

EHB 1530

THE STATE SENATE
Tuesday, April 1, 2003

ENGROSSED

House Bill No. 1530

As Amended

ENGROSSED HOUSE BILL NO. 1530 - By: LERBLANCE, COX and ROBERTS of the House and GUMM of the Senate.

[insurance - Subsidence Insurance Act - deductibles - research programs - reimbursement - codification - effective date]

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

(Bold face denotes Committee Amendments)

1 commercial sub-funds; and to make the Fund the reinsurer for the
2 mine subsidence insurance made available under the Oklahoma
3 Subsidence Insurance Act.

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

7 As used in the Oklahoma Subsidence Insurance Act:

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

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

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

19 4. "Living unit" shall mean the physical portion designated for
20 separate ownership or occupancy for residential purposes, of a
21 building or group of buildings, permanently affixed to realty
22 located in Oklahoma, having elements which are owned or used in

1 common, including a condominium unit, a cooperative unit or any
2 other similar unit;

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

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

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

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

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

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

7 11. "Residence" means a building used principally for
8 residential purposes up to and including a four-family dwelling,
9 permanently affixed to realty located in Oklahoma, including
10 appurtenant structures, driveways, sidewalks, basements, footings,
11 foundations, septic systems and underground pipes directly servicing
12 the dwelling or building, but does not include living units, land,
13 trees, plants, crops or agricultural field drainage tile;

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

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

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

21 A. There is established a fund to be known as the "Oklahoma
22 Subsidence Insurance Fund". The Fund shall operate pursuant to the
23 Oklahoma Subsidence Insurance Act. The Fund is authorized to

1 transact business, provide services, enter into contracts and sue or
2 be sued in its own name.

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

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

17 D. The Fund shall establish the rates, rating schedules,
18 deductibles and retentions, minimum premiums, and classifications
19 for mine subsidence insurance which the Fund shall file with the
20 Insurance Commissioner. The Commissioner shall have thirty (30)
21 days from the date of receipt to approve or disapprove a rate
22 filing. If no action is taken by the Commissioner within thirty
23 (30) days, the rate is deemed to be approved. The Commissioner may,

1 in writing, extend the period for an additional thirty (30) days if
2 the Commissioner determines that additional time is needed.

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

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

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

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

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

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

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

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

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

22 B. No later than February 1, 2004, the Commissioner shall
23 appoint the four public directors, one for a one-year term, one for

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

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

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

12 A. Beginning January 1, 2004, every policy issued or renewed
13 insuring a residence on a direct basis shall include, at a
14 separately stated premium, residential coverage unless waived in
15 writing by the insured. Beginning January 1, 2004, every policy
16 issued or renewed insuring a commercial building on a direct basis
17 shall include at a separately stated premium, commercial coverage
18 unless waived in writing by the insured. Beginning January 1, 2004,
19 every policy issued or renewed insuring a living unit on a direct
20 basis shall include, at a separately stated premium, living unit
21 coverage unless waived in writing by the insured.

22 B. If the insured has previously waived mine subsidence
23 coverage in writing, the insurer or agent need not offer mine

1 subsidence coverage in any renewal or supplementary policy in
2 connection with a policy previously issued to such insured by the
3 same insurer, unless the insured subsequently makes a written
4 request for mine subsidence coverage.

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

21 D. The residential coverage provided pursuant to the Oklahoma
22 Subsidence Insurance Act may also cover the additional living
23 expenses reasonably and necessarily incurred by the owner of a

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

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

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

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

19 A. Effective January 1, 2004, the Fund shall establish two
20 separate sub-funds, a Residential Fund to provide reinsurance for
21 mine subsidence losses arising from residential and living unit
22 coverage and a Commercial Fund to provide reinsurance for mine
23 subsidence losses arising from commercial coverage. The assets and

