

ENROLLED HOUSE
BILL NO. 1328

By: Weaver of the House

and

Robinson of the Senate

An Act relating to insurance; amending Section 60, Chapter 418, O.S.L. 1997, as amended by Section 1 of Enrolled House Bill No. 1666 of the 1st Session of the 47th Oklahoma Legislature, which relates to licensure requirements; modifying insurance licensure categories; amending 36 O.S. 1991, Sections 1902 and 1904, which relate to rehabilitation and liquidation; providing for arbitration of disputes; providing for venue for arbitration proceedings; providing for personal jurisdiction of certain persons; limiting jurisdiction over certain coverage disputes involving guaranty associations; providing for consent to jurisdiction in certain cases; making certain determinations binding and conclusive; deleting restriction on exclusive remedy; allowing a party to pursue contractual rights to arbitration; amending 36 O.S. 1991, Section 1928, as last amended by Section 3, Chapter 156, O.S.L. 1997 (36 O.S. Supp. 1998, Section 1928), which relates to offsets in liquidation proceedings; clarifying certain contractual arrangements; deleting certain offset prohibitions; prohibiting offset in certain 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 the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 1424.11 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

lines 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 for 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~~ Personal property and casualty insurance;

4. Commercial property and casualty insurance;

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

~~5.~~ 6. 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 motor vehicle insurance at a vehicle rental counter or at any other point of sale at which motor vehicle insurance is offered or sold in connection with the short-term renting or leasing of motor vehicles;

4. 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;

5. 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;

6. 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;

7. 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;

8. 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;

9. Crop hail and multiperil crop hail insurance; and

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

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

B. Except as to claims against the estate, nothing in this article shall deprive a party in interest of any contractual right to pursue arbitration of any dispute under any law. Where an insurer subject to this article is a party to an arbitration

proceeding, the venue of such arbitration proceeding shall be in Oklahoma County.

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

1. Current and former agents and brokers of the insurer;

2. Policy holders and reinsurers of the insurer;

3. Current and former officers, directors, managers, trustees, organizers, promoters, and any other persons in control of the insurer; and

4. Any third party administrator for an insurer and any person that maintains information for an insurer.

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

E. The determination of any dispute with respect to the statutory obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the state of domicile of the guaranty association shall be binding and conclusive as to the parties in a delinquency proceeding initiated in the district court, including, without limitation, the policyholders of the insurer.

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

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

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

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

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

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

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

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

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

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

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

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

B. No offset shall be allowed if:

1. The obligation of the insurer would not, at the date of the entry of any liquidation order or otherwise as provided in Section 1925 of this title, entitle the claimant to share in the assets of the insurer;

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

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

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

- ~~a. a reinsurance agreement the primary effect of which is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for mortality, morbidity, or surrender benefit participation by the reinsurer consistent with its participation in the deficiency or excess interest portion of the policies reinsured,~~
- ~~b. allowing the reserve credit taken by the ceding insurer to be in excess of the actuarial reserve necessary under the Oklahoma Insurance Code and applicable rules or regulations including actuarial interpretations or standards adopted by the Insurance Department to support the policy obligations transferred under the reinsurance agreement,~~
- ~~c. requiring the ceding insurer to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience,~~
- ~~d. depriving the ceding insurer of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus,~~
- ~~e. requiring the ceding insurer at specific points in time scheduled in the agreement to terminate or automatically recapture all or part of the reinsurance ceded,~~
- ~~f. a provision that no cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in the account are available for the payment of claims, or~~
- ~~g. a reinsurance agreement involving the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies. is owed to an affiliate of such person, or any other entity or association other than the person;~~

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

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

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

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

Section 6302. As used in this act:

1. Authorized agencies include:

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

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

3. Action includes the failure to take action.

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

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 26th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 26th day of May, 1999.

President of the Senate