

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 2ND CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1328

6 By: Weaver of the House

7 and

8 Robinson of the Senate

9 2ND CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to insurance; amending Section 60,
11 Chapter 418, O.S.L. 1997, as amended by Section 1 of
12 Enrolled House Bill No. 1666 of the 1st Session of
13 the 47th Oklahoma Legislature, which relates to
14 licensure requirements; modifying insurance licensure
15 categories; amending 36 O.S. 1991, Sections 1902 and
16 1904, which relate to rehabilitation and liquidation;
17 providing for arbitration of disputes; providing for
18 venue for arbitration proceedings; providing for
19 personal jurisdiction of certain persons; limiting
20 jurisdiction over certain coverage disputes involving
21 guaranty associations; providing for consent to
22 jurisdiction in certain cases; making certain
23 determinations binding and conclusive; deleting
24 restriction on exclusive remedy; allowing a party to
25 pursue contractual rights to arbitration; amending 36
26 O.S. 1991, Section 1928, as last amended by Section
27 3, Chapter 156, O.S.L. 1997 (36 O.S. Supp. 1998,
28 Section 1928), which relates to offsets in
29 liquidation proceedings; clarifying certain
30 contractual arrangements; deleting certain offset
31 prohibitions; prohibiting offset in certain
32 circumstances involving affiliates; prohibiting
offset in certain circumstances involving assumed
risks; deleting intent language; amending 36 O.S.
1991, Section 6302, as amended by Section 2, Chapter
223, O.S.L. 1993 (36 O.S. Supp. 1998, Section 6302),
which relates to the Arson and Theft Reporting
Immunity Act; clarifying definition of an authorized
agency; providing an effective date; and declaring an
emergency.

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

SECTION 1. AMENDATORY Section 60, Chapter 418, O.S.L.
1997, as amended by Section 1, of Enrolled House Bill No. 1666 of

1 the 1st Session of the 47th Oklahoma Legislature, is amended to read
2 as follows:

3 Section 1424.11 A. No person shall act as or hold himself or
4 herself out to be an insurance agent, surplus lines insurance
5 broker, limited insurance representative, managing general agent,
6 consultant, or customer service representative unless duly licensed.
7 Salaried employees in the office of an insurance agent, surplus
8 lines insurance broker, limited insurance representative, managing
9 general agent or consultant, who devote full time to clerical and
10 administrative services, with incidental receiving of insurance
11 applications and premiums in the office of the employer and who do
12 not receive any commissions for the applications nor a compensation
13 that is varied by the volume of applications or premiums taken or
14 received, shall be exempt from any licensing requirement.

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

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

22 1. Life insurance, including fraternal agents licensed pursuant
23 to Section 2733.1 of this title;

24 2. Accident and health insurance, including fraternal agents
25 licensed pursuant to Section 2733.1 of this title;

26 3. ~~Property~~ Personal property and casualty insurance;

27 4. Commercial property and casualty insurance;

28 5. Variable annuity contracts, including fraternal agents
29 licensed pursuant to Section 2733.1 of this title; and

30 ~~5.~~ 6. Title insurance.

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

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

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

7 3. To engage in the sale of motor vehicle insurance at a
8 vehicle rental counter or at any other point of sale at which motor
9 vehicle insurance is offered or sold in connection with the short-
10 term renting or leasing of motor vehicles;

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

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

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

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

31 8. Job loss insurance, which means the sale of involuntary
32 unemployment insurance in connection with a credit transaction by

1 which satisfaction of a debt in whole or in part is a benefit
2 provided;

3 9. Crop hail and multiperil crop hail insurance; and

4 10. Prepaid dental insurance, provided the individual selling
5 the prepaid dental insurance has been appointed by the prepaid
6 dental plan organization to sell such insurance.

7 E. 1. An insurance agent or limited insurance representative
8 may solicit applications for and issue travel accident policies or
9 baggage insurance by means of mechanical vending machines supervised
10 by the agent or representative only if the Insurance Commissioner
11 shall determine that the form of policy to be sold is reasonably
12 suited for sale and issuance through vending machines, that use of
13 vending machines for the sale of said policies would be of
14 convenience to the public, and that the type of vending machine to
15 be used is reasonably suitable and practical for the sale and
16 issuance of said policies. Policies so sold do not have to be
17 countersigned.

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

30 SECTION 2. AMENDATORY 36 O.S. 1991, Section 1902, is
31 amended to read as follows:

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1 Section 1902. A. The district court is vested with exclusive
2 original jurisdiction of delinquency proceedings pursuant to the
3 provisions of this article, and is authorized to make all necessary
4 and proper orders to carry out the purposes of this article.

5 B. Except as to claims against the estate, nothing in this
6 article shall deprive a party in interest of any contractual right
7 to pursue arbitration of any dispute under any law. Where an
8 insurer subject to this article is a party to an arbitration
9 proceeding, the venue of such arbitration proceeding shall be in
10 Oklahoma County.

