the association~~

~~uses standard forms and provides information to the Bank
Commissioner adequate for a determination of actuarial soundness; or~~

11. A religious publication, or subscribers of the publication, when the publication:
- a. is a nonprofit religious organization,
 - b. is limited to subscribers who are members of the same denomination or religion,
 - c. acts as an organizational clearinghouse for information between subscribers who have financial, physical or medical needs and subscribers with the present ability to pay subscribers with present financial or medical needs,
 - d. provides for the financial or medical needs of a subscriber through payments directly from one subscriber to another, and
 - e. suggests amounts that subscribers may voluntarily give with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 121 of Title 36, unless there is created a duplication in numbering, reads as follows:

In computing any period of time prescribed or allowed by this title, by the rules of the Commissioner or the State Board for Property and Casualty Rates, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday as defined by the Oklahoma Statutes, or any day when the office of the Commissioner does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day when the office of the Commissioner is

open until 4:00 p.m. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

SECTION 4. AMENDATORY 36 O.S. 1991, Section 303, is amended to read as follows:

Section 303. The Insurance Commissioner shall have an official seal, the center of which shall be the same as that of the Great Seal of the State of Oklahoma, and which shall be distinguished by the words "Insurance Commissioner - State of Oklahoma" inscribed in the circular band surrounding the remainder of the device ~~and which.~~ This seal shall be ~~and become~~ the official seal of ~~his~~ the office, ~~and the same may be renewed whenever necessary.~~ Every certificate and other document or paper duly executed by the Insurance Commissioner ~~in the pursuance of any authority conferred upon him by law, and sealed with the seal of his office,~~ authorized employees of the Insurance Department, or independent hearing examiners and all copies or photographic copies of papers certified by ~~him~~ authority of the Commissioner and authenticated by ~~said~~ the seal shall, ~~in all cases, be evidence equally and in like manner as the original thereof, and~~ shall have the same force and effect as the original would in any suit or proceedings in any court of this state.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 306, is amended to read as follows:

Section 306. A. The records, books, and papers pertaining to the official transactions, filings, examinations, investigations, and proceedings of the Insurance Department shall be maintained by ~~said~~ the Department until disposition thereof ~~which shall be made~~ has been approved by the Archives and Records Commission. ~~Said~~ These records, books, and papers shall be public records of the state. However, reports of examinations of insurers shall be filed and made public only as provided in Section ~~310~~ 309.4 of this Code title. Open and ongoing investigative and ~~legal~~ disciplinary files

shall not be made public until their completion or unless they are ordered to be made public by the proper judicial official. Files of the claims division of the Commissioner's office, including complaints and requests for assistance from insureds, and insurance agency and company records, shall not be public records and shall not be disclosed except in connection with disciplinary proceedings by the Commissioner. Final market conduct orders shall be open public records.

B. Any document or other information generated by the Insurance Department or received by the Insurance Department from a governmental agency or any other public body of any kind, including an insurance guaranty fund or risk pool board, that has a protection from disclosure under any statute or evidentiary privilege from disclosure, while in the possession of the body that generated the information, shall retain its confidential character while in the possession of the Insurance Department. The Insurance Department may require that any agency or public body providing a document or other information, if it expects the information to be treated confidentially by the Insurance Department, to also provide simultaneously an express reference to the claimed protection from disclosure.

C. A court shall quash any subpoena commanding the disclosure of confidential information or closed records of the Insurance Department absent a showing of justification for such disclosure.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 307, is amended to read as follows:

Section 307. The Insurance Commissioner shall be charged with the duty of administration and enforcement of the provisions of this Code, except those duties specifically assigned to the State Board for Property and Casualty Rates. The Insurance Commissioner shall provide such administrative and staff support as required by the Board. The Insurance Commissioner shall have jurisdiction over

complaints against all persons engaged in the business of insurance, and shall hear all matters ~~brought before him~~ either in person, by authorized disinterested employees, or by hearing examiners appointed by ~~him~~ the Commissioner for that purpose. It shall be the ~~further~~ duty of the Insurance Commissioner to file ~~in his office~~ and safely keep all books and papers required by law to be filed ~~therein~~ with the Insurance Department, and to keep and preserve in permanent form a full record of ~~his~~ proceedings, including a concise statement of the conditions of such insurers ~~or corporations~~ and other entities reported and examined by ~~him.~~ He the Department and its examiners. The Commissioner shall, annually, at the earliest practicable date after returns are received from the several ~~companies or corporations~~ authorized insurers and other organizations, make a report to the Governor of the State of Oklahoma of the affairs of the Office of the Insurance Commissioner, which report shall contain a tabular statement and synopsis of the several statements, as accepted by the Insurance Commissioner, which shall include with respect to each insurance company the admitted assets, liabilities except capital, capital and ~~or~~ surplus, Oklahoma premium income, amount of claims paid in Oklahoma, and such other matters as ~~in his opinion~~ may be of benefit to the public, ~~and he shall.~~ The Commissioner may make such recommendations as he may deem proper in regard to regarding the subject of insurance in this state, and shall set forth in a statement the various sums received and disbursed by ~~him~~ the Department, from and to whom and for what purpose. Such report shall be published by and subject to the order of the said Insurance Commissioner. The Insurance Commissioner shall, upon retiring from office, deliver to ~~his~~ the qualified successor all furniture, records, papers and property of ~~his~~ the office.

SECTION 7. AMENDATORY 36 O.S. 1991, Section 309.1, is amended to read as follows:

Section 309.1 As used in Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title:

1. "Commissioner" means the Insurance Commissioner;

2. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative or regulatory authority of the Commissioner;

3. "Department" means the Insurance Department;

4. "Examiner" means any individual or firm having been authorized by the Commissioner to conduct an examination ~~under this act~~;

5. "Insurer" means every person engaged in the business of making contracts of insurance or indemnity including not-for-profit hospital service and medical indemnity corporations; and

6. "Person" means any individual, aggregation of individuals, trust, association, ~~partnership or corporation~~ recognized legal entity, or any affiliate thereof.

SECTION 8. AMENDATORY 36 O.S. 1991, Section 309.2, as amended by Section 1, Chapter 79, O.S.L. 1993 (36 O.S. Supp. 1996, Section 309.2), is amended to read as follows:

Section 309.2 A. The Insurance Commissioner or ~~any of his examiners~~ an examiner may conduct an examination under Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title of any company as often as the Commissioner deems appropriate but shall at a minimum, conduct an examination of every domestic insurer licensed in this state not less frequently than once every three (3) years. The Commissioner shall, at a minimum, conduct or cause to be conducted an examination of every foreign insurer licensed in this state not less frequently than once every five (5) years. The Commissioner may accept examinations conducted by ~~accredited~~ other states on foreign insurers domiciled in such states pursuant to subsection C of this

section. In scheduling and determining the nature, scope and frequency of the examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified financial examiners or public accountants and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the Commissioner exercises discretion under this subsection. The Commissioner may also make ~~such~~ examinations, upon the request of ~~five~~ one or more persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that ~~such~~ the company is in an unsound condition.

B. For purposes of completing an examination of any company under Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the company.

C. In lieu of an examination under Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title of any foreign or alien insurer licensed in this state, the Commissioner may accept an examination report on such company as prepared by the insurance department for the company's state of domicile or port-of-entry state ~~until January 1, 1994. Thereafter, such reports may only be accepted if:~~

1. The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

2. The examination is performed with the participation of one or more examiners who are employed by ~~such~~ an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was

performed in a manner consistent with the standards and procedures required by their insurance department.

D. The Commissioner may authorize any employee of the Insurance Department to exercise the Commissioner's authority under Sections 309.1 through 309.7 of this title.

SECTION 9. AMENDATORY 36 O.S. 1991, Section 309.3, is amended to read as follows:

Section 309.3 A. Upon determining that an examination should be conducted, the Insurance Commissioner ~~or his designee~~ shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners as supplemented by rules of the Commissioner. The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate.

B. Every company or person from whom information is sought, including all of its officers, directors, employees and agents, shall provide to the Commissioner and examiners ~~appointed under subsection A of this section~~ timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the

Commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section 619 of ~~Title 36 of the Oklahoma Statutes~~ this title.

C. The Commissioner or ~~any of his~~ examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

D. When making an examination under Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or an accounting firm or individual holding a permit to practice public accounting, certified financial examiners or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

E. Nothing contained in Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title shall be construed to limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made ~~pursuant to~~ in any examination report shall be prima facie evidence in any legal or regulatory action.

F. Nothing contained in Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed

during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may deem appropriate.

SECTION 10. AMENDATORY 36 O.S. 1991, Section 309.5, is amended to read as follows:

Section 309.5 A. No examiner may be appointed by the Insurance Commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title. This section shall not be construed to automatically preclude an examiner from being:

1. A policyholder or claimant under an insurance policy;
2. A grantor of a mortgage or similar instrument on such examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
3. An investment owner in shares of regulated diversified investment companies; or
4. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

B. Notwithstanding the requirements of this section, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, an accounting firm or individual holding a permit to practice public accounting in this state, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this act. An examiner shall disclose to the Commissioner in writing any prior or existing personal or business relationship with any company to be examined by that examiner.

SECTION 11. AMENDATORY 36 O.S. 1991, Section 309.6, is amended to read as follows:

Section 309.6 Any insurer or person examined under the provisions of Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title shall pay the proper charges incurred in such examination, including the actual expense of the Insurance Commissioner or the expenses and compensation of ~~his~~ an authorized representative and the expense and compensation of assistants and examiners employed therein. All expenses incurred in such examination shall be verified by affidavit and a copy shall be filed ~~and kept in his office~~ in the office of the Commissioner.

SECTION 12. AMENDATORY 36 O.S. 1991, Section 309.7, is amended to read as follows:

Section 309.7 A. No cause of action shall arise nor shall any liability be imposed against the Insurance Commissioner, the Commissioner's authorized representatives, or any examiner appointed by the Commissioner for any statements made or conduct performed ~~in good faith~~ while carrying out the provisions of Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title, unless the conduct was objectively unreasonable and outside the scope of the person's duties.

B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under Sections ~~±~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title, if such act of communication or delivery was ~~performed in good faith and without fraudulent intent or the intent to deceive~~ not a fraudulent or criminal act.

C. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection A of this section.

D. A person identified in subsection A of this section shall be entitled to an award of attorney's fees and costs if ~~they are~~

determined to be the prevailing party in a civil ~~cause of~~ action for libel, slander or any other relevant tort arising out of their activities in carrying out the provisions of Sections 309.1 through 309.7 of this act title, and if the court determines that the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

SECTION 13. AMENDATORY 36 O.S. 1991, Section 311, as last amended by Section 2, Chapter 79, O.S.L. 1993 (36 O.S. Supp. 1996, Section 311), is amended to read as follows:

Section 311. A. Each insurer authorized to do business under the provisions of this Code shall, annually, on or before the ~~last day of February~~ first day of March, file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners (NAIC), statements which shall exhibit its financial condition on the thirty-first day of December of the previous year and its business of that year. For good cause shown, the Insurance Commissioner may extend the time within which such statements may be filed. The statements shall be in such general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the Insurance Commissioner by rule. In addition, the statements shall be prepared in accordance with the NAIC annual statement instruction handbooks and follow the accounting procedures and practices prescribed by the NAIC accounting practices and procedure manuals, and as supplemented by the Insurance Commissioner by rule. The assets and liabilities shall be computed pursuant to the most conservative method allowed by the laws of this state. Such statements shall be subscribed and sworn to by the president and secretary and other proper officers. And if the Insurance

Commissioner finds that the facts warrant, and that all laws applicable to ~~said~~ the insurer are fully complied with, ~~he~~ the Commissioner shall issue to ~~said~~ the company a license, or certificate of authority, subject to all requirements and conditions of the law, to transact business in this state, specifying in ~~said~~ the certificate the particular kind or kinds of insurance it is authorized to transact, and ~~said~~ the certificate shall expire on the ~~last day of February~~ first day of March next after its issue.

~~Provided, however, that any certificate of authority shall continue in full force and effect until the new certificate be issued or specifically refused; however, the continuance shall not exceed a period of~~ If a new certificate of authority is neither issued nor denied by the first day of March, the insurer shall be deemed to possess a temporary certificate of authority for a period not to exceed six (6) months, until the new certificate is issued or specifically refused. The annual statement of an insurer of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its United States business, or other officer duly authorized. Any amendments and addendums to the annual statement subsequently filed with the Commissioner shall also be filed with the National Association of Insurance Commissioners, and the insurer shall pay the applicable filing fees.

B. In the absence of actual malice, or gross negligence, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners' employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement shall be acting as agents of the Commissioner under the authority of this section and

shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or disseminating of the data and information collected from the filings required under this section.

C. All financial analysis ratios and examination synopses pertaining to insurance companies, which are submitted to the Commissioner by the National Association of Insurance Commissioners' Insurance Regulatory Information System, are confidential records which ~~may~~ shall not be available for public inspection and ~~may~~ shall not be disclosed by the Commissioner except in receivership proceedings.

SECTION 14. AMENDATORY 36 O.S. 1991, Section 311.1, as amended by Section 36, Chapter 270, O.S.L. 1993 (36 O.S. Supp. 1996, Section 311.1), is amended to read as follows:

Section 311.1 A. Any insurer who files with the Insurance Commissioner any statement required by this Code knowing such statement to be fraudulent and materially false, upon conviction, shall be guilty of a felony, for which the punishment shall be a fine of not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ Fifty Thousand Dollars (\$50,000.00). Any officer, actuary, or employee of such insurer who causes such statement to be filed, knowing the fraudulent and materially false nature thereof, upon conviction, shall be guilty of a felony, for which the punishment for each occurrence shall be a fine of not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or commitment to the custody of the Department of Corrections for not less than one (1) year and not more than five (5) years or both said fine and commitment, and shall ~~not~~ never again be permitted to act as an actuary, officer, or director of any insurer licensed to do business in this state.

B. Any insurer who fails without reasonable cause and permission of the Commissioner to timely file any statement required

by this Code shall be subject, after notice and opportunity for hearing, to censure, suspension or revocation of certificate.

Annual statements filed after the ~~last day of February~~ first day of March without express written advance permission of the Commissioner shall be accompanied by a late filing fee in the amount of Two Hundred Fifty Dollars (\$250.00) or One Hundred Dollars (\$100.00) per day, whichever is greater. Repeated willful violations, after notice and opportunity for hearing, may subject the insurer to both censure, suspension, or revocation of certificate and ~~fine~~ civil penalty of not less than One Hundred Dollars (\$100.00) nor more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) for each occurrence in addition to the late filing fee. Any late filing fees and ~~finer~~ civil penalties collected pursuant to this subsection shall be deposited to the Insurance Commissioner Revolving Fund.

~~C. Fines imposed pursuant to the provisions of subsection B of this section may be enforced in the same manner in which civil judgments may be enforced.~~

~~D.~~ Prosecution or administrative action for any violation of the provisions of this section shall be commenced within four (4) years after the violation is discovered.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 312A of Title 36, unless there is created a duplication in numbering, reads as follows:

Civil penalties and fees imposed pursuant to the provisions of Title 36 of the Oklahoma Statutes may be enforced in the same manner in which civil judgments may be enforced. All final orders of the Insurance Commissioner or State Board for Property and Casualty Rates imposing administrative charges, fees, civil penalties or fines may be recorded in the office of the Clerk of the District Court of Oklahoma County and, upon such recording, all appropriate

writs and process shall issue and shall be enforced by the judges of said court upon application.

SECTION 16. AMENDATORY 36 O.S. 1991, Section 313, is amended to read as follows:

Section 313. A. Orders and notices of the Insurance Commissioner shall be in writing and shall be signed by either the Commissioner, an authorized employee of the Insurance Department, or the an independent hearing examiner, pursuant to the Insurance Code shall not be effective unless in writing signed by him or by his authority. A final order signed by an independent hearing examiner, after hearing, shall be final agency action, notwithstanding the provisions of Section 311 of Title 75 of the Oklahoma Statutes.

B. ~~Every such order shall state its effective date and shall concisely state:~~

~~1. Its intent or purpose.~~

~~2. The grounds on which based.~~

~~3. The provisions of this Code pursuant to which action is so taken or proposed to be taken; but failure to so designate any provision shall not deprive the Commissioner of the right to rely thereon.~~

~~C. An order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the Commissioner's office~~ In the exercise of the powers and the performance of the duties enumerated in this title, the Commissioner and the State Board for Property and Casualty Rates shall comply with the procedures of the Administrative Procedures Act. Any conflict between the provisions of Title 75 of the Oklahoma Statutes and of this title shall be resolved in favor of the provisions of this title.

SECTION 17. AMENDATORY 36 O.S. 1991, Section 317, is amended to read as follows:

Section 317. A. The Insurance Commissioner 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 the same as for testimony in a district court. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was so subpoenaed, or by the person, if other than the Insurance Commissioner, at whose request the hearing is held.~~

~~C. The subpoena~~ All administrative subpoenas shall be served in the same manner as if issued from a district court or in accordance with the Administrative Procedures Act. If any ~~individual~~ person fails to obey a subpoena lawfully served, the Commissioner ~~shall~~ may 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~~ person was required to appear, and such court shall forthwith cause such ~~individual~~ person to be produced and shall impose penalties as though ~~he~~ the person 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 18. AMENDATORY 36 O.S. 1991, Section 319, is amended to read as follows:

Section 319. ~~A.~~ In conducting any ~~such~~ hearing pursuant to the Insurance Code, the Insurance Commissioner ~~shall~~ may appoint an independent hearing examiner who shall sit as a quasi-judicial

officer. The ordinary fees and costs of such hearing ~~officer~~
examiner shall be borne by: ~~(1) the person requesting or demanding~~
~~a hearing of the Insurance Commissioner or, (2) in the case of~~
~~violations and alleged violations of the Insurance Code, by the~~
~~respondent in such cases~~ assessed by the hearing examiner against
the respondent, unless the respondent is the prevailing party.

Within thirty (30) days after termination of the hearing or of any
rehearing thereof or reargument thereon, unless such time is
extended by stipulation, ~~he shall make his order on hearing,~~
~~covering matters involved in such hearing and in any rehearing or~~
~~reargument thereof, and shall give a copy of such order to the same~~
~~persons given notice of the hearing~~ a final order shall be issued.

B. ~~The order shall contain a concise statement of the facts as~~
~~found by the hearing examiner, a concise statement of his~~
~~conclusions therefrom, and the effective date of the order.~~

C. ~~The order may affirm, modify, or nullify action theretofore~~
~~taken or may constitute the taking of new action within the scope of~~
~~the notice of hearing.~~

SECTION 19. AMENDATORY 36 O.S. 1991, Section 320, is
amended to read as follows:

Section 320. A. ~~An appeal from the Insurance Commissioner~~
~~shall be taken only from an order on hearing or an order refusing a~~
~~hearing. Any person aggrieved by any such~~ a final order of the
Insurance Commissioner ~~may, within thirty (30) days after the order~~
~~has been mailed or delivered to the persons entitled to receive the~~
~~same, or within thirty (30) days after the Insurance Commissioner's~~
~~order denying rehearing or reargument has been so mailed or~~
~~delivered, appeal from such order on hearing or such order refusing~~
~~a hearing by petition to~~ obtain judicial review in accordance with
the Administrative Procedures Act. The venue of any such action
shall be in the district court of Oklahoma County. A copy of such
petition shall also forthwith be served upon the Insurance

Commissioner and other parties in interest, if any, and the Insurance Commissioner shall thereupon certify and file in such court a transcript of the record of such hearing and a copy of the order appealed from.

B. Upon filing of the petition the court shall have full jurisdiction, and shall determine whether such filing shall operate as a stay of the order appealed from.

~~C. The court shall hear the matter de novo, including any intermediate order or matter involving the merits and necessarily affecting the order appealed from, advancing the cause upon its calendar as are other causes to which the state is a party.~~

~~D. After hearing the appeal the court may affirm, modify, or reverse the order or action of the Insurance Commissioner in whole or in part, or remand the action to the Insurance Commissioner for further proceedings in accordance with the court's direction.~~

~~E. Costs shall be awarded as in civil actions.~~

~~F. Appeal may be taken to the Supreme Court from the judgment of the district court as in other civil cases to which the state is a party. The district court judgment appealed from shall not be subject to supersedeas, and a stay of the effectiveness of any such judgment may be made only by order of the Supreme Court upon the giving of such security as that Court deems proper.~~

SECTION 20. AMENDATORY 36 O.S. 1991, Section 321.1, as amended by Section 1, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 321.1), is amended to read as follows:

Section 321.1 A. There shall be collected at the time of filing of a report, a fee payable by each insurer required to file a report under Section 101 et seq. of this title, provided the insurer's total written premium per liability category exceeds the requisite filing fees which are as follows:

~~To file fee, which shall be Four Hundred Dollars (\$400.00)
for each periodic claims report required by Section ~~1223~~
1250.9 of this title \$400.00
To file each loss and expense experience report required
by Section 310.1 of this title \$400.00
To file reports required by Section 310.1 of this title
\$400.00.~~

B. All public requests for information provided by this act shall be in writing. All requests for copying such data shall be in writing and may be provided to the requestor after such reasonable time to process such copying and shall be at such costs as provided in Section 321 of ~~Title 36 of the Oklahoma Statutes~~ this title or, if computerized printouts are necessary, at such reasonable costs as established by the Commissioner, or if such items cannot be reproduced by the Commissioner, then such information may, after notification to the requestor, be sent to a private contractor, and such costs shall be payable by the requestor.

C. All amounts received ~~herein~~ pursuant to this section by the Insurance Commissioner shall be paid into the State Treasury to the credit of the State Insurance Commissioner's Revolving Fund for the purpose of fulfilling and accomplishing the conditions and purposes of Section 101 et seq. of this act title.

SECTION 21. AMENDATORY 36 O.S. 1991, Section 335, is amended to read as follows:

Section 335. No employee of the Insurance Department shall be financially interested, directly or indirectly, in any insurer, agency or insurance transaction except as a policyholder or claimant under a policy; except, that as to such matters wherein a conflict of interest does not exist on the part of any such individual, the Insurance Commissioner may employ from time to time insurance actuaries or other technicians who are independently practicing their professions even though similarly employed by insurers and

others. This section shall not be deemed to prohibit employment by the Insurance Commissioner of retired or pensioned personnel of insurers or insurance organizations. In addition, this section shall not be deemed to prohibit employees of the Insurance Department from investing in mutual funds that may own stock in insurance companies, or from having an interest in retirement or pension plans, other than self-directed plans, that may own stock in insurance companies.

SECTION 22. AMENDATORY 36 O.S. 1991, Section 346, is amended to read as follows:

Section 346. A. In conducting any ~~such~~ hearing the State Board for Property and Casualty Rates shall sit as a quasi-judicial or quasi-legislative body. Within thirty (30) calendar days after termination of the hearing or of any rehearing thereof or reargument thereon, it shall make its order on hearing in writing by the Board or by the Insurance Commissioner when authorized by the Board, covering matters involved in such hearing and in any rehearing or reargument thereof, and shall give a copy of such order to the same persons given notice of the hearing.

B. The order shall be signed by a majority of the members of the Board and shall comply with the provisions of Section 312 of Title 75 of the Oklahoma Statutes.

C. The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

D. An order or notice may be ~~given by delivery to the person to be ordered or notified~~ served in accordance with the Administrative Procedures Act or by mailing it, postage prepaid, addressed to ~~him~~ the person affected at his or her principal place of business as last of record in the office of the Insurance Commissioner.

