

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2805

By: Cox

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2001, Sections 311, 311.2, 321, 348.1, 361 and 362, which relate to the Insurance Commissioner and Insurance Department; modifying criteria for preparation of annual statements; authorizing the Insurance Commissioner to request financial information and other information from insurers more frequently than quarterly under certain circumstances; modifying certain fees; authorizing the Anti-Fraud Unit to refer certain matters to the Attorney General; making investigators of the Anti-Fraud Unit peace officers; modifying who pays the annual fee for the Anti-Fraud Unit; amending 36 O.S. 2001, Sections 610, 617 and 624, which relate to requirements for insurers; modifying the amount of surplus insurers must maintain; requiring applicants requesting to be admitted to transact insurance to follow certain instructions; making certificates of authority perpetual, with exception; modifying premium tax; amending 36 O.S. 2001, Section 1112, which relates to surplus line brokers; defining what constitutes financial soundness; amending 36 O.S. 2001, Sections 1435.7, 1435.23 and 1435.29, which relate to the Oklahoma Producer Licensing Act; requiring applicants for licensure to demonstrate certain qualities; modifying certain fee; authorizing continuing education credit for membership in certain organizations or associations; amending 36 O.S. 2001, Section 1452, which relates to the Third-party Administrator Act; clarifying time period to be covered by annual report; amending 36 O.S. 2001, Section 1474, which relates to the Managing General Agents Act; correcting statutory reference; amending 36 O.S. 2001, Section 1612, which relates to investments; authorizing domestic insurers to make purchases used in connection with data processing of transactions; amending 36 O.S. 2001, Section 1655, which relates to subsidiaries of insurers; modifying definition of extraordinary dividend or distribution; amending 36 O.S. 2001, Section 1803, which relates to supervision and conservatorship of insurers; providing exceptions to time period allowed for compliance with certain requirements; providing for effect of issuance of order appointing liquidator; providing for proceedings after appointment of liquidator; providing that statute of limitations and defense of laches do not run under certain circumstances; providing standing for certain entities; amending 36 O.S. 2001, Section 3106, which relates to motor service clubs; modifying date for filing certain statements; modifying period to be

covered by statements; amending 36 O.S. 2001, Sections 3623.1 and 3624, which relate to insurance contracts; making minimum premium charges subject to premium tax; defining terms; requiring fees passed on to consumers to be actual expense of the insurer; prohibiting certain persons from charging duplicate fees or minimum premium charges; providing maximum allowable total for fees and minimum premium charges; providing for refunds of certain premiums; correcting statutory cite; amending 36 O.S. 2001, Section 4511, which relates to employer health care programs; authorizing insurers to contract with mail order prescription drug services and retail pharmacies; amending 36 O.S. 2001, Section 5123, which relates to the Credit for Reinsurance Act; clarifying forms of security; repealing 36 O.S. 2001, Section 615, which relates to the application for certificate of authority to transact insurance; repealing 59 O.S. 2001, Section 858-630, which relates to insurance requirement under the Home Inspection Licensing Act; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 311, is amended to read as follows:

Section 311. A. Each insurer authorized to do business under the provisions of this Code shall, annually, on or before the first day of March, file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners (NAIC), statements which shall exhibit its financial condition on the thirty-first day of December of the previous year and its business of that year. Annual statements shall be filed with the NAIC by diskette or electronically as approved by the NAIC. For good cause shown, the Insurance Commissioner may extend the time within which such statements may be filed. The statements shall be in such general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the Insurance Commissioner by rule. In addition, the statements shall be prepared in accordance with the NAIC annual statement instruction

handbooks, including any supplemental filings described in the NAIC annual instruction handbook, and follow the accounting procedures and practices prescribed by the NAIC accounting practices and procedure manuals as supplemented by the Insurance Commissioner by rule. The assets and liabilities shall be computed pursuant to the most conservative method allowed by the laws of this state. Such statements shall be subscribed and sworn to by the president and secretary and other proper officers. And if the Insurance Commissioner finds that the facts warrant, and that all laws applicable to the insurer are fully complied with, the Commissioner shall issue to the company a license, or certificate of authority, subject to all requirements and conditions of the law, to transact business in this state, specifying in the certificate the particular kind or kinds of insurance it is authorized to transact, and the certificate shall expire on the first day of March next after its issue. If a new certificate of authority is neither issued nor denied by the first day of March, the insurer shall be deemed to possess a temporary certificate of authority for a period not to exceed six (6) months, until the new certificate is issued or specifically refused. The annual statement of an insurer of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its United States business, or other officer duly authorized. Any amendments and addendums to the annual statement subsequently filed with the Commissioner shall also be filed with the National Association of Insurance Commissioners, and the insurer shall pay the applicable filing fees.

B. In the absence of actual malice, or gross negligence, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners'

employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement shall be acting as agents of the Commissioner under the authority of this section and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or disseminating of the data and information collected from the filings required under this section.

C. All financial analysis ratios and examination synopses pertaining to insurance companies, which are submitted to the Commissioner by the National Association of Insurance Commissioners' Insurance Regulatory Information System, are confidential records which shall not be available for public inspection and shall not be disclosed by the Commissioner except in receivership proceedings.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 311.2, is amended to read as follows:

Section 311.2 A. The Insurance Commissioner may request financial information more frequently than quarterly if it appears an insurer is having financial difficulty, if erratic changes are occurring in the financial data of the company, if a considerable number of consumer complaints have been received, or if one or more transactions have occurred which appear to jeopardize the welfare of the policyholders. The insurer also may be requested to furnish a plan of action to improve its underwriting performance.