11 C. In addition to grounds otherwise provided by law, the
12 following persons are subject to the personal jurisdiction of the
13 district court:

- 14 1. Current and former agents and brokers of the insurer;
- 15 2. Policy holders and reinsurers of the insurer;
- 16 3. Current and former officers, directors, managers, trustees,
17 organizers, promoters, and any other persons in control of the
18 insurer; and
- 19 4. Any third party administrator for an insurer and any person
20 that maintains information for an insurer.

21 D. Notwithstanding any other provision in this article, this
22 section shall not confer jurisdiction on the district court to
23 resolve coverage disputes between guaranty associations and those
24 asserting claims against an association resulting from the
25 initiation of a delinquency proceeding under this article except to
26 the extent that the guaranty association has otherwise expressly
27 consented to such jurisdiction pursuant to a plan of rehabilitation
28 or liquidation that resolves its obligations to covered
29 policyholders.

30 E. The determination of any dispute with respect to the
31 statutory obligations of any guaranty association by a court or
32 administrative agency or body with jurisdiction in the state of

1 domicile of the guaranty association shall be binding and conclusive
2 as to the parties in a delinquency proceeding initiated in the
3 district court, including, without limitation, the policyholders of
4 the insurer.

5 F. The venue of delinquency proceedings against any insurer
6 shall be in Oklahoma County.

7 ~~C. Delinquency proceedings pursuant to this article shall~~
8 ~~constitute the sole and exclusive method of liquidating,~~
9 ~~rehabilitating, reorganizing, or conserving an insurer.~~

10 G. No person other than the Insurance Commissioner, his
11 attorney, or the Attorney General representing the Insurance
12 Commissioner shall appear in the courts of this state requesting the
13 appointment of a receiver or otherwise commence delinquency
14 proceedings to take over, liquidate, rehabilitate, reorganize, or
15 conserve an insurer and no court shall entertain a petition for the
16 commencement of such proceedings unless the same has been filed in
17 the name of the state on the relation of the Insurance Commissioner.

18 ~~D.~~ H. An appeal shall lie to the Supreme Court from an order
19 granting or refusing rehabilitation, liquidation, or conservation,
20 and from every other order in delinquency proceedings having the
21 character of a final order as to the particular portion of the
22 proceedings embraced therein.

23 SECTION 3. AMENDATORY 36 O.S. 1991, Section 1904, is
24 amended to read as follows:

25 Section 1904. A. Upon application by the Insurance
26 Commissioner for such an order to show cause, or at any time
27 thereafter, the court may without notice issue an injunction
28 restraining the insurer, its officers, directors, stockholders,
29 members, subscribers, agents and all other persons for the
30 transaction of its business or the waste or disposition of its
31 property until the further order of the court.

32

1 B. The court may at any time during a proceeding under this
2 article issue such other injunctions or orders as may be deemed
3 necessary to prevent interference with the Insurance Commissioner or
4 the proceedings, or waste of the assets of the insurer, or the
5 commencement or prosecution of any actions, or the obtaining of
6 preferences, judgments, attachments or other liens, or the making of
7 any levy against the insurer or against its assets or any part
8 thereof.

9 C. Notwithstanding any other provision of law, no bond shall be
10 required of the Insurance Commissioner as a prerequisite for the
11 issuance of any injunction or restraining order pursuant to this
12 section.

13 D. Nothing in this section shall deprive a party in interest of
14 any contractual right to pursue arbitration of any dispute under any
15 law and venue shall be as provided in subsection B of Section 1902
16 of this title.

17 SECTION 4. AMENDATORY 36 O.S. 1991, Section 1928, as
18 last amended by Section 3, Chapter 156, O.S.L. 1997 (36 O.S. Supp.
19 1998, Section 1928), is amended to read as follows:

20 Section 1928. A. 1. In all cases of mutual debts or mutual
21 credits between the insurer and another person, whether arising out
22 of one or more contracts between the insurer and another person, in
23 connection with any action or proceeding under this article, such
24 credits and debts shall be offset and the balance only shall be
25 allowed or paid, except as provided in subsection B of this section.

26 2. Any mutual debt or mutual credit to be offset shall be filed
27 and approved as a claim against the insurer in accordance with
28 Sections 1918 and 1930 of this title. Any debt or credit not filed
29 in accordance with this paragraph shall be deemed to have been
30 waived.