SECTION 23. AMENDATORY 36 O.S. 1991, Section 351, is amended to read as follows:

Section 351. A. In any proceeding commenced against an insurer pursuant to Article 18 or 19 of ~~Title 36 of the Oklahoma Statutes~~ this title for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, hereinafter called delinquency proceeding, the compensation of personnel employed or retained to assist the Insurance Department with ~~such~~ the proceeding shall be approved by the court at a full hearing before ~~such~~ the compensation may be paid. The Insurance Commissioner shall ~~petition~~ apply to the court for ~~such~~ the hearing; provided, that if any board has been created by law to commence and administer delinquency proceedings under Article 18 or 19 of ~~Title 36 of the Oklahoma Statutes,~~ said this title, or if any association is authorized by the Commissioner to provide assistance to the Commissioner, the board or association shall ~~petition~~ apply to the court. Provided ~~that,~~ this section shall not apply to a supervisorship authorized by ~~Title 36, Oklahoma Statutes,~~ Article 18 of this title.

B. Upon receiving the ~~petition~~ application for approval of compensation, the court shall schedule a hearing ~~thereon.~~ The party responsible for the filing of the ~~petition~~ application shall cause notice in writing of the ~~petition~~ application and hearing to be served upon the following persons not less than ten (10) days before the hearing is scheduled:

1. ~~One or more~~ The persons or firms requesting the compensation;

2. The Commissioner, if not the applicant; and

~~2.~~ 3. Ten persons, or such lesser number as there may be, who hold the largest number of shares in the insurance company involved in the delinquency proceeding, as indicated by ~~said~~ the company's stock register as of the time that the company was placed under supervision pursuant to Section 1804 of ~~Title 36 of the Oklahoma Statutes~~ this title or at the time that an application was filed with the court for the commencement of a delinquency proceeding

pursuant to Section 1903 of ~~Title 36 of the Oklahoma Statutes~~ this title. Said shareholders shall serve as representatives of the insurance company.

C. The notice shall state the time and place of the hearing, the reasons for the hearing and the following rights of any party served with notice:

1. To appear in person at the hearing or to be represented by counsel;

2. To testify under oath, call witnesses to testify, and furnish documentary evidence, relevant to the determination of the compensation;

3. To cross-examine witnesses and have a reasonable opportunity to inspect all documentary evidence; and

4. To subpoena witnesses and compel the production of testimony and documents, relevant to the determination of the compensation. The person making service shall make an affidavit of such service and file the notice and affidavit with the court.

D. At the hearing, the court shall fully investigate the compensation of persons employed or retained to assist the Insurance Department with the conduct of the delinquency proceeding. The court shall not approve the compensation until it has been made to appear to the satisfaction of the court, based upon competent evidence, that such compensation is justified.

SECTION 24. AMENDATORY 36 O.S. 1991, Section 619, is amended to read as follows:

Section 619. A. The Insurance Commissioner may after opportunity for a hearing refuse to renew, or may revoke or suspend an insurer's certificate of authority, in addition to other grounds ~~therefor~~ in this Code, if the insurer:

1. Violates any provision of this Code other than those as to which refusal, suspension, or revocation is mandatory-;

2. Knowingly fails to comply with any lawful rule, ~~regulation,~~
or order of the Insurance Commissioner.;

3. Is found by the Insurance Commissioner to be in unsound
condition or in such condition as to render its further transaction
of insurance in ~~Oklahoma~~ this state hazardous to its policyholders
or to the people of ~~Oklahoma.~~ this state;

4. Without reasonable cause compels claimants under its
policies to accept less than the amount due them or to bring suit
against it to secure full payment ~~thereof.~~;

5. Refuses to be examined or to produce its accounts, records,
and files for examination by the Insurance Commissioner when
required.;

6. Fails to pay any final judgment rendered against it in
~~Oklahoma~~ this state within thirty (30) days after the judgment
~~became~~ becomes final.;

7. Is affiliated with and under the same general management or
interlocking directorate or ownership as another insurer which
transacts direct insurance in ~~Oklahoma~~ this state without having a
certificate of authority therefor, except as permitted to a surplus
line insurer under Article 11 of this title (Unauthorized Insurers).

B. In addition to or in lieu of any applicable revocation or
suspension of an insurer's certificate of authority, any insurer who
knowingly and willfully violates this Code may be subject to a civil
~~fine~~ penalty of not more than Five Thousand Dollars (\$5,000.00) for
each occurrence. ~~Such fine may be enforced in the same manner in
which civil judgments may be enforced.~~

C. In addition to ~~other penalties~~ or in lieu of any sanction,
the Commissioner may require an insurer to restrict its insurance
writings, obtain additional contributions to surplus, withdraw from
the state, reinsure all or part of its business, increase capital,
surplus, deposits or any other account for the security of
policyholders or creditors, or provide independent actuarial review.

SECTION 25. AMENDATORY 36 O.S. 1991, Section 621, is amended to read as follows:

Section 621. A. Each authorized foreign or alien insurer shall appoint the Insurance Commissioner as its ~~attorney~~ agent to receive service of legal process, other than a subpoena, issued against it in ~~Oklahoma~~ this state upon any cause of action arising from its transaction of business in ~~the State of Oklahoma~~ this state. The appointment shall be irrevocable, shall bind any successor and shall remain in effect as long as there is in force in ~~Oklahoma~~ this state any contract made by the insurer or obligations arising therefrom.

B. Service of such process against a foreign or alien insurer shall be made only by service of process upon the Insurance Commissioner. Service of process against a domestic insurer may be made upon the insurer ~~corporation~~ in the manner provided by laws applying to ~~corporations~~ business entities generally, or upon the insurer's attorney-in-fact if a reciprocal insurer ~~of~~ or a Lloyds association.

C. Each such insurer at time of application for a certificate of authority shall file with the Insurance Commissioner designation of the name and address of the person to whom process against it served upon the Insurance Commissioner is to be forwarded. The insurer may change such designation by a new filing.

SECTION 26. AMENDATORY 36 O.S. 1991, Section 622, is amended to read as follows:

Section 622. A. Triplicate copies of legal process against an insurer for whom the Insurance Commissioner is ~~attorney~~ agent shall be served upon ~~him~~ the Commissioner at the principal offices of the Insurance Department. When legal process against an insurer for whom the Insurance Commissioner is agent is issued, it shall be served in triplicate by any manner now provided by law or in lieu thereof by mailing triplicate copies of such legal process in the United States mails with postage prepaid to the Insurance

Commissioner with return receipt requested, in which event service shall be sufficient upon showing of proof of mailing to the Commissioner with the return receipt attached. At the time of service the plaintiff shall pay to the Insurance Commissioner ~~Ten Dollars (\$10.00)~~ Twenty Dollars (\$20.00), taxable as costs in the action. Upon receiving ~~such~~ service, the Insurance Commissioner shall promptly forward a copy thereof by mail with return receipt requested to the person last so designated by the insurer to receive the same.

B. Process served upon the Insurance Commissioner and copy thereof forwarded as provided in this section ~~provided~~ shall constitute service ~~thereof~~ upon the insurer.

C. Any monies received by the Insurance Commissioner pursuant to subsection A of this section shall be deposited with the State Treasurer, who shall place the same to the credit of the State Insurance Commissioner Revolving Fund.

SECTION 27. AMENDATORY 36 O.S. 1991, Section 624, is amended to read as follows:

Section 624. A. Every insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, nonprofit hospital service and medical indemnity corporation, or health maintenance organization, doing business in ~~the State of Oklahoma~~ this state in the execution or exchange of contracts of insurance, indemnity or health maintenance services, or as an insurance company of any nature or character whatsoever, hereinafter referred to in this article as an insurance company, or company, shall, annually, on or before the ~~last~~ first day of ~~February~~ March, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of direct written premiums, membership, application, policy and/or registration fees charged during the preceding calendar year, or since the last return of such direct written premiums,

membership, application, policy and/or registration fees was made by such company, from insurance of every kind upon persons or on the lives of persons resident in this state, or upon real and personal property located within this state, and/or upon any other risks insured within this state, provided, that with respect to the tax payable annually, considerations received for annuity contracts and payments received by a health maintenance organization from the Secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C., Section 1395mm(g) shall no longer be deemed to be premiums for insurance and shall no longer be subject to the tax imposed by this section. Every such company shall, at the same time, pay to the Insurance Commissioner:

~~(1)~~ 1. An annual license fee as prescribed by Section 321 of this Code, except for Health Maintenance Organizations which shall pay the annual license fee provided for in Section 2504 of Title 63 of the Oklahoma Statutes; and

~~(2)~~ 2. An annual tax on all of said direct written premiums after all returned premiums are deducted, and on all membership, application, policy and/or registration fees collected thereby, for the privileges of having written, continued and/or serviced insurance on lives, property and/or other risks in this state and of having made and serviced investments therein during the then expiring license year except premiums or fees paid by any county, city, town or school district funds or by their duly constituted authorities performing a public service organized pursuant to Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes. Provided, no deduction shall be made from premiums for dividends paid to policyholders. The rate of taxation ~~for calendar year 1988 shall be three percent (3%). For all subsequent calendar years, the rate of taxation~~ for all entities subject to said tax shall be two and twenty-five one-hundredths percent (2.25%). ~~No tax shall be~~

~~levied upon any assessment or policy fee collected during calendar years 1990 and 1991 in response to the requirements of the Insurance Commissioner pursuant to subsection A or subsection B of Section 1509 of this title provided, such funds are used for the sole purpose of paying losses and associated expenses. If any insurance company or other entity uses such funds for any purpose other than payment of losses and associated expenses, such entity shall be liable for the taxes levied pursuant to the provisions of this section which would have been otherwise levied and collected, including fails to remit such taxes in a timely manner, it shall remain liable therefor together with interest thereon at a rate equal to the annual average interest rate earned on state funds by the State Treasurer during such tax period 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.~~

B. For all insurance companies or other entities taxed pursuant to this section, the annual license fee and tax and all required membership, application, policy, registration, and agent appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code and in Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes. Any company, except health maintenance organizations, failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes and fees and interest, the sum of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater; and the company so failing or neglecting for sixty (60)

days shall thereafter be debarred from transacting any business of insurance in this state until said taxes, fees and penalties are fully paid, and the Insurance Commissioner shall revoke the license or certificate of authority granted to the agent or agents of that company to transact business in this state. Provided, that when any such insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, or nonprofit hospital service and indemnity corporation, applies for the first time for a license to do business in Oklahoma, it shall, at the time of making such application, pay a license fee as prescribed by Section 1425 of Article 14A of this Code, and, on or before the ~~last day of February~~ first day of March, following, pay the premium tax, membership, application, policy, registration, and agent appointment fees, as hereinbefore provided. Such license fee, tax and membership, application, policy, registration, and appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes.

C. Any health maintenance organization failing to file premium tax returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes, the sum of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater. Any health maintenance organization failing or neglecting to pay said tax and penalty shall be debarred from operating in this state and the State Department of Health shall revoke the license of the health maintenance organization, until said taxes and penalties are fully paid.

SECTION 28. AMENDATORY 36 O.S. 1991, Section 629, is amended to read as follows:

Section 629. A. Every insurer transacting insurance in this state whose premium tax, paid with respect to the previous calendar year's premiums, was One Thousand Dollars (\$1,000.00) or more, shall make an estimate each year as provided herein and remit with each estimate a prepayment of its annual premium tax for the current calendar year equal to one-fourth (1/4) of its annual premium tax paid with respect to the previous calendar year's premiums.

Estimates, with remittance, shall be made on or before April 1, June 15, September 15 and December 15, respectively.

B. All ~~such~~ sums prepaid by an insurer shall be allowed as credits against its annual return for premium tax payable on or before the ~~last first~~ day of ~~February; and if such~~ March. If sums prepaid exceed ~~its~~ the insurer's annual premium tax payable on or before the ~~last first~~ day of ~~February, such~~ March, the excess shall be refunded or shall be allowed as credits against subsequent prepayments of the tax as the insurer shall elect on the annual return for premium tax filed for the year by the insurer with respect to which such excess prepayments were made; ~~provided however, that.~~ Provided, in the case of an insurer which has made prepayments of its premium tax in excess of its annual premium tax payable, ~~such~~ the part of ~~such~~ the excess prepayments as has not been credited against subsequent prepayments of the tax shall be refunded to ~~such~~ the insurer upon application ~~therefor~~ within one hundred eighty (180) days after application is made. ~~Provided, for calendar year 1988, if the prepayment made on or before April 1, 1988, is in an amount based on a four percent (4%) rate of taxation, the insurer shall be entitled to offset the amount payed in excess of the amount due based on a three percent (3%) rate of taxation against the prepayment due on June 15, 1988. The prepayments made on September 15, 1988, and December 15, 1988, shall be estimated on the basis of a three percent (3%) rate of taxation.~~

SECTION 29. AMENDATORY 36 O.S. 1991, Section 632, is amended to read as follows:

Section 632. A. Unless otherwise provided for by law or exempted by the provisions of this section, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or ophthalmologic expenses, whether coverage is by direct payment, reimbursement, or other means, shall be presumed to be subject to the jurisdiction of the Insurance Commissioner unless the person or other entity shows that while providing coverage the person or entity is subject to the jurisdiction of another agency of this or another state, any subdivision of this state, or the federal government, or provides a plan of self-insurance or other employee welfare benefit program for an individual employer or labor union maintained pursuant to a collective bargaining agreement or other arrangement which provides for health care services solely for its employees or members and their dependents.

B. A person or entity may show that it is subject to the jurisdiction of another agency of this or another state, any subdivision of this state, or the federal government by providing to the Insurance Commissioner the certificate, license, or other document issued by the other governmental agency which permits or qualifies the person or entity to provide those services.

C. Any person or entity which is unable to show that it is subject to the jurisdiction of another agency of this or another state, any subdivision of this state, or the federal government, or provides an employee welfare benefit program for an individual employer or labor union as provided for in subsection A of this section, shall submit to an examination by the Insurance Commissioner to determine the organization and solvency of the person or entity, and to determine whether or not the person or

entity is in compliance with applicable provisions of the Oklahoma Insurance Code, Section 101 et seq. of this title.

D. Any person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state, any subdivision of this state, or the federal government, or provides an employee welfare benefit program for an individual employer or labor union as provided for in subsection A of this section, shall be subject to all appropriate provisions of the Oklahoma Insurance Code regarding the conduct of its business.

1. Any agent, broker, administrator, or other person or company which advertises, solicits, negotiates, procures, sells, renews, continues, or administers coverage in this state which is provided by any person or entity specified in subsection C of this section for expenses specified in subsection A of this section shall advise any purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage, if the coverage for expenses specified in subsection A of this section is not fully insured or otherwise fully covered by a company authorized to do such business in this state; and

2. Any administrator who advertises or administers coverage in this state which is provided by any person or entity specified in subsection C of this section for expenses specified in subsection A of this section shall advise any agent, broker, or other person or company which advertises, solicits, negotiates, sells, procures, renews, or continues said coverage of the elements of the coverage including the amount of stop-loss insurance in effect.

E. 1. Those entities which are not licensed insurers in this state, other than a hospital service and medical indemnity corporation as authorized in Section 2601 et seq. of this title, shall place the following statement in conspicuous bold-face type on the front page of their policy or certificate: "State insurance

insolvency guaranty funds are not available for your use in the event of insolvency or liquidation of this company"; and

2. Those entities which are not licensed insurers, or not subject to the jurisdiction of the Insurance Commissioner or any other state agency, shall place the following statement in conspicuous bold-face type on the front page of their policy, plan or certificate: "This policy, plan or certificate and this entity are not subject to the jurisdiction of the Oklahoma State Insurance Commissioner".

SECTION 30. 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 State Board for Property and Casualty Rates;
 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 of this act, 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. 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. 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. 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 31. AMENDATORY Section 22, Chapter 349, O.S.L. 1993 (36 O.S. Supp. 1996, Section 901.5), is amended to read as follows:

Section 901.5 A. Rating organizations shall develop and file for approval with the Insurance Commissioner in accordance with the provisions of this section, a filing containing advisory prospective

loss costs and supporting actuarial and statistical data for workers' compensation insurance. Each insurer shall individually file their own specific profit and expense factors used to determine the final rates it will file for approval and the effective date of any rate changes.

B. As used in this section:

1. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees;

2. "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit and variations in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums; and

3. "Prospective loss costs" means that portion of a rate that does not include provision for expenses (other than loss adjustment expenses) or profit, and ~~are~~ is based on historical aggregate losses and loss adjustment expenses adjusted through development to ~~their~~ its ultimate value and projected through trending to a future point in time.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 352 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. Upon request by an applicant, the Insurance Commissioner may refund to the applicant all or any portion of any fees collected by the Commissioner pursuant to law including but not limited to any unearned fees and application fees. Such fees may be refunded, if requested, prior to any official action being taken by the Commissioner or prior to the occurrence of the action for which the application was made or in such other circumstances that the Commissioner deems proper.

2. The Commissioner may retain a portion of the fee if it is determined that administrative costs were incurred by the Insurance Department in the action.

B. The Commissioner shall promulgate permanent rules and may promulgate emergency rules to implement the provisions of this section pursuant to the Administrative Procedures Act.

SECTION 33. AMENDATORY 36 O.S. 1991, Section 902.1, is amended to read as follows:

Section 902.1 No property or casualty insurer shall increase or decrease a filed rate by more than fifteen percent (15%), inclusive of any rate adjustments, add-ons, deductibles or deviations, without prior approval from the State Board for Property and Casualty Rates, pursuant to the request for rate approval required in Article 9 of the Insurance Code. Any such rate shall remain in effect as provided in subsection F of Section 903 of this title.

SECTION 34. AMENDATORY 36 O.S. 1991, Section 902.2, as last amended by Section 3, Chapter 129, O.S.L. 1994 (36 O.S. Supp. 1996, Section 902.2), is amended to read as follows:

Section 902.2 A. The State Board for Property and Casualty Rates 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. In the case of workers' compensation rates, differences in the hazard levels of different geographical regions of the state ~~based on Court of Criminal Appeals judicial districts;~~

15. All other relevant factors within and outside this state;

16. 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

17. 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 35. AMENDATORY 36 O.S. 1991, Section 908, is amended to read as follows:

Section 908. The State Board for Property and Casualty Rates may, if it finds that any person or organization has violated the provisions of any statute for which the Board has jurisdiction, impose a penalty of not less than One Hundred Dollars (\$100.00) nor more than ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00) for each such violation. Such penalties may be in addition to any other penalty provided by law.

No penalty shall be imposed except upon a written order of the Board, stating its findings made after a hearing held not less than ten (10) days after written notice to a person or organization alleged to have violated any statute for which the Board has jurisdiction specifying the alleged violation.

SECTION 36. AMENDATORY 36 O.S. 1991, Section 1103, is amended to read as follows:

Section 1103. A. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within ~~Oklahoma~~ this state by an unauthorized insurer, or the performance within ~~Oklahoma~~ this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by ~~such~~ the insurer of the Insurance Commissioner and ~~his~~ the Commissioner's successors in office as its attorney, upon whom may be served all lawful process, other than a subpoena, issued within ~~Oklahoma~~ this state in any action or proceeding against such insurer arising out of any such contract or transaction.

B. Such service of process shall be made by delivering to and leaving with the Insurance Commissioner three copies thereof. At time of ~~such~~ service the plaintiff shall pay ~~Ten Dollars (\$10.00)~~ Twenty Dollars (\$20.00) to the Insurance Commissioner, taxable as costs in the action. The Insurance Commissioner shall ~~forthwith~~ mail by registered mail one of the copies of ~~such~~ the process to the defendant at its principal place of business as last known to the Insurance Commissioner, and shall keep a record of all process so served.

C. Service of process in any such action or proceeding, in addition to the manner provided herein, shall also be valid if served upon any person within ~~Oklahoma~~ this state who, in this state on behalf of such 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.

D. Service of process upon such an insurer in accordance with this section shall be as valid and effective as if served upon a defendant personally present in ~~Oklahoma~~ 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~~ the insurer by any other lawful means.

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

SECTION 37. AMENDATORY 36 O.S. 1991, Section 1113, is amended to read as follows:

Section 1113. Each surplus line broker shall keep in ~~his~~ the broker's office in this state a full and true record of each surplus line contract procured by ~~him~~ the broker, and such record may be examined at any time within three (3) years thereafter by the Insurance Commissioner ~~or the Insurance Board~~. The record shall include ~~such of~~ the following items as are applicable:

1. Name and address of the insurer τj
2. Name and address of the insured τj
3. Amount of insurance τj
4. Gross premium charged τj
5. Return premium paid, if any τj
6. Rate of premium charged on the several items of coverage τj
7. Effective date of the contract and the terms thereof τj and
8. Brief general description of the risks insured against and the property insured.

SECTION 38. AMENDATORY 36 O.S. 1991, Section 1115, is amended to read as follows:

Section 1115. A. On or before the end of each month following each calendar quarter, each surplus line broker shall remit to the State Treasurer through the Insurance Commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by the broker for the period covered by the report. Such tax shall be at the rate of six percent (6%) of the gross premiums less premiums returned on account of cancellation or reduction of premium, and shall exclude gross premiums and returned premiums upon business exempted from surplus line provisions pursuant to Section 1119 of this title.

B. Except as provided in subsection C of this section, for the purpose of determining the surplus line tax, the total premium charged for surplus line insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion as the total premium on the insured properties or operations in this state, computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where such insurance applies, bears to the total premium so computed in all such states or countries.

C. The surplus line tax on insurance on motor transit operations conducted between this and other states shall be paid on the total premium charged on all surplus line insurance less:

1. ~~the~~ The portion of the premium determined as provided in subsection B of this section charged for operations in other states taxing such premium of an insured maintaining its headquarters office in this state; or

2. ~~the~~ The premium for operations outside of this state of an insured maintaining its headquarters office outside of this state and branch office in this state.

D. 1. Every person, ~~corporation,~~ association, or ~~partnership~~ legal entity procuring or accepting any ~~policy of insurance coverage~~ from an unauthorized insurer, upon, covering, or relating to a subject of insurance resident or having a situs in the ~~State of Oklahoma~~ this state, or any such ~~policy of insurance coverage~~ which is to be performed in whole or part in ~~the State of Oklahoma~~ this state, except such ~~policies coverages~~ as are lawfully obtained through a licensed surplus line broker in this state, shall report, within thirty (30) days next succeeding the issuance of ~~such policy evidence of coverage~~, the purchase of such ~~policy or policies coverages~~ of insurance to the Insurance Commissioner, on forms prescribed by ~~him~~ the Commissioner, and at the same time shall remit to the Insurance Commissioner a tax in the amount of six percent (6%) of the annual premium agreed to be paid, or paid, for such insurance. Such ~~policies of insurance coverages~~, providing for the payment of retrospective premiums, or ~~policies coverages~~ on which the premiums are not determinable at the time of issuance, shall be reported to the Insurance Commissioner, by the insured, within thirty (30) days next succeeding the date such ~~policies coverages~~ are issued and the tax payable on such ~~policies coverages~~ shall be remitted, by the insured, to the Insurance Commissioner within thirty (30) days next succeeding the date such premiums can be determined. The tax on renewal premiums shall be paid by the insured in accordance with this section, in like manner as provided for payment of the original premium tax, within thirty (30) days next succeeding the date such premiums can be determined.

2. The taxes imposed by the provisions of this section on surplus lines shall be paid into the State Treasury and deposited to the General Revenue Fund of this state.

