

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1530

By: Cox

COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Oklahoma Subsidence Insurance Act; providing short title; stating purpose; defining terms; establishing the Oklahoma Mine Subsidence Insurance Fund; providing purpose; providing powers and duties; providing for establishment of certain rates, schedules, classification, deductibles, retentions, and premiums; providing for funding; requiring annual operating report; authorizing research programs; authorizing reinsurance programs; providing for management of the Fund; providing for appointment of a board of directors; providing qualifications; providing terms of office; requiring certain policies to include mine subsidence coverage; authorizing waiver of coverage; providing for establishment of premiums; providing reinsurance levels; providing for the division of the Fund into separate residential and commercial sub-funds; limiting liability of insurers; authorizing exemption of certain policies in counties designated by the Insurance Commissioner; providing insurers with right to refuse to provide coverage in certain circumstances; providing for arbitration and procedures therefor; requiring reinsurance agreements; providing contents of the reinsurance agreements; providing for distribution of premiums; providing for reimbursement to insurers within specified time; requiring insurers to report certain information; providing that the Fund has no right of recourse against an insurer, with exception; providing that the Fund may seek recovery against policyholders for unjust enrichment; providing for subrogation; providing powers of the Insurance Commissioner; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 17 of this act shall constitute Article 9C of the Insurance Code and shall be known and may be cited as the "Oklahoma Subsidence Insurance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

The purpose of the Oklahoma Subsidence Insurance Act is to require insurers to make mine subsidence insurance coverage available for residences, living units and commercial buildings located in this state; to establish the Oklahoma Mine Subsidence Insurance Fund; to divide the Fund into separate residential and commercial sub-funds; and to make the Fund the reinsurer for the mine subsidence insurance made available under the Oklahoma Subsidence Insurance Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Subsidence Insurance Act:

1. "Commercial building" means any building, other than a residence, permanently affixed to realty located in Oklahoma, including basements, footings, foundations, septic systems and underground pipes directly servicing the building, but does not include sidewalks, driveways, parking lots, living units, land, trees, plants, crops or agricultural field drainage tile;

2. "Commercial coverage" means mine subsidence insurance for a commercial building;

3. "Insurer" or "insurers" means insurance companies and reciprocals licensed and authorized to write property and casualty policies of insurance in this state;

4. "Living unit" shall mean the physical portion designated for separate ownership or occupancy for residential purposes, of a building or group of buildings, permanently affixed to realty

located in Oklahoma, having elements which are owned or used in common, including a condominium unit, a cooperative unit or any other similar unit;

5. "Living unit coverage" means mine subsidence insurance for a living unit covering the losses described in subsection D of Section 6 of this act;

6. "Mine subsidence" means lateral or vertical ground movement caused by a failure initiated at the mine level, of man-made underground mines, including, but not limited to, coal mines, clay mines, lead and zinc mines, limestone mines, and fluorspar mines that directly damages residences or commercial buildings. "Mine subsidence" does not include lateral or vertical ground movement caused by earthquake, landslide, volcanic eruption, soil conditions, soil erosion, soil freezing and thawing, improperly compacted soil, construction defects, roots of trees and shrubs or collapse of storm and sewer drains and rapid transit tunnels;

7. "Mine Subsidence Insurance Fund" or "Fund" means the fund established by the Oklahoma Subsidence Insurance Act;

8. "Policy" or "policies" means any contract or contracts of insurance providing the coverage of the Standard Fire Policy and Extended Coverage Endorsement on any residence, living unit or commercial building. It does not include those insurance contracts that are referred to as marine or inland marine policies;

9. "Premium" or "premiums" means the gross amount charged to policyholders for the mine subsidence insurance made available under the Oklahoma Subsidence Insurance Act;

10. "Rates" or "rate schedules" means the rates by which premiums shall be computed for the mine subsidence insurance made available under the Oklahoma Subsidence Insurance Act;

11. "Residence" means a building used principally for residential purposes up to and including a four-family dwelling, permanently affixed to realty located in Oklahoma, including

appurtenant structures, driveways, sidewalks, basements, footings, foundations, septic systems and underground pipes directly servicing the dwelling or building, but does not include living units, land, trees, plants, crops or agricultural field drainage tile;

12. "Residential coverage" means mine subsidence insurance for a residence; and

13. "Intergovernmental cooperative" means an intergovernmental cooperative organized pursuant to the Interlocal Cooperation Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is established a fund to be known as the "Oklahoma Subsidence Insurance Fund". The Fund shall operate pursuant to the Oklahoma Subsidence Insurance Act. The Fund is authorized to transact business, provide services, enter into contracts and sue or be sued in its own name.

