

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2725

By: Thornbrugh

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 1991, Section 1425, as last amended by Section 69, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1999, Section 1425), which relates to insurance agents license application process; requiring an insurance agent to maintain an errors and omissions policy; stating liability amount of policy; allowing coverage under a blanket policy; allowing excess coverage; allowing for self-retention; amending 36 O.S. 1991, Sections 4423 and 4424, as last amended by Section 1, Chapter 180, O.S.L. 1997 (36 O.S. Supp. 1999, Section 4424), which relate to the Long-Term Care Insurance Act; providing an exception for certain entities from requirements of the Long-Term Care Insurance Act; modifying certain definition; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1425, as last amended by Section 69, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1999, 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 provisions of this section.

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

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 expressly terminated in writing by the insurer or as provided in subsection E of this section. The Commissioner shall collect from each company a biennial appointment fee.

3. In connection with the 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 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. The insurer providing coverage shall maintain an accurate list of all agents covered by such policy~~ with the Commissioner and, upon approval of the application, maintain in force while licensed, 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) total liability limit per occurrence, subject to 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 insurance agents or brokers in an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) total liability limit per occurrence, subject to not less than Five

Hundred Thousand Dollars (\$500,000.00) annual aggregate for all claims made during the policy period. A blanket liability policy may also include other coverage on an excess basis over One Hundred Thousand Dollar (\$100,000.00) primary coverage. An errors and omissions policy required pursuant to this paragraph shall be issued by an insurance company authorized to do business in this state. Self-retention shall be permitted on such policies covering insurance agents.

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 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 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 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 & Health .....not to exceed \$ 40.00
    - Property and Casualty .....not to exceed \$ 40.00
  - c. For filing 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. 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. 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, 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 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.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 4423, is amended to read as follows:

Section 4423. A. The requirements of the Long-Term Care Insurance Act shall apply to policies, other than life care community policies delivered or issued for delivery in this state on or after November 1, 1987. The requirements of the Long-Term Care Insurance Act shall apply to life care community policies delivered or issued for delivery in this state on or after November 1, 1989.

B. Notwithstanding any other provision, the Long-Term Care Insurance Act shall not apply to the following:

1. Residential care homes licensed pursuant to the Oklahoma Residential Care Act;

2. Assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act; or

3. Facilities licensed pursuant to the Oklahoma Nursing Home Care Act.

C. The Long-Term Care Insurance Act is not intended to supersede the obligations of entities subject to said act to comply with the substance of other applicable insurance laws insofar as they do not conflict with the Long-Term Care Insurance Act, except that laws and regulations designed and intended to apply to Medicare supplement insurance policies shall not apply to long-term care insurance. A policy which is not advertised, marketed or offered as long-term care insurance need not meet the requirements of the Long-Term Care Insurance Act. The Long-Term Care Insurance Act is not intended to require life care communities to be licensed insurers. Life care communities which are not licensed insurers shall not be subject to the provisions of the Insurance Code or the jurisdiction of the Insurance Commissioner, except as provided in the Long-Term Care Insurance Act.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 4424, as last amended by Section 1, Chapter 180, O.S.L. 1997 (36 O.S. Supp. 1999, Section 4424), is amended to read as follows:

Section 4424. Unless the context requires otherwise, the definitions in this section apply throughout the Long-Term Care Insurance Act, ~~Section 4421 et seq. of this title.~~

1. a. "Long-term care insurance" means any insurance policy or rider, including qualified long-term care insurance contracts, which are advertised, marketed, offered or designed primarily to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital.

- b. This term includes group and individual health policies or riders or group and individual life policies or annuities or riders which provide, directly or as a supplement, coverage for long-term care, whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, life care communities, or any similar organization.
- c. This term also includes a policy or rider which provides for payment of long-term care benefits based upon cognitive impairment or the loss of functional capacity.
- d. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage or related asset-protection coverage, catastrophic coverage, comprehensive coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.
- e. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor

the eligibility for the benefits is conditioned upon the receipt of long-term care.

- f. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this act.

2. "Applicant" means:

- a. in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, and
- b. in the case of a group long-term care insurance policy, the proposed certificate holder.

3. "Certificate" means any certificate issued under a group long-term care insurance policy, which certificate has been delivered, or issued for delivery, in this state.

4. "Group long-term care insurance" means a long-term care insurance policy which is delivered, or issued for delivery, in this state and issued to:

- a. one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof or for members or former members, or a combination thereof, of the labor organizations, or
- b. any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:
  - (1) is composed of individuals, all of whom are or were actively engaged in the same profession, trade or occupation, and

(2) has been maintained in good faith for purposes  
other than insurance, or

- c. an association, a trust, or the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the Insurance Commissioner that the association or associations shall have at the outset of transacting long-term care insurance in this state a minimum of one hundred (100) persons in the association or associations and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least one (1) year; and shall have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Thirty (30) days after such filing the association or associations shall be deemed to satisfy such organizational requirements, unless the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements, or
- d. a group other than as described in subparagraphs a, b and c of this paragraph, subject to a finding by the Commissioner that:

- (1) the issuance of the group policy is not contrary to the best interest of the public,
- (2) the issuance of the group policy would result in economies of acquisition or administration, and
- (3) the benefits are reasonable in relation to the premiums charged.

5. "Life care community" means any arrangement pursuant to which a person contracts for a place of residence and personal care services, including but not limited to services which progress from independent living to semi-dependent nursing care to acute nursing care, in consideration of a payment or payments of fees prior to the delivery of services and accommodations. Life care community shall not include the following:

- a. traditional ~~residential~~ landlord and tenant agreements utilizing periodic rental and security deposit payments,
- b. residential care homes licensed pursuant to the Oklahoma Residential Care Act,
- c. assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act, or
- d. facilities licensed pursuant to the Oklahoma Nursing Home Care Act.

6. "Policy" means any policy, contract, certificate, subscriber agreement, rider or endorsement delivered, or issued for delivery, in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, life care community, or any similar organization.

7. "Qualified long-term care insurance contract" means any:

- a. individual or group insurance contract if the contract meets the requirements of Section 7702(B) of the Internal Revenue Code, as amended, and if ~~+~~ :
- ~~1.~~ (1) the only insurance protection provided under the contract is coverage of qualified long-term care services,
  - ~~2.~~ (2) the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under Title XVIII of the Social Security Act as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph do not apply to contracts where Medicare is a secondary payor, or where the contract makes per diem or other periodic payments without regard to expenses,
  - ~~3.~~ (3) the contract is guaranteed renewable,
  - ~~4.~~ (4) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract, and
  - ~~5.~~ (5) the contract contains the consumer protection provisions set forth in Section 7702(B)(g) of the Internal Revenue Code ~~+~~ , or

b. life insurance contract which provides long-term care coverage by rider or as part of the contract if the contract complies with the applicable provisions of Section 7702(B) of the Internal Revenue Code, as amended.

8. "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

SECTION 4. This act shall become effective July 1, 2000.

SECTION 5. 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.

47-2-8889            KB            6/11/15