SECTION 39. AMENDATORY 36 O.S. 1991, Section 1116, as amended by Section 2, Chapter 65, O.S.L. 1992 (36 O.S. Supp. 1996, Section 1116), is amended to read as follows:

Section 1116. A. ~~If any~~ Any surplus line broker who fails to remit the surplus line tax provided for by Section 1115 of this title for more than sixty (60) days after it is due, ~~he~~ shall be liable to a ~~fine~~ civil penalty of not to exceed Twenty-five Dollars (\$25.00) for each additional day of delinquency. The Insurance Commissioner shall collect the tax by distraint and shall recover the ~~fine~~ penalty by an action in the name of the State of Oklahoma. The Commissioner may request the Attorney General to appear in the name of the state by relation of the Commissioner. All ~~finer~~ penalties shall be paid into the ~~general fund~~ General Revenue Fund of ~~the~~ this state.

B. If any person, ~~corporation,~~ association or ~~partnership~~ legal entity procuring or accepting any ~~policy of~~ insurance coverage from an unauthorized insurer, otherwise than through a licensed surplus line broker in this state, fails to remit the surplus line tax provided for by subsection D of Section 1115 of this title, such person, ~~corporation,~~ association or ~~partnership~~ legal entity shall, in addition to said tax, be liable to a ~~fine~~ civil penalty in an amount equal to one percent (1%) of the premiums paid or agreed to be paid for such policy or policies of insurance for each calendar month of delinquency or a ~~fine~~ civil penalty in the amount of Twenty-five Dollars (\$25.00) whichever shall be the greater. The Insurance Commissioner shall collect the tax by distraint and shall recover the ~~fine~~ civil penalty in an action in the name of the State of Oklahoma. ~~Such fine may be totally or partially waived to the Insurance Commissioner provided the person, corporation, association or partnership that procured or accepted a policy of insurance from an unauthorized insurer and failed to pay the tax satisfactorily explains the situation to the Insurance Commissioner, or provided such failure has resulted from a mistake of either the law or the facts which subjects the person, corporation, association or partnership to such tax. The waiver of all or any part of any such~~

~~fine in excess of One Thousand Five Hundred Dollars (\$1,500.00)~~
~~shall not become effective unless approved by a judge of the~~
~~district court of the county of residence or principal place of~~
~~doing business of the person, corporation, association or~~
~~partnership failing to remit such surplus line tax, after a full~~
~~hearing thereon~~ The Commissioner may request the Attorney General to
appear in the name of the state by relation of the Commissioner.

All ~~finer~~ civil penalties shall be paid into the ~~general fund~~
General Revenue Fund of the state.

SECTION 40. AMENDATORY 36 O.S. 1991, Section 1118, is amended to read as follows:

Section 1118. A. Every unauthorized insurer issuing or delivering a surplus line policy through a surplus line broker in this state shall conclusively be deemed thereby to have irrevocably appointed the Insurance Commissioner as its attorney for acceptance of service of all legal process, other than a subpoena, issued in this state in any action or proceeding under or arising out of such policy, and service of such process upon the Insurance Commissioner shall be lawful personal service upon such insurer.

B. Each surplus line policy shall contain a provision stating the substance of subsection A of this section, and designating the person to whom the Insurance Commissioner shall mail process as provided in subsection C of this section.

C. Triplicate copies of legal process against such an insurer shall be served upon the Insurance Commissioner, and at time of service the plaintiff shall pay to the Insurance Commissioner ~~Ten Dollars (\$10.00)~~ Twenty Dollars (\$20.00), taxable as costs in the action. The Insurance Commissioner shall forthwith mail one copy of the process so served to the person designated by the insurer in the policy for the purpose, by mail with return receipt requested. The insurer shall have forty (40) days after ~~such~~ the date of mailing within which to plead, answer, or otherwise defend the action.

SECTION 41. AMENDATORY 36 O.S. 1991, Section 1206, is amended to read as follows:

Section 1206. A. Whenever the Insurance Commissioner shall have reason to believe that any ~~such~~ person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 1204 of this ~~article title~~, and that a proceeding by ~~him~~ the Commissioner in respect thereto would be to the interest of the public, ~~he~~ the Commissioner shall issue and serve upon ~~such~~ the person a statement of the charges in that respect and a notice ~~of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten (10) days after the date of the service thereof in accordance with the Administrative Procedures Act.~~

B. At the time and place fixed for ~~such~~ a hearing, ~~such~~ the person shall have an opportunity to be heard and to show cause why an order should not be made by the Commissioner requiring ~~such~~ the person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at ~~such~~ the hearing by counsel or in person.

~~C. Nothing contained in this article shall require the observance at any such hearing of formal rules of pleading or evidence.~~

~~D. The Commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The Commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review~~

~~is sought, the Commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Oklahoma county, or the county where such party resides, on application of the Commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.~~

~~E. Statements of charges, notices, orders, and other processes of the Commissioner under this article may be served by anyone duly authorized by the Commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.~~

SECTION 42. AMENDATORY 36 O.S. 1991, Section 1207, is amended to read as follows:

Section 1207. A. If, after ~~such~~ a hearing or waiver of the right to a hearing, the Insurance Commissioner shall determine that the method of competition or the act or practice in question is defined in Section 1204 of this ~~article~~ title and that the person complained of has engaged in ~~such~~ a method of competition, act or practice in violation of this article, ~~he~~ the Commissioner shall reduce ~~his~~ these findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring

~~such~~ the person to cease and desist from engaging in such method of competition, act or practice.

B. Until the expiration of the time allowed under ~~paragraph~~ subsection A, of Section 1208 of this ~~article~~ title for filing a petition for review, if no such petition has been duly filed within such time, or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the court, as hereinafter provided, the Commissioner may at any time, upon such notice and in such manner as ~~he~~ the Commissioner shall deem proper, modify or set aside in whole or in part any order issued by ~~him~~ the Commissioner under this section.

C. After the expiration of the time allowed for filing ~~such~~ a petition for review, if no ~~such~~ petition has been duly filed within such time, the Commissioner may at any time, after notice and opportunity for hearing, reopen and later, modify or set aside, in whole or in part, any order issued by ~~him~~ the Commissioner under this section whenever in ~~his~~ the Commissioner's opinion conditions of fact or of law has so changed as to require such action or if the public interest shall so require.

SECTION 43. AMENDATORY 36 O.S. 1991, Section 1208, is amended to read as follows:

Section 1208. A. Any person required by an order of the Insurance Commissioner under Section 1207 of this ~~article~~ title to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 1204 of this ~~article~~ title may obtain a review of such order by filing in the district court of ~~any~~ Oklahoma County, or the county in the State of Oklahoma which the order was served, within thirty (30) days from the date of service of such order, a written petition praying that the order of the Commissioner be set aside. A copy of ~~such~~ the petition shall be ~~forthwith~~ served upon the Commissioner, and thereupon the Commissioner ~~forthwith~~ shall certify and file in

such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commissioner. Upon ~~such~~ filing ~~of~~ the petition and transcript, ~~such~~ the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of ~~such~~ the petition shall operate as a stay of ~~such~~ the order of the Commissioner, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in ~~such~~ the transcript a decree modifying, affirming or reversing the order of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts, if supported by the evidence, shall be conclusive.

B. To the extent that the order of the Commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of ~~such~~ the order of the Commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that ~~such~~ additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commissioner, the court may order ~~such~~ additional evidence be taken before the Commissioner, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commissioner may modify ~~his~~ findings of fact, or make new findings by reason of the additional evidence so taken, and ~~he~~ shall file such modified or new findings which, if supported by the evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence. Appeal may be taken from the district court ~~to the Supreme Court~~ as provided in other civil cases.

C. A cease and desist order issued by the Commissioner under Section 1207 of this title shall become final:

1. Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the Commissioner may thereafter modify or set aside ~~his~~ an order to the extent provided in subsection B of Section 1207 of this ~~article~~ title; or

2. Upon the final decision of the court if the court directs that the order of the Commissioner be affirmed or the petition for review dismissed.

D. No order of the Commissioner under this article or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 44. AMENDATORY 36 O.S. 1991, Section 1209, is amended to read as follows:

Section 1209. A. Whenever the Insurance Commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in Section 1204 of this ~~article~~ title, that ~~such~~ the method of competition is unfair or that ~~such~~ the act or practice is unfair or deceptive and that ~~a~~ an administrative proceeding ~~by him~~ in respect thereto would be to the interest of the public, ~~he~~ the Commissioner may issue and serve such person a statement of the charges in that respect and a notice ~~of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten (10) days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 1206 of this article in accordance with the Administrative Procedures Act.~~ The Commissioner shall, after ~~such~~ a hearing or waiver of the right to a hearing, make a report in writing ~~in which he shall state his~~ stating findings as to the facts and ~~he shall~~ serve a copy thereof upon such person.

B. If such report charges a violation of this article and if such method of competition, act or practice has not been discontinued, the Commissioner may, ~~through the Attorney General of this state, at any time after thirty (30) days after the service of such report,~~ cause a petition to be filed in the district court of Oklahoma County or the district court of this state within the district wherein the person resides or has his or her principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The Commissioner may request the Attorney General to appear in the name of the state by relation of the Commissioner. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

C. A transcript of the proceedings before the Commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that ~~such~~ additional evidence is material and there were reasonable grounds for the failure to adduce ~~such~~ evidence in the proceeding before the Commissioner, the court may order ~~such~~ additional evidence to be taken before the Commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commissioner may modify ~~his~~ findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

D. If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the Commissioner with respect

thereto is to the interest of the public and that the findings of the Commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

SECTION 45. AMENDATORY 36 O.S. 1991, Section 1210, is amended to read as follows:

Section 1210. If the ~~report~~ final order of the Insurance Commissioner does not charge a violation of this article, then any intervenor in the proceedings may, within thirty (30) days after the service of such ~~report order~~, cause a ~~notice of appeal~~ an action for judicial review to be filed in the district court of Oklahoma County for a review of such ~~report order~~. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such ~~report order~~ of the Commissioner, constitutes a violation of this article.

SECTION 46. AMENDATORY 36 O.S. 1991, Section 1211, is amended to read as follows:

Section 1211. Any person who violates a cease and desist order of the Insurance Commissioner issued and served pursuant to the provisions of Section 1207 of this ~~Code~~ title, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Oklahoma a ~~sum~~ civil penalty of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00) for each violation.

SECTION 47. AMENDATORY 36 O.S. 1991, Section 1213, is amended to read as follows:

Section 1213. If any person shall ask to be excused from attending and testifying or from producing any books, papers,

records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, ~~he~~ the person must nonetheless comply with such direction, but ~~he~~ shall not thereafter be prosecuted or subjected to any criminal penalty of forfeiture for or on account of any ~~transaction, matter or thing concerning~~ evidence which ~~he~~ the person may testify or produce evidence pursuant thereto, ~~and no.~~ No testimony so given or evidence produced shall be received against ~~him~~ the person upon any criminal action, investigation or proceeding, ~~provided.~~ Provided, however, ~~that no such individual~~ individuals so testifying shall not be exempt from prosecution or punishment for any perjury committed by ~~him~~ them while so testifying and the testimony or evidence so given or produced shall be admissible against ~~him~~ them upon any criminal action, investigation or proceeding concerning such perjury, ~~nor,~~ and such individuals shall ~~he~~ not be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. ~~Any such individual may execute, acknowledge and file in the office of the Commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.~~

SECTION 48. AMENDATORY 36 O.S. 1991, Section 1219, as amended by Section 1, Chapter 74, O.S.L. 1992 (36 O.S. Supp. 1996, Section 1219), is amended to read as follows:

Section 1219. A. In the administration, servicing or processing of any individual, group or blanket accident and health insurance policy, it shall be an unfair trade practice for any insurer to fail to notify a policyholder or assignee of record in writing of the cause for delay in payment of any claim where said claim is not paid within thirty (30) days after receipt of proof of loss. ~~The notification shall be by mail with return receipt requested.~~ Failure of an insurer to provide a policyholder or assignee of record with such notification shall constitute prima facie evidence that the claim will be paid in accordance with the terms of the policy.

B. If a claim is not paid within sixty (60) days after receipt of proof of loss, the insurer shall pay interest which shall be the same rate of interest as the average United States Treasury Bill rate of the preceding calendar year as certified to the State Insurance Commissioner by the State Treasurer on the first regular business day in January of each year, plus two (2) percentage points, which shall accrue from the sixty-first day after receipt of proof of loss until the claim is paid.

C. As used in this section:

"Proof of loss" means written documents such as claim forms, medical bills, or other reasonable evidence of a claim, but shall not include information not necessary for determination of proof of loss and not pertinent to filed claims, such as any medical reports that the insurer wants to secure merely for completion of business records or files.

D. In the event litigation should ensue based upon such a claim, the prevailing party shall be entitled to recover a

reasonable attorney's fee to be set by the court and taxed as costs against the party or parties who do not prevail.

E. The provisions of this section shall not apply to the Oklahoma Life and Health Insurance Guaranty Association or to the Oklahoma Property and Casualty Insurance Guaranty Association.

SECTION 49. AMENDATORY 36 O.S. 1991, Section 1253, as renumbered by Section 20, Chapter 342, O.S.L. 1994, and as last amended by Section 5, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.4), is amended to read as follows:

Section 1250.4 A. An insurer's claim files, other than the claim files of the State Insurance Fund, shall be subject to examination by the Insurance Commissioner or by ~~his~~ duly appointed designees. Such files shall contain all notes and work papers pertaining to a claim in such detail that pertinent events and the dates of such events can be reconstructed. In addition, the Insurance Commissioner, authorized employees and examiners shall have access to any of an insurer's files that may relate to a particular complaint under investigation or to an inquiry or examination by the Insurance Department.

B. Every agent, adjuster, administrator, insurance company representative, or insurer, other than the State Insurance Fund and its representatives, upon receipt of any inquiry from the Commissioner concerning a claim or a problem involving premium monies shall, within ~~fifteen (15) business~~ twenty (20) days after receipt of such inquiry, furnish the Commissioner with an adequate response to the inquiry.

C. Every insurer, upon receipt of any pertinent written communication from a claimant which reasonably suggests that a response is expected, shall, within ~~twenty (20) business~~ thirty (30) days after receipt thereof, furnish the claimant with an adequate response to the communication.

D. Any violation by an insurer of this section shall subject the insurer to discipline including a civil penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00).

SECTION 50. AMENDATORY 36 O.S. 1991, Section 1254, as last amended by Section 5, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.5), is amended to read as follows:

Section 1250.5 Any of the following acts by an insurer, if committed in violation of Section ~~3~~ 1250.3 of this ~~act~~ title, constitutes an unfair claim settlement practice:

1. Failing to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim;
2. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
3. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its insurance policies or insurance contracts;
4. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
5. Denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so;
6. Except where there is a time limit specified in the policy, making statements, written or otherwise, which require a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights;

7. Requesting a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

8. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

9. Denying payment to a claimant on the grounds that services, procedures or supplies provided by a treating physician or a hospital were not medically necessary unless the health insurer or administrator, as defined in Section 1442 of this title, first obtains an opinion from any provider of health care licensed by law and preceded by a medical examination or claim review, to the effect that the services, procedures or supplies for which payment is being denied were not medically necessary. Upon written request of a claimant, treating physician or hospital, such opinion shall be set forth in a written report, prepared and signed by the reviewing physician. The report shall detail which specific services, procedures or supplies were not medically necessary, in the opinion of the reviewing physician, and an explanation of that conclusion. A copy of each report of a reviewing physician shall be mailed by the health insurer, or administrator, postage prepaid, to the claimant, treating physician or hospital requesting same within fifteen (15) days after receipt of such written request. As used in this subsection, "physician" means a person holding a valid license to practice medicine and surgery, osteopathy, podiatry, chiropractic or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes;

10. Compensating a reviewing physician on the basis of a percentage of the amount by which a claim is reduced for payment;

11. Compelling, without just cause, policyholders to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such

policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered; or

12. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last financial examination conducted or accepted by the Insurance Commissioner, whichever time is ~~shorter~~ longer. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance.

SECTION 51. AMENDATORY 36 O.S. 1991, Section 1255, as amended by Section 6, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.6), is amended to read as follows:

Section 1250.6 A. Every property and casualty insurer, within ~~twenty (20) business~~ thirty (30) days after receiving notification of a claim, shall acknowledge the receipt of such notification unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the property and casualty insurer, and dated. Notification given to an agent of a property and casualty insurer shall be notification to the insurer.

B. Every property and casualty insurer, upon receiving notification of a claim, promptly shall provide necessary claim forms, instruction, and reasonable assistance so that first party claimants can comply with the policy conditions and the reasonable requirements of the property and casualty insurer. Compliance with this paragraph within ~~twenty (20) business~~ thirty (30) days after notification of a claim shall constitute compliance with subsection A of this section.

SECTION 52. AMENDATORY 36 O.S. 1991, Section 1256, as last amended by Section 7, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.7), is amended to read as follows:

Section 1250.7 A. Within ~~thirty (30) business~~ forty-five (45) days after receipt by a property and casualty insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer, or if further investigation is necessary. No property and casualty insurer shall deny a claim because of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. A denial shall be given to any claimant in writing, and the claim file of the property and casualty insurer shall contain a copy of the denial. If there is a reasonable basis supported by specific information available for review by the Commissioner that the first party claimant has fraudulently caused or contributed to the loss, a property and casualty insurer shall be relieved from the requirements of this subsection. In the event of a weather-related catastrophe or a major natural disaster, as declared by the Governor, the Insurance Commissioner may extend the deadline imposed under this subsection an additional ~~fifteen (15) business~~ twenty (20) days.

B. If a claim is denied for reasons other than those described in subsection A of this section, and is made by any other means than writing, an appropriate notation shall be made in the claim file of the property and casualty insurer until such time as a written confirmation can be made.

C. Every property and casualty insurer shall complete investigation of a claim within ~~forty-five (45) business~~ sixty (60) days after notification of proof of loss unless such investigation cannot reasonably be completed within such time. If such

investigation cannot be completed, or if a property and casualty insurer needs more time to determine whether a claim should be accepted or denied, it shall so notify the claimant within ~~forty-five (45) business~~ sixty (60) days after receipt of the proofs of loss, giving reasons why more time is needed. If the investigation remains incomplete, a property and casualty insurer shall, within ~~forty-five (45) business~~ sixty (60) days from the date of the initial notification, send to such claimant a letter setting forth the reasons additional time is needed for investigation. Except for an investigation of possible fraud or arson which is supported by specific information giving a reasonable basis for the investigation, the time for investigation shall not exceed ~~ninety (90) business~~ one hundred twenty (120) days after receipt of proof of loss. Provided, in the event of a weather-related catastrophe or a major natural disaster, as declared by the Governor, the Insurance Commissioner may extend this deadline for investigation an additional ~~fifteen (15) business~~ twenty (20) days.

D. Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

E. Insurers shall not continue or delay negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney, for a length of time which causes the claimant's rights to be affected by a statute of limitations, or a policy or contract time limit, without giving the claimant written notice that the time limit is expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty (30) days, and to third party claimants sixty (60) days, before the date on which such time limit may expire.

F. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the

statement is given for the purpose of notifying a third party claimant of the provision of a statute of limitations.

G. If a lawsuit on the claim is initiated, the time limits provided for in this section shall not apply.

SECTION 53. AMENDATORY 36 O.S. 1991, Section 1259, as renumbered by Section 20, Chapter 342, O.S.L. 1994, and as last amended by Section 8, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.11), is amended to read as follows:

Section 1250.11 A. Upon the receipt of the results of an investigation instituted pursuant to the provisions of Section 1250.10 of this title, the Insurance Commissioner shall review the results and shall determine whether, by the standards set out in Sections 1250.3 and 1250.5 of this title, further action is required. If the Insurance Commissioner deems further action necessary, the Commissioner shall issue and serve upon the insurer a statement of the charges and a notice ~~of hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty (30) days after the date of the service thereof~~ in accordance with the Administrative Procedures Act. No insurer shall be deemed in violation of the Unfair Claims Settlement Practices Act solely by reason of the numbers and types of such complaints or claims.

B. The Insurance Commissioner shall not assert enforcement jurisdiction pursuant to this section over the State Insurance Fund.

SECTION 54. AMENDATORY 36 O.S. 1991, Section 1226, as renumbered by Section 20, Chapter 342, O.S.L. 1994, and as last amended by Section 9, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.13), is amended to read as follows:

Section 1250.13 A. The Insurance Commissioner, upon finding an insurer, other than the State Insurance Fund, in violation of any

provision of the Unfair Claims Settlement Practices Act, shall issue a cease and desist order to said insurer directing it to stop such unlawful practices. If the insurer refuses or fails to comply with said order, the Commissioner shall have the authority to revoke or suspend the insurer's certificate of authority. The Commissioner shall also have the authority to limit, regulate, and control the insurer's line of business, the insurer's writing of policy forms or other particular forms, and the insurer's volume of its line of business or its writing of policy forms or other particular forms. The Commissioner shall use the above authority to the extent deemed necessary to obtain the insurer's compliance with the order. The Attorney General shall offer his assistance if requested by the Commissioner to enforce the Commissioner's orders.

B. Reasonable attorneys fees shall be awarded the Commissioner if judicial action is necessary for the enforcement of the orders. Such fees shall be based upon those prevailing in the community. Fees collected by the Commissioner without the assistance of the Attorney General shall be credited to the Insurance Commissioner's Revolving Fund. Fees collected by the Attorney General shall be credited to the Attorney General's Revolving Fund.

SECTION 55. AMENDATORY 36 O.S. 1991, Section 1258, as renumbered by Section 20, Chapter 342, O.S.L. 1994, and as last amended by Section 10, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.14), is amended to read as follows:

Section 1250.14 For any violation of the Unfair Claims Settlement Practices Act, the Insurance Commissioner may, after notice and hearing, subject an insurer, other than the State Insurance Fund, to a civil ~~fine~~ penalty of not less than One Hundred Dollars (\$100.00) nor more than ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00) for each occurrence. Such ~~fine~~ civil penalty may be enforced in the same manner in which civil

judgments may be enforced. Such ~~fines~~ penalties shall be placed in the Insurance Commissioner's Revolving Fund.

SECTION 56. AMENDATORY Section 15, Chapter 342, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1250.15), is amended to read as follows:

Section 1250.15 Any insurer affected by an order of the Insurance Commissioner issued pursuant to the Unfair Claims Settlement Practices Act may seek judicial review of such order by filing a petition in the District Court of Oklahoma County within thirty (30) days after the insurer is notified of the order. ~~Such judicial review shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.~~

SECTION 57. AMENDATORY 36 O.S. 1991, Section 1422, as amended by Section 17, Chapter 339, O.S.L. 1995 (36 O.S. Supp. 1996, Section 1422), is amended to read as follows:

Section 1422. As used in ~~this act~~ Section 1421 et seq. of this title:

1. "Commissioner" means the ~~State~~ Insurance Commissioner;
2. "Insurance consultant" means an individual, ~~partnership,~~ ~~limited liability company,~~ or ~~corporation~~ legal entity who, for a fee, holds himself or herself or itself out to the public as engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued or delivered in this state;
3. "Insurance agent" means an individual, ~~partnership,~~ ~~limited liability company,~~ or ~~corporation~~ legal entity appointed by an insurer to solicit applications for a policy of insurance or to negotiate a policy of insurance on its behalf.