B. Any insurer upon request of the Commissioner shall furnish to the Insurance Commissioner within forty-five (45) days following the close of any calendar quarter, except the fourth quarter, on blank forms prescribed by the Insurance Commissioner, a statement which shall exhibit the financial condition of the company as of the last date of the month immediately preceding reporting date. Such reports for information purposes shall contain a complete listing of all written commitments to loan, guaranties of loans, or contractual

obligations concerning loans or conditional liabilities to borrowers or lenders made during the quarter reported. Such reports may require the inclusion of an exhibit of the operating results of the company for the three (3) months' period immediately preceding the date for which the financial condition is shown. A completed blank form prescribed by the Commissioner for said statement shall be furnished by each insurer for each such reporting date. Such statements shall be subscribed and sworn to by the president and the secretary and other proper officers of the company. Failure of any insurer to execute and file such statements or exhibits as required herein shall constitute cause, after notice and hearing, for censure, suspension, or revocation of certificate of authority to transact an insurance business in this state or a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence, or both censure, suspension, or revocation, and fine. The Commissioner shall set such cause for hearing and if he finds that the facts warrant, he shall order said censure, suspension, or revocation of the certificate of authority of the insurer found to be in default or said fine, or both said censure, suspension, or revocation, and fine. Willful violations, after notice and hearing, may subject the insurer to both censure, suspension or revocation of certificate and a fine of not less than One Hundred Dollars (\$100.00) or not more than Five Thousand Dollars (\$5,000.00) for each violation. The Insurance Commissioner may establish rules or regulations to carry out the purposes of this section.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 321, is amended to read as follows:

Section 321. A. The Insurance Commissioner shall collect in advance the following fees and licenses:

1. For filing charter documents:

- Original charter documents, articles of incorporation, bylaws, or record of organization of alien or foreign insurers, or certified copies thereof.....\$50.00
2. Certificate of Authority:
- (a) Issuance:
- Fraternal benefit societies, alien or foreign.....\$150.00
- Hospital service and medical indemnity corporations, alien or foreign.....\$150.00
- All other alien or foreign insurers.....\$150.00
- (b) Renewal:
- Fraternal benefit societies, alien or foreign.....\$150.00
- Hospital service and medical indemnity corporations, alien or foreign.....\$150.00
- All other alien or foreign insurers.....\$150.00
3. For filing appointment of Insurance Commissioner as agent for service of process.....\$10.00
4. Miscellaneous:
- (a) Copies of records, per page.....\$0.40
- (b) Amended charter documents, articles of incorporation or bylaws of domestic, alien or foreign insurers.....\$50.00
- (c) Certificate of Commissioner, under seal..... \$5.00
- (d) For filing Merger and Acquisition Forms.....~~\$500.00~~  
.....\$1,000.00
- (e) For filing Variable Product Forms.....\$200.00
- (f) For filing a Life, Accident and Health Policy.....\$50.00
- (g) For filing an advertisement or rider application to a Life, Accident and

- Health Policy.....\$25.00
- (h) Pending Company Review.....\$1,000.00
- (i) Pending Company Admission Packet.....\$50.00

B. All fees and licenses not above dedicated, nor dedicated by Section 628 of this title, collected by the Insurance Commissioner as provided by this Code, shall be paid into the State Treasury weekly. The State Treasury is authorized and directed to deduct from said amount so paid a sum equal to one-tenth (1/10) of such payment and place the same to the credit of the General Revenue Fund of the state. The remainder of said amount so paid is hereby allocated and appropriated to the State Insurance Commissioner Revolving Fund and shall by the State Treasurer be placed to the credit of the State Insurance Commissioner Revolving Fund.

C. There shall be assessed an annual fee of Two Hundred Fifty Dollars (\$250.00) payable by each insurer, fraternal benefit society, hospital service and medical indemnity corporation, charitable and benevolent corporation, or United States surplus lines insurance companies licensed to do business in this state, to pay for the filing, processing, and reviewing of annual and quarterly financial statements by personnel of the Office of the State Insurance Commissioner.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 348.1, is amended to read as follows:

Section 348.1 A. The Insurance Commissioner shall collect the following fees and licenses for the Board and the Property and Casualty Division:

1. Rating organizations, application fee
  - for issuance of license..... ~~\$ 100.00~~ \$200.00
2. Miscellaneous:
  - a. Certificate of Insurance Commissioner,
    - under seal..... ~~\$ 10.00~~ \$20.00
  - b. Upon each transaction of filing of

documents required pursuant to the provisions of Section 3610 of this title.....~~\$ 40.00~~

(1) For an individual insurer..... \$50.00

(2) For an approved rating or advisory organization:

(a) Basic fee..... \$50.00

(b) Additional fee for each member or subscriber insurer..... \$10.00

not to exceed..... \$500.00

3. For each rate, loss cost and rule filing request pursuant to the provisions of Sections 902.1, 903 et seq., and 981 et seq. of this title:

a. For an individual insurer..... ~~\$ 80.00~~ \$100.00

b. For an approved rating or advisory organization:

(1) Basic fee..... ~~\$ 80.00~~ \$80.00

(2) Additional fee for each member or subscriber insurer..... \$10.00,

not to exceed..... ~~\$1,000.00~~ \$500.00.

B. All fees and licenses collected by the Insurance Commissioner as provided in this section shall be paid into the State Treasury on a weekly basis to the credit of the Insurance Commissioner's Revolving Fund for the purpose of carrying out and enforcing the provisions of Article 9 of the Insurance Code.