1 liabilities of the Fund shall be allocated to the two sub-funds in
2 such manner as determined by the board of directors, with the
3 approval of the Insurance Commissioner. The two sub-funds shall
4 continue to be managed by the board of directors. Beginning January
5 1, 2004, all premiums received by the Fund for residential coverage
6 or living unit coverage shall be credited to the Residential Fund,
7 all losses and expenses for residential coverage or living unit
8 coverage shall be charged to the Residential Fund. All premiums
9 received by the Fund for commercial coverage shall be credited to
10 the Commercial Fund, and all losses and expenses for commercial
11 coverage shall be charged to the Commercial Fund. The Fund's
12 overhead expenses shall be allocated between the Residential Fund
13 and the Commercial Fund on the basis of annual written premium
14 credited to each sub-fund. The assets and liabilities of the
15 Residential and Commercial Funds shall be accounted for separately.
16 The assets of the Residential Fund shall not be used to reimburse
17 insurers for losses for Commercial Coverage and the assets of the
18 Commercial Fund shall not be used to reimburse insurers for losses
19 for residential coverage or living unit coverage.

20 B. No insurer shall be required to pay any claim for any loss
21 reinsured under the Oklahoma Subsidence Insurance Act except to the
22 extent that the amount available in the Residential Fund or the

1 Commercial Fund, as the case may be, is sufficient to reimburse the
2 insurer for such payment.

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

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

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

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

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

19 In the event of a dispute between a policyholder and an insurer
20 as to whether a residence or commercial building covered by mine
21 subsidence insurance has been damaged by mine subsidence, a
22 policyholder shall have the right to submit that dispute to
23 arbitration in accordance with this section. No policyholder shall

1 have the right under this section to submit to arbitration any issue
2 regarding the amount of loss or damage caused to a residence or
3 commercial building by mine subsidence.

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

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

20 All insurers shall enter into a reinsurance agreement with the
21 Fund. The reinsurance agreement shall be filed with and approved by
22 the Insurance Commissioner. The agreement shall provide that each
23 insurer shall cede one hundred percent (100%) of any subsidence

1 insurance written up to the limits contained in subsection C of
2 Section 6 of this act to the Fund and, in consideration of the
3 ceding commission retained by the insurer, agrees to distribute
4 informational publications provided by the Fund on a schedule set by
5 the Fund, undertake adjustment of losses, payment of taxes, and all
6 other expenses of the insurer necessary for sale of policies and
7 administration of the mine subsidence insurance coverage. The Fund
8 shall agree to reimburse the insurer for all amounts reasonably and
9 properly paid policyholders from claims resulting from mine
10 subsidence and for expenses specified in the reinsurance agreement.
11 In addition, the reinsurance agreement may contain, and may
12 authorize the Fund to establish and promulgate deductibles. The
13 reinsurance agreement may also contain reasonable rules and
14 procedures covering insurer documentation of losses, insurer
15 reporting of claims, reports of litigation, premiums and loss
16 payments, loss payment review by the Fund, remitting of premiums to
17 the Fund, underwriting, cause and origin investigations, and
18 procedures for resolving disputes between the insurers and the Fund.

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

22 The Fund is authorized to establish the proportion of total mine
23 subsidence insurance premiums collected by each insurer which shall

1 be retained by the insurer as a ceding commission, subject to review
2 of the Insurance Commissioner. The remainder of such premiums shall
3 be remitted by the insurer to the Fund at times to be determined by
4 the Fund. The ceding commission shall be uniform in all reinsurance
5 agreements entered into pursuant to Section 11 of this act and shall
6 be based on reasonable administrative costs to the insurers,
7 including agents' commissions.

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

11 The Residential or the Commercial Fund, as the case may be,
12 shall reimburse insurers for all amounts due within ninety (90) days
13 after receiving adequate documentation, as set forth in the
14 reinsurance agreement, the Plan of Operation or in the operating
15 rules and procedures adopted by the Fund, that the insurer has
16 properly paid the claim and is entitled to reimbursement by the
17 Fund, subject to the limitations imposed by Section 7 of this act.

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

21 Every insurer shall report, at times designated by the Fund,
22 such information as is reasonably required by the Fund to conduct

1 its affairs, establish claim reserves, and reimburse insurers for
2 losses paid to insureds.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 3-31-03 -
5 DO PASS, As Amended and Coauthored.