Any person not duly licensed as an insurance agent, surplus lines insurance broker, or limited insurance representative who

solicits a policy of insurance on behalf of an insurer shall be deemed to be acting as an insurance agent within the meaning of this act, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of the company is subject, and the company by issuing the policy of insurance shall thereby accept and acknowledge the person as its agent in the transaction;

4. "Limited insurance representative" means an individual, ~~partnership, limited liability company,~~ or ~~corporation~~ legal entity who is authorized by the Commissioner to solicit or negotiate contracts for a particular line of insurance as provided in Section 1424 of this title, which the Legislature hereby determines does not require the professional competency demanded for an insurance agent's license;

5. "Managing general agent" means an individual, ~~partnership,~~ ~~limited liability company,~~ or ~~corporation~~ legal entity appointed, as an independent contractor, by one or more insurers to exercise general supervision over the business of the insurer in this state, with authority to appoint agents for the insurer, and to terminate appointments for the insurer;

6. "Surplus lines insurance broker" means an individual, ~~partnership, limited liability company,~~ or ~~corporation~~ legal entity who solicits, negotiates, or procures a policy of insurance in an insurance company not licensed to transact business in this state which cannot be procured from insurers licensed to do business in this state. All transactions under such license shall be subject to Article 11 of this title.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person shall act as or hold himself or herself out to be an insurance agent, surplus lines insurance broker, limited

insurance representative, managing general agent, consultant, or customer service representative unless duly licensed. Salaried employees in the office of an insurance agent, surplus line insurance broker, limited insurance representative, managing general agent or consultant, who devote full time to clerical and administrative services, with incidental receiving of insurance applications and premiums in the office of the employer and who do not receive any commissions for the applications nor a compensation that is varied by the volume of applications or premiums taken or received, shall be exempt from any licensing requirement.

B. No insurance agent, surplus lines insurance broker, or limited insurance representative shall make application for, procure, negotiate for, or place for others any policies for any lines of insurance as to which he or she is not then qualified and duly licensed.

C. An insurance agent may receive qualification for a license in one or more of the following categories or lines of insurance:

1. Life insurance, including fraternal agents licensed pursuant to Section 2733.1 of this title;
2. Accident and health insurance, including fraternal agents licensed pursuant to Section 2733.1 of this title;
3. Property and casualty insurance;
4. Variable annuity contracts, including fraternal agents licensed pursuant to Section 2733.1 of this title; and
5. Title insurance.

D. A limited insurance representative may receive qualification for a license in one or more of the following categories:

1. As a ticket-selling agent of a common carrier who acts only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier;

2. To engage in the sale of only limited travel accident insurance;

3. To engage in the sale of credit life insurance or credit accident and health insurance or both credit life insurance and credit accident and health insurance in connection with a credit transaction by which satisfaction of a debt in whole or in part is a benefit provided;

4. To engage in the sale of personal property floater insurance upon personal effects against loss or damage from any cause in connection with a credit transaction of not more than Five Thousand Dollars (\$5,000.00) by which satisfaction of the credit transaction debt in whole or in part is a benefit provided, and such personal effects are used as collateral on the debt;

5. To engage in the sale of nonfiling insurance relating to mortgages and security interests arising under the Uniform Commercial Code, Section 1-101 et seq. of Title 12A of the Oklahoma Statutes;

6. Prepaid legal liability insurance, which means the assumption of an enforceable contractual obligation to provide specified legal services or to reimburse policyholders for specified legal expenses, pursuant to the provisions of a group or individual policy;

7. Job loss insurance, which means the sale of involuntary unemployment insurance in connection with a credit transaction by which satisfaction of a debt in whole or in part is a benefit provided;

8. Crop hail and multiperil crop hail insurance; and

9. Prepaid dental insurance, provided the individual selling the prepaid dental insurance has been appointed by the prepaid dental plan organization to sell such insurance.

E. 1. An insurance agent or limited insurance representative may solicit applications for and issue travel accident policies or

baggage insurance by means of mechanical vending machines supervised by the agent or representative only if the Insurance Commissioner shall determine that the form of policy to be sold is reasonably suited for sale and issuance through vending machines, that use of vending machines for the sale of said policies would be of convenience to the public, and that the type of vending machine to be used is reasonably suitable and practical for the sale and issuance of said policies. Policies so sold do not have to be countersigned.

2. The Commissioner shall issue to the insurance agent or limited insurance representative a special vending machine license for each such machine to be used. The license shall specify the name and address of the insurer and licensee, the kind of insurance and type of policy to be sold, and the place where the machine is to be in operation. The license shall expire, be renewable, and be suspended or revoked coincidentally with the insurance agent license or limited representative license of the licensee. The license fee for each vending machine shall be that stated in the provisions of Section 1425 of this title. Proof of existence of the license shall be displayed on or about each machine in such manner as the Commissioner may reasonably require.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.12 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An insurance agent may place only a kind or kinds of insurance for which the agent is licensed and appointed by an insurer. In the event that an agent's appointments for one or more lines of insurance have been terminated, then the agent may elect to surrender the license as to that line or lines, and upon renewal the Commissioner will issue a license that includes only those lines for which the agent has both a license and an appointment.

B. An insurance agent may place a kind or kinds of insurance for which the agent is not appointed by an insurer, only by placing the insurance through a licensed agent holding an appointment for that kind or kinds of insurance from an insurer. This subparagraph shall not be interpreted to permit an agent to solicit insurance in a line for which the agent is not licensed.

C. A limited insurance representative may place only a kind or kinds of insurance for which the representative is licensed and appointed by an insurer. In the event that a representative's appointments have all been terminated, then the representative's license will be deemed to have expired unless, within ten (10) days after the last termination, a new appointment has been secured.

D. A limited insurance representative may place a kind or kinds of insurance for which he or she is not appointed as a limited insurance representative only by placing the insurance through a licensed limited insurance representative holding an appointment for that kind or kinds of insurance from an insurer.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.13 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any person or legal entity authorized to do business in Oklahoma may be licensed as an insurance agent, surplus lines insurance broker, or limited insurance representative or insurance consultant.

B. In the case of a partnership which has been licensed each general partner and each other individual acting for the partnership, and in the case of any entity which has been licensed each individual acting for the entity as an agent, surplus lines insurance broker, limited insurance representative or consultant, shall be named in the license and shall qualify therefor as though an individual licensee. The Commissioner shall charge a full additional license fee and a separate license shall be issued for

each individual so named in such license. The agency shall notify the Commissioner within fifteen (15) days if any individual licensed on its behalf has been terminated, is no longer associated with the agency, or has left its employ.

C. A nonresident of this state shall only be named in a license for a resident insurance agency as a nonresident agent.

D. A domestic insurance agency must be organized pursuant to the provisions of the laws of this state and must maintain its principal place of business in this state.

E. A license shall not be issued in a trade name except upon proof satisfactory to the Commissioner that the trade name has been lawfully registered.

F. No entity shall be licensed as an agency unless the insurance business to be transacted pursuant to the license is the primary purpose of the entity as described in its organizing documents or the entity is a bank that qualifies for an insurance agent license pursuant to Section 92 of Title 12 of the United States Code or subsection (10) of Section 402 of Title 6 of the Oklahoma Statutes. Any entity that owns an interest in or is a partner in a licensed agency shall also qualify for and obtain an agency license pursuant to this section, unless the owning entity is a bank that qualifies for an insurance agent license pursuant to Section 92 of Title 12 of the United States Code or subsection (10) of Section 402 of Title 6 of the Oklahoma Statutes, or the owning entity lawfully owned its interest in the licensed agency prior to the effective date of this act. The provisions of this paragraph shall not apply to any person licensed as a title insurance agent.

G. The licensee shall notify the Commissioner of all changes among its members, directors, and officers, and all other individuals designated in the license within fifteen (15) days after said change.

H. No person whose license as an insurance agent has been revoked by order of the Commissioner, nor any entity in which such person has a majority ownership interest, whether direct or indirect, shall own any interest in any entity licensed pursuant to the provisions of this section.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.14 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall not grant, renew, continue, or permit to continue any license if the Commissioner finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. "Controlled business" means:

- a. insurance written on the interests of the licensee or those of his or her relatives to the second degree or of his or her employer, or
- b. insurance covering the licensee or his or her relatives to the second degree or a corporation, association, or partnership of which the licensee or a member of his or her immediate family is an officer, director, substantial stockholder, partner, associate, or employee, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, association, or partnership. A vendor's or lender's interest in property sold or being sold pursuant to contract or which is security for any loan shall not be deemed for the purpose of this provision to constitute property or an interest of the vendor or lender.

B. A license shall be deemed to have been or intended to be used for the purpose of writing controlled business if the Commissioner finds that during any twelve-month period the aggregate

commissions earned from controlled business has exceeded twenty-five percent (25%) of the aggregate commissions earned on all business written by the applicant or licensee during the same period.

C. The prohibitions contained in this subsection concerning licensing for the writing of controlled business shall not apply to title insurance agents and limited insurance representatives.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.15 of Title 36, unless there is created a duplication in numbering, reads as follows:

No insurer, insurance agent, surplus lines insurance broker, or limited insurance representative shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, surplus lines insurance broker, or limited insurance representative within this state unless the person performing services held at the time said services were performed a valid license for such services as required by the laws of this state. No person other than a person duly licensed by this state as an insurance agent, surplus lines insurance broker, or limited insurance representative at the time said services were performed shall accept any commission, brokerage, or other valuable consideration. Any person duly licensed as an insurance agent pursuant to the provisions of the Insurance Agents Licensing Act, Article 14A of this title, may pay or assign his or her commissions or direct that his or her commissions be paid to an entity licensed as an insurance agent pursuant to the provisions of this section of which the licensee is a member, partner, officer, employee, or agent. The provisions of this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto pursuant to the provisions of this section. Any person duly licensed as a limited insurance representative may pay or assign his or her commissions or direct that his or her commissions be paid to a financial institution or supervised lender

licensed and regulated pursuant to the laws of this state or of any state or of the United States, or to any principal, corporation, partnership or other entity which is the credit granting party in any credit transaction involved, its parent, affiliate, successor or assign, or to a partnership or corporation licensed as a limited insurance representative of which the licensee is a member, officer, employee or agent.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.16 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The name, mailing address of the licensee, expiration date, the line or lines of insurance coverage by the license, and such other information as the Commissioner deems proper for inclusion in the license shall be indicated on the license.

B. All licenses issued pursuant to the provisions of the Insurance Agents Licensing Act shall continue in force not longer than twenty-four (24) months. The renewal dates for the licenses may be staggered throughout the year by notifying licensees in writing of the expiration and renewal date being assigned to the licensees by the Commissioner and by making appropriate adjustment in the biennial licensing fee.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.17 of Title 36, unless there is created a duplication in numbering, reads as follows:

An insurance agent or limited insurance representative may represent as many insurers as may appoint the agent or representative in accordance with the provisions of the Insurance Agents Licensing Act. A company shall not pay any commission or fee to an agent or limited insurance representative unless and until his appointment with that company has been approved by the Commissioner.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.18 of Title 36, unless there is created a duplication in numbering, reads as follows:

No license as an insurance agent, surplus lines insurance broker, customer service representative, or limited insurance representative shall be required of the following:

1. Any regular-salaried officer or employee of an insurance company, or of a licensed insurance agent, surplus lines insurance broker, or limited insurance representative, if the duties and responsibilities of said officer or employee do not include the negotiation or solicitation of insurance;

2. Persons who secure and furnish information for the purpose of group or wholesale life insurance, or annuities, or group, blanket, or franchise health insurance, or for enrolling individuals in such plans or issuing certificates thereunder, or otherwise assisting in administering such plans, if no commission is paid for said service; or

3. Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that said employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates which involves the use of insurance issued by a licensed insurance company if said employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1424.19 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any person or agent who receives exclusive agency contract overrides upon business written in this state shall be licensed as an insurance agent in this state and shall file with the application

a copy of each exclusive agency contract which is used to obtain commission on business in this state.

SECTION 67. AMENDATORY 36 O.S. 1991, Section 1425, as last amended by Section 4, Chapter 246, O.S.L. 1996 (36 O.S. Supp. 1996, Section 1425), is amended to read as follows:

Section 1425. A. The Commissioner shall not issue, continue, or permit to continue any license of an insurance agent, surplus lines insurance broker, limited insurance representative, or customer service representative except in compliance with the ~~following~~ provisions of this section.

~~A.~~ B. 1. Application shall be made to the Commissioner by the applicant on a form prescribed and with the information required by the Commissioner.

~~B. 1.~~ 2. The application for an insurance agent, managing general agent, or limited insurance representative license shall be accompanied by a written appointment. The appointment shall be made by an officer or attorney-in-fact of the insurer designating the applicant as an insurance agent, managing general agent, or limited insurance representative for such lines of insurance as the applicant will be authorized to write for said insurer. All appointments for any licensee shall be submitted on behalf of the appointing insurer on a form prescribed by the Commissioner and shall remain in force until ~~the renewal date~~ expressly terminated in writing. ~~The renewal dates may be staggered for appointments of agents, managing general agents, and limited insurance representatives by notifying the various companies in writing of the expiration and renewal date being assigned to agents and limited insurance representatives of said companies by the Commissioner and by making appropriate adjustment in the~~ shall collect from each company a biennial appointment fee.

~~2.~~ For 3. In connection with the renewal licensure of an applicant, the applicant shall submit either a letter from the

appointing insurer verifying acceptance of responsibility for the actions of the applicant in the scope of that person's ~~employment appointment~~, or submit and maintain an errors and omissions policy acceptable to the Commissioner, or, if errors and omissions coverage is provided by the insurer for agents by utilizing a blanket errors and omissions policy for coverage, a copy of the policy providing the errors and omissions coverage shall be on file with the Commissioner ~~of insurance~~. The insurer providing coverage shall ~~submit a~~ maintain an accurate list of all agents covered by such policy ~~when renewal applications are to be submitted. Provided, however, in the case of title insurance, scope of employment shall be limited to the issuance of commitments and policies and other duties only as specifically expressed in the agency contract.~~

~~3.~~ 4. Application for a customer service representative license or license renewal shall be accompanied by a written appointment, which shall remain in effect until expressly terminated in writing, signed by the insurance agent or broker who will supervise the customer service representative, on forms ~~provided~~ prescribed by the Commissioner.

5. Any insurer approved to offer workers' compensation equivalent insurance pursuant to the provisions of Section 65 of Title 85 of the Oklahoma Statutes may appoint property and casualty agents. All agents appointed for workers' compensation equivalent insurance products must be licensed as property and casualty agents by the Oklahoma Insurance Department.

C. Every individual applicant for licensing as an insurance agent, managing general agent, limited insurance representative, or customer service representative pursuant to the provisions of the Insurance Agents Licensing Act, ~~except a partnership or corporation,~~ shall be eighteen (18) years of age or older.

D. 1. Except as provided in paragraph 2 of this subsection, an applicant shall not be a full-time employee of the government of the

United States or of the executive or administrative branches of the government of this state or any county or municipality in this state.

- 2. a. The provisions of this subsection shall not apply to applicants for life or accident and health insurance agents' licenses or limited representatives.
- b. The provisions of this subsection shall not apply to persons who hold an elective office except the office of Insurance Commissioner.
- c. For the purpose of this subsection, a teacher shall not be considered a full-time employee of the executive or administrative branches of the government of the state or of any county or municipality in the state.

E. All applications shall be accompanied by the applicable fees. An appointment ~~shall terminate~~ may be deemed by the Commissioner to have terminated upon failure by the insurer to pay the prescribed renewal fee. The Commissioner may also by order impose a civil penalty equal to double the amount of the unpaid renewal fee.

The Insurance Commissioner shall collect in advance the following fees and licenses:

- 1. For filing appointment of Insurance Commissioner as agent for service of process \$10.00
- 2. Miscellaneous:
 - a. Certificate and Clearance of Commissioner, under seal \$3.00
 - b. Agent's study manual:
 - Life, Accident & Healthnot to exceed \$40.00
 - Property and Casualtynot to exceed \$40.00

- c. For filing ~~Agency Articles of Incorporation~~
organizational documents of an entity applying for a
license as an agency \$20.00
3. Examination for license:
- For each examination covering laws and one or more
lines of insurance \$50.00
4. Licenses:
- a. Agent's biennial license, regardless of number of
companies represented \$60.00
 - b. Agent's biennial license for sale or solicitation of
separate accounts or agreements, as provided for in
Section 6061 of this title \$60.00
 - c. Limited insurance representative biennial license
\$40.00
 - d. Temporary license as agent \$20.00
 - e. Managing general agent's biennial license \$60.00
 - f. Surplus lines broker's biennial license \$100.00
 - g. Insurance vending machine, each machine, biennial fee
\$100.00
 - h. Insurance consultant's biennial license, resident or
nonresident \$100.00
 - i. Customer service representative biennial license
\$40.00
5. ~~Filing notice of biennial appointment of~~ Biennial fee for
each appointed agent, managing general agent, or limited
insurance representative by insurer, each license of each
agent or representative \$40.00
6. Renewal fee for all licenses shall be the same as the
current initial license fee.
7. The fee for a duplicate license shall be one-half (1/2) the
fee of an original license.

8. ~~Late application for the~~ The renewal of a license shall require a fee of double the current original license fee if the application for renewal is late, or incomplete on the renewal deadline.

F. 1. The fees and monies received by the Insurance Commissioner pursuant to the provisions of paragraphs 1 ~~and~~, 2, 7 and 8 of subsection E of this section shall be deposited with the State Treasurer, who shall place the same to the credit of the State Insurance Commissioner Revolving Fund for the purpose of fulfilling and accomplishing the conditions and purposes of the Insurance Agents Licensing Act, including the use of postal mail facilities for the Department.

2. The fees and monies received by the Insurance Commissioner pursuant to the provisions of paragraphs 3 through ~~5~~ 6 of subsection E of this section shall be paid into the State Treasury to the credit of the General Revenue Fund of the state.

G. There is hereby created in the State Treasury the State Insurance Commissioner Revolving Fund which shall be a continuing fund not subject to fiscal year limitations. The revolving fund shall consist of fees and monies received by the Insurance Commissioner as required by law to be deposited in said fund and any other funds not dedicated in the Oklahoma Insurance Code. The revolving fund shall be used to fund the general operations of the Insurance Commissioner's Office for the purpose of fulfilling and accomplishing the conditions and purposes of the Insurance Agents Licensing Act. All expenditures from said revolving fund shall be on claims approved by the Insurance Commissioner and filed with the Director of State Finance for payment.

H. All fees, fines, monies, and license fees authorized by the provisions of this section and not dedicated by the provisions of subsection F of this section to the State Insurance Commissioner

Revolving Fund shall be paid into the State Treasury to the credit of the General Revenue Fund of this state.

I. 1. Prior to issuance of a license as an insurance consultant or surplus lines insurance broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in an amount of not less than Five Thousand Dollars (\$5,000.00) and not more than Forty Thousand Dollars (\$40,000.00) with an authorized corporate surety approved by the Commissioner. The exact amount of the bond shall be determined pursuant to the rules of the Commissioner and shall be based upon the actual or reasonably estimated premium for policies issued in connection with the services of the licensee. The surety shall notify the Commissioner of any changes in the bond of any licensee. The aggregate liability of the surety for any and all claims on a bond required by the provisions of this subsection shall in no event exceed the amount of the bond. No such bond shall be terminated unless at least thirty (30) days' prior written notice of the termination is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the licensee shall notify the surety within ten (10) working days.

2. All surety protection required by the provisions of this section is to inure to the benefit of any party aggrieved by the acts of a consultant or broker arising pursuant to conduct as a licensed insurance consultant or surplus lines insurance broker.

~~J. The Commissioner shall issue an insurance agent's license, managing general agent's license, insurance consultant's license, a limited insurance representative's or a customer service representative's license to any duly qualified resident or nonresident of this state, whether an individual, partnership, or corporation, as follows:~~

~~1. An applicant may qualify as a resident if the applicant resides in this state. Any license issued pursuant to any such application claiming residency in this state for licensing in this state shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or other jurisdiction or ceases to be a resident of this state. However, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify as a resident in such other state and may hold a license from each state;~~

~~2. a. An applicant may qualify for a license pursuant to the provisions of the Insurance Agents Licensing Act as a nonresident only if the applicant holds a resident agent's license in any state of the United States, a province of Canada, or any other foreign country, in which he or she claims residency and with which the Commissioner has executed a reciprocal licensing agreement. The applicant shall provide to the Commissioner an original certification of licensure status from the resident state of the applicant. A license issued to a nonresident of this state shall grant the same rights and privileges afforded a resident licensee, except as otherwise provided for by law. A corporation or partnership otherwise qualified to hold a license as a nonresident agent shall be licensed pursuant to the provisions of this section:~~

~~(1) if the principal purpose of the corporation or partnership is the transacting of insurance business,~~

~~(2) if said corporation or partnership is not a subsidiary or affiliate of a corporation or partnership not so qualified unless the parent corporation is also qualified as a nonprofit corporation under the provisions of Section 501(c)(6) of the Internal Revenue Code on or before January 1, 1985, and the subsidiary corporation of the nonprofit parent corporation writes only group insurance for members of the parent corporation, and~~

~~(3) if such corporation or partnership does not own stock in or is not a partner in any corporation or partnership licensed as a resident pursuant to Section 1424 of this title.~~

~~b. The Commissioner shall not issue a license to any nonresident applicant until said applicant files with the Commissioner his or her designation of the Commissioner as the person upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the insurance business of the applicant in this state. This designation shall constitute an agreement that said service of process is of the same legal force and validity as personal service of process in this state upon the nonresident licensee. Service of process upon any such licensee in any such action or proceeding in any court of competent jurisdiction of this state may be made by serving the Commissioner with three copies thereof and by paying to the Commissioner a fee of Ten Dollars (\$10.00). The Commissioner shall forward a copy of the process by mail with return receipt requested to the licensee~~

~~at his or her last-known address of record or principal place of business, and the Commissioner shall keep a record of all process so served upon the licensee.~~

~~c. Service of process upon any such licensee in any action or proceeding instituted by the Commissioner pursuant to the provisions of this Code shall be made by the Commissioner by mailing the process by mail with return receipt requested to the licensee at his or her last-known address of record or principal place of business.~~

~~Service of process upon any nonresident licensee is sufficient, provided notice of the service and a copy of the process are sent within ten (10) days thereafter to the licensee at his or her last-known address of record or principal place of business by mail with return receipt requested.~~

~~d. If the Commissioner revokes or suspends any nonresident's license through a formal proceeding pursuant to the provisions of this Code, the Commissioner shall promptly notify the appropriate Commissioner of the licensee's state of residence of the action and of the particulars thereof.~~

~~e. A nonresident of this state may be licensed without taking an examination, as prescribed by the Commissioner, if the Commissioner of the state of residence of the applicant certifies by facsimile signature and seal that the applicant has passed a similar examination, or has been a continuous holder, prior to the time the examination was required, of a license similar to the license for which application is being made in this state.~~

~~f. When, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of the other state or jurisdiction in addition to or in excess of those imposed on nonresidents pursuant to the provisions of the Insurance Agents Licensing Act, the same requirements shall be imposed upon such residents of the other state or jurisdiction;~~

~~3. An applicant for a surplus lines insurance broker's license shall be licensed in this state as a resident insurance agent qualified as to the line or lines of insurance to be written;~~

~~4. An applicant for any license required by the provisions of the Insurance Agents Licensing Act shall be deemed by the Commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation;~~