C. The fees, licenses, and taxes imposed by the Board upon persons, firms, associations, or corporations licensed pursuant to this section shall be payment in full with respect thereto of and in lieu of all demands for any and all state, county, district, and municipal license fees, license taxes, business privilege taxes, business privilege fees, and charges of every kind now or hereafter imposed upon all such persons, firms, associations, or corporations.

This subsection shall not affect other fees, licenses and taxes imposed by the Insurance Code.

D. Any costs incurred by the Board or the Commissioner in the process of review and analysis of a filing shall be assessed against the company or organization making the filing.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 361, is amended to read as follows:

Section 361. A. There is hereby created within the Insurance Department, under the control and direction of the Insurance Commissioner, an "Anti-Fraud Unit" within the Division of the General Counsel of the Insurance Department.

B. The Anti-Fraud Unit, upon inquiry, complaint, or referral shall investigate the extent, if any, to which a violation has occurred of any statute or administrative rule of this state pertaining to insurance fraud and may initiate any necessary investigation. Whenever the Unit determines that a violation of any criminal law of this state may have occurred, it shall refer the matter to the Oklahoma State Bureau of Investigation for further investigation pursuant to Section 150.5 of Title 74 of the Oklahoma Statutes or the Attorney General pursuant to Section 18b of Title 74 of the Oklahoma Statutes. The Insurance Department shall retain the authority to initiate and prosecute any civil action it deems necessary or advisable.

C. The investigators of the Anti-Fraud Unit shall be peace officers, as defined by and pursuant to the guidelines and requirements of Section 3311 of Title 70 of the Oklahoma Statutes and Sections 99 and 99a of Title 21 of the Oklahoma Statutes.

D. Records, documents, reports and evidence obtained or created by the Anti-Fraud Division as a result of an inquiry or investigation of suspected insurance fraud shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual, but shall be subject to court

order. Information and records shall be disclosed upon request to officers and agents of federal, state, county, or municipal law enforcement agencies, to the Oklahoma State Bureau of Investigation, to the Attorney General's office and to district attorneys, in the furtherance of criminal investigations.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 362, is amended to read as follows:

Section 362. A. There is hereby created in the State Treasury a revolving fund for the Insurance Commissioner to be designated the "Insurance Department Anti-Fraud Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of all monies received and collected by the Insurance Department pursuant to subsection B of this section and all other monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Insurance Commissioner for the purposes of investigation of suspected insurance fraud and civil or administrative action in cases involving suspected insurance fraud. Expenditures from said 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.

B. The following shall pay an annual fee of Six Hundred Dollars (\$600.00) to the Insurance Department which shall be payable quarterly in the amount of One Hundred Fifty Dollars (\$150.00): Life, accident and health insurers; property and casualty insurers; county mutual fire insurers; mutual benefit associations; fraternal benefit societies; reciprocal insurers; motor service clubs; title insurers; nonprofit insurers; health maintenance organizations (HMOs); ~~risk retention groups~~ service warranty associations; surplus lines carriers; multiple employer welfare arrangements (MEWAs); trusts which write surety policies; prepaid dental plan organizations; ~~third-party administrators~~; and accredited

reinsurers. The payments shall be due on or before the last day of the month following each calendar quarter. Within sixty (60) days after each calendar quarter, the Commissioner shall transfer:

1. Twenty-five percent (25%) of all monies collected by the Insurance Department pursuant to this section to the Attorney General's Insurance Fraud Unit Revolving Fund created in Section 19.3 of Title 74 of the Oklahoma Statutes, for use by the Attorney General in the investigation and prosecution of insurance fraud; and

2. Fifteen percent (15%) of all monies collected by the Insurance Department pursuant to this section to the OSBI Revolving Fund created in Section 150.19a of Title 74 of the Oklahoma Statutes, for use by the Oklahoma State Bureau of Investigation in the investigation of insurance fraud.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 610, is amended to read as follows:

Section 610. A. To qualify for authority to incorporate an insurance company or to transact any one or more kinds of insurance an insurer shall possess and maintain, after the effective date of this act, surplus in regard to policyholders, which is defined as the aggregate of the capital and surplus ~~(if a stock insurer) or surplus (if a mutual or reciprocal insurer)~~, in an amount not less than ~~as shown by the applicable portion of the following schedule:~~

<del>KINDS OF</del>	<del>MINIMUM</del>
<del>INSURANCE</del>	<del>SURPLUS IN REGARD TO</del>
	<del>POLICYHOLDERS REQUIRED</del>
<del>Life and/or accident and health .....</del>	<del>\$500,000.00</del>
<del>Mutual benefit association converting</del>	
<del>to legal reserve life or limited</del>	
<del>stock life.....</del>	<del>500,000.00</del>
<del>Domestic fraternal converting to</del>	
<del>legal reserve life.....</del>	<del>500,000.00</del>
<del>Property.....</del>	<del>500,000.00</del>

<del>Marine</del> .....	<del>500,000.00</del>
<del>Casualty</del> .....	<del>500,000.00</del>
<del>Vehicle</del> .....	<del>500,000.00</del>
<del>Surety (except alien)</del> .....	<del>500,000.00</del>
<del>Alien surety</del> .....	<del>500,000.00</del>
<del>Title</del> .....	<del>500,000.00</del>
<del>All insurance except life, surety and title.....</del>	<del>500,000.00</del>
<del>All insurance except life and title.....</del>	<del>500,000.00</del>
<u>One Million Five Hundred Thousand Dollars (\$1,500,000.00).</u>	

B. Any domestic insurer lawfully authorized to transact the business of insurance in Oklahoma immediately prior to the effective date of this act shall not be required to increase its capital or surplus to meet increased requirements of this act, provided, however, that in no event shall such insurer reduce its capital or surplus below the figure required of insurers on January 1, 1979.

