

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. _____

By: Fisher

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Sections 309.6, as amended by Section 11, Chapter 418, O.S.L. 1997 and 309.7, as amended by Section 12, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Sections 309.6 and 309.7), which relate to examinations of companies by the office of the Insurance Commissioner; clarifying charges and expenses for examinations begun prior to certain date; authorizing the Insurance Commissioner to collect certain fees, costs, and expenses for examinations conducted after certain date; providing procedures and requirements for collection of the fees, costs, and expenses; creating the Insurance Examination Revolving Fund; providing procedures related to the fund; modifying liability restrictions imposed when conducting examinations; directing the Insurance Commissioner to adopt rules for reporting certain information; stating contents of the report; stating date of first report; stating date of subsequent reports; providing for codification; and providing an effective date.

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

SECTION 699. AMENDATORY 36 O.S. 1991, Section 309.6, as amended by Section 11, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1998, Section 309.6), is amended to read as follows:

Section 309.6 ~~Any~~ A. For examinations which begin on or before March 31, 2000, the insurer or person examined under the provisions of Sections 309.1 through 309.7 of this title shall pay the proper charges incurred in ~~such~~ the examination, including the actual expense of the Insurance Commissioner or the expenses and compensation of an authorized representative and the expense and compensation of assistants and examiners employed therein. All expenses incurred in ~~such~~ the examination shall be verified by affidavit and a copy shall be filed in the office of the Commissioner. Per diem charges for lodging and travel expenses

shall be in accordance with applicable travel regulations published by the National Association of Insurance Commissioners' Examiner's Handbook. All lodging and travel expenses may be reimbursed directly by the companies being examined upon the authorization of the Insurance Commissioner.

B. 1. Beginning January 1, 2000, the Insurance Commissioner shall charge and collect an annual examination regulation fee from every domestic insurance company for the examination of insurers or persons pursuant to the provisions of Sections 309.1 through 309.7 of this title. The fee shall be based on either the combination of nationwide annual direct premium income and the nationwide annual reinsurance assumed premium income or the year-end admitted assets of the company, whichever fee amount is greater, calculated as follows:

a. Fees based on the combination of nationwide annual direct premium income and nationwide annual reinsurance assumed premium income shall be as follows:

(1) Five Hundred Dollars (\$500.00) if the premium income is less than Five Hundred Thousand Dollars (\$500,000.00) and there is no reinsurance assumed premium,

(2) One Thousand Dollars (\$1,000.00) if the premium income is Five Hundred Thousand Dollars (\$500,000.00) or more but is less than Five Million Dollars (\$5,000,000.00) and there is no reinsurance assumed premium, or if the premium is less than Five Million Dollars (\$5,000,000.00) and the reinsurance assumed premium is less than Ten Million Dollars (\$10,000,000.00),

(3) Five Thousand Dollars (\$5,000.00) if the premium income is less than Five Million Dollars

(\$5,000,000.00) and the reinsurance assumed premium is Ten Million Dollars (\$10,000,000.00) or more,

(4) Seven Thousand Five Hundred Dollars (\$7,500.00) if the premium income is Five Million Dollars (\$5,000,000.00) or more but less than Ten Million Dollars (\$10,000,000.00),

(5) Ten Thousand Dollars (\$10,000.00) if the premium income is Ten Million Dollars (\$10,000,000.00) or more but less than Twenty-five Million Dollars (\$25,000,000.00),

(6) Fourteen Thousand Dollars (\$14,000.00) if the premium income is Twenty-five Million Dollars (\$25,000,000.00) or more but less than Fifty Million Dollars (\$50,000,000.00),

(7) Eighteen Thousand Dollars (\$18,000.00) if the premium income is Fifty Million Dollars (\$50,000,000.00) or more but less than One Hundred Million Dollars (\$100,000,000.00), and

(8) Twenty-five Thousand Dollars (\$25,000.00) if the premium income is One Hundred Million Dollars (\$100,000,000.00) or more.

b. Fees based on year-end admitted assets shall be as follows:

(1) Five Hundred Dollars (\$500.00) if admitted assets are less than One Million Dollars (\$1,000,000.00),

(2) One Thousand Dollars (\$1,000.00) if admitted assets are One Million Dollars (\$1,000,000.00) or more but less than Five Million Dollars (\$5,000,000.00),