~~5. a. It shall be unlawful for any person whose license to act as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative has been suspended, revoked, surrendered, or refused to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or shall be committed to the custody of the Department of Corrections for not less~~

~~than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.~~

~~b. It shall be unlawful for any insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative to assist, aid, or conspire with a person whose license as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative has been suspended, revoked, surrendered, or refused to engage in any acts as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody;~~

~~6. Except for those persons exempt from licensure as provided for in Section 1424 of this title, it shall be unlawful for any person to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, surplus lines insurance broker, insurance consultant, or customer service representative without being duly licensed, or for any partnership or corporation, or any person acting on behalf of a partnership or corporation, to violate any of the provisions of subsection B of Section 1424 of this title. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and~~

~~shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment;~~

~~7. a. After completion and filing of the application with the Commissioner, except as provided in Section 1426 of this title, the Commissioner shall subject each applicant for license as an insurance agent, insurance consultant, limited insurance representative, or customer service representative to an examination approved by the Commissioner as to competence to act as a licensee, which each applicant shall personally take and pass to the satisfaction of the Commissioner.~~

~~b. If the applicant is a partnership or corporation, the examination shall be taken by each individual who is to act for the corporation or partnership as an agent, limited insurance representative, or insurance consultant.~~

~~c. Each examination for a license shall be approved for use by the Commissioner and shall reasonably test the knowledge of the applicant as to the lines of insurance, policies, and transactions to be handled pursuant to the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.~~

~~d. Examination for licensing shall be at such reasonable times and places as are designated by the Commissioner.~~

~~e. The Commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination among individuals examined.~~

- ~~f. The applicant shall pass the examination with a grade determined by the Commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten (10) days after the examination, the Commissioner shall inform the applicant and the appointing insurer, when applicable, as to whether or not the applicant has passed. Formal evidence of said licensing shall be issued by the Commissioner to the licensee within a reasonable time.~~
- ~~g. An applicant who has failed to pass the first examination for the license applied for may take a second examination within thirty (30) days following the first examination. Examination fees for subsequent examinations shall not be waived.~~
- ~~h. An applicant who has failed to pass the first two examinations for the license applied for shall not be permitted to take a subsequent examination until the expiration of six (6) months after the last previous examination. A current application, company appointments, and applicable fees shall be submitted with each request to take a subsequent examination;~~
- ~~8. a. If the Commissioner finds that the applicant has not fully met the requirements for licensing, the Commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer, when applicable, in writing, of the denial, stating the grounds therefor.~~
- ~~b. If for any reason a license is not issued by the Commissioner, all fees accompanying the application for the license as insurance agent, surplus lines insurance broker, insurance consultant, and limited~~

~~insurance representative shall be deemed earned and shall not be refundable;~~

~~9. Every licensed agent shall notify the Commissioner of any change in address as shown on the license as issued within ten (10) days after the change; and~~

~~10. Every licensed agent shall provide a place of business which is accessible to the public. The provisions of this section shall not prohibit the business of insurance in the residence of a licensed agent.~~

~~K. If an agent or agents choose to use a facsimile signature stamp in their business, then such stamp shall be proof that the agent or agents have authorized the signing of any documents relating to the business of insurance.~~

~~L. It shall be unlawful for any insurer to discriminate among or between the agents it has appointed. Any person or company convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment.~~

~~M. It shall be unlawful for any insurance agent to receive an ownership interest in any policy, by assignment or otherwise, unless the agent has an insurable interest in the life of the insured.~~

SECTION 68. AMENDATORY 36 O.S. 1991, Section 1425.1, as last amended by Section 5, Chapter 246, O.S.L. 1996 (36 O.S. Supp. 1996, Section 1425.1), is amended to read as follows:

Section 1425.1 A. 1. Each insurance agent shall, biennially, complete not less than ~~sixteen (16)~~ fourteen (14) clock hours of continuing insurance education which shall cover subjects in the lines for which the agent is licensed. Such education may include a written or oral examination.

2. Each customer service representative shall, biennially, complete not less than ~~twelve (12)~~ ten (10) clock hours of continuing insurance education which shall cover subjects in the lines for which the licensee is authorized to conduct insurance-related business on behalf of the appointing agent, broker, or agency. ~~In addition, the licensee~~

3. Licensees shall complete, in addition to the foregoing, two (2) clock hours of ethics course work in this same period.

B. 1. The Insurance Commissioner shall approve courses and providers of continuing education.

2. Each insurance company shall be allowed to provide continuing education to insurance agents and customer service representatives as required by this section; provided that such continuing education meets the general standards for education otherwise established by the Insurance Commission.

3. An agent who, during the time period prior to renewal, successfully completes any one of the following courses or programs of instruction and equivalent classroom hours approved by the Insurance Commissioner shall be deemed to have met the biennial requirement for continuing education:

- a. any part of a life course curriculum totaling fifty (50) classroom hours, or a health course totaling twenty-six (26) classroom hours offered by the Life Underwriter Training Council,
- b. any part of the American College of Life Underwriters (CLU) diploma curriculum totaling thirty (30) classroom hours,
- c. any part of the Accredited Advisor in Insurance (AAI) program totaling twenty-five (25) classroom hours offered by the Insurance Institute of America,
- d. any part of the Chartered Property and Casualty Underwriter (CPCU) professional designation program

totaling thirty (30) classroom hours offered by the American Institute of Property and Liability Underwriters, or

- e. any part of the Certified Insurance Counselor Program totaling twenty (20) classroom hours.

C. Each provider of continuing education shall, after approval by the Commissioner, submit an annual fee of Two Hundred Dollars (\$200.00) payable to the Insurance Commissioner which shall be deposited in the State Insurance Commissioner Revolving Fund, created in subsection G of Section 1425 of this title, for the purposes of fulfilling and accomplishing the conditions and purposes of the Insurance Agents Licensing Act. Provided, public funded educational institutions shall be exempt from this subsection.

D. Failure of an insurance agent or customer service representative to comply with the requirements of this act may, after notice and opportunity for hearing, result in censure, suspension, nonrenewal of license or a ~~fine~~ civil penalty of up to Five Hundred Dollars (\$500.00) or by both such penalty and ~~fine~~ civil penalty. Said ~~fine~~ civil penalty may be enforced in the same manner in which civil judgments may be enforced. Any ~~finer~~ civil penalties collected under this act shall be deposited in the State Insurance Commissioner Revolving Fund.

E. Limited insurance representatives ~~as set out in subparagraph b of paragraph 2 of subsection A of Section 1424 of this title~~ shall be exempt from the provisions of this section.

F. The Commissioner shall adopt and promulgate such rules as are necessary for effective administration of this act.

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall issue an insurance agent's license, managing general agent's license, insurance consultant's

license, a limited insurance representative's or a customer service representative's license to any duly qualified resident or nonresident of this state, whether an individual or legal entity, in accordance with this section.

1. An applicant may qualify as a resident if the applicant resides in this state. Any license issued pursuant to any such application claiming residency in this state for licensing in this state shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or other jurisdiction or ceases to be a resident of this state. However, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify as a resident in such other state and may hold a resident license from each state, so long as both states are party to a reciprocal dual licensing agreement.

2. An applicant may qualify for a license pursuant to the provisions of the Insurance Agents Licensing Act as a nonresident only if the applicant holds a resident agent's license in any state of the United States, a province of Canada, or any other foreign country, in which he or she claims residency and which provides for the issuance of nonresident licenses to residents of this state, by law or by a reciprocal licensing agreement with the Commissioner.

3. The applicant shall provide to the Commissioner an original certification of licensure status from the resident state of the applicant.

4. A license issued to a nonresident of this state shall grant the same rights and privileges afforded a resident licensee, except as otherwise provided for by law.

B. A legal entity otherwise qualified to hold a license as a nonresident agent shall be licensed pursuant to the provisions of this section:

1. If the principal purpose of the entity is the transacting of insurance business;

2. If the entity is not a subsidiary or affiliate of an entity not so qualified unless the entity is a subsidiary of a parent corporation that qualified as a nonprofit corporation under the provisions of Section 501(c)(6) of the Internal Revenue Code on or before January 1, 1985, and the subsidiary corporation of the nonprofit parent corporation writes only group insurance for members of the parent corporation; and

3. If such entity does not own an interest in or is not a partner in an entity licensed as a resident agency in this state pursuant to this title.

C. The Commissioner shall not issue a license to any nonresident applicant until the applicant files with the Commissioner his or her designation of the Commissioner as the person upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the insurance business of the applicant in this state. This designation shall constitute an agreement that said service of process is of the same legal force and validity as personal service of process in this state upon the nonresident licensee. Service of process upon any such licensee in any such action or proceeding in any court of competent jurisdiction of this state may be made by serving the Commissioner with three copies thereof and by paying to the Commissioner a fee of Twenty Dollars (\$20.00). The Commissioner shall forward a copy of the process by mail with return receipt requested to the licensee at his or her last-known address of record or principal place of business, and the

Commissioner shall keep a record of all process so served upon the licensee.

D. Service of process upon any such licensee in any action or proceeding instituted by the Commissioner pursuant to the provisions of this Code shall be made by the Commissioner by mailing the process by mail with return receipt requested to the licensee at his or her last-known address of record or principal place of business. Service of process, other than a subpoena, upon any nonresident licensee is sufficient, provided notice of the service and a copy of the process are sent within ten (10) days thereafter to the licensee at his or her last-known address of record or principal place of business by mail with return receipt requested.

E. If the Commissioner revokes or suspends any nonresident's license through a formal proceeding pursuant to the provisions of this Code, the Commissioner shall promptly notify the appropriate Commissioner of the licensee's state of residence of the action and of the particulars thereof.

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

When, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of the other state or jurisdiction in addition to or in excess of those imposed on nonresidents pursuant to the provisions of the Insurance Agents Licensing Act, the same requirements shall be imposed upon such residents of the other state or jurisdiction.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

An applicant for a surplus lines insurance broker's license shall first be licensed in this state as a resident insurance agent qualified as to the line or lines of insurance to be written.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

An applicant for any license required by the provisions of the Insurance Agents Licensing Act shall demonstrate to the Insurance Commissioner that the applicant is competent, trustworthy, financially responsible, and of good personal and business reputation.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person whose license to act as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative has been suspended, revoked, surrendered, or refused to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.

B. It shall be unlawful for any insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative to assist, aid, or conspire with a person whose

license as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative has been suspended, revoked, surrendered, or refused to engage in any acts as an insurance agent, limited insurance representative, managing general agent, insurance consultant, surplus lines insurance broker, or customer service representative. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.

C. Except for those persons exempt from licensure, it shall be unlawful for any person to do or perform any of the acts of an insurance agent, limited insurance representative, managing general agent, surplus lines insurance broker, insurance consultant, or customer service representative without being duly licensed. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. After completion and filing of the application with the Insurance Commissioner, except as provided in Section 1426 of Title 36 of the Oklahoma Statutes, the Commissioner shall subject each applicant for license as an insurance agent, insurance consultant, limited insurance representative, or customer service representative

to an examination approved by the Commissioner as to competence to act as a licensee, which each applicant shall personally take and pass to the satisfaction of the Commissioner.

B. If the applicant is a legal entity, the examination shall be taken by each individual who is to act for the entity as a licensee.

C. Each examination for a license shall be approved for use by the Commissioner and shall reasonably test the knowledge of the applicant as to the lines of insurance, policies, and transactions to be handled pursuant to the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

D. Examination for licensing shall be at such reasonable times and places as are designated by the Commissioner.

E. The Commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination among individuals examined.

F. The applicant shall pass the examination with a grade determined by the Commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten (10) days after the examination, the Commissioner shall inform the applicant and the appointing insurer, when applicable, as to whether or not the applicant has passed. Formal evidence of licensing shall be issued by the Commissioner to the licensee within a reasonable time.

G. An applicant who has failed to pass the first examination for the license applied for may take a second examination within thirty (30) days following the first examination. Examination fees for subsequent examinations shall not be waived.

H. An applicant who has failed to pass the first two examinations for the license applied for shall not be permitted to take a subsequent examination until the expiration of six (6) months after the last previous examination. A current application, company

appointments, and applicable fees shall be submitted with each request to take a subsequent examination.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If the Insurance Commissioner finds that the applicant has not fully met the requirements for licensing, the Commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer, when applicable, in writing, of the denial, stating the grounds therefor.

B. If for any reason a license or appointment is not issued or renewed by the Commissioner, all fees accompanying the appointment or application for the license shall be deemed earned and shall not be refundable.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1425.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every licensed agent shall notify the Insurance Commissioner of any change in address as shown on the license as issued within ten (10) days after the change.

B. Every licensed agent shall provide a place of business which is accessible to the public. The provisions of this section shall not prohibit the business of insurance in the residence of a licensed agent.

C. If an agent or agents choose to use a facsimile signature stamp in their business, then such stamp shall be proof that the agent or agents have authorized the signing of any documents relating to the business of insurance.

D. It shall be unlawful for any insurer to discriminate among or between the agents it has appointed. Any person or company convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a

fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment.

E. It shall be unlawful for any insurance agent to receive an ownership interest in any policy, by assignment or otherwise, unless the agent has an insurable interest in the life of the insured.

SECTION 77. AMENDATORY 36 O.S. 1991, Section 1426, is amended to read as follows:

Section 1426. The following ~~shall~~ may be exempt from the requirement for a ~~written~~ an examination, if the Insurance Commissioner is satisfied that the applicant is cognizant of and capable of fulfilling the responsibilities of the license:

1. Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed pursuant to a similar license in this state, other than a temporary license, within the twenty-four (24) months preceding the date of application, unless the previous license was revoked, suspended, or continuation thereof was refused by the Commissioner; ~~and~~

2. Any ~~ticket-selling agent of a common carrier selling only baggage insurance or limited travel accident insurance; and~~ limited insurance representative;

3. ~~Persons engaged in the solicitation of limited travel accident policies or baggage insurance by means of mechanical vending machines~~ An applicant for a nonresident license; and

4. ~~Prepaid legal liability limited insurance representatives;~~ and

5. ~~Job loss limited insurance representatives~~ A surplus lines insurance broker.

SECTION 78. AMENDATORY 36 O.S. 1991, Section 1427, is amended to read as follows:

Section 1427. A. No person shall act as, or hold himself or herself out to be, an insurance consultant until a license as an

insurance consultant has been issued to him or her by the Insurance Commissioner. However, no insurance consultant's license shall be required of the following:

1. Attorneys licensed to practice law in this state acting in their professional capacity; ~~or~~

2. A duly licensed insurance agent or surplus lines insurance broker; ~~or~~

3. A trust officer of a bank acting in the normal course of his or her employment; or

4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in his or her professional capacity.

B. An application for a license to act as an insurance consultant shall be made to the Commissioner on forms prescribed by the Commissioner. Within a reasonable time after receipt of a properly completed application form, the Commissioner shall hold a written examination for the applicant, and may conduct investigations and propound interrogatories concerning the qualifications of the applicant, the residence, business affiliations, and any other matter which ~~he~~ the Commissioner deems necessary or advisable to determine compliance with the provisions of the Insurance Agents Licensing Act or for the protection of the public.

C. In advance of rendering any service as an insurance consultant as defined in the provisions of Section 1422 of this title, a written agreement on a form approved by the Commissioner shall be prepared by the consultant, and shall be signed by both the consultant and the client. The agreement shall outline the nature of the work to be performed by the consultant and shall state ~~his~~ the fee for the work. The consultant shall retain a copy of the agreement for not less than three (3) years after completion of the

services and shall make said copy available to the Insurance Commissioner upon request by the Insurance Commissioner.

D. No individual may concurrently hold a consultant's license and a license as an insurance agent, surplus lines insurance broker, or limited insurance representative.

E. No licensed consultant in the performance of activities as a consultant may employ, be employed by, be in partnership with, or receive any remuneration whatsoever from, any licensed insurance agent, surplus lines insurance broker, limited insurance representative, or insurer.

F. A license to act as an insurance consultant shall be valid for not longer than twelve (12) months and may be renewed annually.

G. All requirements and standards relating to the denial, revocation, or suspension of an insurance agent's license, including penalties, shall apply to the denial, revocation, and suspension of an insurance consultant's license to the extent practicable.

H. A consultant is obligated by the terms of ~~his~~ this license, to serve with objectivity and complete loyalty the interests of ~~his~~ a client alone; and render to ~~his~~ a client such information, counsel, and service as, within the knowledge, understanding, and opinion, in good faith, of the licensee, best serves the client's insurance needs and interests.

I. A duly licensed insurance agent or surplus lines insurance broker who acts as, or holds himself or herself out to be, an insurance consultant pursuant to the exemption from licensing as a consultant contained in the provisions of subsection A of this section shall nonetheless be subject to the provisions of subsections C and H of this section. However, nothing in this title shall prohibit the offset, in whole or in part, of the fee payable pursuant to the provisions of subsection C of this section by compensation otherwise payable to said duly licensed insurance agent or surplus lines insurance broker for acting as an agent or broker.

~~J. A nonresident of this state may be licensed as an insurance consultant without taking a written examination if the Commissioner of the state of residence of the applicant certifies by facsimile signature and seal that the applicant has passed a similar written examination for, or has been a continuous holder prior to the time said written examination was required of, a license similar to the license for which application is being made in this state.~~

~~K. Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents pursuant to the provisions of the Insurance Agents Licensing Act, the same requirements shall be imposed upon such residents of such other state or jurisdiction.~~

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1427A of Title 36, unless there is created a duplication in numbering, reads as follows:

Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents pursuant to the provisions of the Insurance Agents Licensing Act, the same requirements shall be imposed upon such residents of such other state or jurisdiction.

SECTION 80. AMENDATORY 36 O.S. 1991, Section 1428, as amended by Section 2, Chapter 248, O.S.L. 1993 (36 O.S. Supp. 1996, Section 1428), is amended to read as follows:

Section 1428. A. The Insurance Commissioner or the independent hearing examiner shall censure, suspend, or revoke, or refuse to issue, continue, or renew, any license issued or applied for

pursuant to the provisions of the Insurance Agents Licensing Act if, after notice to the licensee and, if the licensee requests a hearing, also to the insurer represented, the Commissioner or the independent hearing examiner finds as to the licensee any one or more of the following conditions:

1. Any materially untrue statement in the license application;
2. Any cause for which issuance of the license could have been refused had it existed and been known to the Commissioner at the time of issuance;
3. Any violation of or noncompliance with any insurance laws of this state, or any violation of any lawful rule, ~~regulation,~~ or order of the Commissioner;
4. Obtaining or attempting to obtain any license through misrepresentation or fraud;
5. Improperly withholding, misappropriating, or converting to ~~his~~ the licensee's own use any monies belonging to policyholders, insurers, beneficiaries, or others received in the course of ~~his~~ the licensee's insurance business;
6. Misrepresentation of the terms of any actual or proposed insurance contract;
7. Conviction of or plea of guilty or nolo contendere to:
 - a. a felony, or
 - b. a misdemeanor involving ~~moral turpitude~~ dishonesty;
8. The licensee has been found guilty of any unfair trade practice or fraud;
9. In the conduct of his or her affairs, the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself or herself to be incompetent, untrustworthy, or financially irresponsible;
10. The licensee has forged the name of another person to an application for insurance; or

11. The applicant has been found to have been cheating on an examination for an insurance license.

B. If the action by the Commissioner or the independent hearing examiner is to deny renewal or to deny an application for a license, ~~he~~ the Commissioner or independent hearing examiner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reasons for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner or independent hearing examiner within a reasonable time for a hearing before the Commissioner or independent hearing examiner to determine the reasonableness of the action of the Commissioner or independent hearing examiner.

C. The license of a ~~partnership or corporation~~ legal entity may be suspended, revoked, or refused if the Commissioner or independent hearing examiner finds that a violation by an individual licensee was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the ~~partnership or corporation~~ agency and the violation was not reported to the Commissioner nor corrective action taken in relation to the violation.

D. In addition to ~~or in lieu of~~ any applicable denial, censure, suspension, or revocation of a license, any person violating the provisions of the Insurance Agents Licensing Act may be subject to a civil ~~fine~~ penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. Said ~~fine~~ penalty may be enforced in the same manner in which civil judgments may be enforced.

E. Every licensee licensed pursuant to the provisions of the Insurance Agents Licensing Act shall keep at his or her place of business the usual and customary records pertaining to transactions authorized by his or her license. All records as to any particular

transactions shall be kept available and open to the inspection of the Commissioner at any time during business hours during the three (3) years immediately following the date of completion of the transaction. The Commissioner may require a financial or market conduct examination during any investigation of a licensee. The cost of such examination shall be apportioned among all of the appointing insurers of the licensee.

F. Every licensee licensed pursuant to the provisions of the Insurance Agents Licensing Act shall notify the Commissioner of the conviction of or plea of guilty or nolo contendere to a felony or misdemeanor ~~involving moral turpitude~~ within thirty (30) days after the plea is taken and also within thirty (30) days of the entering of an order of judgment and sentencing and shall notify the Commissioner of any administrative action taken against his or her license in another state within thirty (30) days of the entering of the administrative order in that state.

G. For one (1) year after notification by the Commissioner of an alleged violation, or for two (2) years after the last day the person was licensed, whichever is the lesser period of time, the Commissioner shall retain jurisdiction as to any person who cancels his or her agent's license or allows said license to lapse, or otherwise ceases to be licensed, if the person while licensed as an agent allegedly violated any provision of this Code. Notice and opportunity for hearing shall be conducted in the same manner as if the person still maintained an agent's license. If the Commissioner or independent hearing examiner determines that a violation of the provisions of this Code occurred, any order issued by the Commissioner or independent hearing examiner pursuant to said determination may become a permanent record in the file of the person and may be used in any future request by the person for licensure or reinstatement.

H. Files pertaining to investigations or legal matters which contain information concerning a current and ongoing investigation of allegations of violations of this Code by a licensed agent shall not be available for public inspection without proper judicial authorization; however, a licensed agent, under investigation for alleged violations of this Code, or against whom an action for alleged violations of this Code has been commenced, may view ~~files~~ evidence and complaints pertaining to ~~his~~ the investigation, other than privileged information, at reasonable times at the Commissioner's office. All qualification examination materials, booklets and answers for any license authorized to be issued by the Commissioner under any statute, shall not be available for public inspection.

SECTION 81. AMENDATORY 36 O.S. 1991, Section 1448, is amended to read as follows:

Section 1448. A. Every administrator shall be bonded.

B. Prior to issuance of a license as an administrator, the applicant shall file with the Insurance Commissioner and thereafter keep in effect as long as the license remains in effect, a surety bond in ~~the~~ an amount of sufficient to protect those with whom the administrator deals, as determined by the Insurance Commissioner, which amount shall not be less than Ten Thousand Dollars (\$10,000.00), and in a form acceptable to the Insurance Commissioner. The bond is intended to secure performance of the administrator in conformity with the laws, rules and regulations governing third-party administrators. The bond shall be for the benefit of parties injured by the actions of the administrator.

C. In no event shall the cumulative liability of the Surety be more than the penal sum of the bond ~~penalty of Ten Thousand Dollars (\$10,000.00)~~. In no event shall the Surety cancel the bond without first giving thirty (30) days' written notice to the principal and the Insurance Commissioner.

SECTION 82. AMENDATORY 36 O.S. 1991, Section 1450, is amended to read as follows:

Section 1450. A. No person shall act as or present himself or herself to be an administrator, as defined by the provisions of the Third-party Administrator Act, in this state, unless ~~said~~ the person holds a valid license as an administrator which is issued by the Insurance Commissioner.