C. Wherever the language paid-in capital, capital, capital stock or a similar term (if a stock company) or surplus, expendable surplus or a similar term (if a mutual or reciprocal insurer) is used elsewhere in this code, the term surplus in regard to policyholders may be used interchangeably when applicable.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 615.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Unless otherwise instructed by the Insurance Commissioner, an applicant requesting to be admitted to transact insurance in this state shall follow the instructions outlined in the National Association of Insurance Commissioners (NAIC) Uniform Certificate of Authority Application (UCAA) instructions.

SECTION 9. AMENDATORY 36 O.S. 2001, Section 617, is amended to read as follows:

Section 617. A. All certificates of authority shall ~~expire at midnight on the last day of February next following date of issuance or renewal. If the insurer qualifies therefor its certificate shall be renewed annually. Provided, however, that any certificate of authority shall continue in full force and effect until the new certificate be issued or specifically refused; however, the continuance shall not exceed a period of six (6) months, beginning November 1, 2002, be perpetual and automatically renewed as of March 1 of each year, unless the insurer fails to comply with the requirements of the Insurance Code. Such failure to comply shall invalidate the certificate of authority.~~

B. The Insurance Commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.

SECTION 10. AMENDATORY 36 O.S. 2001, Section 624, is amended to read as follows:

Section 624. A. Every insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, nonprofit hospital service and medical indemnity corporation, or health maintenance organization, doing business in this state in the execution or exchange of contracts of insurance, indemnity or health maintenance services, or as an insurance company of any nature or character whatsoever, hereinafter referred to in this article as an insurance company, or company, shall, annually, on or before the first day of March, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of direct written premiums, membership, application, policy and/or registration fees charged during the preceding calendar year, or since the last return of such direct written premiums, membership, application, policy and/or registration fees was made by such company, from insurance of every kind upon persons or on the lives of persons resident in this state,

or upon real and personal property located within this state, and/or upon any other risks insured within this state, provided, that with respect to the tax payable annually, considerations received for annuity contracts and payments received by a health maintenance organization from the Secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C., Section 1395mm(g) shall no longer be deemed to be premiums for insurance and shall no longer be subject to the tax imposed by this section. Every such company shall, at the same time, pay to the Insurance Commissioner:

1. An annual license fee as prescribed by Section 321 of this Code, except for Health Maintenance Organizations which shall pay the annual license fee provided for in Section 2504 of Title 63 of the Oklahoma Statutes; and

2. An annual tax on all of said direct written premiums after all returned premiums are deducted, and on all membership, application, policy and/or registration fees, installment and/or finance fees or charges collected thereby, for the privileges of having written, continued and/or serviced insurance on lives, property and/or other risks in this state and of having made and serviced investments therein during the then expiring license year except premiums or fees paid by any county, city, town or school district funds or by their duly constituted authorities performing a public service organized pursuant to Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes. Provided, no deduction shall be made from premiums for dividends paid to policyholders. The rate of taxation for all entities subject to said tax shall be the greater of One Thousand Dollars (\$1,000.00) or two and twenty-five one-hundredths percent (2.25%). If any insurance company or other entity liable for the taxes levied pursuant to the provisions of this section fails to remit such taxes in a timely manner, it shall

remain liable therefor together with interest thereon at an annual rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

B. For all insurance companies or other entities taxed pursuant to this section, the annual license fee and tax and all required membership, application, policy, registration, and agent appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code and in Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes. Any company, except health maintenance organizations, failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes and fees and interest, the sum of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater; and the company so failing or neglecting for sixty (60) days shall thereafter be debarred from transacting any business of insurance in this state until said taxes, fees and penalties are fully paid, and the Insurance Commissioner shall revoke the license or certificate of authority granted to the agent or agents of that company to transact business in this state. Provided, that when any such insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, or nonprofit hospital service and indemnity corporation, applies for the first time for a license to do business in Oklahoma, it shall, at the time of making such application, pay a license fee as prescribed by Section 1425 of Article 14A of this Code, and, on or before the first day of March, following, pay the premium tax, membership, application, policy,

registration, and agent appointment fees, as hereinbefore provided. Such license fee, tax and membership, application, policy, registration, and appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes.

C. Any health maintenance organization failing to file premium tax returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes, the sum of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater. Any health maintenance organization failing or neglecting to pay said tax and penalty shall be debarred from operating in this state and the State Department of Health shall revoke the license of the health maintenance organization, until said taxes and penalties are fully paid.

SECTION 11. AMENDATORY 36 O.S. 2001, Section 1112, is amended to read as follows:

Section 1112. A. A surplus line broker shall not knowingly place any such coverage in an insurer which is in an unsound financial condition. To be considered financially sound, a surplus line broker shall have a minimum capital and surplus of not less than Fifteen Million Dollars (\$15,000,000.00). A surplus line broker shall not place any such coverage in an insurer unless the insurer has been approved in writing by the Commissioner as a surplus line insurer and such approval has not been withdrawn. A surplus line broker shall not place any surplus line insurance in an insurer that has been disapproved by the Commissioner as a surplus line insurer.

B. For violation of this section, in addition to any other penalty provided by law, the broker's license shall be revoked, and the broker shall not again be so licensed within a period of two (2) years thereafter. In addition, any surplus line broker who violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for each offense, by a fine of not more than One Thousand Dollars (\$1,000.00) or by confinement in jail for not more than ninety (90) days, or by both such fine and imprisonment.