31 B. No offset shall be allowed if:
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1 1. The obligation of the insurer would not, at the date of the
2 entry of any liquidation order or otherwise as provided in Section
3 1925 of this title, entitle the claimant to share in the assets of
4 the insurer;

5 2. The obligation of the insurer was purchased by or
6 transferred to the claimant to be used as an offset;

7 3. The obligation is to pay an assessment levied against the
8 members of a mutual insurer, or against the subscribers of a
9 reciprocal insurer, or to pay a balance upon the subscription to the
10 capital stock of a stock insurer; ~~or~~

11 4. The obligation of the insurer ~~was the result of a life or~~
12 ~~accident and health reinsurance agreement that contains terms or~~
13 ~~conditions structured to avoid reasonable risk transfer and~~
14 ~~indemnification criteria including, but not limited to:~~

15 a. ~~a reinsurance agreement the primary effect of which is~~
16 ~~to transfer deficiency reserves or excess interest~~
17 ~~reserves to the books of the reinsurer for a "risk~~
18 ~~charge" and the agreement does not provide for~~
19 ~~mortality, morbidity, or surrender benefit~~
20 ~~participation by the reinsurer consistent with its~~
21 ~~participation in the deficiency or excess interest~~
22 ~~portion of the policies reinsured,~~

23 b. ~~allowing the reserve credit taken by the ceding~~
24 ~~insurer to be in excess of the actuarial reserve~~
25 ~~necessary under the Oklahoma Insurance Code and~~
26 ~~applicable rules or regulations including actuarial~~
27 ~~interpretations or standards adopted by the Insurance~~
28 ~~Department to support the policy obligations~~
29 ~~transferred under the reinsurance agreement,~~

30 c. ~~requiring the ceding insurer to reimburse the~~
31 ~~reinsurer for negative experience under the~~
32 ~~reinsurance agreement, except that neither offsetting~~

1 ~~experience refunds against prior years' losses nor~~
2 ~~payment by the ceding insurer of an amount equal to~~
3 ~~prior years' losses upon voluntary termination of~~
4 ~~in-force reinsurance by that ceding insurer shall be~~
5 ~~considered such a reimbursement to the reinsurer for~~
6 ~~negative experience,~~

7 ~~d. depriving the ceding insurer of surplus at the~~
8 ~~reinsurer's option or automatically upon the~~
9 ~~occurrence of some event, such as the insolvency of~~
10 ~~the ceding insurer, except that termination of the~~
11 ~~reinsurance agreement by the reinsurer for nonpayment~~
12 ~~of reinsurance premiums shall not be considered to be~~
13 ~~such a deprivation of surplus,~~

14 ~~e. requiring the ceding insurer at specific points in~~
15 ~~time scheduled in the agreement to terminate or~~
16 ~~automatically recapture all or part of the reinsurance~~
17 ~~ceded,~~

18 ~~f. a provision that no cash payment is due from the~~
19 ~~reinsurer, throughout the lifetime of the reinsurance~~
20 ~~agreement, with all settlements prior to the~~
21 ~~termination date of the agreement made only in a~~
22 ~~"reinsurance account", and no funds in the account are~~
23 ~~available for the payment of claims, or~~

24 ~~g. a reinsurance agreement involving the possible payment~~
25 ~~by the ceding insurer to the reinsurer of amounts~~
26 ~~other than from income reasonably expected from the~~
27 ~~reinsured policies. is owed to an affiliate of such~~
28 ~~person, or any other entity or association other than~~
29 ~~the person;~~

30 5. The obligation of the person is owed to an affiliate of the
31 insurer, or any other entity or association other than the insurer;
32 or

1 6. The obligation between the person and the insurer arise from
2 business where either the person or the insurer has assumed risks
3 and obligations from the other party and then has ceded back to that
4 party substantially the same risks and obligations.

5 ~~C. It is the intent of the Legislature that the provisions of~~
6 ~~paragraph 4 of subsection B of this section only apply to life and~~
7 ~~accident and health reinsurance agreements made and entered into on~~
8 ~~and after November 1, 1988.~~

9 SECTION 5. AMENDATORY 36 O.S. 1991, Section 6302, as
10 amended by Section 2, Chapter 223, O.S.L. 1993 (36 O.S. Supp. 1998,
11 Section 6302), is amended to read as follows:

12 Section 6302. As used in this act:

13 1. Authorized agencies include:

- 14 a. the State Fire Marshal and the marshal or head of any
15 county or local fire or theft investigatory agency,
16 b. the Director of the State Bureau of Investigation,
17 c. the district attorney in the county where the fire or
18 theft occurred, and
19 d. for the purposes of subsection A of Section 6303 of
20 this title, the Federal Bureau of Investigation, the
21 United States Attorney or any other federal agency
22 authorized or charged with investigation or
23 prosecution with respect to a fire or theft;

24 2. Relevant information means any information having a tendency
25 to make the existence of any fact that is of consequence to the
26 investigation or determination of the issue more probable or less
27 probable than it would be without the information; and

28 3. Action includes the failure to take action.

29 SECTION 6. This act shall become effective July 1, 1999.

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

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