B. The Fund shall provide reinsurance for mine subsidence losses to all insurers writing mine subsidence insurance pursuant to the Oklahoma Subsidence Insurance Act.

C. The monies in the Fund shall be derived from premiums for mine subsidence insurance collected on behalf of the Fund pursuant to the Oklahoma Subsidence Insurance Act, from investment income and from receipt of federal or state funds. No insurer shall have any liability to the Fund or to any creditor of the Fund, except as may be set forth in the Oklahoma Subsidence Insurance Act, in the Articles of Governance which may be adopted by the Fund, in a reinsurance agreement executed pursuant to Section 11 of this act, in the Plan of Operation established by the Fund, or in the rules and procedures adopted by the Fund as authorized by the reinsurance agreement.

D. The Fund shall establish the rates, rating schedules, deductibles and retentions, minimum premiums, and classifications

for mine subsidence insurance which the Fund shall file with the Insurance Commissioner. The Commissioner shall have thirty (30) days from the date of receipt to approve or disapprove a rate filing. If no action is taken by the Commissioner within thirty (30) days, the rate is deemed to be approved. The Commissioner may, in writing, extend the period for an additional thirty (30) days if the Commissioner determines that additional time is needed.

E. The Fund shall establish its rates, rating schedules, deductibles and retentions, minimum premiums, and classification in such a manner as to satisfy all reasonably foreseeable claims and expenses the Fund is likely to incur. The Fund shall give due consideration to loss experience and relevant trends, premium and other income and reasonable reserves established for contingencies in establishing the mine subsidence rates.

F. The Fund shall compile and publish an annual operating report.

G. The Fund shall develop at least two consumer information publications to aid the public in understanding mine subsidence and mine subsidence insurance and shall establish a schedule for the distribution of the publications pursuant to the reinsurance agreement. Topics that shall be addressed shall include but are not limited to:

1. Descriptive information about mine subsidence, and what benefits mine subsidence insurance provides to the property owner; and

2. Information that will be useful to a policyholder who has filed a mine subsidence claim, such as information that explains the claim investigation process and claim handling procedures.

H. The Fund shall be empowered to conduct research programs in an effort to improve the administration of the mine subsidence insurance program and help reduce and mitigate mine subsidence losses consistent with the public interest.

I. The Fund may enter into reinsurance agreements with any intergovernmental cooperative that provides joint self-insurance for mine subsidence losses of its members. These reinsurance agreements shall be substantially similar to reinsurance agreements described in Section 11 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Fund shall be managed by an eleven-member board of directors, six of whom shall be insurance industry directors, four of whom shall be public directors, and one of whom shall be an Oklahoma-licensed insurance producer. The industry directors shall be elected annually in the manner provided in Articles of Governance adopted by the Fund. The public directors shall be appointed by the Insurance Commissioner, and shall not be employees of or otherwise affiliated with the insurance industry. The Oklahoma-licensed insurance producer shall be appointed by the Insurance Commissioner.

B. No later than February 1, 2004, the Commissioner shall appoint the four (4) public directors, one for a one-year term, one for a two-year term and two for three-year terms. No later than February 1, 2004, the Commissioner shall appoint the Oklahoma-licensed insurance producer for a two-year term. Thereafter, all public directors and the licensed insurance producer shall be appointed for three-year terms.

C. As soon as practical after July 1, 2003, the Fund shall adopt Articles of Governance, which shall be submitted to the Commissioner for review and approval.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 2004, every policy issued or renewed insuring a residence on a direct basis shall include, at a

separately stated premium, residential coverage unless waived in writing by the insured. Beginning January 1, 2004, every policy issued or renewed insuring a commercial building on a direct basis shall include at a separately stated premium, commercial coverage unless waived in writing by the insured. Beginning January 1, 2004, every policy issued or renewed insuring a living unit on a direct basis shall include, at a separately stated premium, living unit coverage unless waived in writing by the insured.