SECTION 12. AMENDATORY 36 O.S. 2001, Section 1435.7, is amended to read as follows:

Section 1435.7 A. A person applying for a resident insurance producer license shall make application to the Insurance Commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the Insurance Commissioner shall find that the individual:

1. Is at least eighteen (18) years of age;
2. Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 13 of this act;
3. Where required by the Insurance Commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;
4. Has paid the fees set forth in Section 23 of this act; and
5. Has successfully passed the examinations for the lines of authority for which the person has applied.

B. In connection with the licensure of an applicant for a resident insurance producer license, 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.

C. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the Insurance Commissioner shall find that:

1. The business entity has paid the fees set forth in Section 23 of this act;

2. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this state;

3. A domestic business entity is organized pursuant to the provisions of the laws of this state and maintains its principal place of business in this state;

4. No person whose license as an insurance producer has been revoked by order of the Commissioner, nor any business entity in which such person has a majority ownership interest, whether direct or indirect, owns any interest in the business entity licensed as an insurance producer; and

5. The business entity has provided proof satisfactory to the Commissioner that a trade name has been lawfully registered for an insurance producer license to be issued in a trade name.

D. A business entity acting as an insurance producer shall notify the Commissioner of all changes among its members, directors and officers and all other individuals designated in the license within fifteen (15) days after the change.

E. An applicant for any license required by the provisions of the Oklahoma Producer Licensing Act shall demonstrate to the Insurance Commissioner that the applicant is competent, trustworthy, financially responsible, and of good personal and business reputation.

F. The Insurance Commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 13. AMENDATORY 36 O.S. 2001, Section 1435.23, is amended to read as follows:

Section 1435.23 A. 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~~ \$ 20.00
2. Miscellaneous:
  - a. Certificate and Clearance of Commissioner, ~~under seal~~ ..... \$ 3.00
  - b. Insurance producer'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 insurance producer.....\$ 20.00
3. Examination for license:

For each examination covering laws and  
one or more lines of insurance .....\$ 50.00

4. Licenses:

- a. Insurance producer's biennial license,  
regardless of number of companies  
represented.....\$ 60.00
- b. Insurance producer'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 lines producer 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 insurance  
producer, managing general agent, or limited  
lines producer by insurer, each license of  
each insurance producer 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.

B. 1. The fees and monies received by the Insurance Commissioner pursuant to the provisions of paragraphs 1, 2, 7 and 8 of subsection A 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 Oklahoma Producer 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 A of this section shall be paid into the State Treasury to the credit of the General Revenue Fund of the state.

C. 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 Oklahoma Producer 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.

D. All fees, fines, monies, and license fees authorized by the provisions of this section and not dedicated by the provisions of subsection B 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.

E. If for any reason an insurance producer license or appointment is not issued or renewed by the Commissioner, all fees accompanying the appointment or application for the license shall be

deemed earned and shall not be refundable except as provided in Section 352 of this title.

SECTION 14. AMENDATORY 36 O.S. 2001, Section 1435.29, is amended to read as follows:

Section 1435.29 A. 1. Each insurance producer shall, biennially, complete not less than fourteen (14) clock hours of continuing insurance education which shall cover subjects in the lines for which the insurance producer is licensed. Such education may include a written or oral examination.

2. Each customer service representative shall, biennially, complete not less than ten (10) clock hours of continuing insurance education which shall cover subjects in the lines for which the licensee is authorized to conduct insurance-related business on behalf of the appointing agent, broker, or agency.

3. Licensees shall complete, in addition to the foregoing, two (2) clock hours of ethics course work in this same period.

B. 1. The Insurance Commissioner shall approve courses and providers of continuing education. The Insurance Department may use one or more of the following to review and provide a nonbinding recommendation to the Insurance Commissioner on approval or disapproval of courses and providers of continuing education:

- a. employees of the Insurance Commissioner,
- b. a continuing education advisory committee, or
- c. an independent service whose normal business activities include the review and approval of continuing education courses and providers. The Commissioner may negotiate agreements with such independent service to review documents and other materials submitted for approval of courses and providers and provide the Commissioner with its nonbinding recommendation. The Commissioner may require such independent service to collect the fee

charged by the independent service for reviewing materials provided for review directly from the course providers.

The Insurance Commissioner has sole authority to approve courses and providers of continuing education. If the Insurance Commissioner uses one of the entities listed above to provide a nonbinding recommendation, the Commissioner shall adopt or decline to adopt the recommendation within thirty (30) days of receipt of the recommendation. In the event the Insurance Commissioner takes no action within said thirty-day period, the recommendation made to the Commissioner will be deemed to have been adopted by the Commissioner.

2. Each insurance company shall be allowed to provide continuing education to insurance producers and customer service representatives as required by this section; provided that such continuing education meets the general standards for education otherwise established by the Insurance Commissioner.

3. An insurance producer who, during the time period prior to renewal, successfully completes any one of the following courses or programs of instruction and equivalent classroom hours approved by the Insurance Commissioner shall be deemed to have met the biennial requirement for continuing education:

- a. any part of a life course curriculum totaling fifty (50) classroom hours, or a health course totaling twenty-six (26) classroom hours offered by the Life Underwriter Training Council,
- b. any part of the American College diploma curriculum for Chartered Life Underwriters (CLU), Registered Health Underwriters (RHU), Chartered Financial Consultants (ChFC), or Registered Employee Benefits Consultants (REBC), totaling thirty (30) classroom hours,

- c. any part of the Accredited Advisor in Insurance (AAI) program totaling twenty-five (25) classroom hours offered by the Insurance Institute of America,
- d. any part of the Chartered Property and Casualty Underwriter (CPCU) professional designation program totaling thirty (30) classroom hours offered by the American Institute of Property and Liability Underwriters, or
- e. any part of the Certified Insurance Counselor Program totaling twenty (20) classroom hours.

