STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1566 By: Sullivan

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2001, Section 1509, as amended by Section 56, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1509), which relates to assets and liabilities of insurers; extending moratorium on applicability of certain reserve requirements; amending 36 O.S. 2001, Section 1530, as amended by Section 57, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1530), which relates to risk-based capital for insurers; extending time insurer is exempt from certain surplus requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1509, as amended by Section 56, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1509), is amended to read as follows:

Section 1509. A. If the Insurance Commissioner determines in writing that an insurer's unearned premium reserve, however computed, is inadequate, the Commissioner may require the insurer to compute the reserve or any part thereof according to any other method or methods as are prescribed in this article.

B. If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the Commissioner, in writing, shall require the insurer to maintain loss reserves in an increased amount as is needed to make them adequate.

C. 1. Insurers shall not use present value discounting for computing reserves for property and casualty insurance, except for workers' compensation carriers and physicians' and hospitals' professional liability insurance written on an occurrence basis. Workers' compensation carriers may use present value discounting at

a rate of four percent (4%) for disability and death claims. Property and casualty insurers which elect to use present value discounting for computing reserves on physicians' and hospitals' professional liability insurance shall file initially, and thereafter annually, an actuarial opinion certifying to the adequacy of such reserves which shall include an analysis of the propriety of loss payout patterns, interest rate assumptions used in developing the discount and the adequacy of the insurer's rates. Additionally, the actuary shall consider the quality and liquidity of the insurer's assets and the nature and extent of the insurer's reinsurance program. In no event shall the interest rate used to compute the discounted reserves exceed the insurer's average yield on invested assets for the year, less one percent (1%).

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the insurer on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society.

3. Except for workers' compensation insurance carriers, insurers discounting reserves pursuant to this subsection shall invest and maintain their funds only in cash; securities described in the following sections of this Code:

a. Section 1607 (securities of or guaranteed by the United States),

b. Section 1608 (state and Canadian public obligations),

c. Section 1609 (county, municipal and district obligations),

d. Section 1610 (public improvement bonds),

e. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record,

f. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record, and

g. Section 1620 (deposits, banks, savings and loans); and any other investment specifically approved by the Commissioner.

4. This subsection applies to reserves established in connection with incidents of loss occurring on or after January 1, 1989. The investment limitations prescribed by this subsection shall be applicable on or after January 1, 1989.

D. During any period of reserve strengthening mandated by the Commissioner pursuant to the provisions of this section, no insurer shall pay dividends or other benefits which would not be normal payments under the terms of a policy to any stockholder or policyholder of such insurer and such insurer shall be subject to any additional reasonable restrictions as the Commissioner shall deem prudent.

E. Insurers shall report, on a form prescribed by the Commissioner and filed with their annual statement, all funds collected through policy fees or assessments which were collected in response to a written request to increase inadequate reserves from the Commissioner made pursuant to the provisions of this section.

F. 1. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions, as defined by Section ~~59~~ 2202 of this ~~act~~ title, on July 1, 2004, are granted a moratorium on the applicability of any provisions of the laws of this state that require the maintenance of adequate reserves. The moratorium shall be in effect until ~~January 1, 2006~~ December 31, 2008.

2. Any insurer eligible to utilize the moratorium provided by this section that elects to utilize the moratorium shall notify the

Commissioner in writing of the election prior to the application of the moratorium to the insurer.

3. Any policy issued by an insurer utilizing the moratorium provided by this section shall, during the moratorium period, contain the following notice in ten-point type on the front page and the declaration page:

NOTICE

The insurer is not subject to the insurance laws and regulations related to maintenance of reserves and surplus.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 1530, as amended by Section 57, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1530), is amended to read as follows:

Section 1530. A. The provisions of this act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the Insurance Commissioner under such laws, including, but not limited to, Article 18 or 19 of the Insurance Code.

B. The Commissioner may promulgate reasonable rules necessary for the implementation of this act.

C. The Commissioner may exempt from the application of this act in any year any domestic insurer which:

1. Writes direct business only in this state; and

2. Assumes no reinsurance in excess of five percent (5%) of direct premium written.

D. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions as defined by Section ~~59~~ 2202 of this ~~act~~ title on July 1, 2004, which notify the Commissioner in writing of the insurer's election to utilize the moratorium provided in Section 1509 of this title shall be exempt from the provisions of this title which require an insurer to maintain an adequate surplus as regards policyholders as a condition

to obtaining or renewal of a license to act as an insurer, until ~~January 1, 2006~~ December 31, 2008. The Commissioner shall not enforce any recapitalization plan against any insurer domiciled in this state that is issuing policies of physicians', allied health care professionals' and health care institutions' professional liability insurance until ~~January 1, 2006~~ December 31, 2008.

SECTION 3. This act shall become effective November 1, 2005.

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