B. If the insured has previously waived mine subsidence coverage in writing, the insurer or agent need not offer mine subsidence coverage in any renewal or supplementary policy in connection with a policy previously issued to such insured by the same insurer, unless the insured subsequently makes a written request for mine subsidence coverage.

C. The premium charged for residential, commercial or living unit coverage shall be the premium level set by the Fund. The loss covered shall be the loss in excess of the deductible or retention established by the Fund and contained in a mine subsidence endorsement to the policy. For all policies issued or renewed on or after January 1, 2004, the reinsured loss shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) per residence, Three Hundred Fifty Thousand Dollars (\$350,000.00) per commercial building or Fifteen Thousand Dollars (\$15,000.00) per living unit. For all policies issued or renewed on or after January 1, 2006, the amount of reinsurance available from the Fund shall not be less than Two Hundred Thousand Dollars (\$200,000.00) per residence, Two Hundred Thousand Dollars (\$200,000.00) per commercial building, or Fifteen Thousand Dollars (\$15,000.00) per living unit. The Fund may, from time to time, adjust the amount of reinsurance available as long as the minimum set by this section is met.

D. The residential coverage provided pursuant to the Oklahoma Subsidence Insurance Act may also cover the additional living

expenses reasonably and necessarily incurred by the owner of a residence who has been temporarily displaced as the direct result of damage to the residence caused by mine subsidence if the underlying policy also covers this type of loss, provided however, that the loss covered under living unit coverage shall be limited to losses to improvements and betterments, and reimbursement of additional living expenses and assessments made against the insured on account of mine subsidence loss.

E. The total amount of the loss reimbursable to an insurer shall be limited to the amount of insurance reinsured by the Fund in force at the time when the damage first becomes reasonably observable. All damage caused by a single mine subsidence event or several subsidence events which are continuous shall constitute one occurrence.

F. No insurer shall be required to offer mine subsidence coverage in excess of the reinsured limits.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Effective January 1, 2004, the Fund shall establish two separate sub-funds, a Residential Fund to provide reinsurance for mine subsidence losses arising from residential and living unit coverage and a Commercial Fund to provide reinsurance for mine subsidence losses arising from commercial coverage. The assets and liabilities of the Fund shall be allocated to the two sub-funds in such manner as determined by the board of directors, with the approval of the Insurance Commissioner. The two sub-funds shall continue to be managed by the board of directors. Beginning January 1, 2004, all premiums received by the Fund for residential coverage or living unit coverage shall be credited to the Residential Fund, all losses and expenses for residential coverage or living unit coverage shall be charged to the Residential Fund. All premiums

received by the Fund for commercial coverage shall be credited to the Commercial Fund, and all losses and expenses for commercial coverage shall be charged to the Commercial Fund. The Fund's overhead expenses shall be allocated between the Residential Fund and the Commercial Fund on the basis of annual written premium credited to each sub-fund. The assets and liabilities of the Residential and Commercial Funds shall be accounted for separately. The assets of the Residential Fund shall not be used to reimburse insurers for losses for Commercial Coverage and the assets of the Commercial Fund shall not be used to reimburse insurers for losses for residential coverage or living unit coverage.

B. No insurer shall be required to pay any claim for any loss reinsured under the Oklahoma Subsidence Insurance Act except to the extent that the amount available in the Residential Fund or the Commercial Fund, as the case may be, is sufficient to reimburse the insurer for such payment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner upon request of the Fund, may exempt every policy insuring residences, living units or commercial buildings located in any specified county of this state, from the provisions of Section 6 of the Oklahoma Subsidence Insurance Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

An insurer may refuse to provide mine subsidence coverage on a residence or commercial building evidencing unrepaired mine subsidence damage until such damage has been repaired.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

In the event of a dispute between a policyholder and an insurer as to whether a residence or commercial building covered by mine subsidence insurance has been damaged by mine subsidence, a policyholder shall have the right to submit that dispute to arbitration in accordance with this section. No policyholder shall have the right under this section to submit to arbitration any issue regarding the amount of loss or damage caused to a residence or commercial building by mine subsidence.