4. Subject to approval by the Commissioner, the active membership of the licensed agent or broker in local, regional, state, or national professional insurance organizations or associations may be approved for up to two (2) annual hours of instruction. These hours shall be credited upon timely filing with the Commissioner, or designee of the Commissioner, appropriate written evidence acceptable to the Commissioner of such active membership in the organization or association.

C. Each provider of continuing education shall, after approval by the Commissioner, submit an annual fee of Two Hundred Dollars (\$200.00) payable to the Insurance Commissioner which shall be deposited in the State Insurance Commissioner Revolving Fund, created in subsection C of Section 23 of this act, for the purposes of fulfilling and accomplishing the conditions and purposes of the Oklahoma Producer Licensing Act and the Insurance Adjusters Licensing Act. Provided, public-funded educational institutions shall be exempt from this subsection.

D. Failure of an insurance producer or customer service representative to comply with the requirements of this act may, after notice and opportunity for hearing, result in censure, suspension, nonrenewal of license or a civil penalty of up to Five Hundred Dollars (\$500.00) or by both such penalty and civil penalty.

Said civil penalty may be enforced in the same manner in which civil judgments may be enforced. Any civil penalties collected under this act shall be deposited in the State Insurance Commissioner Revolving Fund.

E. Limited lines producers and nonresident agents who have successfully completed an equivalent or greater requirement shall be exempt from the provisions of this section.

F. Insurance producers and limited lines producers who are sixty-five (65) years of age or older and who have at least thirty (30) years of experience as insurance producers or limited lines producers, and who do not write new business, shall be exempt from the provisions of this section.

G. Members of the Legislature shall be exempt from this section.

H. The Commissioner shall adopt and promulgate such rules as are necessary for effective administration of this section.

SECTION 15. AMENDATORY 36 O.S. 2001, Section 1452, is amended to read as follows:

Section 1452. On or before June 1 of each year, all licensed administrators shall file an annual report for the previous calendar year prepared by a certified public accountant and which shall be subscribed and sworn to by the president and attested to by the secretary or other proper officers substantiating that the information contained in the report is true and factual concerning each of the plans they administer which are governed pursuant to the provisions of the Third-party Administrator Act. The report shall include the name and address of each fund and a statement of fund equity, paid claims by the covered unit, the accumulated year-to-date paid claims, and the year-to-date reserve status. Failure of any third-party administrator to execute and file such annual reports as required by this section shall constitute cause, after notice and opportunity for hearing, for censure, suspension,

or revocation of administrator licensure to transact business in this state, or a civil penalty of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00) for each occurrence, or both censure, suspension, or revocation and civil penalty.

SECTION 16. AMENDATORY 36 O.S. 2001, Section 1474, is amended to read as follows:

Section 1474. No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1. The insurer may terminate the contract for cause upon thirty (30) days' written notice to the managing general agent and the Insurance Commissioner. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

2. The managing general agent shall render accounts to the insurer detailing all transactions and shall remit all funds due under the contract to the insurer on not less than a monthly basis;

3. All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three (3) months' estimated claims payment and allocated loss adjustment expenses;

4. Separate records of business written by the managing general agent shall be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer. The Insurance Commissioner shall have

access to all books, bank accounts and records of the managing general agent in a form usable to the Commissioner. Such records shall be retained according to the provisions of ~~paragraph 5 of subsection A E of Section 1428 of Title 36 of the Oklahoma Statutes~~ 1435.13 of this title;

5. The contract may not be assigned in whole or part by the managing general agent;

6. The contract shall contain appropriate underwriting guidelines including:

- a. the maximum annual premium volume,
- b. the basis of the rates to be charged,
- c. the types of risks which may be written,
- d. maximum limits of liability,
- e. applicable exclusions,
- f. territorial limitations,
- g. policy cancellation provisions, and
- h. the maximum policy period;

7. The insurer shall have the right to cancel or not renew any policy of insurance subject to applicable laws and regulations;

8. If the contract permits the managing general agent to settle claims on behalf of the insurer:

- a. all claims must be reported to the company in a timely manner,
- b. a copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
  - (1) has the potential to exceed a threshold determined by the Insurance Commissioner or exceeds the limit set by the company, whichever is less,
  - (2) involves a coverage dispute,

- (3) may exceed the managing general agent's claims settlement authority,
  - (4) is open for more than six (6) months, or
  - (5) is closed by payment of an amount set by the Insurance Commissioner or an amount set by the company, whichever is less,
- c. all claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis,
- d. any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination, and
- e. nothing in this section shall be construed to give the Insurance Commissioner authority to settle or adjust claims on behalf of the insurer;

9. Where electronic claim files are in existence, the contract shall address the timely transmission of the data;

10. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent on the lines of business written by the managing general agent until at least ninety-seven percent (97%) of the

ultimate loss has been developed for those lines of business, based on an opinion of the actuary who certifies the adequacy of the loss reserves for the insurer;

11. The managing general agent shall not:

- a. bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded:
  - (1) a list of reinsurers with which such automatic agreements are in effect,
  - (2) the coverages and amounts or percentages that may be reinsured, and
  - (3) commission schedules,
- b. commit the insurer to participate in insurance or reinsurance syndicates,
- c. appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he is appointed,
- d. without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year,
- e. collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer,

- f. permit its sub-agent or sub-broker to serve on the insurer's board of directors,
- g. jointly employ an individual who is employed with the insurer, or
- h. appoint a sub-managing general agent.

