

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1341

By: Cox

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Section 309.4, which relates to examination reports; requiring insurance companies to deliver copies of adopted reports and related orders to other states and jurisdictions within certain time; amending 36 O.S. 1991, Section 628, which relates to reciprocity and retaliation; holding insurers of foreign countries to same obligations and prohibitions that are imposed on the state of principal agency; amending 36 O.S. 1991, Section 1616, which relates to investments by domestic insurance companies; modifying investment restrictions; amending 36 O.S. 1991, Section 1653, as last amended by Section 88, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 2000, Section 1653), which relates to subsidiaries of insurers; modifying prohibition on offer or acquisition of voting security of domestic insurer; amending 36 O.S. 1991, Sections 1905 and 1906, which relate to grounds for rehabilitation of domestic insurers and grounds for liquidation of insurers; expanding grounds for court order appointing Insurance Commissioner as receiver; correcting statutory cite; repealing Section 1, Chapter 353, O.S.L. 2000 (36 O.S. Supp. 2000, Section 349), which is a repetitive statute relating to reciprocity and retaliation; 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 309.4, is amended to read as follows:

Section 309.4 A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from such facts.

B. No later than thirty (30) days following completion of the examination, the examiner in charge shall file with the Insurance Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than twenty (20) days to make a written submission or written rebuttal with respect to any matters contained in the examination report.

C. Within twenty (20) days of the end of the period allowed for the receipt of written submissions or written rebuttals, the Insurance Commissioner shall fully consider and review the report, together with any written submissions or written rebuttals and any relevant portions of the examiners' workpapers and enter an order:

1. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure such violation;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection A of this section; or

3. Calling for an investigatory hearing with notice pursuant to the Administrative Procedures Act to the company for purposes of obtaining additional documentation, data, information and testimony.

D. 1. All orders entered pursuant to paragraph 1 of subsection C of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a

final administrative decision and may be appealed pursuant to the Administrative Procedures Act, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders. Upon proper order of the Commissioner, the company shall deliver by mail or otherwise, within thirty (30) days of the date of the order, a copy of the adopted report and related orders to all states and jurisdictions in which the company is licensed to transact the business of insurance.

2. Any hearing conducted pursuant to paragraph 3 of subsection C of this section by the Commissioner or authorized representative, shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within thirty (30) days of the conclusion of any such hearing, the Commissioner shall enter an order pursuant to paragraph 1 of subsection C of this section.

3. The Commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The Commissioner or ~~his~~ a representative of the Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner or ~~his~~ representative of the Commissioner shall be under oath and preserved for the record.

4. Nothing contained in this section shall require the Department to disclose any information or records which would

indicate or show the existence or content of any investigation or activity of a criminal justice agency.

5. The hearing shall proceed with the Commissioner or ~~his~~ a representative of the Commissioner posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. The company and the Department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. 1. Upon the adoption of the examination report under paragraph 1 of subsection C of this section, the Commissioner shall continue to hold the content of the examination report as private and confidential information for a period of two (2) days except to the extent provided in subsection B of this section and subsection F of Section ~~3~~ 309.3 of this ~~act~~ title. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

2. Nothing contained in Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title.

3. In the event the Commissioner determines that regulatory action is appropriate as a result of any examination, ~~he~~ the Commissioner may initiate any proceedings or actions as provided by law.

F. All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the

Commissioner or any other person in the course of an examination made under Sections ~~4~~ 309.1 through ~~7~~ 309.7 of this ~~act~~ title shall be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in subsection E of this section and subsection F of Section ~~3~~ 309.3 of this ~~act~~ title. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 628, is amended to read as follows:

Section 628. When by or pursuant to the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other material obligations, prohibitions or restrictions are imposed upon Oklahoma insurers doing business, or that might seek to do business in such other state or country, or upon the agents of such insurers, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon similar insurers or agents of such other state or foreign country under the statutes of this state, so long as such laws continue in force or are so applied, the same obligations, prohibitions and restrictions of whatever kind shall be imposed upon similar insurers or agents of such other state or foreign country doing business in Oklahoma. All insurance companies of other nations shall be held to the same obligations and prohibitions that are imposed by the state where they have elected to make their deposit and establish their principal agency in the United States. Any tax, license or other obligation imposed by any city, county or other political

subdivision of a state or foreign country on Oklahoma insurers or their agents shall be deemed to be imposed by such state or foreign country within the meaning of this section. The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes. Monies collected pursuant to this section shall be paid by the Insurance Commissioner to the State Treasury to the credit of the General Revenue Fund of the state.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1616, is amended to read as follows:

Section 1616. A. Any domestic company, in addition to other investments permitted by this article, may invest an amount not to exceed its capital and surplus if a stock company, and if a company other than stock an amount not to exceed its surplus over all liabilities, directly or indirectly, in the shares of one or more insurance companies where such companies operate as companion companies or are under substantially the same management. The stock of another insurance company shall not be used by any company as assets in meeting the minimum requirements for organization of an insurance company.

B. Except with the consent of the Insurance Commissioner, no domestic life insurer shall, in addition to other investments permitted by this article, invest an amount equal in the aggregate to ~~more than~~ the lesser of ten percent (10%) of its assets, ~~or in the case of a domestic nonlife insurer, an amount equal in the aggregate to more than twenty percent (20%) of its assets~~ or fifty percent (50%) of its surplus as regards policyholders, provided that after such investments, its surplus as regards policyholders shall be reasonable in relation to its outstanding liabilities and adequate to meet its financial needs, in the shares of solvent corporations created or existing under the laws of the United States or of any state, including the shares of a substantially owned or wholly owned

subsidiary corporation. Investing in the shares of mutual funds that invest only in bonds or preferred stocks shall be considered as investing in bonds or preferred stocks, and investing in mutual funds that invest in common stocks shall be considered as investing in common stocks. However, investments in the shares of subsidiaries or companion insurance companies shall be governed by ~~paragraph~~ subsection A of this section.

~~C. For the purpose of determining the investment limitation imposed by this article, the insurer shall value securities purchased pursuant to the provisions of this article at the cost of the security or at the market value of the security, whichever is lower.~~

SECTION 4. AMENDATORY 36 O.S. 1991, Section 1653, as last amended by Section 88, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 2000, Section 1653), is amended to read as follows:

Section 1653. A. No person other than the issuer shall make a tender offer for, request or invite tenders of, or enter into any agreement to exchange, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer or of any other person controlling a domestic insurer, ~~if such other person, either directly or through his or her affiliates, is substantially engaged in the business of insurance,~~ if, after the consummation of such action, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer. No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Insurance Commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by

this section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner prescribed in subsection D of this section.

B. The statement to be filed with the Commissioner as required by subsection A of this section shall be made under oath or affirmation and shall contain the following information described in this subsection.

1. The name and address of each person, referred to in this section as the "acquiring party", by whom or on whose behalf the merger or other acquisition of control referred to in subsection A of this section is to be effected.

a. If such person is an individual:

- (1) his or her principal occupation and all offices and positions held during the past five (5) years,
- (2) any conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty, or breach of trust, during his or her lifetime, and
- (3) any conviction of crimes other than minor traffic violations and any administrative discipline imposed during the past ten (10) years.

b. If such person is not an individual:

- (1) a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence,
- (2) any conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty, or breach of trust, during its existence, and any administrative discipline imposed during the past ten (10) years,

- (3) an informative description of the business intended to be done by such person and such person's subsidiaries, and
- (4) a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph a of this paragraph.

2. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

3. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years for each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement. However, the Commissioner has the discretionary ability to waive the audit requirements set forth in this section based upon review of substantially similar financial disclosure statements submitted by the acquiring party.

4. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

5. The number of shares of any security referred to in subsection A of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection A of this section, including any requested documentary evidence of the same, and a statement as to the method by which the fairness of the proposal was arrived at.

6. The amount of each class of any security referred to in subsection A of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

7. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection A of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, including any required documentary evidence of the same. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

8. A description of the purchase of any security referred to in subsection A of this section during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

9. Copies of all tender offers for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection A of this section, and, if distributed, of additional soliciting material relating thereto.

