ENGROSSED HOUSE
BILL NO. 1721

By: Cox of the House

and

Robinson of the Senate

An Act relating to insurance; amending 36 O.S. 2001, Section 311, as amended by Section 1, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2002, Section 311), which relates to annual statements; modifying filing requirements; amending 36 O.S. 2001, Section 902.1, which relates to limit changing property and casualty rates without prior approval; modifying restrictions; amending 36 O.S. 2001, Sections 1435.7, as amended by Section 14, Chapter 307, O.S.L. 2002, 1435.20, 1435.29, as amended by Section 20, Chapter 307, O.S.L. 2002 and 1435.30 (36 O.S. Supp. 2002, Sections 1435.7 and 1435.29), which relate to the Oklahoma Producer Licensing Act; modifying acceptable application form; designating license holders for motor vehicle rental or leasing businesses; modifying certain continuing education credit; modifying duration and renewal period for insurance consultant licenses; amending 36 O.S 2001, Section 6459, which relates to the Oklahoma Risk Retention Act; removing certain restriction on nonresidents; repealing 36 O.S. 2001, Section 611, which relates to expendable surplus funds; 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, as amended by Section 1, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2002, Section 311), is amended to read as follows:

Section 311. A. ~~Each insurer~~ 1. All insurers 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~~ the financial condition of insurers 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, along with applicable fees. Domestic insurers shall file a printed annual financial statement along with all supplement filings in the office of the Insurance Commissioner annually on or before the first day of March.

2. Foreign insurers shall file an Affidavit of Filing and Financial Statement Attestation annually on or before the first day of March. The Insurance Commissioner may require foreign insurers to file the annual financial statement in a printed format. Such document required by the Insurance Commissioner shall be due annually on or before the first day of March.

3. 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 902.1, is amended to read as follows:

Section 902.1 No property or casualty insurer shall increase or decrease ~~a~~ filed ~~rate~~ base rates by more than fifteen percent (15%)~~, inclusive of any rate adjustments, add-ons, deductibles or deviations,~~ without prior approval from the State Board for Property and Casualty Rates, pursuant to the request for rate approval required in Article 9 of the Insurance Code. ~~Any such rate shall remain in effect as provided in subsection F of Section 903 of this title.~~

SECTION 3. AMENDATORY 36 O.S. 2001, Section 1435.7, as amended by Section 14, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2002, 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 or an application approved by the Commissioner 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 1435.13 of this title;

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 1435.23 of this title; 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 <u>or an application approved by the Commissioner</u>. Before approving the application, the Insurance Commissioner shall find that:

1. The business entity has paid the fees set forth in Section 1435.23 of this title;

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 4. AMENDATORY 36 O.S. 2001, Section 1435.20, is amended to read as follows:

Section 1435.20 A. A limited lines producer may receive qualification for a license in one or more of the following categories:

1. As a ticket-selling agent of a common carrier who acts only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier;

2. To engage in the sale of only limited travel accident insurance;

3. To engage in the sale of motor vehicle insurance at a vehicle rental counter or at any other point of sale at which motor vehicle insurance is offered or sold in connection with the short-term renting or leasing of motor vehicles<u>; provided, the branch manager of the rental or leasing company shall hold the license under which the employees working for the rental or leasing company operate</u>;

4. To engage in the sale of limited line credit insurance;

5. To engage in the sale of nonfiling insurance relating to mortgages and security interests arising under the Uniform Commercial Code, Section 1-101 et seq. of Title 12A of the Oklahoma Statutes;

6. Prepaid legal liability insurance, which means the assumption of an enforceable contractual obligation to provide specified legal services or to reimburse policyholders for specified legal expenses, pursuant to the provisions of a group or individual policy;

7. Crop hail and multiperil crop hail insurance; and

8. Prepaid dental insurance, provided the individual selling the prepaid dental insurance has been appointed by the prepaid dental plan organization to sell such insurance.

B. 1. An insurance producer or limited lines producer may solicit applications for and issue travel accident policies or baggage insurance by means of mechanical vending machines supervised by the insurance producer or limited lines producer only if the Insurance Commissioner shall determine that the form of policy to be sold is reasonably suited for sale and issuance through vending machines, that use of vending machines for the sale of said policies would be of convenience to the public, and that the type of vending machine to be used is reasonably suitable and practical for the sale and issuance of said policies. Policies so sold do not have to be countersigned.