SECTION 17. AMENDATORY 36 O.S. 2001, Section 1612, is amended to read as follows:

Section 1612. Any domestic company, in addition to the investments permitted by this article, may invest in electronic machines constituting a data processing system, or systems, and other office equipment, furniture and machines, and such other property, machines and equipment heretofore or hereafter purchased for use in connection with the data processing of the transaction of the business of an insurance company and may further invest in property, which shall not be included in calculating the limitation of Section 1624, used for recreational, hospitalization, convalescent and/or retirement purposes for its employees, to the extent that the total market value of all such property, which shall be depreciated over its useful life in accordance with standard accounting procedures, constitutes less than three per cent of its otherwise admitted assets.

SECTION 18. AMENDATORY 36 O.S. 2001, Section 1655, is amended to read as follows:

Section 1655. (a) Transactions with Affiliates. Material transactions by registered insurers with their affiliates shall be subject to the provisions of Section 1604 of this title. The board of directors will be charged with exercising that degree of care which a prudent person would have exercised under similar circumstances. Material transactions shall be subject to the following standards:

- (1) the terms shall be fair and reasonable~~+~~l,

- (2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction<sup>7</sup>1 and
  - (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (b) Insurance Commissioner's Approval Required.
- (1) The prior written approval of the Commissioner shall be required for the following transactions between a domestic insurer and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than five percent (5%) of the insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is less, as of the latest statutory financial statement filed with the Commissioner; provided, however, that the Commissioner must either approve or disapprove within thirty (30) days after receiving written notification from the insurer of the proposed transaction and failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction<sup>7</sup>1
  - (2) The prior written approval of the Commissioner shall be required for any transactions between a domestic insurer and its affiliates where the insurer is found by the Commissioner to be in unsound condition or in such condition as to render its further transaction of insurance in Oklahoma hazardous to its policyholders

or to the people of Oklahoma; provided, however, that the Commissioner must either approve or disapprove within ninety (90) days after written notification by the insurer and failure to disapprove the proposed transaction within ninety (90) days shall constitute approval of the transaction~~†~~‡

(3) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

(i) loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: (a) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; (b) with respect to life insurers, three percent (3%) of the insurer's admitted assets; each as of the 31st day of December next preceding~~†~~‡

(ii) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer~~†~~1

(iii) all management agreements, service contracts and all cost-sharing arrangements~~†~~1 and

(4) The Insurance Commissioner shall promulgate reasonable rules and regulations governing the form and content of the notice required pursuant to subsection (b) of this section.

(c) Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to the effective date of this section.

(d) Adequacy of Surplus. For purposes of Section 1651 et seq. of this title, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria~~†~~1
- (2) the extent to which the insurer's business is diversified among the several lines of insurance~~†~~1

- (3) the number and size of risks insured in each line of business<sup>†</sup>
- (4) the extent of the geographical dispersion of the insurer's insured risks<sup>†</sup>
- (5) the nature and extent of the insurer's reinsurance program<sup>†</sup>
- (6) the quality, diversification, and liquidity of the insurer's investment portfolio<sup>†</sup>
- (7) the recent past and projected future trend in the size of the insurer's investment portfolio<sup>†</sup>
- (8) the surplus as regards policyholders maintained by other comparable insurers<sup>†</sup>
- (9) the adequacy of the insurer's reserves<sup>†</sup>
- (10) the quality and liquidity of investments in subsidiaries made pursuant to Section 1652 of this title. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants<sup>†</sup>   and
- (11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

(e) Dividends and Other Distributions. No insurer subject to registration under Section 1654 of this title shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) thirty (30) days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the Commissioner shall have approved such payment within such thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other

property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the ~~greater~~ lesser of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of such dividend or distribution or (ii) the Commissioner has not disapproved such payment within the thirty-day period referred to above.

SECTION 19. AMENDATORY 36 O.S. 2001, Section 1803, is amended to read as follows:

Section 1803. A. The Commissioner shall, if there is substantial reason to believe that any insurer is insolvent, or if any insurer's condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or it has exceeded its powers, or it has failed to comply with the law, or if such insurer gives its consent:

1. Notify the insurer of his determination;
2. Furnish the insurer a written list of requirements to abate his determination; and
3. If ~~he~~ the Commissioner makes a further determination to supervise, notify the insurer that it is under supervision pursuant to this ~~act~~ article.

B. Such insurer shall comply with the lawful requirements of the Commissioner and, if placed under supervision, shall have ninety (90) days from the date of notice within which to comply with the requirements of the Commissioner unless the Commissioner designates a lesser or greater period of time or unless the Commissioner determines at any time during or after the ninety-day period of time that judicial or administrative proceedings should be initiated to place such insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, pursuant to Articles 18 and 19 of this title. If such insurer does not comply with such requirements, such supervision may continue until such requirements are remedied or until the Commissioner approves or completes pursuit of additional options as provided in the Insurance Code.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1913.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the judgment of the liquidator, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend any action in which the liquidator intervenes under this section at the expense of the estate of the insurer.