10. Such additional information as the Commissioner may require or by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

C. 1. If the person required to file the statement referred to in subsection A of this section is a partnership, limited partnership, limited liability company, syndicate or other group or legal entity, the Commissioner may require that the information called for by subsection B of this section shall be given with respect to each partner or each member of such entity, syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection A of this section is a corporation, the Commissioner may require that the information called for by subsection B of this section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

2. If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3. If any offer, request, invitation, agreement or acquisition referred to in subsection A of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, Public Law 22, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, Public Law 291, or under a state law requiring similar registration

or disclosure, the person required to file the statement referred to in subsection A of this section may utilize such documents in furnishing the information called for by that statement.

D. 1. The Commissioner shall approve any merger or other acquisition of control referred to in subsection A of this section unless, after a public hearing thereon, he or she finds that:

- a. after the change of control, the domestic insurer referred to in subsection A of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed,
- b. the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein,
- c. the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders,
- d. the terms of the offer, request, invitation, agreement or acquisition referred to in subsection A of this section are unfair and unreasonable,
- e. the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest, or
- f. the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of

policyholders or the public to permit the merger or other acquisition of control.

2. The public hearing referred to in paragraph 1 of this subsection shall be held within thirty (30) days after the statement required by subsection A of this section is filed, or after the information required by the Commissioner has been supplied, and at least twenty (20) days' notice thereof shall be given by the Commissioner to the person filing the statement, unless the notice is waived. Not less than fourteen (14) days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner, unless the notice is waived in writing. The insurer shall give notice to its securityholders. The Commissioner shall make a determination within thirty (30) days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing, except by consent.

3. The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

E. The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the Commissioner by order shall exempt therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

F. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Commissioner under this section, and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Commissioner to be ~~his~~ the person's true and lawful agent upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Commissioner in triplicate and transmitted by certified mail with return receipt requested by the Commissioner to such person at ~~his or her~~ the person's last-known address.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 1905, is amended to read as follows:

Section 1905. The Insurance Commissioner may apply to the court for an order appointing ~~him~~ the Commissioner as receiver of and directing ~~him~~ the Commissioner to rehabilitate a domestic insurer upon one or more of the following grounds. That the insurer:

1. Is impaired or insolvent.
2. Is in a condition such that the continued operation would be hazardous to the policyholders, the creditors of the insurer, or the general public.
3. Has refused to submit its books, records, accounts or affairs to reasonable examination by the Insurance Commissioner.
- ~~3.~~ 4. Has failed to comply with an order of the Insurance Commissioner to make good an impairment of capital or surplus or both.
- ~~4.~~ 5. Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or

business in that of any other insurer without having first obtained the written approval of the Insurance Commissioner.

~~5.~~ 6. Has wilfully violated its charter or any law of this state.

~~6.~~ 7. Has an officer, director, or manager who has refused to be examined under oath concerning its affairs, for which purpose the Insurance Commissioner is hereby authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

~~7.~~ 8. Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise pursuant to the provisions of this code, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder.

~~8.~~ 9. Has consented to such an order through a majority of its directors, stockholders, members or subscribers.

~~9.~~ 10. Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within thirty (30) days after the judgment became final or within thirty (30) days after the time for taking an appeal has expired, or within thirty (30) days after dismissal of an appeal before final termination, whichever date is the later.

SECTION 6. AMENDATORY 36 O.S. 1991, Section 1906, is amended to read as follows:

Section 1906. The Insurance Commissioner may apply to the court for an order appointing ~~him~~ the Commissioner as receiver (if ~~his~~ the appointment of the Commissioner as receiver shall not be then in effect) and directing ~~him~~ the Commissioner to liquidate the business

of a domestic insurer, foreign or of the United States branch of an alien insurer having trusteed assets in this State, regardless of whether or not there has been a prior order directing ~~him~~ the Commissioner to rehabilitate such insurer, upon any grounds specified in section ~~1805~~ 1905 of this ~~article~~ title, or if such insurer:

1. Has ceased transacting business for a period of one (1) year, or

2. Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this ~~code~~ Code.

3. Has failed, if a domestic insurer, to obtain from the Insurance Commissioner a certificate of authority to transact a business of insurance in Oklahoma for one of the immediately preceding five (5) years.

SECTION 7. REPEALER Section 1, Chapter 353, O.S.L. 2000 (36 O.S. Supp. 2000, Section 349), is hereby repealed.

SECTION 8. This act shall become effective July 1, 2001.

SECTION 9. 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.

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