2. The Commissioner shall issue to the insurance agent or limited insurance representative a special vending machine license for each such machine to be used. The license shall specify the name and address of the insurer and licensee, the kind of insurance and type of policy to be sold, and the place where the machine is to be in operation. The license shall expire, be renewable, and be suspended or revoked coincidentally with the insurance agent license or limited representative license of the licensee. The license fee

for each vending machine shall be that stated in the provisions of Section 23 of this act. Proof of existence of the license shall be displayed on or about each machine in such manner as the Commissioner may reasonably require.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 1435.29, as amended by Section 20, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2002, 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)~~ one (1) annual ~~hours~~ hour of instruction. ~~These hours~~ The hour shall be credited upon timely filing with the Commissioner, or designee of the Commissioner, and 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 1435.23 of this title, 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 6. AMENDATORY 36 O.S. 2001, Section 1435.30, is amended to read as follows:

Section 1435.30 A. No person shall act as, or hold himself or herself out to be, an insurance consultant until a license as an insurance consultant has been issued to the person by the Insurance Commissioner. However, no insurance consultant's license shall be required of the following:

1. Attorneys licensed to practice law in this state acting in their professional capacity;

2. A duly licensed insurance producer or surplus lines insurance broker;

3. A trust officer of a bank acting in the normal course of employment; or

4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in a professional capacity.

B. An application for a license to act as an insurance consultant shall be made to the Commissioner on forms prescribed by the Commissioner. Within a reasonable time after receipt of a properly completed application form, the Commissioner shall hold a written examination for the applicant, and may conduct investigations and propound interrogatories concerning the qualifications of the applicant, the residence, business affiliations, and any other matter which the Commissioner deems necessary or advisable to determine compliance with the provisions of the Oklahoma Producer Licensing Act or for the protection of the public.

C. In advance of rendering any service as an insurance consultant as defined in the provisions of Section 2 of this act, a written agreement on a form approved by the Commissioner shall be prepared by the consultant, and shall be signed by both the consultant and the client. The agreement shall outline the nature of the work to be performed by the consultant and shall state the fee for the work. The consultant shall retain a copy of the agreement for not less than three (3) years after completion of the services and shall make said copy available to the Insurance Commissioner upon request by the Insurance Commissioner.

D. No individual may concurrently hold a consultant's license and a license as an insurance producer, surplus lines insurance broker, or limited lines producer.

E. No licensed consultant in the performance of activities as a consultant may employ, be employed by, be in partnership with, or receive any remuneration whatsoever from, any licensed insurance

producer, surplus lines insurance broker, limited producer, or insurer.

F. A license to act as an insurance consultant shall be valid for not longer than ~~twelve (12)~~ twenty-four (24) months and may be renewed ~~annually~~ biennially.

G. All requirements and standards relating to the denial, revocation, or suspension of an insurance producer’s license, including penalties, shall apply to the denial, revocation, and suspension of an insurance consultant's license to the extent practicable.

H. A consultant is obligated by the terms of this license, to serve with objectivity and complete loyalty the interests of a client alone; and render to a client such information, counsel, and service as, within the knowledge, understanding, and opinion, in good faith, of the licensee, best serves the client's insurance needs and interests.

I. A duly licensed insurance producer or surplus lines insurance broker who acts as, or holds himself or herself out to be, an insurance consultant pursuant to the exemption from licensing as a consultant contained in the provisions of subsection A of this section shall nonetheless be subject to the provisions of subsections C and H of this section. However, nothing in this title shall prohibit the offset, in whole or in part, of the fee payable pursuant to the provisions of subsection C of this section by compensation otherwise payable to said duly licensed insurance producer or surplus lines insurance broker for acting as an insurance producer or broker.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6459, is amended to read as follows:

Section 6459. A purchasing group shall not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not licensed to transact insurance in this state, unless

the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this state. ~~A nonresident person may be licensed as a surplus line broker only for purposes of placing insurance on behalf of a purchasing group.~~

SECTION 8. REPEALER 36 O.S. 2001, Section 611, is hereby repealed.

SECTION 9. This act shall become effective November 1, 2003.

Passed the House of Representatives the 26th day of February, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2003.

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Presiding Officer of the Senate