B. The liquidator may, upon or after an order for liquidation, within two (2) years or such other longer time applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. If, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or if in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and if in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer, within a period of one hundred eighty (180) days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

C. No statute of limitation or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the petition is denied.

D. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

SECTION 21. AMENDATORY 36 O.S. 2001, Section 3106, is amended to read as follows:

Section 3106. A. Whenever the Commissioner deems it to be prudent or necessary he shall personally, or by his authorized representative, visit each motor service club and thoroughly inspect and examine its financial condition, its ability to fulfill its obligations, whether it has complied with the provisions of this act and any other facts relative to its business methods, management and the equity of its dealings with its members.

B. Every motor service club shall furnish to the Commissioner, on or before ~~December 31~~, July 1 of each year, on blanks prescribed and furnished by the Commissioner, a statement which shall exhibit the financial condition of the company as of ~~the last day of the month immediately preceding the reporting date~~. ~~Such reports may require the inclusion of an exhibit of the operating results of the company for the three-month period immediately preceding the date for which the financial condition is shown. The Commissioner shall furnish two or more of the prescribed forms for each reporting period~~ December 31 of the previous calendar year. Such statements shall be subscribed and sworn to by the president and secretary or two other proper officers of the company.

SECTION 22. AMENDATORY 36 O.S. 2001, Section 3623.1, is amended to read as follows:

Section 3623.1 A. Nothing in this Code shall be construed to prevent an insurer from charging and collecting in this state separate initial membership fees and policy fees in addition to premiums for insurance, and such fees shall not be considered premium within the definition of this Code, but shall be subject to premium tax as provided in this Code.

B. A minimum premium charge is considered premium within the definition of this Code, and shall be subject to premium tax as provided in this Code.

C. 1. Fees are defined as a flat amount added to the basic premium rate to reflect the cost of establishing the required

records, sending premium notices and other related expenses and include, but are not limited to, the following: Installment fees, service charges, financing fees, membership fees, return check fees, policy fees, motor vehicle record fees, inspection fees, late fees, electronic transfer fees, credit score fees and expense load fees.

2. The fee passed on to the consumer must be the actual expense incurred by the insurance company.

D. Minimum premium charge is the smallest acceptable premium for which an insurance company will write a policy. This minimum charge is necessary to cover fixed expenses, other than those expenses defined as fees above, in placing the policy on the books. A minimum premium charge includes, but is not limited to, minimum earned premium and minimum retained premium.

E. An insurance consultant, insurance producer, limited lines producer, managing general agent or surplus lines insurance broker cannot charge a duplicate fee or minimum premium charge.

F. The maximum allowable total for all fees and the minimum premium charge shall not exceed ten percent (10%) of the premium charged for the insurance policy.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3623.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Premiums paid for coverage of life, accident and health insurance shall be refunded from the date of death of the insured to the premium due date.

1. The refund of premium shall be on a daily pro-rata basis.

2. Premium refunds shall be provided within thirty (30) days from the date of valid proof of loss has been received.

B. As it pertains to this section, life, accident and health insurance coverage shall include any policy, contract, plan or agreement of life, accident and health insurance, or subscriber certificates of life or medical care corporations, health care

corporations, hospital service associations, or health care maintenance organizations, delivered or issued for delivery in this state by any insurer; any certificate, contract or policy issued by a fraternal benefit society; any policy or certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state; and any evidence of coverage issued by a health maintenance organization. Life, accident and health insurance coverage shall include long-term care, dental, vision and disability insurance policies and certificates.

SECTION 24. AMENDATORY 36 O.S. 2001, Section 3624, is amended to read as follows:

Section 3624. Except as provided in subsection € D of Section 6055 of this title, a policy may be assignable or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or accident and health policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

SECTION 25. AMENDATORY 36 O.S. 2001, Section 4511, is amended to read as follows:

Section 4511. A. No employer providing pharmacy services including prescription drugs to any employee or retiree of said employer, as part of a health care program, shall knowingly:

1. Require the employee or retiree of said employer to obtain drugs from a mail order pharmacy as a condition of obtaining the employer's payment for such prescription drugs; or

2. Impose upon an employee or retiree of said employer not utilizing a mail order pharmacy designated by the employer a copayment fee or other condition not imposed upon employees or retirees of said employer utilizing the designated mail order pharmacy.

B. The provisions of this section shall not apply to any employer who offers, as a part of a health care program, health insurance coverage to employees or retirees of said employer which provides for reimbursement of an equal portion of the cost to the employee or retiree of said employer for prescription drugs regardless of the supplier provided that the health insurance plan allows the employee or retiree of said employer freedom of choice in determining where the drugs are purchased.

C. Nothing in this section shall be construed to prohibit an insurer from contracting with a mail-order prescription drug service or a retail pharmacy for discounts and passing any resulting savings or portion of those savings on to the insured or covered person. Any person violating the provisions of this section, upon conviction, shall be guilty of a misdemeanor. Each such violation shall constitute a separate offense.

SECTION 26. AMENDATORY 36 O.S. 2001, Section 5123, is amended to read as follows:

Section 5123. A. An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 5122 of this title shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such

assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in Section 5122 of this title. This security may be in one or more of the following forms:

1. Cash;

2. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; ~~and~~

3. Any other form of security acceptable to the Insurance Commissioner; and

~~B. 1.~~

4. a. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph 1 of subsection J of Section 5122 of this title, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement.

~~2.~~ b. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

SECTION 27. REPEALER 36 O.S. 2001, Section 615, is hereby repealed.

SECTION 28. REPEALER 59 O.S. 2001, Section 858-630, is hereby repealed.

SECTION 29. This act shall become effective November 1, 2002.

48-2-7743 SD 6/12/15