- (3) Five Thousand Dollars (\$5,000.00) if admitted assets are Five Million Dollars (\$5,000,000.00) or more but less than Twenty-five Million Dollars (\$25,000,000.00),
- (4) Seven Thousand Five Hundred Dollars (\$7,500.00) if admitted assets are Twenty-five Million Dollars (\$25,000,000.00) or more but less than Fifty Million Dollars (\$50,000,000.00),
- (5) Ten Thousand Dollars (\$10,000.00) if admitted assets are Fifty Million Dollars (\$50,000,000.00) or more but less than One Hundred Million Dollars (\$100,000,000.00),
- (6) Fourteen Thousand Dollars (\$14,000.00) if admitted assets are One Hundred Million Dollars (\$100,000,000.00) or more but less than Five Hundred Million Dollars (\$500,000,000.00),
- (7) Eighteen Thousand Dollars (\$18,000.00) if admitted assets are Five Hundred Million Dollars (\$500,000,000.00) or more but less than One Billion Dollars (\$1,000,000,000.00),
- (8) Twenty-five Thousand Dollars (\$25,000.00) if admitted assets are One Billion Dollars (\$1,000,000,000.00) or more but less than Two Billion Dollars (\$2,000,000,000.00), and
- (9) Thirty Thousand Dollars (\$30,000.00) if admitted assets are Two Billion Dollars (\$2,000,000,000.00) or more.

2. The total sum of the annual examination regulation fees charged to domestic companies which are affiliated with the same domestic group shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) and shall be assessed by the Commissioner to the member company designated by the group.

C. Beginning January 1, 2000, the Insurance Commissioner shall charge and collect an annual examination regulation fee from every foreign or alien company, except fraternal benefit societies, for the examination of insurers or persons pursuant to the provisions of Sections 309.1 through 309.7 of this title. The fee shall be based upon the Oklahoma annual direct premium income and all Oklahoma reinsurance assumed premium income calculated as follows:

1. Fees based on the combination of Oklahoma annual direct premium income and nationwide annual reinsurance assumed premium income shall be as follows:

- a. One Hundred Dollars (\$100.00) if the premium is Five Hundred Dollars (\$500.00) or more but less than Five Million Dollars (\$5,000,000.00) and there is no reinsurance assumed premium, or if the premium is less than Five Million Dollars (\$5,000,000.00) and the reinsurance assumed premium is less than Ten Million Dollars (\$10,000,000.00),
- b. Two Hundred Fifty Dollars (\$250.00) if the premium income is less than Five Million Dollars (\$5,000,000.00) and the reinsurance assumed premium is Ten Million Dollars (\$10,000,000.00) or more,
- c. Five Hundred Dollars (\$500.00) if the premium income is Five Million Dollars (\$5,000,000.00) or more but less than Ten Million Dollars (\$10,000,000.00),
- d. One Thousand Dollars (\$1,000.00) if the premium income is Ten Million Dollars (\$10,000,000.00) or more but less than Twenty-five Million Dollars (\$25,000,000.00),
- e. Two Thousand Five Hundred Dollars (\$2,500.00) if the premium income is Twenty-five Million Dollars (\$25,000,000.00) or more but is less than Fifty Million Dollars (\$50,000,000.00),

- f. Five Thousand Dollars (\$5,000.00) if the premium income is Fifty Million Dollars (\$50,000,000.00) or more but less than One Hundred Million Dollars (\$100,000,000.00),
- g. Six Thousand Dollars (\$6,000.00) if the premium income is One Hundred Million Dollars (\$100,000,000.00) or more but less than Two Hundred Million Dollars (\$200,000,000.00), and
- h. Eight Thousand Five Hundred Dollars (\$8,500.00) if the premium income is Two Hundred Million Dollars (\$200,000,000.00) or more.

2. The total sum of the annual examination regulation fees charged to foreign or alien companies which are affiliated with the same foreign or alien group shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) and shall be assessed by the Commissioner to the member company designated by the group. When the financial examination is conducted by the state of domicile in accordance with the standards adopted by the National Association of Insurance Commissioners, the fees in paragraph 1 of this subsection shall be based on the aggregate premium income of the affiliated companies.

D. The examination regulation fees imposed pursuant to subsections B and C of this section shall apply to examinations which begin after March 31, 2000, and shall be paid by each company or domestic, foreign, or alien affiliated group no later than March 1 of each calendar year. The fee shall be filed by each company or domestic, foreign, or alien affiliated group along with the filing of the annual statement with the Insurance Commissioner and shall be based upon the premium income or admitted assets of the company as shown in the annual statement for that company for the preceding calendar year. The Commissioner shall develop and provide an assessment form to be completed and filed by each company or

domestic, foreign, or alien affiliated group. The Commissioner shall not collect examiner charges or fees from companies or allow examiners to directly charge companies which undergo financial or market examinations pursuant to Sections 309.1 through 309.7 of this title, for examinations which begin after March 31, 2000.