B. An application for an administrator's license shall be in a form prescribed by the Commissioner and shall be accompanied by a fee of One Hundred Dollars (\$100.00). This fee shall not be refundable if the application is denied or refused for any reason by either the applicant or the Commissioner.

C. The administrator's license shall continue in force no longer than twelve (12) months from the original month of issuance. Upon filing a renewal form prescribed by the Commissioner, accompanied by a fee of One Hundred Dollars (\$100.00), ~~said~~ the license may be renewed annually for a one-year term. Late application for renewal of a license shall require a fee of double the amount of the original license fee. The administrator shall submit, together with the application for renewal, a list of the names and addresses of the persons with whom the administrator has contracted in accordance with Section 1443 of this title. The Commissioner shall hold this information confidential except as provided in Section 1443 of this title.

D. The administrator's license shall be issued or renewed by the Commissioner unless, after notice and opportunity for hearing, the Commissioner determines that the administrator is not competent, trustworthy, or financially responsible, or has had any insurance license denied for cause by any state, has been convicted or has pleaded guilty or nolo contendere to any felony or a misdemeanor involving ~~moral turpitude~~ dishonesty.

E. After notice and opportunity for hearing, and upon determining that the administrator has violated any of the provisions of the Oklahoma Insurance Code or upon finding reasons for which the issuance or nonrenewal of such license could have been denied, the Commissioner may either suspend or revoke an administrator's license or assess a ~~fine~~ civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each occurrence. The payment of the ~~fine~~ penalty may be enforced in the same manner as civil judgments may be enforced.

F. Any person who is acting as or presenting himself or herself to be an administrator without a valid license shall be subject, upon conviction, to a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for each occurrence. This fine shall be in addition to any other penalties which may be imposed for violations of the Oklahoma Insurance Code or other laws of this state.

G. Except as provided for in subsections E and F of this section, any person convicted of violating any provisions of the Third-party Administrator Act shall be guilty of a misdemeanor and shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00).

H. Any fees imposed pursuant to the provisions of this section and any ~~finer~~ civil penalties imposed pursuant to an administrative hearing order for violation of the provisions of the Third-party Administrator Act shall be deposited in the State Insurance Commissioner Revolving Fund.

SECTION 83. AMENDATORY 36 O.S. 1991, Section 1452, as amended by Section 6, Chapter 129, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1452), is amended to read as follows:

Section 1452. On or before June 1 of each year, all licensed administrators shall file an annual report prepared by a certified public accountant and which shall be subscribed and sworn to by the

president and attested to by the secretary or other proper officers substantiating that the information contained in the report is true and factual concerning each of the plans they administer which are governed pursuant to the provisions of the Third-party Administrator Act. The report shall include the name and address of each fund and a statement of fund equity, paid claims by the covered unit, the accumulated year-to-date paid claims, and the year-to-date reserve status. Failure of any third-party administrator to execute and file such annual reports as required by this section shall constitute cause, after notice and opportunity for hearing, for censure, suspension, or revocation of administrator licensure to transact business in this state, or a ~~fine~~ civil penalty of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00) for each occurrence, or both censure, suspension, or revocation and ~~fine~~ civil penalty.

SECTION 84. AMENDATORY 36 O.S. 1991, Section 1462, is amended to read as follows:

Section 1462. A. For purposes of the Oklahoma Life, Accident and Health Insurance Broker Act, "life or accident and health insurance broker" means ~~a person or corporation~~ an individual or legal entity who, for compensation, not being a licensed life or accident and health insurance agent or agency for the company in which a policy of life or accident and health insurance is placed, acts or aids in any manner in negotiating contracts of life or accident and health insurance or placing risks or effecting life or accident and health insurance for a party other than himself or herself. ~~A person or corporation~~ An individual or legal entity not licensed as a life or accident and health insurance broker who solicits a policy of life or accident and health insurance on behalf of others or transmits for others an application for a policy of life or accident and health insurance to or from an insurance company or offers or assumes to act in the negotiations of said life

or accident and health insurance shall be a life or accident and health insurance broker for the purposes of the Oklahoma Life, Accident and Health Insurance Broker Act and shall be liable for all the duties, requirements, liabilities, and penalties to which said licensed life or accident and health insurance brokers are subject.

B. Insurers for whom a life or accident and health insurance broker acts shall be liable for said life or accident and health insurance broker's actions as if said life or accident and health insurance broker were directly employed by the insurer.

SECTION 85. AMENDATORY 36 O.S. 1991, Section 1464, is amended to read as follows:

Section 1464. A. 1. To be licensed as a life or accident and health insurance broker, ~~a person or corporation~~ an individual or legal entity shall have been a licensed resident or nonresident insurance agent or agency in this state continuously for at least two (2) years immediately prior to ~~his~~ application and such agent's license shall remain in effect in order to maintain the broker's license.

2. Any applicant for a broker's license shall have no Oklahoma Insurance Code violations or record with the Insurance Commissioner or an insurance regulatory body of another state and shall not have been convicted, or pleaded guilty or nolo contendere to a felony or a misdemeanor involving ~~moral turpitude~~ dishonesty.

3. The fee for a life or accident and health insurance broker's license shall be Fifty Dollars (\$50.00), ~~and said~~ The license may be renewed each year for the same fee. Late application for renewal of a license shall require a fee of double the amount of the original current license fee. ~~Said~~ The fees shall be placed in the State Insurance Commissioner Revolving Fund.

B. 1. Every applicant for a life or accident and health insurance broker's license shall file with the Commissioner and, upon approval of ~~said applicant's~~ the application, maintain in force

while licensed and for at least two (2) years following termination of ~~said~~ the license, evidence satisfactory to the Commissioner of an errors and omissions policy covering the individual applicant in an amount of not less than One Hundred Thousand Dollars (\$100,000.00) annual aggregate for all claims made during the policy period, or covering the applicant under a blanket liability policy insuring other life or accident and health insurance agents or brokers in an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) annual aggregate for all claims made during the policy period.

2. Such policy shall be issued by an insurance company authorized to do business in this state, shall be continuous in form, and shall provide coverage acceptable to the Commissioner for errors and omissions of the life or accident and health insurance broker. The policy carrier shall notify the Commissioner of any lapse or termination of errors and omissions coverage.

3. Failure to maintain a policy in force shall result in automatic termination of licensure, and the license shall be returned by its lawful custodian to the Commissioner for further cancellation.

C. 1. Every applicant shall also provide a bond in favor of the people of Oklahoma executed by an authorized surety company and payable to any party injured under the term of the bond.

2. The bond shall be continuous in form and in the amount of Five Thousand Dollars (\$5,000.00) total aggregate liability, or more if the Commissioner deems it necessary. The bond shall be conditioned upon full accounting and due payments to the person or company entitled thereto as an incident of life or accident and health insurance transactions and funds brought into the life or accident and health insurance broker's possession under his or her license.

3. Said bond shall remain in force and effect until the surety is released from liability by the Commissioner or until the bond is

anceled by the surety. The surety may cancel the bond and be released from further liability thereunder upon thirty (30) days of written notice, in advance, to the Commissioner. Said cancellation shall not affect any liability incurred or accrued thereunder before the termination of the thirty-day period. Upon receipt of any notice of cancellation, the Commissioner shall immediately notify the licensee.

4. Said license shall automatically terminate upon there being no bond in force, and the license shall be returned by its lawful custodian to the Commissioner for further cancellation.

D. Life or accident and health insurance brokers shall be subject to the same violations, fines, and penalties as stated in Section 1428 of this title. Violations of the provisions of the Oklahoma Life, Accident and Health Insurance Broker Act may result, after notice and hearing, in censure, suspension, or revocation of license or a ~~fine~~ civil penalty of not less than One Hundred Dollars (\$100.00), nor more than One Thousand Dollars (\$1,000.00), or a combination thereof for each occurrence.

SECTION 86. AMENDATORY Section 1, Chapter 142, O.S.L. 1994 (36 O.S. Supp. 1996, Section 1629), is amended to read as follows:

Section 1629. Any insurer may make and invest in student loans guaranteed or reinsured as to principal and interest by a state sponsoring a higher education assistance corporation, to the extent of such guaranty or reinsurance, or by a private nonprofit student loan insurance guarantor or reinsurer whose assets are not less than Two Hundred Fifty Million Dollars (\$250,000,000.00) and who is authorized to act in such capacity by the United States Department of Education, to the extent of such guaranty or reinsurance. Any such investment shall not exceed, except with the consent of the Insurance Commissioner of the State of Oklahoma, twenty-five percent (25%) of the insurer's net admitted assets based upon the insurer's

most recent financial statement filed with the Insurance Commissioner's office.

SECTION 87. AMENDATORY 36 O.S. 1991, Section 1653, as last amended by Section 7, Chapter 79, O.S.L. 1993 (36 O.S. Supp. 1996, Section 1653), is amended to read as follows:

Section 1653. ~~(a) Filing Requirements.~~ A. No person other than the issuer shall make a tender offer for, request or invite tenders of, or enter into any agreement to exchange, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer or of any other person controlling a domestic insurer, if such other person, either directly or through his or her affiliates, is substantially engaged in the business of insurance, if, after the consummation of such action, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer. No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Insurance Commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner prescribed in subsection ~~(d)~~ D of this section.

~~(b) Content of Statement.~~ B. The statement to be filed with the Commissioner as required by subsection ~~(a)~~ A of this section shall be made under oath or affirmation and shall contain the following information: described in this subsection.

~~(1)~~ 1. The name and address of each person, referred to in this section as the "acquiring party", by whom or on whose behalf the

merger or other acquisition of control referred to in subsection ~~(a)~~
A of this section is to be effected, ~~and~~.

~~(i) if~~ a. If such person is an individual ~~;~~:

- (1) his or her principal occupation and all offices and positions held during the past five (5) years,
- (2) any conviction of a felony or misdemeanor involving dishonesty or breach of trust, during his or her lifetime, and
- (3) any conviction of crimes other than minor traffic violations and any administrative discipline imposed during the past ten (10) years ~~;~~.

~~(ii) if~~ b. If such person is not an individual ~~;~~:

- (1) a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence ~~;~~,
- (2) any conviction of a felony or misdemeanor involving dishonesty or breach of trust, during its existence, and any administrative discipline imposed during the past ten (10) years,
- (3) an informative description of the business intended to be done by such person and such person's subsidiaries ~~;~~, and
- (4) a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by ~~paragraph (i)~~ subparagraph a of this subsection paragraph.

~~(2)~~ 2. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

~~(3)~~ 3. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years for each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement. However, the Commissioner has the discretionary ability to waive the audit requirements set forth in this section based upon review of substantially similar financial disclosure statements submitted by the acquiring party.

~~(4)~~ 4. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

~~(5)~~ 5. The number of shares of any security referred to in subsection ~~(a)~~ A of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection ~~(a)~~ A of this section, including any requested documentary evidence of the same, and a statement as to the method by which the fairness of the proposal was arrived at.

~~(6)~~ 6. The amount of each class of any security referred to in subsection ~~(a)~~ A of this section which is beneficially owned or

concerning which there is a right to acquire beneficial ownership by each acquiring party.

~~(7)~~ 7. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection ~~(a)~~ A of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, including any required documentary evidence of the same. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

~~(8)~~ 8. A description of the purchase of any security referred to in subsection ~~(a)~~ A of this section during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

~~(9)~~ 9. Copies of all tender offers for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection ~~(a)~~ A of this section, and, if distributed, of additional soliciting material relating thereto.

~~(10)~~ 10. Such additional information as the Commissioner may require or by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

C. 1. If the person required to file the statement referred to in subsection ~~(a)~~ A of this section is a partnership, limited partnership, limited liability company, syndicate or other group or legal entity, the Commissioner may require that the information called for by ~~paragraphs (1) through (10) of this~~ subsection B of this section shall be given with respect to each partner ~~of such~~

~~partnership or limited partnership, or~~ each member of such entity,
syndicate or group, and each person who controls such partner or
member. If any such partner, member or person is a corporation or
the person required to file the statement referred to in subsection
~~(a)~~ A of this section is a corporation, the Commissioner may require
that the information called for by ~~paragraphs (1) through (10) of~~
~~this~~ subsection B of this section be given with respect to such
corporation, each officer and director of such corporation, and each
person who is directly or indirectly the beneficial owner of more
than ten percent (10%) of the outstanding voting securities of such
corporation.

2. If any material change occurs in the facts set forth in the
statement filed with the Commissioner and sent to such insurer
pursuant to this section, an amendment setting forth such change,
together with copies of all documents and other material relevant to
such change, shall be filed with the Commissioner and sent to such
insurer within two (2) business days after the person learns of such
change. Such insurer shall send such amendment to its shareholders.

~~(c) Alternative Filing Materials.~~ 3. If any offer, request,
invitation, agreement or acquisition referred to in subsection ~~(a)~~ A
of this section is proposed to be made by means of a registration
statement under the Securities Act of 1933, Public Law 22, or in
circumstances requiring the disclosure of similar information under
the Securities Exchange Act of 1934, Public Law 291, or under a
state law requiring similar registration or disclosure, the person
required to file the statement referred to in subsection ~~(a)~~ A of
this section may utilize such documents in furnishing the
information called for by that statement.

~~(d) Approval by Commissioner: Hearings.~~

~~(1)~~ D. 1. The Commissioner shall approve any merger or other
acquisition of control referred to in subsection ~~(a)~~ A of this

section unless, after a public hearing thereon, he or she finds that:

- ~~(i)~~ a. after the change of control, l the domestic insurer referred to in subsection ~~(a)~~ A of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed~~r~~ l
- ~~(ii)~~ b. the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein~~r~~ l
- ~~(iii)~~ c. the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders~~r~~ l
- ~~(iv)~~ d. the terms of the offer, request, invitation, agreement or acquisition referred to in subsection ~~(a)~~ A of this section are unfair and unreasonable~~r~~ l
- ~~(v)~~ e. the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest~~r~~ l or r
- ~~(vi)~~ f. the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders or the public to permit the merger or other acquisition of control.

~~(2)~~ 2. The public hearing referred to in ~~clause (1)~~ paragraph 1 of this subsection shall be held within thirty (30) days after the

statement required by subsection ~~(a)~~ A of this section is filed, or after the information required by the Commissioner has been supplied, and at least twenty (20) days' notice thereof shall be given by the Commissioner to the person filing the statement, unless the notice is waived. Not less than fourteen (14) days' notice of ~~such~~ the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner, unless the notice is waived in writing. The insurer shall give notice to its securityholders. The Commissioner shall make a determination within thirty (30) days after the conclusion of ~~such~~ the hearing. At ~~such~~ the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing, except by consent.

~~(3)~~ 3. The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

~~(e) Exemptions.~~ E. The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the Commissioner by order shall exempt therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

~~(f) Jurisdiction; Consent to Service of Process.~~ F. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state

who files a statement with the Commissioner under this section, and over all actions involving such person arising out of violations of this section, ~~and each.~~ Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Commissioner to be his true and lawful ~~attorney~~ agent upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Commissioner in triplicate and transmitted by certified mail with return receipt requested by the Commissioner to such person at his or her last-known address.

SECTION 88. AMENDATORY Section 8, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1996, Section 1658.2), is amended to read as follows:

Section 1658.2 ~~(a)~~ A. Any insurer failing, without just cause, to file any registration statement, summary, or other information as required in Article 16A of the Insurance Code shall be required, after notice and opportunity for hearing, to pay a penalty of Two Hundred Dollars (\$200.00) for each day's delay, to be recovered by the Insurance Commissioner ~~of Insurance~~ and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section shall be Twenty Thousand Dollars (\$20,000.00). The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

~~(b)~~ B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 1654 or subsection (e) of Section 1655 of ~~Title 36 of the Oklahoma Statutes~~ this title, or which violate Article 16A of the Insurance Code,

shall pay, in their individual capacity, a civil forfeiture of not more than Five Thousand Dollars (\$5,000.00) per violation, after notice and opportunity for hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

~~(e)~~ C. Whenever it appears to the Commissioner that any insurer subject to Article 16A of the Insurance Code or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 1655 of ~~Title 36 of the Oklahoma Statutes~~ this title and which would not have been approved had such approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and opportunity for hearing, the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

~~(d)~~ D. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of Article 16A of the Insurance Code, the Commissioner may submit such information to the district attorney for Oklahoma County for appropriate action. Any insurer which willfully violates Article 16A of the Insurance Code may be fined not more than ~~Ten Thousand Dollars (\$10,000.00)~~ Fifty Thousand Dollars (\$50,000.00). Any individual convicted of willfully violating a provision of Article 16A of the Insurance Code may be fined in the individual capacity of such person not more than ~~Five Thousand Dollars (\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or be imprisoned for not more than three (3) years or be subject to both such fine and imprisonment.

~~(e)~~ E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of ~~his~~ or her duties under Article 16A of the Insurance Code, upon conviction thereof, shall be imprisoned for not more than three (3) years or fined ~~Five Thousand Dollars (\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or be subject to both such fine and imprisonment. Any fines imposed shall be paid by the officer, director or employee in the individual capacity of such person.

SECTION 89. AMENDATORY Section 7, Chapter 246, O.S.L. 1996 (36 O.S. Supp. 1996, Section 1927.1), is amended to read as follows:

Section 1927.1 A. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. ~~Every~~ Before the members of the next class receive any payment, every claim in each class shall be ~~paid~~:

1. Paid in full;

2. Paid based upon an estimate of unliquidated liability, including any liability to any governmental entity, if approved by the court after notice and opportunity for a full hearing; or

3. Protected by adequate funds retained for such payment ~~before the members of the next class receive any payment.~~

Once such funds are ~~retained by the liquidator and~~ approved by the court and paid or retained by the liquidator, the insurer's estate shall have no further liability to members of that class except to the extent of the retained funds and any other undistributed funds. Payment of retained funds pursuant to court order under this section extinguishes the potential liability of the receiver to the United States or any other governmental entity. No subclasses shall be established within any class except as otherwise provided by law.

No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution of claims shall be ~~be~~ as provided in subsection B of this section.

B. 1. Class 1. The reasonable costs and expenses of administration expressly approved by the receiver, including but not limited to the following:

- a. the actual and necessary costs of preserving or recovering the assets of the insurer,
- b. compensation for all authorized services rendered in the conservation, rehabilitation or liquidation,
- c. any necessary filing or recordation fees,
- d. the fees and mileage payable to witnesses, ~~and~~ including experts, and other litigation costs and expenses,
- e. authorized reasonable attorney's fees and other professional services rendered in the conservation, rehabilitation or liquidation, ~~and~~ and
- f. any reasonable expenses that were incurred in furtherance of activities that provided a material economic benefit to the estate.

2. Class 2. The administrative expenses of guaranty associations. For purposes of this section these expenses shall be the reasonable expenses incurred by guaranty associations where the expenses are not payments or expenses which are required to be incurred as direct policy benefits in fulfillment of the terms of the insurance contract or policy, and that are of the type and nature that, but for the activities of the guaranty association otherwise would have been incurred by the receiver, including but not limited to evaluations of policy coverage, activities involved in the adjustment and settlement of claims under policies, including those of in-house or outside adjusters, and the reasonable expenses

incurred in connection with the arrangements for ongoing coverage through transfer to other insurers, policy exchanges or maintaining policies in force. The receiver may in his or her sole discretion approve as an administrative expense under this section any other reasonable expenses of the guaranty association if the receiver finds:

- a. the expenses are not expenses required to be paid or incurred as direct policy benefits by the terms of the policy, and
- b. the expenses were incurred in furtherance of activities that provided a material economic benefit to the estate as a whole, irrespective of whether the activities resulted in additional benefits to covered claimants.

The court shall approve such expenses unless it finds the receiver abused his or her discretion in approving the expenses. If the receiver determines that any administrative expenses of a guaranty association were not reasonable expenses, but were nevertheless paid out of a statutory deposit or the proceeds of any bond or other asset located in another state or foreign country, then the court shall adjudge the Class 3 claims of that association to have been paid to the extent of the amount of unreasonable expenses thus paid from those assets.

If the receiver determines that the assets of the estate will be sufficient to pay all Class 1 claims in full, Class 2 claims shall be paid ~~currently~~ as practicable, provided that the liquidator shall secure from each of the associations receiving disbursements pursuant to this section an agreement to return to the liquidator such disbursements, together with investment income actually earned on such disbursements, as may be required to pay Class 1 claims. No bond shall be required of any such association~~†~~.

3. Class 3. All claims under policies including claims of the federal or any state or local government for losses incurred ("loss claims") including third party claims, claims for unearned premiums, all claims of a guaranty association for payment of covered claims or covered obligations of the insurer and all claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity.

Notwithstanding the foregoing, the following claims shall be excluded from Class 3 priority:

- a. obligations of the insolvent insurer arising out of reinsurance contracts,
- b. obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this act. Notwithstanding the provisions of this paragraph, earned premium claims on policies, other than reinsurance agreements, shall not be excluded,
- c. obligations to insurers, insurance pools or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise,

- d. any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer,
- e. any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, and
- f. tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices~~†~~.

4. Class 4. Claims of the federal government other than those claims included in Class 3~~†~~.

5. Class 5. Debts due employees for services, benefits, contractual or otherwise due arising out of such reasonable compensation to employees for services performed to the extent that they do not exceed two (2) months of monetary compensation and represent payment for services performed within six (6) months before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one (1) year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees~~†~~.

6. Class 6. Claims of any person, including claims of state or local governments, except those specifically classified elsewhere in this section.

7. Class 7. Claims for commissions and service fees, and claims of attorneys for fees and expenses owed them by a person for services rendered in opposing a formal delinquency proceeding. In order to prove the claim, the claimant must show that the insurer which is the subject of the delinquency proceeding incurred such fees and expenses based on its best knowledge, information and

belief, formed after reasonable inquiry indicating opposition was in the best interests of the person, was well grounded in fact and was warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that opposition was not pursued for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation~~7.~~

~~7. Class 7.~~ 8. Class 8. Claims of any state or local government for a penalty or forfeiture, but only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph ~~8~~ 9 of this section~~7.~~

~~8. Class 8.~~ 9. Class 9. Surplus or contribution notes or similar obligations, premium refunds on assessable policies, interest on claims of Classes 1 through ~~7~~ 8 and any other claims specifically subordinated to this class~~7.~~and.

~~9. Class 9.~~ 10. Class 10. Claims of shareholders or other owners arising out of their capacity as shareholders or other owners, or arising in any other capacity or facts except as they may be qualified in Class 3 or 4 above.

~~B.~~ C. If any claimant of this state, another state or foreign country shall be entitled to or shall receive a dividend upon his or her claim out of a statutory deposit or the proceeds of any bond or other asset located in another state or foreign country, unless such deposit or proceeds shall have been delivered to the domiciliary liquidator, then the claimants shall not be entitled to any further dividend from the receiver until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal dividend upon their claims, and after such equalization, such

claimants shall be entitled to share in the distribution of further dividends by the receiver, along with and like all other creditors of the same class, wheresoever residing.

C. D. Upon the declaration of a dividend, the receiver shall apply the amount of the dividend against any indebtedness owed to the insurer by the person entitled to the dividend. There shall be no claim allowed for any deductible charged by a guaranty association or entity performing a similar function.

E. This section shall apply to pending and future claims in existing delinquency proceedings as well as to claims in delinquency proceedings arising after the effective date of this section.

F. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this section to the extent such other provisions or application can be given effect without the invalid provision or application.

SECTION 90. AMENDATORY 36 O.S. 1991, Section 2105, is amended to read as follows:

Section 2105. A. This section applies to stock and mutual insurers hereafter incorporated in Oklahoma. The Commissioner may by order waive these requirements in the event that a stock insurer is incorporated by the Commissioner as receiver of an insolvent company in this state as a company into which the company's foreign subsidiaries will be merged, in order to facilitate a sale of the insolvent insurer's subsidiaries, with the permission of the receivership court.

B. Five or more individuals of age of twenty-one (21) years or more may incorporate a stock insurer; ten or more such individuals may incorporate a mutual insurer. Not less than two-thirds (2/3) of the incorporators shall be citizens of the United States residing in Oklahoma. The articles of incorporation shall be signed and

acknowledged by the incorporators as deeds are required to be acknowledged.

C. The articles of incorporation shall state:

1. The name of the corporation; if a mutual, the word "mutual" shall be a part of the name.

2. The duration of its existence, which may be perpetual.

3. The kinds of insurance the corporation is formed to transact, according to the definitions thereof in this Code.

4. If a stock corporation, its authorized capital, the classes and number of shares into which divided, the par value of each such share, and the respective rights of each such class. Shares without par value shall not be authorized.

5. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred, which liability shall be as stated in the articles of incorporation but not less than one nor more than six times the premium for the member's policy at the annual premium rate for a term of one (1) year.

6. The number of directors, of which there shall be not less than five nor more than fifty, who shall conduct the affairs of the corporation, and the names and addresses of the corporation's first directors and officers for stated terms of office of not less than two (2) months nor more than one (1) year; provided, however, that the Commissioner of Insurance may approve amended articles of incorporation for a domestic insurer to permit the board of directors to consist of three or more directors.

7. The city or town in Oklahoma in which is to be located the principal place of business, and the counties, states, and countries in which business may be transacted.

8. The limitations, if any, on the corporation's indebtedness. 9. If a

10. Such other provisions, not inconsistent with law, as deemed appropriate by the incorporators.

11. The names and addresses of the incorporators.

12. The name and address of the person in Oklahoma upon whom all process in any action or proceeding may be served. Such designation may be changed or amended on authority of the Board of Directors evidenced by the filing of a certificate stating such change, executed by the President, attested by the Secretary, and filed with the Insurance Commissioner.

SECTION 91. AMENDATORY 36 O.S. 1991, Section 2611, is amended to read as follows:

Section 2611. A. Each such corporation shall annually, on or before the ~~last~~ first day of ~~February~~ March, file in the office of the Insurance Commissioner a full, true and complete statement of the condition of the corporation on the thirty-first day of December of the preceding year in such form as shall be prescribed by the Insurance Commissioner, and which shall be verified under oath by at least two of the principal officers of the corporation.

B. Whenever the Insurance Commissioner deems it pertinent or necessary, and at least once in each three (3) years, the Insurance Commissioner shall personally, or by ~~his~~ an authorized representative, visit each corporation, and thoroughly inspect and examine its financial condition, its ability to fulfill its obligations, whether it has complied with the provisions of the law, and any other facts relative to its business methods, management and the equity of its dealings with its members. The Insurance Commissioner may summon and administer the oath to and examine as witnesses, the directors, officers, trustees, agents, representatives and members of any corporation and any other person or persons relative to its affairs, transactions and condition. Any corporation so examined shall pay the proper charges for the per diem, traveling and other necessary expenses in connection therewith.

SECTION 92. AMENDATORY Section 26, Chapter 76, O.S.L. 1992 (36 O.S. Supp. 1996, Section 2726.1), is amended to read as follows:

Section 2726.1 A. Reports shall be filed in accordance with the following provisions:

1. Every society transacting business in this state shall annually, on or before the ~~last~~ first day of ~~February~~ March, unless for cause shown such time has been extended by the Insurance Commissioner, file with the Commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee therefor stated in Section 321 of ~~Article 3 of the Insurance Code~~ this title. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies ~~and as supplemented by additional information required~~ if adopted and as modified by the Commissioner.

2. As part of the annual statement herein required, each society shall, on or before the ~~last~~ first day of ~~February~~ March, file with the Commissioner a valuation of its certificates in force on the immediately preceding December 31; provided, the Commissioner may, in his or her discretion for cause shown, extend the time for filing such valuation for not more than two (2) calendar months. Such valuation shall be done in accordance with the standards specified in Section ~~25~~ 2725.1 of this ~~act~~ title. Such valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

B. A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit One Hundred Dollars (\$100.00) for each day during which such neglect continues, and, on notice by the Insurance Commissioner to that

effect, its authority to do business in this state shall cease while such default continues.

SECTION 93. AMENDATORY 36 O.S. 1991, Section 3612, is amended to read as follows:

Section 3612. A. Insurance contracts shall contain such standard provisions as are required by the applicable provisions of this Code pertaining to contracts of particular kinds of insurance. The Insurance Commissioner ~~or the Insurance Board, as the case may be,~~ may waive the required use of a particular standard provision in a particular insurance policy form if ~~(1) he or it:~~

1. The Commissioner finds such provision unnecessary for the protection of the insured and inconsistent with the purpose of the policy;i and ~~(2) the~~

2. The policy is otherwise approved ~~by him.~~

B. No policy shall contain any provision inconsistent with or contradictory to any standard provision used or required to be used, but the Insurance Commissioner ~~or the Insurance Board, as the case may be,~~ may approve any substitute provision which is not less favorable in any particular to the insured or beneficiary than the standard provisions or optional standard provisions otherwise required.

C. In lieu of the standard provisions required by the provisions of this Code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the Insurance Commissioner ~~or the Insurance Board, as the case may be.~~

D. This section does not apply with respect to the Oklahoma standard fire insurance policy.

SECTION 94. AMENDATORY 36 O.S. 1991, Section 4101.1, is amended to read as follows:

Section 4101.1 A. Insurance under any group life insurance policy issued pursuant to subsections A, C, and D, of Section 4101 of this title, may if seventy-five percent (75%) of the then insured employees or members who then have eligible dependents elect, be extended to insure the dependents, or any class or classes thereof, of each insured employee or member who so elects in amounts in accordance with a plan which precludes individual selection and for each insured dependent shall not be in excess of fifty percent (50%) of the insurance on the life of such employee or member. The term "dependent" is the spouse of the insured employee or member and an insured employee's or member's child under twenty-one (21) years of age or his or her child twenty-one (21) years or older who is attending an educational institution and relying upon the insured employee or member for financial support.

B. Premiums for the insurance on such dependents shall be paid by the policyholder either wholly from policyholder's funds, or from funds contributed wholly by the employees or members, or partly from funds contributed by the policyholder and partly by the employees or members.

C. A dependent pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or union member.

D. Notwithstanding the provisions of paragraph 7 of Section 4103(7) 4103 of this title, only one certificate need be issued for each family unit if a statement concerning any dependent's coverage is included in such certificate.

SECTION 95. AMENDATORY 36 O.S. 1991, Section 4112, is amended to read as follows:

Section 4112. ~~A.~~ An insurer shall pay the proceeds of any benefits under group life insurance policy not more than thirty (30) days after the insurer has received proof of death of the insured. If the proceeds are not paid within this period, the insurer shall

pay interest on the proceeds, at a rate which is not less than the current rate of interest on death proceeds on deposit with the insurer, from the date of death of the insured to the date when the proceeds are paid. Payment shall be deemed to have been made on the date a check, draft or other valid instrument which is equivalent to payment was placed in the U.S. mails in a properly addressed, postpaid envelope; or, if not so posted, on the date of delivery of such instrument to the beneficiary.

~~B. Subsection A of this section shall not apply to any group life insurance policy issued before October 1, 1978, which contains specific provisions to the contrary.~~

SECTION 96. AMENDATORY 36 O.S. 1991, Section 4427, as amended by Section 4, Chapter 136, O.S.L. 1993 (36 O.S. Supp. 1996, Section 4427), is amended to read as follows:

Section 4427. A. The Insurance Commissioner may adopt rules ~~and regulations~~ to implement the provisions of the Long-Term Care Insurance Act. The Commissioner may adopt rules ~~and regulations~~ that apply to all providers of long-term care insurance coverage, whether or not a provider is otherwise subject to the provisions of the Insurance Code, and that include, but are not limited to, standards for full and fair disclosure setting forth the manner, content, and required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definition of terms. The Commissioner may issue reasonable ~~regulations~~ rules to establish minimum standards for marketing practices, agent compensation, agent testing, penalties and reporting practices for long-term care insurance.

B. In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a ~~fine~~ civil penalty of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to Ten Thousand Dollars (\$10,000.00) whichever is greater.

~~C. In the exercise of all powers and the performance of all duties provided for in this section, the Commissioner shall comply with the procedures provided in the Administrative Procedures Act.~~

SECTION 97. AMENDATORY Section 32, Chapter 178, O.S.L. 1992 (36 O.S. Supp. 1996, Section 5111), is amended to read as follows:

Section 5111. A. A reinsurance intermediary, insurer or reinsurer found by the Insurance Commissioner, after notice and opportunity for a hearing conducted in accordance with the Administrative Procedures Act, to be in violation of any provision of the Reinsurance Intermediary Act, shall:

1. For each separate violation, pay a penalty in an amount not exceeding Five Thousand Dollars (\$5,000.00); and
2. Be subject to revocation or suspension of license.

B. In addition, if a violation of the Reinsurance Intermediary Act is committed by a reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

C. The decision, determination, or order of the Commissioner pursuant to this section shall be subject to judicial review pursuant to the Administrative Procedures Act.

D. Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided in the Oklahoma Insurance Code.

E. Nothing contained in the Reinsurance Intermediary Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to such persons.

SECTION 98. AMENDATORY Section 36, Chapter 178, O.S.L. 1992, as amended by Section 1, Chapter 86, O.S.L. 1994 (36 O.S. Supp. 1996, Section 5122), is amended to read as follows:

Section 5122. A. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection B, C, D, E or F of this section. If meeting the requirements of subsection D or E of this section, the requirements of subsection G of this section must also be met.

B. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

1. Files with the Insurance Commissioner evidence of its submission to this state's jurisdiction;

2. Submits to this state's authority to examine its books and records;

3. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state; and

4. Files annually with the Insurance Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement, and either:

- a. maintains a surplus as regards policyholders in an amount which is not less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has not been denied by the Insurance Commissioner within ninety (90) days of its submission, or
- b. maintains a surplus as regards policyholders in an amount less than Twenty Million Dollars (\$20,000,000.00) and whose accreditation has been approved by the Insurance Commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Insurance Commissioner after notice and opportunity for hearing.

D. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

1. Maintains a surplus as regards policyholders in an amount not less than Twenty Million Dollars (\$20,000,000.00); and
2. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of this subsection does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

E. 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified

United States financial institution, as defined in Section 5102 of this title, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Insurance Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the Insurance Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than Twenty Million Dollars (\$20,000,000.00). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition:

- a. the group shall maintain a trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group,
- b. the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members, and
- c. the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of Ten Billion Dollars (\$10,000,000,000.00), the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint trusteed surplus of which One Hundred Million Dollars (\$100,000,000.00) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Insurance Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

3. Such trust shall be established in a form approved by the Insurance Commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Insurance Commissioner. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

4. No later than ~~February 28~~ March 1 of each year the trustees of the trust shall report to the Insurance Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

F. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsections B, C, D or E of this section but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

G. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections D and E of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

2. To designate the Insurance Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

H. The provisions of this section are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 99. AMENDATORY 36 O.S. 1991, Section 6002, is amended to read as follows:

Section 6002. No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside of ~~Oklahoma~~ this state to cover Oklahoma persons or risks at any preferred rate or form other than that offered to persons not in such group, and the public generally, unless such form, plan or policy and the rates or premiums to be charged therefor have been submitted to and approved by the State ~~Insurance Board as not in conflict with Section 1 above, and the Oklahoma Insurance Code~~ for Property and Casualty Rates.

SECTION 100. AMENDATORY 36 O.S. 1991, Section 6031, is amended to read as follows:

Section 6031. A. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of equity security of an insurer or who is a director or officer of such insurer shall file in the office of the Insurance Commissioner within (10) ten days after ~~he becomes~~ becoming such beneficial owner, director or officer a statement, in such form and detail and subject to such rules ~~and regulations~~ as the Insurance Commissioner may prescribe, of the amount of all equity securities of such insurer of which he or she is the beneficial owner, director or officer, ~~and~~ within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the Insurance Commissioner a statement, in such form and detail and subject to such rules ~~and regulations~~ as the Insurance Commissioner may prescribe, indicating his or her ownership at the close of the calendar month and such changes in his or her ownership as have occurred during such calendar month.

B. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or

officer by reason of his or her relationship to such insurer, any profit realized by him or her from any purchase and sale or any sale and purchase, of any equity security of such insurer within any period of less than two (2) years subsequent to the incorporation of the insurer, shall ~~insure~~ inure to and be recoverable by the insurer, unless such equity security was acquired in good faith in connection with a debt previously contracted, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction.

C. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer or by the owner of any equity security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter. If no suit to recover such profit is so filed within six (6) months following the date such profit was realized or accrued or if at any time such suit is not diligently prosecuted, the Insurance Commissioner ~~shall~~ may file or prosecute such suit for and on behalf of the insurer at the expense of the insurer.

SECTION 101. AMENDATORY 36 O.S. 1991, Section 6032, is amended to read as follows:

Section 6032. A. Not more than forty-nine percent (49%) of the equity securities of any insurer shall be sold to any person, firm, corporation or trustee or nominee thereof where said insurer has been organized within two (2) years preceding the acquisition of such equity securities, unless the stock so sold or acquired shall have been at a price not less than the highest market value of such stock during two (2) years subsequent to incorporation or the highest price at which such stock is offered to the public during two (2) years subsequent to incorporation, whichever sum is the greater. Should more than forty-nine percent (49%) of the equity

securities of any insurer be sold to any person, firm, corporation or trustee or nominee thereof at a price less than the highest market price or the highest price such stock is offered to the public during the first two (2) years subsequent to incorporation, such excess between the purchase price and such highest market or highest offering price shall inure to and be recoverable by the insurer, unless such equity security was acquired in good faith in connection with a debt previously contracted, irrespective of any intention on the part of such purchaser in entering into such transaction.

B. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer or by the owner of any equity security of the insurer in the name of and in behalf of the insurer if the insurer shall fail or refuse to bring suit within sixty (60) days after request or shall fail to diligently prosecute the same thereafter. If no suit to recover the difference between the purchase price and such highest market or highest offered price is filed within six (6) months after the realization of such profit or after the expiration of two (2) years subsequent to the incorporation of the insurer, or if at any time such suit is not diligently prosecuted, the Insurance Commissioner ~~shall~~ may file or prosecute such suit for and on behalf of the insurer at the expense of the insurer.

~~Provided, however, if~~ C. If the Insurance Commissioner shall find from substantial evidence submitted ~~to him~~ that for the best interest of the policyholders or creditors of an insurer ~~that he~~ the Commissioner should approve some plan of merger, consolidation, rehabilitation or sale of such insurer but is prevented or hindered from doing so because of the provisions of ~~Section 2 hereof~~ this section, ~~he~~ the Commissioner may order that said transaction be exempt from the provisions of this ~~Section 2~~ section.

1994 (36 O.S. Supp. 1996, Section 6103.2), is amended to read as follows:

Section 6103.2 A. Unless otherwise indicated, the term "insurer" as used in Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this act title includes all ~~corporations~~ legal entities, associations, ~~partnerships~~ and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges, mutual benefit societies and insurance exchanges and syndicates.

B. The venue of any act listed in this section shall be Oklahoma County.

C. Any one of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract;

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

3. The taking or receiving of any application for insurance;

4. Maintaining any agency or office where any acts in furtherance of an insurance business are transacted, including but not limited to:

a. the execution of contracts of insurance with citizens of this or any other state,

b. maintaining files or records of contracts of insurance,

c. the processing of claims, and

d. the receiving or collection of any premiums, commissions, membership fees, assessments, dues or

other consideration for any insurance or any part thereof;

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

6. Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in:

- a. the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof,
- b. the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts,
- c. inspection of risks,
- d. fixing of rates or investigation or adjustment of claims or losses,
- e. the transaction of matters subsequent to effectuation of the contract and arising out of it, or
- f. in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state;

Provided, the provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to, surgical, chiropractic, physical therapy, speech pathology,

audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:

- a. any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or
- b. a multiple employer welfare arrangement as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1002(40) (A), as amended, that holds a valid license issued by the Insurance Commissioner or is exempt from state regulation pursuant to subsection B of Section 634 of ~~Title 36 of the Oklahoma Statutes~~ this title;

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;

9. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes; or

10. Any other transactions of business in this state by an insurer.

D. The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance;

2. Life, accident and health insurance or annuities provided to educational or scientific institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions or individuals engaged in the service of such institutions;

3. The lawful transaction of reinsurance by insurers; or

4. Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only

subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

SECTION 103. AMENDATORY Section 13, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.3), is amended to read as follows:

Section 6103.3 A. For the purposes of Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title, "person" shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, any similar group, entity or any combination of the foregoing acting in concert.

B. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title, except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state, this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

C. Any person which the Insurance Commissioner has reason to believe is doing any of the acts specified in Section ~~42~~ 6103.2 of this ~~act~~ title, upon written request by the Commissioner, shall immediately provide to the Commissioner such information as requested in relation to such acts.

D. A person or entity who violates any provision of Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title is subject to a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each act of violation and for each day of violation to be recovered as provided in this section.

E. Whenever the Commissioner has reason to believe or it appears that any person or insurer has violated or is threatening to violate any provision of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title or any rule promulgated pursuant thereto, or that any person or insurer acting in violation of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title has engaged in or is threatening to engage in any unfair method of competition or any unfair or deceptive act or practice as defined by Section 1201 et seq. of ~~Title 36 of the Oklahoma Statutes~~ this title or any rule promulgated pursuant thereto, the Commissioner may:

1. Issue an ex parte cease and desist order under the procedures provided by ~~Section 14~~ Sections 6103.5 and 6103.6 of this ~~act~~ title;

2. Institute in the district court of Oklahoma County a civil suit for injunctive relief to restrain the person from continuing the violation or threat of violation;

3. Institute in the district court of Oklahoma County a civil suit to recover a civil penalty as provided for in this section; or

4. Exercise any combination of the acts provided for in this subsection.

F. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title, the district court shall grant the injunctive relief and the injunction shall be issued without bond.

G. This section shall not be construed to limit the Insurance Commissioner to the remedies specified herein. It is the intent of the Legislature that persons engaging in the business of insurance without statutory authorization constitute an imminent peril to the public welfare and should immediately be stopped and enjoined from doing so, provided, the Insurance Commissioner and the State of Oklahoma should be able to choose at any time any available remedy

or action to bring about such a result without regard to prior proceedings under this section.

SECTION 104. AMENDATORY Section 14, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.4), is amended to read as follows:

Section 6103.4 A. 1. If the Insurance Commissioner has reason to believe or it appears that a person or insurer has violated or is threatening to violate the provisions of Sections ~~41~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title or a rule promulgated pursuant thereto, or that a person or insurer acting in violation of Sections ~~41~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title has engaged in or is threatening to engage in an unfair method of competition or an unfair or deceptive act or practice as defined in Section 1201 et seq. of ~~Title 36 of the Oklahoma Statutes~~ this title or a rule promulgated pursuant thereto, the Commissioner may set a hearing and shall serve on that person or insurer allegations of fact and a notice of hearing, in conformance with the Administrative Procedures Act and the Oklahoma Insurance Code, and the applicable rules thereof.

2. The hearing must be held not earlier than the 5th day or later than the 30th day after the date of service of the statement and notice unless the parties, with prior written approval of the Commissioner, mutually agree to some other arrangements. Process may be served by registered mail, return receipt requested, to the person's last-known address.

3. The hearing shall be conducted in the manner provided for contested cases under the Administrative Procedures Act and the Oklahoma Insurance Code, and the applicable rules thereof.

B. 1. After the hearing, the Commissioner may issue an order against the person or insurer charged with a violation requiring that the person or insurer immediately cease and desist from the violation.

2. A person aggrieved by a final order or decision of the Insurance Commissioner pursuant to Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

C. The Insurance Commissioner may promulgate reasonable rules necessary to carry out this section.

D. The Insurance Commissioner may proceed under Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title or under any other applicable law without regard to prior proceedings.

SECTION 105. AMENDATORY Section 15, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.5), is amended to read as follows:

Section 6103.5 The Insurance Commissioner may issue a cease and desist order, ex parte, if:

1. The Commissioner believes:

- a. an unauthorized person is engaging in the business of insurance in violation of Section ~~42~~ 6103.2 of this ~~act~~ title or in violation of a rule promulgated pursuant to Sections ~~44~~ 6103.1 through ~~24~~ 6103.11 of this ~~act~~ title, or
- b. an unauthorized person engaged in the business of insurance acting in violation of Section ~~43~~ 6103.3 of this ~~act~~ title is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Section 1201 et seq. of ~~Title 36 of the Oklahoma Statutes~~ this title or in violation of any rule promulgated pursuant thereto; or

2. It appears to the Commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury.

SECTION 106. AMENDATORY Section 16, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.6), is amended to read as follows:

Section 6103.6 A. On issuance of an emergency cease and desist order under Section ~~14~~ 6103.5 of this ~~act~~ title, the Insurance Commissioner shall serve on the person affected by the order, by registered or certified mail, return receipt requested, to the person's last-known address, or by other lawful means, an order that contains a statement of the charges and require the person immediately to cease and desist from the acts, methods or practices stated.

B. 1. If a person affected by an emergency cease and desist order seeks to contest that order, the person may request a hearing before the Commissioner. The person affected must request the hearing not later than the 30th day after the date on which the person receives the order. A request to contest an order must be in writing and directed to the Commissioner and must state the grounds for the request to set aside or modify the order.

2. On receiving the request for a hearing, the Commissioner shall serve notice of the time and place of the hearing at which the person requesting the hearing shall have the opportunity to show cause why the order should not be affirmed. The hearing is to be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

3. Pending the hearing, an emergency cease and desist order continues in full force and effect unless the order is stayed by the Commissioner.

4. The hearing on the order shall be conducted according to the procedures for contested cases under the Administrative Procedures Act.

5. At the hearing, the Commissioner shall affirm, modify or set aside in whole or in part the emergency cease and desist order.

C. A person aggrieved by a final order and decision of the Commissioner pursuant to Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

D. The Commissioner may recover reasonable attorney's fees if judicial action is necessary for enforcement of the order.

E. A cease and desist order is final thirty-one (31) days after the date it is received if the person affected by the order does not request a hearing as provided by subsection B of this section.

SECTION 107. AMENDATORY Section 17, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.7), is amended to read as follows:

Section 6103.7 A. 1. If the Insurance Commissioner reasonably believes that a person has violated a cease and desist order issued under Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title, the Commissioner may:

- a. initiate individual proceedings under this section pursuant to the Administrative Procedures Act,
- b. initiate proceedings to revoke the certificate of authority of the person affected by a ruling or action issued under Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title, or
- c. pursue any other action the Commissioner deems appropriate under applicable law.

2. In determining whether a cease and desist order has been violated, the Commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order. The hearing shall be conducted according to the procedure for contested cases under the Administrative Procedures Act.