Arbitration may be initiated only after the insurer has made a decision that the residence or commercial building covered by mine subsidence insurance was not damaged by mine subsidence and so notified the policyholder in writing, accompanied by a notice informing the policyholder of the policyholder's right to arbitration and containing specific reference to this section. Within sixty (60) days after receipt by the policyholder of the notification, the policyholder may initiate arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect. All costs of the arbitration shall be borne by the losing party. Appeals from the decision of the arbitrators shall be in accordance with the Uniform Arbitration Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

All insurers shall enter into a reinsurance agreement with the Fund. The reinsurance agreement shall be filed with and approved by the Insurance Commissioner. The agreement shall provide that each insurer shall cede one hundred percent (100%) of any subsidence insurance written up to the limits contained in subsection C of Section 6 of this act to the Fund and, in consideration of the ceding commission retained by the insurer, agrees to distribute informational publications provided by the Fund on a schedule set by

the Fund, undertake adjustment of losses, payment of taxes, and all other expenses of the insurer necessary for sale of policies and administration of the mine subsidence insurance coverage. The Fund shall agree to reimburse the insurer for all amounts reasonably and properly paid policyholders from claims resulting from mine subsidence and for expenses specified in the reinsurance agreement. In addition, the reinsurance agreement may contain, and may authorize the Fund to establish and promulgate deductibles. The reinsurance agreement may also contain reasonable rules and procedures covering insurer documentation of losses, insurer reporting of claims, reports of litigation, premiums and loss payments, loss payment review by the Fund, remitting of premiums to the Fund, underwriting, cause and origin investigations, and procedures for resolving disputes between the insurers and the Fund.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.12 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Fund is authorized to establish the proportion of total mine subsidence insurance premiums collected by each insurer which shall be retained by the insurer as a ceding commission, subject to review of the Insurance Commissioner. The remainder of such premiums shall be remitted by the insurer to the Fund at times to be determined by the Fund. The ceding commission shall be uniform in all reinsurance agreements entered into pursuant to Section 11 of this act and shall be based on reasonable administrative costs to the insurers, including agents' commissions.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.13 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Residential or the Commercial Fund, as the case may be, shall reimburse insurers for all amounts due within ninety (90) days after receiving adequate documentation, as set forth in the

reinsurance agreement, the Plan of Operation or in the operating rules and procedures adopted by the Fund, that the insurer has properly paid the claim and is entitled to reimbursement by the Fund, subject to the limitations imposed by Section 7 of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.14 of Title 36, unless there is created a duplication in numbering, reads as follows:

Every insurer shall report, at times designated by the Fund, such information as is reasonably required by the Fund to conduct its affairs, establish claim reserves, and reimburse insurers for losses paid to insureds.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.15 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Fund shall have no right of recourse against the insurer, once the Fund has reimbursed the insurer for any particular loss, unless the insurer has failed to settle that loss in its customary manner, or in case of fraud by the insurer.

B. The Fund may seek recovery against the policyholder for unjust enrichment if, in the Fund's judgment, the policyholder was not entitled to the amounts paid because of fraud, or a material violation of the policy conditions. The insurer shall provide cooperation to the Fund.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.16 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All insurers issuing mine subsidence policies shall retain the right of subrogation.

B. The Fund, on its own behalf, may exercise the right of subrogation.

C. Every insurer shall include in its reports an itemized list of all losses in subrogation and shall remit to the Fund all monies, less expenses, recovered as the result of subrogation actions.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999.17 of Title 36, unless there is created a duplication in numbering, reads as follows:

In addition to any powers conferred upon the Insurance Commissioner by this or any other law, the Commissioner shall have the authority to supervise the operations of the Fund and shall review the Fund's rates once every three (3) years. In addition, the Commissioner or any person designated by the Commissioner has the power:

1. To examine the operation of the Fund through free access to all books, records, files, papers and documents relating to its operation and may summon, qualify and examine as witnesses all persons having knowledge of such operation, including officers, agents or employees thereof;

2. To do all things necessary to enable the state and any insurer participating in any program approved by the Commissioner to fully participate in any federal program which may be enacted for purposes similar to the purposes of the Oklahoma Subsidence Insurance Act; and

3. To require such reports as the Commissioner may deem necessary.

SECTION 18. This act shall become effective January 1, 2004.

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