E. In addition to the examination regulation fees authorized by this section, a company undergoing an examination pursuant to Sections 309.1 through 309.7 of this title shall pay the following costs and expenses incurred by the Insurance Commissioner which are necessary and required to perform the examination:

1. Electronic data processing costs;

2. The costs of professionals and specialists including, but not limited to, appraisers, independent certified public accountants, independent actuaries, and attorneys; and

3. Per diem lodging and travel expenses as set forth in the National Association of Insurance Commissioners' Examiner's Handbook for examiners, professionals and specialists.

F. If the Insurance Commissioner is required by law to examine an organization or person not subject to the examination regulation fees established in this section, the Commissioner may charge and collect any expenses incurred in the examination which shall be paid by the organization or person being examined. The charge shall be reasonably related to the cost of the examination and shall include, but not be limited to, the compensation of examiners and the costs and expenses set forth in subsection E of this section.

G. Any company, person or entity failing to pay the full amount of the examination regulation fees as required by this section shall be subject to penalty and interest as otherwise provided for in the Oklahoma Insurance Code.

H. Except for direct reimbursements authorized by the Insurance Commissioner, direct payments made by companies to examiners for examinations which were begun prior to April 1, 2000, and direct

payments made as authorized in subsection E of this section, all examination regulation fees shall be paid into the Insurance Examination Revolving Fund created in Section 2 of this act.

I. All expenses incurred in an examination shall be verified by affidavit, a copy of which shall be filed with the Insurance Commissioner.

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 309.6A of Title 36, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury the "Insurance Examination Revolving Fund". The fund shall be a continuing fund not subject to fiscal year limitations. The fund shall consist of all fees received by the Insurance Commissioner as provided for in Section 1 of this act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended for the reimbursement of expenses incurred by the Commissioner for examinations performed pursuant to Sections 309.1 through 309.7 of Title 36 of the Oklahoma Statutes. Any remaining monies may be used to fund the general operations of the Insurance Department. All expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 309.7, as amended by Section 12, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1998, 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, or the Commissioner's authorized representatives, ~~or any examiner appointed by the Commissioner~~ for any statements made or conduct performed while carrying out the provisions of Sections 309.1 through 309.7 of this title, except and unless the conduct was objectively unreasonable and, due to gross negligence, conducted outside the

scope of the person's duties or the provisions of Sections 309.1 through 309.7 of this title, or was a fraudulent or criminal act.

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 309.7 of this title, if ~~such act of the~~ communication or delivery of information was 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 determined to be the prevailing party in a civil action arising out of activities of the person in carrying out the provisions of Sections 309.1 through 309.7 of this 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall promulgate rules requiring the fifty (50) largest property and casualty insurers based on direct written premiums in this state who are authorized to write liability insurance including, but not limited to, professional liability insurance, to report the following information:

1. The amount collected in premiums in this state for professional liability coverage in this state for the current calendar year ending on December 31;

2. The amounts paid out in professional liability claims in this state for the current calendar year ending on December 31 which shall show the amount paid as a result of judgments and the amount paid as a result of settlements;

3. The professions for which the insurer writes professional liability coverage;

4. The amount collected in premiums in this state for any type of liability insurance affording coverage for personal injury and wrongful death for the current calendar year ending on December 31;

5. The amounts paid out in personal injury and wrongful death claims in this state for the current calendar year ending on December 31 which shall show the amount paid as a result of judgments and the amount paid as a result of settlements;

6. The aggregate number of judgments or settlements that required the insurer to make payments of over Two Hundred Fifty Thousand Dollars (\$250,000.00) for each of the previous two (2) years ending on the thirty-first day of December and, if the payment exceeded One Million Dollars (\$1,000,000.00), the amount of the payment; and

7. Company policies or incentives for encouraging the insured to develop a risk management plan.

B. The first report required by this section shall be filed with the Insurance Commissioner no later than March 1, 2000. Subsequent reports shall be filed annually, on or before the first day of March, with the office of the Insurance Commissioner.

SECTION 5. This act shall become effective November 1, 1999.

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