B. After a hearing, if the Commissioner determines that a cease and desist order has been violated, the Commissioner may:

1. Impose a civil penalty of Twenty-five Thousand Dollars (\$25,000.00) for each act of violation;

2. Direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the Commissioner, to all Oklahoma residents, Oklahoma insureds, and entities operating in Oklahoma damaged by the violation or failure to comply; or

3. Both impose the penalty and direct restitution.

C. A person aggrieved by a final order or decision of the Commissioner pursuant to Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes. The Commissioner may recover reasonable attorney's fees if judicial action is necessary to enforce an order.

SECTION 108. AMENDATORY Section 18, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.8), is amended to read as follows:

Section 6103.8 If a person fails to pay a penalty assessed under the provisions of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title, the Insurance Commissioner may:

1. Institute in the district court of Oklahoma County a civil suit to recover the civil penalty; or

2. Pursuant to the Administrative Procedures Act, cancel or revoke any permit, license, certificate of authority, certificate of registration or other authorization issued pursuant to the Oklahoma Insurance Code.

SECTION 109. AMENDATORY Section 19, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.9), is amended to read as follows:

Section 6103.9 A. 1. Service of process on a person as defined in Section ~~13~~ 6103.3 of this ~~act~~ title in a civil suit for injunctive relief under Section ~~13~~ 6103.3 of this ~~act~~ title or to recover a civil penalty under Section ~~17~~ 6103.7 of this ~~act~~ title shall be made by serving the Secretary of State as agent of the person.

2. Service of process shall be made pursuant to Section 2004 of Title 12 of the Oklahoma Statutes. The Insurance Commissioner shall not pay a fee. Persons served under the provisions of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title shall not be considered foreign insurance companies.

B. Nothing contained in this section shall limit or abridge the right to serve any process upon any person in any other manner now or hereafter permitted by law.

SECTION 110. AMENDATORY Section 20, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.10), is amended to read as follows:

Section 6103.10 The Insurance Commissioner may promulgate reasonable rules necessary to carry out the provisions of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title.

SECTION 111. AMENDATORY Section 21, Chapter 294, O.S.L. 1994 (36 O.S. Supp. 1996, Section 6103.11), is amended to read as follows:

Section 6103.11 The Insurance Commissioner may proceed solely under the provisions of Sections ~~11~~ 6103.1 through ~~21~~ 6103.11 of this ~~act~~ title or under said provisions in conjunction with other applicable law.

SECTION 112. AMENDATORY 36 O.S. 1991, Section 6202, is amended to read as follows:

Section 6202. Terms used in the Insurance Adjusters Licensing Act are defined as follows:

1. "Commissioner" means the Insurance Commissioner of the state or his or her lawfully authorized representative;

2. "Adjuster" means either an insurance adjuster or a public adjuster;

3. "Insurance adjuster" means any person, firm, association, company, or ~~corporation~~ legal entity that acts in this state for an insurer, and that investigates claims, adjusts losses, negotiates claim settlements, or performs incidental duties arising pursuant to the provisions of insurance contracts on behalf of an insurer and includes:

- a. "independent adjusters", meaning any insurance adjuster that suggests or presents to the insurance industry and public that said adjuster acts as an adjuster for a fee or other compensation, and
- b. "company or staff adjusters", meaning adjusters who engage in the investigation, adjustment, and negotiation of claims as salaried employees of an insurer;

4. "Public adjuster" means any person, firm, association, company, or corporation that suggests or presents to members of the public that said public adjuster represents the interests of an insured or third party for a fee or compensation. Public adjusters may investigate claims and negotiate losses to property only; and

5. "Insurer" means any authorized insurance company, corporation, reciprocal group, mutual group, underwriting association or bureau, or any combination thereof, writing or underwriting any insurance contracts.

SECTION 113. AMENDATORY 36 O.S. 1991, Section 6218, is amended to read as follows:

Section 6218. A. In the event of a catastrophe, the Insurance Commission may declare an emergency to exist, and in the event of such a declaration, the Commissioner may issue a license as an

emergency adjuster to any resident or nonresident applicant. An individual licensed as an emergency adjuster pursuant to this section may only adjust claims related to the catastrophe. Said applicant shall not have to be a licensed adjuster. An applicant for this license shall be certified in the manner prescribed by the Commissioner by an adjuster licensed in this state or by an insurer who maintains an office in this state and is licensed to do business in this state. A licensed adjuster or insurer who certifies an applicant for this license shall be responsible for any losses caused by the applicant or for any improper claim handling practices committed by the applicant. The employer of this applicant shall certify the application for license as an emergency adjuster to the Commissioner within five (5) days after the applicant begins working as an emergency adjuster for said employer. The license as an emergency adjuster shall remain in force for not more than ninety (90) days from the date of issue, unless extended for an additional ninety (90) days by the Commissioner.

B. The Commissioner may suspend or revoke the right of any person acting as an adjuster or an emergency adjuster in this state pursuant to the authority derived from the provisions of the Insurance Adjusters Licensing Act to continue to adjust claims in this state after a hearing on the suspension or revocation if the Commissioner finds that said person has engaged in any of the practices forbidden to a licensed adjuster. Notice of the hearing on said suspension or revocation shall be given personally or shall be sent by mail to the address stated in the registration. A duplicate copy of the notice shall be given to the insurer.

SECTION 114. AMENDATORY 36 O.S. 1991, Section 6403, is amended to read as follows:

Section 6403. Failure of any insurer to comply with Section 6401 et seq. of this act title may subject the insurer at the discretion of the Insurance Commissioner, after notice and

opportunity for hearing, to penalties of censure, suspension or revocation of certification of authority or a ~~fine~~ civil penalty of up to Five Thousand Dollars (\$5,000.00) for each occurrence or by both such ~~fine~~ penalty and censure, suspension or revocation of certificate.

SECTION 115. AMENDATORY 36 O.S. 1991, Section 6422, is amended to read as follows:

Section 6422. Members of the Market Assistance Association, whether a voluntary or statutory program, shall be required to participate in all assessments and writings of the Association. Failure to participate shall, after notice and opportunity for hearing before the Insurance Commissioner, result in a censure, suspension or revocation of certificate of authority or a ~~fine~~ civil penalty up to Five Thousand Dollars (\$5,000.00) for each occurrence or by both such ~~fine~~ penalty and censure, suspension or revocation of certificate of authority.

SECTION 116. AMENDATORY 36 O.S. 1991, Section 6460, is amended to read as follows:

Section 6460. The Insurance Commissioner of this state is authorized to make use of any of the powers established pursuant to the Insurance Code of this state to enforce the laws of this state so long as those powers are not specifically preempted by ~~the federal Product Liability Risk Retention Act of 1981, as amended by the federal Liability Risk Retention Act of 1986.~~ Such powers shall ~~include, but are not limited to, the Commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the Commissioner of this state shall rely on the procedural law and regulations of the Insurance Code. The injunctive authority of the Commissioner of this state in regard to risk retention groups is~~

~~restricted by the requirement that any injunction be issued by a court of competent jurisdiction statutes.~~

SECTION 117. AMENDATORY 54 O.S. 1991, Section 144, is amended to read as follows:

Section 144. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking ~~and insurance~~.

SECTION 118. AMENDATORY 54 O.S. 1991, Section 307, is amended to read as follows:

Section 307.

NATURE OF BUSINESS

A limited partnership may carry on any business that a partnership without limited partners may carry on except banking ~~and insurance~~.

SECTION 119. AMENDATORY 59 O.S. 1991, Section 1305, as last amended by Section 1, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1305), is amended to read as follows:

Section 1305. A. The application for license to serve as a bail bondsman must affirmatively show that the applicant:

1. Is a person who has reached the age of twenty-one (21) years;
2. Is of good character and reputation;
3. Has not been previously convicted of, or pled guilty or nolo contendere to, a felony, or a misdemeanor involving ~~moral turpitude~~ dishonesty;
4. Is a citizen of the United States;
5. Has been a bona fide resident of the state for at least one (1) year;
6. Will actively engage in the bail bond business; and
7. Has knowledge or experience, or has received instruction in the bail bond business.

B. The applicant shall apply in writing on forms prepared and supplied by the Insurance Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license pursuant to Section 1301 et seq. of this title, or on any renewal thereof, relating to qualifications, residence, prospective place of business and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

C. An applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars (\$250.00) with the application, a complete set of the applicant's fingerprints and two recent credential-size full face photographs of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The applicant shall provide with the application an investigative fee of One Hundred Dollars (\$100.00) with which the Commissioner will conduct an investigation of the applicant. All fees shall be nonrefundable.

D. Failure of the applicant to secure approval of the Commissioner shall not preclude the applicant from reapplying a second time, but a second application shall not be considered by the Commissioner within three (3) months subsequent to the date upon which the Commissioner denied the last application.

SECTION 120. AMENDATORY 59 O.S. 1991, Section 1310, as amended by Section 3, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1310), is amended to read as follows:

Section 1310. A. The Insurance Commissioner may deny, censure, suspend, revoke, or refuse to renew any license issued under Section 1301 et seq. of this title for any of the following causes:

1. For any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner;
2. Violation of any laws of this state or any lawful rule, regulation, or order of the Commissioner relating to bail in the course of dealing under the license issued by the Commissioner;
3. Material misstatement, misrepresentation, or fraud in obtaining the license;
4. Misappropriation, conversion, or unlawful withholding of monies or property belonging to insurers, insureds, or others and received in the conduct of business under the license;
5. Conviction of, or having entered a plea of guilty or nolo contendere to, a felony, or a misdemeanor involving ~~moral turpitude~~ dishonesty;
6. Fraudulent or dishonest practices in conducting business under the license;
7. Failure to comply with, or violation of any proper order, rule, or regulation of the Commissioner;
8. Recommending any particular attorney-at-law to handle a case in which the bail bondsman has caused a bond to be issued under the terms of Section 1301 et seq. of this title;
9. When, in the judgment of the Commissioner, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on the bail bond business or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or dividing with someone other than a licensed bail bondsman, or offering to divide commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for this conduct is found by the

Commissioner to be a source of detriment, injury, or loss to the public;

10. For any materially untrue statement in the license application;

11. Misrepresentation of the terms of any actual or proposed bond;

12. For forging the name of another to a bond or application for bond;

13. Cheating on an examination for licensure;

14. Soliciting business in or about any place where prisoners are confined, arraigned or in custody;

15. For paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer, or officer of the law, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof, or to secure delay or other advantage. This shall not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant;

16. For paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond;

17. For paying a fee or rebating or giving or promising anything of value to the principal or anyone in the principal's behalf;

18. Participating in the capacity of an attorney at a trial or hearing of one on whose bond the licensee is surety;

19. Accepting anything of value from a principal, other than the premium; provided, the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned immediately upon final termination of liability on

the bond. Collateral security or other indemnity required by the bondsman shall be reasonable in relation to the amount of the bond;

20. Willful failure to return collateral security to the principal when the principal is entitled thereto;

21. For failing to notify the Commissioner of a change of address, as noted on the license, within five (5) days after a change is made, or failing to respond to a properly mailed notification within a reasonable amount of time;

22. For failing to file a report as required by Section 1314 of this title;

23. For filing a materially untrue monthly report;

24. For filing false affidavits regarding cancellation of the appointment of an insurer;

25. Forcing the Commissioner to withdraw deposited monies to pay forfeitures or any other outstanding judgments;

26. For failing to pay any fees to a district court clerk as are required by this title or failing to pay any fees to a municipal court clerk as are required by this title or by Section 28-127 of Title 11 of the Oklahoma Statutes;

27. For uttering an insufficient check to the Insurance Commissioner for any fees, fines or other payments received by the Commissioner from the bail bondsman; and

28. For failing to pay travel expenses for the return of the defendant to custody once having guaranteed the expenses pursuant to the provisions of subparagraph d of paragraph 3 of subsection C of Section 1332 of this title.

B. In addition to, ~~or in lieu of,~~ any applicable denial, censure, suspension or revocation of a license, any person violating any provisions of Sections 1301 et seq. of this title may be subject to a civil ~~fine~~ penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. This fine may be enforced in the same manner in which

civil judgments may be enforced. Any order for civil penalties entered by the Commissioner or authorized decision maker for the Insurance Department which has become final may be filed with the clerk of the court of Oklahoma County and shall then be enforced by the judges of said county.

C. No bail bondsman or bail bond agency shall advertise as or hold itself out to be a surety company.

D. If any bail bondsman is convicted by any court of a violation of any of the provisions of this act, the license of the individual shall therefore be deemed to be immediately revoked, without any further procedure relative thereto by the Commissioner.

E. ~~The Commissioner shall retain jurisdiction for one (1) year after notification of an alleged violation as to any person who cancels a bail bondsman's license or allows a license to lapse, if the alleged violation occurred while the person was licensed as a bondsman~~ For one (1) year after notification by the Commissioner of an alleged violation, or for two (2) years after the last day the person was licensed, whichever is the lesser period of time, the Commissioner shall retain jurisdiction as to any person who cancels his bail bondsman's license or allows the license to lapse, or otherwise ceases to be licensed, if the person while licensed as a bondsman allegedly violated any provision of this title. Notice and opportunity for hearing shall be conducted in the same manner as if the person still maintained a bondsman's license. If the Commissioner or hearing examiner determines that a violation of the provisions of Sections 1301 through 1340 of this title occurred, any order issued ~~by the Commissioner~~ pursuant to the determination ~~may~~ shall become a permanent record in the file of the person and may be used if the person should request relicensure or reinstatement.

F. Any law enforcement agency, district attorney's office, court clerk's office, or insurer that is aware that a licensed bail bondsman has been convicted of a ~~felony, or a crime involving moral~~

~~turpitude,~~ or has pleaded guilty or nolo contendere to a any crime as ~~as~~ ~~mentioned,~~ shall notify the Insurance Commissioner of that fact.

SECTION 121. AMENDATORY 59 O.S. 1991, Section 1315, as amended by Section 49, Chapter 274, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1315), is amended to read as follows:

Section 1315. A. The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond:

1. Persons convicted, ~~or who are within the term of sentencing for pleading guilty or nolo contendere to a felony of,~~ or who have pled guilty or nolo contendere to, a felony or a misdemeanor involving dishonesty;

2. Jailers;

3. Police officers;

4. Committing judges;

5. Municipal or district court judges;

6. Prisoners;

7. Sheriffs, deputy sheriffs and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners;

8. Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an officer, director or stockholder of any corporation holding such a permit;

9. Any person who is an agent, employee, or owner of any establishment at which low-point beer as defined by Section 163.2 of Title 37 of the Oklahoma Statutes is sold for on-premises consumption;

10. Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent, officer, or employee of any such licensee;

11. Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided; and

12. Any person, agent, or employee of retail liquor package stores.

B. This shall not apply to a sheriff, deputy sheriff, police officer or officer of the law who is not on duty and who assists in the apprehension of any defendant.

C. The provisions of this section shall not apply to persons possessing permits or licenses pertaining to low-point beer or alcoholic beverages, as defined in Sections 163.2 and 506 of Title 37 of the Oklahoma Statutes, which were issued prior to May 23, 1984. However, no one shall be permitted to maintain an office for conducting bail bonds business where low-point beer or alcoholic beverages are sold for on-premises consumption.

SECTION 122. AMENDATORY 59 O.S. 1991, Section 1332, as last amended by Section 5, Chapter 357, O.S.L. 1995 (59 O.S. Supp. 1996, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of an undertaking, the court before which the cause is pending shall declare the undertaking and any money, property or securities that have been deposited as bail, forfeited on the day the defendant failed to appear. In the event of the forfeiture of a bail bond the clerk of the trial court shall, within thirty (30) days after the forfeiture, by mail with return receipt requested, mail a true and correct copy of the order and judgment of forfeiture to the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy of the order and judgment of forfeiture on file.

B. The order and judgment of forfeiture shall be on forms prescribed by the Administrative Director of the Courts.

C. 1. The bail bondsman shall have ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody.

2. When the court record indicates that the defendant is returned to custody in the jurisdiction where forfeiture occurred, within the ninety-day period, the court clerk shall enter a minute vacating the forfeiture and exonerating the bond. If the defendant has been timely returned to custody, but this is not reflected by the court record, the court shall vacate the forfeiture and exonerate the bond.

3. For the purposes of this section, return to custody shall mean:

- a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman,
- b. an appearance of the defendant in open court in the court where charged,
- c. arrest or incarceration within this state of the defendant by law enforcement personnel, or
- d. arrest or incarceration of the defendant in any other jurisdiction, provided the bondsman has requested that a hold be placed on the defendant in the jurisdiction wherein the forfeiture lies, and has guaranteed reasonable travel expenses for the return of the defendant.

4. In addition to the provisions set forth in paragraphs 2 and 3 of this subsection, the court may vacate the forfeiture and exonerate the bond in any felony case in which:

- a. the bondsman has requested in writing of the sheriff's department in the county where the forfeiture occurred that the defendant be entered into the computerized records of the National Crime Information Center, and

- b. the request has not been honored within thirty (30) business days of the receipt of the written request by the department.

5. The court may, in its discretion, vacate the order of forfeiture and exonerate the bond where good cause has been shown for:

- a. the defendant's failure to appear, or
- b. the bondsman's failure to return the defendant to custody within the required ninety (90) days.

D. 1. If, within ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made:

- a. the defendant is not returned to custody, or
- b. the forfeiture has not been stayed,

the bondsman and if applicable, the insurer, whose risk it is, shall deposit cash or other valuable securities in the face amount of the bond with the court clerk ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made; provided, this provision shall not apply if the defendant has been returned to custody within the ninety-day period and the court has failed to vacate the forfeiture pursuant to paragraphs 2 through 5 of subsection C of this section.

2. After the order and judgment has been paid, the bondsman and if applicable, the insurer, whose risk it is, may file a motion for remitter within one hundred eighty (180) days from receipt of the order and judgment of forfeiture, or mailing of the notice if no receipt is made, and upon the event the defendant is returned to custody within ninety (90) days after payment is due, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

3. If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day from the date of

service of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, then the court clerk shall notify the Insurance Commissioner by sending a certified copy of the order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested.

4. The Insurance Commissioner shall:

- a. in the case of a surety bondsman, immediately cancel the license privilege and authorization of the insurer to do business within the State of Oklahoma and cancel the appointment of all surety bondsman agents of the insurer who are licensed by Section 1301 et seq. of this title, and
- b. in the case of a professional bondsman, withdraw the face amount of the said forfeiture from the deposit provided in Section 1306 of this title. The Commissioner shall then immediately direct the professional bondsman, by mail with return receipt requested, to make additional deposits to bring the original deposit to the required level. Should the professional bondsman, after being notified, fail to make an additional deposit within ten (10) days from the receipt of notice, or mailing of notice if no receipt is made, the license shall be revoked and all sums presently on deposit shall be held by the Commissioner to secure the face amounts of bonds outstanding. Upon release of the bonds, any amount of deposit in excess of the bonds shall be returned to the bondsman; provided, the bail bondsman shall have had notice as required by the court, at the place of the bondsman's business, of the trial or hearing of the defendant named in the bond. The notice shall

have been at least ten (10) days before the required appearance of the defendant, unless the appearance is scheduled at the time of execution of the bond.

Notwithstanding the foregoing, the bondsman shall be deemed to have had notice of the trial or hearing if the defendant named in the bond shall have been recognized back in open court to appear at a date certain for the trial or hearing.

5. If the actions of any bail bondsman force the Insurance Commissioner to withdraw monies, deposited pursuant to Section 1306 of this title, to pay past due executions more than two (2) times in a consecutive twelve-month period, then the license of the professional bondsman shall, in addition to other penalties, be suspended automatically for one (1) year or until a deposit equal to all outstanding forfeitures due is made. The deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall an increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

E. 1. If the defendant's failure to appear was the result of being in the custody of a court other than the court in which the appearance was scheduled, forfeiture shall not lie. Upon proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the defendant was in custody of another court on the day the defendant was due to appear, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

2. Where the defendant is in the custody of another court, the district attorney or municipal attorney shall direct a hold order to the official, judge, court or law enforcement agent wherein the defendant is in custody; provided, that all expenses accrued as a result of returning the custody of the defendant shall be borne by the bondsman.

F. The district attorney or municipal attorney shall not receive any ~~fees~~, bonuses or other monies or property for or by reason of services or actions in connection with or collection of bond forfeitures under the provisions of Section 1301 et seq. of this title, except that the court may award a reasonable attorney fee in favor of the prevailing party for legal services in any civil action or proceeding to collect upon a judgment of forfeiture.

G. The above procedures shall be subject to the bondsman's rights of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture pursuant to the procedures for appeal set forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes. To stay the execution of the order and judgment of forfeiture, the bondsman or insurer shall comply with the provisions set forth in Section ~~968.1~~ 990.4 of Title 12 of the Oklahoma Statutes.

H. For municipal courts of record, the above procedures are criminal in nature and ancillary to the criminal procedures before the trial court and shall be subject to the bondsman's right of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture by the municipal courts of record to the Court of Criminal Appeals.

SECTION 123. AMENDATORY 85 O.S. 1991, Section 177, as last amended by Section 3, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 1996, Section 177), is amended to read as follows:

Section 177. A. 1. There is hereby established with the State Treasurer a Workers' Compensation Administration Fund to be used for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation.

2. No money on deposit with the State Treasurer to the credit of the Workers' Compensation Administration Fund shall be expended except pursuant to legislative appropriation.

B. For the purpose of providing funds for the Workers' Compensation Administration Fund, each mutual or interinsurance

association, stock company, the State Insurance Fund or other insurance carrier writing workers' compensation insurance in this state or providing a workers' compensation equivalent insurance product as provided in Section 4 65 of this ~~act~~ title shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible.

Contributions made by insurance carriers and the State Insurance Fund, under the provisions of this section, to the Workers' Compensation Administration Fund shall be considered ~~losses~~ for the purpose of computing workers' compensation rates.

C. When an employer is authorized to become a self-insurer, the Administrator as directed by the Court shall so notify the Oklahoma Tax Commission, giving the effective date of such authorization. The Oklahoma Tax Commission shall then assess and collect from the employers carrying their own risk a tax at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such tax shall be payable by the employers and collected by the Oklahoma Tax Commission according to the provisions of this section regarding payment and collection of the tax created in subsections B, D, E and F of this section.

D. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax

Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of this title.

E. The Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the Workers' Compensation Administration Fund all monies collected under the provisions of this section.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Workers' Compensation Administration Fund.

SECTION 124. RECODIFICATION 36 O.S. 1991, Sections 351, as amended by Section 22 of this act, and 1425.1, as last amended by Section 60 of this act, shall be recodified, respectively, as Sections 1938 and 1426A of Title 36 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 125. REPEALER 36 O.S. 1991, Sections 107.2, 310.1, 310.2, 312, 314, 315, 316, 318, 341.1, 344, 623, 903.1, 1259, as amended by Section 12, Chapter 342, O.S.L. 1994, and as renumbered by Section 20, Chapter 342, O.S.L. 1994, 1424, as last amended by Section 3, Chapter 246, O.S.L. 1996, 1424.2, 1426.1, 1429, 1453, Sections 11 and 19, Chapter 178, O.S.L. 1992, 1812, 2615, 2620, 2663, 2683, 2691.13, Section 36, Chapter 76, O.S.L. 1992, 3623 and 6152 (36 O.S. Supp. 1996, Sections 1250.12, 1424, 1659.3, 1677 and 2736.1), are hereby repealed.

SECTION 126. This act shall become effective November 1, 1997.

46-1-7330

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