ENGROSSED HOUSE
BILL NO. 2132 By: Ramsey

An Act relating to insurance; requiring disclosure of certain information related to assets of an insurer; requiring certain reporting of assets; exempting certain exchanges of assets from reporting requirements; specifying exchanges of assets subject to reporting requirements; stating type of information required in report; requiring reporting of certain action relating to reinsurance agreements; providing exemption from reporting requirement; stating type of information required on report; requiring an annual actuary opinion on reserves of certain life insurance companies; requiring an actuarial opinion on level of reserves; stating provisions for opinion; providing for confidentiality of certain material and opinion; defining certain term; amending 36 O.S. 1991, Section 2105, which relates to stocks and mutual insurers; changing the minimum number of directors for stock and mutual insurers; providing for codification; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

1. The Insurance Commissioner may share such information with insurance departments of other states;

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

3. The Insurance Commissioner may publish all or any part of the information, without prior written consent, in the manner the Commissioner may deem appropriate if the Commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by publication.

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

A. No acquisitions or dispositions of assets need be reported pursuant to Section 1 of this act if the acquisitions or dispositions are not material. For purposes of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent annual statement filed with the Insurance Commissioner pursuant to Section 311 of Title 36 of the Oklahoma Statutes.

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

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

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

a. date of the transaction,

b. manner of acquisition or disposition,

c. description of the assets involved,

d. nature and amount of the consideration given or received,

e. purpose of, or reason for, the transaction,

f. manner by which the amount of consideration was determined,

g. gain or loss recognized or realized as a result of the transaction, and

h. names of the persons from whom the assets were acquired or to whom they were disposed.

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

a. the insurer has less than One Million Dollars ($1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and

b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

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

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

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

(1) more than fifty percent (50%) of the insurer's total ceded written premium, or

(2) more than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves,

b. as respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement, and

c. as respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

(1) an authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers, or

(2) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

2. However, no filing shall be required if:

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

b. as respects life, annuity, and accident and health business: the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

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

a. effective date of the nonrenewal, cancellation or revision,

b. the description of the transaction with an identification of the initiator thereof,

c. purpose of, or reason for, the transaction, and

d. if applicable, the identity of the replacement reinsurers.

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

a. the insurer has less than One Million Dollars ($1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and

b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1998, every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial

items held in support of the policies and contracts specified by the Insurance Commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported accounts and comply with applicable laws of this state. The Commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

B. 1. Beginning January 1, 1998, every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection A of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

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

C. Each opinion required by subsection B of this section shall be accompanied by a memorandum, in form and substance acceptable to the Commissioner as specified by rule, prepared to support each actuarial opinion. If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified by rule, or the Commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the Commissioner, the Commissioner may engage a

qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.

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

1. The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1997;

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

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

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

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

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

E. 1. Any memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection therewith, shall be kept confidential by the Commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any

person by reason of any action required by this section or by rules promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the Commissioner as follows:

a. with the written consent of the company, or

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

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

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

SECTION 5. 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.

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~~ three 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.

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 6. This act shall become effective July 1, 1997.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 4th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate