

ENROLLED SENATE
BILL NO. 2122

By: Sparks and Brown of the
Senate

and

Peterson (Ron) of the House

An Act relating to insurance; creating the Crimes by or Affecting Persons Engaged in the Business of Insurance Act; providing short title; prohibiting certain persons from engaging or participating in the insurance business; specifying actions that the Insurance Commissioner may take regarding the enforcement of the Crimes by or Affecting Persons Engaged in the Business of Insurance Act; defining the act of doing the business of insurance in this state; providing procedures relating to the emergency cease and desist order; authorizing the Insurance Commissioner to promulgate certain rules; amending 36 O.S. 2001, Section 987, as last amended by Section 2, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 987), which relates to rate filings; specifying when certain filings shall be open to public inspection; amending 36 O.S. 2001, Sections 1435.4, 1435.5, 1435.7, as last amended by Section 3, Chapter 338, O.S.L. 2007, 1435.9, as amended by Section 16, Chapter 307, O.S.L. 2002, 1435.20, as amended by Section 4, Chapter 150, O.S.L. 2003, 1435.23, as last amended by Section 14, Chapter 125, O.S.L. 2007 and 1435.29, as last amended by Section 15, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Sections 1435.7, 1435.9, 1435.20, 1435.23 and 1435.29), which relate to the Oklahoma Producer Licensing Act; allowing certain penalty to be waived if application for licensure as a surplus lines broker is received within certain time period; exempting volunteer counselor assisting Medicare

beneficiaries with enrollment in Medicare Part D plans from licensure; clarifying licensure requirements; modifying licensing requirement for certain nonresident producers; eliminating and adding categories for a limited lines producer license; modifying license fee; requiring Insurance Commissioner approval of resident provisional producer prelicensing education; allowing the Insurance Commissioner to certify providers and courses offered for license examination study; amending 36 O.S. 2001, Sections 1442 and 1450, as amended by Section 10, Chapter 274, O.S.L. 2004 (36 O.S. Supp. 2007, Section 1450), which relate to the Third-party Administrator Act; modifying definition; specifying conditions regarding the eligibility of an administrator for a nonresident administrator license; defining terms; requiring certain administrators to provide certain information; amending 36 O.S. 2001, Section 1922, which relates to the Uniform Insurers Liquidation Act; specifying powers of the receiver; specifying time period for the commencement of certain actions; amending 36 O.S. 2001, Section 4424, which relates to the Long-Term Care Insurance Act; modifying definition; amending 36 O.S. 2001, Section 4501, which relates to group and blanket accident and health insurance; specifying time period for an association to be in existence with regard to certain policies; amending 36 O.S. 2001, Sections 5002 and 5005, which relate to title insurers; clarifying references; specifying laws and rules which are applicable to title insurers; amending 36 O.S. 2001, Section 6060, as amended by Section 1, Chapter 78, O.S.L. 2002 (36 O.S. Supp. 2007, Section 6060), which relates to mammography screening; eliminating references to low-dose mammography; amending 36 O.S. 2001, Sections 6210, as amended by Section 27, Chapter 125, O.S.L. 2007 and 6217, as amended by Section 29, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Sections 6210 and 6217), which relate to the Insurance Adjusters Licensing Act; specifying time period to take and pass certain examination;

requiring a new application if applicant fails examination within the specified time period; requiring provider of continuing education to submit an annual fee; exempting certain providers from such fee; amending 36 O.S. 2001, Sections 6602, as last amended by Section 31, Chapter 125, O.S.L. 2007, 6609 and 6615, as last amended by Section 32, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Sections 6602 and 6615), which relate to the Service Warranty Insurance Act; modifying definition; modifying dates; amending 59 O.S. 2001, Sections 1316, as last amended by Section 4, Chapter 386, O.S.L. 2005 and 1317, as amended by Section 1, Chapter 167, O.S.L. 2004 (59 O.S. Supp. 2007, Sections 1316 and 1317), which relate to bail bondsmen; requiring certain agreement to be submitted to the Insurance Commissioner; authorizing the Commissioner to suspend the appointment of the professional bondsman's bail agents if the bondsman's professional qualification is surrendered, suspended or revoked; providing procedures for the reinstatement of the appointment of the bail agents under certain conditions; specifying that the appointment of a surety bondsman or managing general agent is in effect until the expiration of the bail bondsman's license or the cancellation of the appointment by the Commissioner; amending Section 1, Chapter 322, O.S.L. 2006, as amended by Section 14, Chapter 326, O.S.L. 2007 (47 O.S. Supp. 2007, Section 7-600.2), which relates to online verification systems for motor vehicle insurance; requiring cooperation of the Oklahoma Tax Commission in the development of the verification system; modifying date for which the verification system shall be installed and operational; exempting certain information from the provisions of the Oklahoma Open Records Act; repealing 36 O.S. 2001, Sections 1435.25, 1435.32, 1435.34, 1435.35, as amended by Section 11, Chapter 129, O.S.L. 2005, 1435.37 and 1924 (36 O.S. Supp. 2007, Section 1435.35), which relate to the Oklahoma Producer Licensing Act and the Uniform Insurers Liquidation

Act; providing for codification; providing an effective date; and declaring an emergency.

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 401 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 6 of this act shall be known and may be cited as the "Crimes By or Affecting Persons Engaged in the Business of Insurance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under Section 1033 of Title 18 of the United States Code, shall engage or participate in the business of insurance in this state or do any of the acts of an insurance business as set forth in Section 4 of this act.

B. A person described in subsection A of this section may engage in the business of insurance or participate in such business if such person has the written consent of the Insurance Commissioner.

C. A person who violates subsection A of this section or any rule promulgated pursuant thereto is subject to a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each act of violation and for each day of violation.

D. The business of insurance includes title insurers for purposes of the Crimes by or Affecting Persons Engaged in the Business of Insurance Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 403 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Whenever the Insurance Commissioner has reason to believe or it appears that any person has violated subsection A of Section 2 of this act, the Insurance Commissioner may:

1. Revoke any license or registration issued or approved by the Insurance Commissioner;

2. Issue an ex parte cease and desist order under the procedures provided by Section 5 of this act;

3. Institute in the district court of Oklahoma County a civil suit for injunctive relief to restrain the person from continuing the violation;

4. Institute in the district court of Oklahoma County a civil suit to recover a civil penalty as provided for in Section 2 of this act; or

5. Exercise any combination of the acts provided for in this subsection.

B. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of the Crimes By or Affecting Persons Engaged in the Business of Insurance Act or order of the Insurance Commissioner issued pursuant to the Crimes By or Affecting Persons Engaged in the Business of Insurance Act, the district court shall grant the injunctive relief and the injunction shall be issued without bond.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any one of the following acts in this state affected by mail or otherwise is defined to be doing the business of insurance in this state:

1. The making of or proposing to make, as an insurer, an insurance contract;

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

3. The taking or receiving of any application for insurance;

4. Maintaining any agency or office where any acts in furtherance of an insurance business are transacted, including but not limited to:

- a. the execution of contracts of insurance with citizens of this or any other state,
- b. maintaining files or records of contracts of insurance,
- c. the processing of claims, and
- d. the receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

6. Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in:

- a. the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof,
- b. the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts,

- c. inspection of risks,
- d. fixing of rates or investigation or adjustment of claims or losses,
- e. the transaction of matters subsequent to effectuation of the contract and arising out of it, or
- f. in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

Provided, the provisions of this paragraph shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such employer;

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise;

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;

9. Ownership in whole or in part, directly or indirectly, of any entity involved in the business of insurance;

10. Acquiring or assisting others in the acquisition or attempted acquisition of any entity involved in the business of insurance;

11. Possessing a license, registration or permit issued or approved by the Insurance Commissioner;

12. Any other transactions of business in this state by an insurance company, producer, title insurance producer, adjuster, third-party administrator, service warranty association, title insurer or any other person that is licensed by or registered with the Insurance Commissioner; or

13. The doing of or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. On issuance of an emergency cease and desist order under Section 3 of this act, the Insurance Commissioner shall serve on the person affected by the order, by registered or certified mail, return receipt requested, to the person's last-known address, or by other lawful means, an order that contains a statement of the charges and requires the person immediately to cease and desist from the violation of subsection A of Section 2 of this act.

B. 1. If a person affected by an emergency cease and desist order seeks to contest that order, the person may request a hearing before the Insurance Commissioner. The person affected must request the hearing not later than the thirtieth day after the date on which the person receives the order. A request to contest an order must be in writing and directed to the Insurance Commissioner and must state the grounds for the request to set aside or modify the order.

2. On receiving the request for a hearing, the Insurance Commissioner shall serve notice of the time and place of the hearing at which the person requesting the hearing shall have the opportunity to show cause why the order should not be affirmed. The hearing is to be held not later than the tenth day after the date the Insurance Commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.

3. Pending the hearing, an emergency cease and desist order continues in full force and effect unless the order is stayed by the Insurance Commissioner.

4. The hearing on the order shall be conducted according to the procedures for contested cases under the Administrative Procedures Act.

5. At the hearing, the Insurance Commissioner shall affirm, modify or set aside in whole or in part the emergency cease and desist order.

C. A person aggrieved by a final order of the Insurance Commissioner pursuant to the Crimes By or Affecting Persons Engaged in the Business of Insurance Act may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

D. The Insurance Commissioner may recover reasonable attorney fees if judicial action is necessary for enforcement of the order.

E. A cease and desist order is final thirty-one (31) days after the date it is received if the person affected by the order does not request a hearing as provided by subsection B of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may promulgate rules necessary to carry out the provisions of the Crimes By or Affecting Persons Engaged in the Business of Insurance Act.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 987, as last amended by Section 2, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 987), is amended to read as follows:

Section 987. Rate Filings.

A. In a competitive market, every insurer shall file with the Commissioner all rates and supplementary rate information to be used in this state no later than thirty (30) days after the effective date; provided, that the rates and supplementary rate information need not be filed for commercial risks, which by general custom are not written according to manual rules or rating plans.

B. In a noncompetitive market, every insurer shall file with the Commissioner all rates, supplementary rate information and supporting information at least thirty (30) days before the proposed effective date. The Commissioner may give written notice, within thirty (30) days of receipt of the filing, that the Commissioner needs additional time, not to exceed thirty (30) days from the date of the notice to consider the filing. Upon written application of the insurer, the Commissioner may authorize rates to be effective before the expiration of the waiting period or an extension thereof. A filing shall be deemed to meet the requirements of the Property and Casualty Competitive Loss Cost Rating Act and to become effective unless disapproved pursuant to this title by the Commissioner before the expiration of the waiting period or an extension thereof.

In a noncompetitive market, the filing shall be deemed in compliance with the filing provision of this section unless the Commissioner informs the insurer within ten (10) days after receipt of the filings as to what supplementary rate information or supporting information is required to complete the filing.

C. Every authorized insurer shall file with the Commissioner, except as to rates for those lines of insurance exempted from the provisions of the Property and Casualty Competitive Loss Cost Rating Act by the Commissioner under subsections E and F of this section and except for those risks designated as special risks under Section 997 of this title, all rates, supplementary rate information and any changes and amendments which it proposes to use. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization as permitted by this title. Such loss cost multiplier filing and expense constant filings made by insurers shall remain in effect until amended or withdrawn by the insurer. Every filing shall state the effective date.

D. Under rules as may be adopted, the Commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks.

E. Notwithstanding any other provision of the Property and Casualty Competitive Loss Cost Rating Act, upon the written consent of the insured in a separate written document, a rate in excess of that determined in accordance with the other provisions of the Property and Casualty Competitive Loss Cost Rating Act may be used on a specific risk.

F. A filing and any supporting information required to be filed shall be open to public inspection once the filing becomes effective except information marked confidential, trade secret, or proprietary by the insurer or filer and except the filings of an advisory organization which shall be open to public inspection upon the received date of the rate, loss cost, or manual rule change. The insurer or filer shall have the burden of asserting to the Commissioner that a filing and supporting information are confidential, upon the request of the Commissioner. The Commissioner may disapprove of the insurer's request for confidential filing status.

SECTION 8. AMENDATORY 36 O.S. 2001, Section 1435.4, is amended to read as follows:

Section 1435.4 A. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with the Oklahoma Producer Licensing Act.

B. A penalty for selling, soliciting, negotiating, or procuring surplus lines insurance in this state without a surplus lines broker license shall be waived if the Insurance Commissioner receives an application for licensure as a surplus lines broker within thirty (30) days from the effective date of the policy at issue.

SECTION 9. AMENDATORY 36 O.S. 2001, Section 1435.5, is amended to read as follows:

Section 1435.5 A. Nothing in the Oklahoma Producer Licensing Act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

B. A license as an insurance producer shall not be required of the following:

1. An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state, and:

- a. the officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance, or
- b. the officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance, or
- c. the officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

2. A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass-marketed property and casualty insurance, where no commission is paid to the person for the service;

3. An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the

employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

4. Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

5. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

6. A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; ~~or~~

7. A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission; or

8. A volunteer counselor assisting Medicare beneficiaries with enrollment in Medicare Part D plans pursuant to the Federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. Law No. 108-173, provided that the volunteer counselor does not receive commissions or other valuable consideration from any person or plan for the enrollment, that the volunteer counselor has received education that is acceptable to the Insurance Commissioner

on enrollment of Medicare beneficiaries in Medicare Part D, that the volunteer counselor is providing volunteer services as part of a sponsoring agency or organization acceptable to the Commissioner, and that supporting documentation and/or verification is provided to the Commissioner as set out by rule.

SECTION 10. AMENDATORY 36 O.S. 2001, Section 1435.7, as last amended by Section 3, Chapter 338, O.S.L. 2007 (36 O.S. Supp. 2007, 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~~ Has held a provisional insurance producer license ~~under Section 11 of Enrolled House Bill No. 1960 of the 1st Session of the 51st Oklahoma Legislature~~ or has been a participant in an approved training program offered by an insurance company licensed in this state ~~or has completed a prelicensing course of study for the lines of authority for which the person has applied~~ except for title, aircraft title, or any other producer applicant exempt by rule;
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. 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 or an application approved by the Commissioner. 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; and

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.~~

C. 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.

D. 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.

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

SECTION 11. AMENDATORY 36 O.S. 2001, Section 1435.9, as amended by Section 16, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2007, Section 1435.9), is amended to read as follows:

Section 1435.9 A. Unless denied licensure pursuant to Section 1435.13 of this title, a nonresident person shall receive a nonresident producer license if:

1. The person is currently licensed as a resident and in good standing in that person's home state;
2. The person has submitted the proper request for licensure and has paid the fees required by Section 1435.23 of this title;
3. The person has submitted or transmitted to the Insurance Commissioner the application for licensure that the person submitted to the person's home state, or in lieu of the same, a completed Uniform Application; and
4. The person's home state awards nonresident producer licenses to residents of this state on the same basis.

B. Any nonresident application submitted pursuant to this section shall constitute the applicant's designation of the Insurance Commissioner as the person upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the insurance business of the applicant in this state. This designation constitutes an agreement that said service of process is of the same legal force and validity as personal service of process in this state upon the nonresident licensee.

C. The Insurance Commissioner may verify the producer's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

D. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. ~~No fee or license application is required.~~

E. Notwithstanding any other provision of the Oklahoma Producer Licensing Act or of the Oklahoma Insurance Code, a person licensed as a surplus lines producer in that person's home state shall receive a nonresident surplus lines producer license pursuant to subsections A and B of this section.

F. Notwithstanding any other provision of the Oklahoma Producer Licensing Act, a person licensed as a limited line credit insurance or other type of limited lines producer in that person's home state shall receive a nonresident limited lines producer license, pursuant to subsections A and B of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subsection A of Section 1435.8 of this title.

SECTION 12. AMENDATORY 36 O.S. 2001, Section 1435.20, as amended by Section 4, Chapter 150, O.S.L. 2003 (36 O.S. Supp. 2007, 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; 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;~~

~~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. 2. Crop hail and multiperil crop hail - insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop 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~~

~~3. Car rental - insurance offered, sold or solicited in connection with and incidental to the rental of rental cars for a period of two (2) years, whether at the rental office or by preselection of coverage in master, corporate, group or individual agreements that:~~

~~a. is nontransferable,~~

~~b. applies only to the rental car that is the subject of the rental agreement, and~~

~~c. is limited to the following kinds of insurance:~~

~~(1) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting~~

from an accident that occurs with the rental car during the rental period,

(2) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period,

(3) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period,

(4) roadside assistance and emergency sickness protection insurance, or

(5) any other coverage designated by the Insurance Commissioner;

4. Credit - credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the Insurance Commissioner as limited line credit insurance;

5. Surety - insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, surety does not include surety bail bonds; and

6. Travel - insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

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~~ 1435.23 of this ~~act~~ title. Proof of existence of the license shall be displayed on or about each machine in such manner as the Commissioner may reasonably require.

SECTION 13. AMENDATORY 36 O.S. 2001, Section 1435.23, as last amended by Section 14, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, 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..... \$ 20.00
2. Miscellaneous:

- a. Certificate and Clearance of Commissioner..... \$ 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.... not to exceed \$100.00
- 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
- j. Insurance producer's provisional license.... ~~\$ 40.00~~
\$ 20.00

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.

F. The Insurance Commissioner, by order, may waive licensing fees in extraordinary circumstances for a class of producers where the Commissioner deems that the public interest will be best served.

SECTION 14. AMENDATORY 36 O.S. 2001, Section 1435.29, as last amended by Section 15, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, 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 resident provisional producer prelicensing education and 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 resident provisional producer prelicensing education and 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 resident provisional producer prelicensing education and 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.

The Insurance Commissioner may certify providers and courses offered for license examination study. The Insurance Department shall use employees of the Insurance Commissioner to review and certify license examination study program providers and courses.

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, participates in an approved professional designation program shall be deemed to have met the biennial requirement for continuing education.

~~Course~~ Each course in the curriculum for the program shall total a minimum of twenty (20) hours. Each approved professional designation program included in this section shall be reviewed for quality and compliance every three (3) years in accordance with standardized criteria promulgated by rule. Continuation of approved status is contingent upon the findings of the review. The list of professional designation programs approved under this paragraph shall be made available to producers and providers annually.

4. The Insurance Department may promulgate rules providing that courses or programs offered by ~~specified~~ professional associations shall qualify for presumptive continuing education credit approval. The rules shall include standardized criteria for reviewing the professional associations' mission, membership, and other relevant information, and shall provide a procedure for the Department to disallow all or part of a presumptively approved course. Professional association courses approved in accordance with this paragraph shall be reviewed every three (3) years to determine whether they continue to qualify for continuing education credit.

5. Subject to approval by the Commissioner, the active membership of the licensed producer or broker in local, regional, state, or national professional insurance organizations or

associations may be approved for up to one (1) annual hour of instruction. 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.

6. The active service of a licensed producer as a member of a continuing education advisory committee, as described in paragraph 1 of this subsection, shall be deemed to qualify for continuing education credit on an hour-for-hour basis.

C. Each provider of resident provisional producer prelicensing education and continuing education shall, after approval by the Commissioner, submit an annual fee. A fee ~~shall~~ may be assessed for each course submission at the time it is first submitted for review and upon submission for renewal at expiration. Annual fees and course submission fees shall be set forth as a rule by the Commissioner. The fees are 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, federal agencies, and Oklahoma state agencies shall be exempt from this subsection.

D. Failure of an insurance producer or customer service representative to comply with the requirements of ~~this act~~ the Oklahoma Producer Licensing 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 1442, is amended to read as follows:

Section 1442. As used in the Third-party Administrator Act, Section 1441 et seq. of this title:

1. "Administrator" means any person who collects premiums for an insurer or trust or who adjusts or settles claims for an insurer or trust, in connection with life or health insurance coverage ~~or~~ annuities or employee benefit stop loss in this state, but shall not include any person who collects premiums or who adjusts or settles claims under the following circumstances:

- a. ~~Any~~ any employer on behalf of the employees of that employer or the employees of one or more subsidiary or affiliated corporations of that employer~~†~~
- b. ~~A~~ a union on behalf of its members~~†~~
- c. ~~An~~ an insurance company which is licensed to transact insurance business in this state~~†~~
- d. ~~A~~ a wholly owned subsidiary of an entity which is subject to the jurisdiction of the Insurance Commissioner~~†~~
- e. ~~An~~ an insurance company acting as an insurer with respect to a policy lawfully issued and delivered by said company in and pursuant to the laws of this state~~†~~

- f. ~~A~~ a hospital, medical, dental, or optometric service corporation or a health care service organization, including their agents, authorized by the Commissioner to issue contracts in this state pursuant to the provisions of the Oklahoma Insurance Code when engaged in the performance of their duties~~†~~†
- g. ~~A~~ a life or disability agent or broker who is licensed in this state and whose activities are limited exclusively to the sale of insurance~~†~~†
- h. ~~An~~ an adjuster licensed in this state for the kinds of business for which he is acting as an adjuster~~†~~†
- i. ~~A~~ a creditor insuring a debt between the creditor and its debtors on behalf of said creditor's debtors~~†~~†
- j. ~~A~~ a financial institution which is subject to supervision or examination by federal or state banking authorities~~†~~†
- k. ~~A~~ a company which issues credit cards and advances credit for and collects premiums or charges from its credit card holders who have authorized said collection, if the company does not adjust or settle claims~~†~~†
- l. ~~A~~ a person who adjusts or settles claims in the normal course of practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities~~†~~†
- m. ~~The~~ the State Insurance Fund~~†~~†
- n. ~~Any~~ any workers' compensation trust~~†~~† or
- o. ~~A~~ a trust providing benefits to the employees of any political subdivision of a city, county or the state~~†~~†; and

2. "Trust" means any trust other than those exempted in paragraph 1 of this section which engages in the business of making contracts of insurance.

SECTION 16. AMENDATORY 36 O.S. 2001, Section 1450, as amended by Section 10, Chapter 274, O.S.L. 2004 (36 O.S. Supp. 2007, Section 1450), is amended to read as follows:

Section 1450. A. No person shall act as or present himself or herself to be an administrator, as defined by the provisions of the Third-party Administrator Act, in this state, unless the person holds a valid license as an administrator which is issued by the Insurance Commissioner.

B. An administrator shall not be eligible for a nonresident administrator license under this section if the administrator does not hold a home state certificate of authority or license in a state that has adopted the Third-party Administrator Act or that applies substantially similar provisions as are contained in the Third-party Administrator Act to that administrator. If the Third-party Administrator Act in the administrator's home state does not extend to stop-loss insurance, but if the home state otherwise applies substantially similar provisions as are contained in the Third-party Administrator Act to that administrator, then that omission shall not operate to disqualify the administrator from receiving a nonresident administrator license in this state.

1. "Home state" means the United States jurisdiction that has adopted the Third-party Administrator Act or a substantially similar law governing third-party administrators and which has been designated by the administrator as its principal regulator. The administrator may designate either its state of incorporation or its principal place of business within the United States if that jurisdiction has adopted the Third-party Administrator Act or a substantially similar law governing third-party administrators. If neither the administrator's state of incorporation nor its principal place of business within the United States has adopted the Third-party Administrator Act or a substantially similar law governing third-party administrators, then the third-party administrator shall designate a United States jurisdiction in which it does business and which has adopted the Third-party Administrator Act or a substantially similar law governing third-party administrators. For

purposes of this definition, "United States jurisdiction" means the District of Columbia or a state or territory of the United States.

2. "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

C. In the case of a partnership which has been licensed, each general partner and each other individual acting for the partnership, and in the case of any entity which has been licensed, each individual acting for the entity as a third-party administrator shall be named in the license and shall qualify therefore as though an individual licensee. The Commissioner shall charge a full additional license fee and a separate license shall be issued for each individual so named in such a license. The entity partnership shall notify the Commissioner within fifteen (15) days if any individual licensed on its behalf has been terminated, or is no longer associated with or employed by the entity partnership. Any entity or partnership licensed as administrators under the Third-party Administrators Act shall provide National Association of Insurance Commissioner Biographical Affidavits as required for domestic insurers pursuant to the insurance laws of this state.

~~C.~~ D. An application for an administrator's license shall be in a form prescribed by the Commissioner and shall be accompanied by a fee of One Hundred Dollars (\$100.00). This fee shall not be refundable if the application is denied or refused for any reason by either the applicant or the Commissioner.

~~D.~~ E. The administrator's license shall continue in force no longer than twelve (12) months from the original month of issuance. Upon filing a renewal form prescribed by the Commissioner, accompanied by a fee of One Hundred Dollars (\$100.00), the license may be renewed annually for a one-year term. Late application for renewal of a license shall require a fee of double the amount of the original license fee. The administrator shall submit, together with the application for renewal, a list of the names and addresses of the persons with whom the administrator has contracted in accordance with Section 1443 of this title. The Commissioner shall hold this information confidential except as provided in Section 1443 of this title.

~~E.~~ F. The administrator's license shall be issued or renewed by the Commissioner unless, after notice and opportunity for hearing, the Commissioner determines that the administrator is not competent, trustworthy, or financially responsible, or has had any insurance license denied for cause by any state, has been convicted or has pleaded guilty or nolo contendere to any felony or to a misdemeanor involving moral turpitude or dishonesty.

~~F.~~ G. After notice and opportunity for hearing, and upon determining that the administrator has violated any of the provisions of the Oklahoma Insurance Code or upon finding reasons for which the issuance or nonrenewal of such license could have been denied, the Commissioner may either suspend or revoke an administrator's license or assess a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each occurrence. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

~~G.~~ H. Any person who is acting as or presenting himself or herself to be an administrator without a valid license shall be subject, upon conviction, to a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for each occurrence. This fine shall be in addition to any other penalties which may be imposed for violations of the Oklahoma Insurance Code or other laws of this state.

~~H.~~ I. Except as provided for in subsections ~~E~~ F and ~~F~~ G of this section, any person convicted of violating any provisions of the Third-party Administrator Act shall be guilty of a misdemeanor and shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00).

~~I.~~ J. Any fees imposed pursuant to the provisions of this section and any civil penalties imposed pursuant to an administrative hearing order for violation of the provisions of the Third-party Administrator Act shall be deposited in the State Insurance Commissioner Revolving Fund.

SECTION 17. AMENDATORY 36 O.S. 2001, Section 1922, is amended to read as follows:

~~Section 1922. The monies collected by the Insurance Commissioner in a proceeding under this article shall be from time to time deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The Insurance Commissioner may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund~~

A. The receiver shall have the power:

1. To hold hearings, to subpoena witnesses for the purpose of compelling their attendance, to administer oaths, to examine any person under oath, and to compel any persons to subscribe to their testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, data or other documents, electronic or paper, that the receiver deems relevant to the inquiry;

2. To audit the books and records of all agents of the insurer, including, but not limited to, third-party administrators, and affiliated and nonaffiliated management companies insofar as those records relate to the business activities of the insurer;

3. To conduct litigation, including:

a. to continue to prosecute or defend, and to institute in the name of the insurer or in the receiver's own name, suits or other legal proceedings, in this state or elsewhere,

b. to abandon the prosecution of claims the receiver deems unprofitable to pursue further,

c. to collect all debts and monies due and claims belonging to the insurer, wherever located, and in furtherance of this purpose to institute action in this or other jurisdictions in order to forestall garnishment and attachment proceedings against those

debts, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the receiver deems consistent with the purpose of the Uniform Insurers Liquidation Act, and pursue any creditor's remedies available to enforce the insurer's claims,

- d. to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition for supervision, conservation, receivership, rehabilitation or liquidation has been filed shall not bind the receiver. Whenever a guaranty association has an obligation to defend any suit, the receiver shall defer to that obligation and may defend only in cooperation with the guaranty association or in the absence of the guaranty association's defense,
- e. to exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer, transaction or lien that may be voidable under the Uniform Insurers Liquidation Act or otherwise, and
- f. to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the insurer or any of its property, and to act as the receiver or trustee whenever the appointment is offered.

The receiver shall have exclusive standing in any action that may exist to assert claims or defenses on behalf of the creditors, members, policyholders or shareholders of the insurer or the public against any person, except to the extent that a claim is personal to a specific creditor, member, policyholder or shareholder and recovery on the claim would not inure to the benefit of the estate. If the receiver sells or dissolves the corporate entity or charter of the insurer, the receiver shall have the power to apply to any court in this state or elsewhere for leave to substitute the receiver for the insurer as a party. This paragraph does not

infringe or impair any of the rights provided to a guaranty association pursuant to its enabling statute or otherwise;

4. a. To conduct public or private sales of the insurer's property, and thereby to acquire, hypothecate, encumber, lease, sell, improve, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, and to settle or resolve any claim or lawsuit brought by the receiver on behalf of the insurer or pending when a petition for supervision, conservation, receivership, rehabilitation or liquidation is filed, or commute or settle any claim of reinsurance under any contract of reinsurance,
- b. to transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee. The transferee shall have the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim. The transfer of these rights shall not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether the agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Except as provided in this subparagraph, any transfer of rights pursuant to this provision shall not impair any rights or defenses of the reinsurer that existed prior to the transfer or would have existed in the absence of the transfer. Except as otherwise provided in this subparagraph, any transfer of rights pursuant to this provision shall not relieve the transferee or the receiver from obligations owed to the reinsurer pursuant to the reinsurance or other agreement, and
- c. to execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other

transaction in connection with the liquidation or rehabilitation and to file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

5. a. To use property of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 1927.1 of this title,
- b. to use property of the estate to transfer the insurer's obligations under surety bonds and surety undertakings, and collateral held by the insurer with respect to the reimbursement obligations of the principals under those surety bonds and surety undertakings, to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 1927.1 of this title; and if the receivership court so orders, the estate shall have no further liability under the transferred policies, surety bonds, or surety undertakings after the transfer is made, and
- c. upon the issuance of an order of liquidation and a finding of insolvency, policies or portions of policies of life, disability income, long-term care or health insurance or annuities covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy, including any terms restructured pursuant to a court-approved rehabilitation plan, to the extent necessary to permit the guaranty associations to discharge their statutory obligations. Policies or portions of policies of life, disability income, long-term care or health insurance or annuities, not covered by one or more guaranty associations, and other types of policies, shall terminate by operation of law, except to the extent the liquidator proposes and the receivership court approves the use of property of the estate, consistent with subparagraphs a and b of this

paragraph, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer;

6. To borrow money on the security of the property of the estate or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation or rehabilitation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution in Section 1927.1 of this title;

7. To enter into contracts, and to assume or reject any executory contract or unexpired lease to which the insurer is a party; provided, however, notwithstanding anything which may appear to the contrary in this act, any statute of this state or of any other state, or of the United States, receiver shall not be bound by any provision of any contract of or by the insurer which requires arbitration;

8. To take possession of the records and property of the insurer. Guaranty associations shall have reasonable access to the records of the insurer necessary for them to carry out their statutory obligations;

9. To deposit in one or more banks in this state sums required for meeting current administration expenses and dividend distributions;

10. To invest the assets of the estate;

11. To enter into agreements with any receivers or commissioners of any other states; and

12. To exercise all powers now held or hereafter conferred upon receivers by the applicable statutory and common law of this state not inconsistent with the provisions of the Uniform Insurers Liquidation Act.

B. The receiver is vested with all the rights of the entity or entities in receivership.

C. The enumeration, in this section, of the powers and authority of the receiver shall not be construed as a limitation upon the receiver, nor shall it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation or rehabilitation.

D. The receiver shall not be obligated to defend any action against the insurer or insured. An insured not defended by a guaranty association may provide his or her own defense, and include the cost of the defense as part of any claim of the insured against the estate, if the defense was an obligation of the insurer. The right of the receiver to contest coverage on a particular claim shall be deemed preserved without the necessity of an express reservation of rights.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If applicable statutory or common law, an order, or an agreement fixes, defines, extends or tolls a period within which the insurer may commence an action, and this period has not expired before the date of the filing of the initial petition in a delinquency proceeding as defined in Section 1901 of Title 36 of the Oklahoma Statutes, the receiver shall not by reason thereof be barred from commencing such an action if the receiver does so on or before the later of:

1. The end of the period, including any suspension of the period occurring on or after the filing of the initial petition in a delinquency proceeding; or

2. Four (4) years after the entry of the order commencing a delinquency proceeding or entry of a subsequent order granting a different form of relief in a delinquency proceeding.

B. Except as provided in subsection A of this section, if applicable law, an order or an agreement fixes, defines, extends or tolls a period within which the insurer may file any pleading, demand, notice, or proof of claim or loss, or cure a default in a case or proceeding, or perform any other similar act, and the period

has not expired before the date of the filing of the initial petition in a delinquency proceeding, the receiver shall not by reason thereof be barred from filing, curing or performing, as the case may be, if the receiver does so on or before the later of:

1. The end of the period, including any suspension of the period occurring on or after the filing of the initial petition in a delinquency proceeding; or

2. One hundred eighty (180) days after the entry of the order granting the initial petition in the delinquency proceeding, or within such further extension thereof granted by the court which is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

C. If applicable law, an order or an agreement fixes, defines, extends or tolls a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the date of the filing of the initial petition in a delinquency proceeding, then the period does not expire until the later of:

1. The end of the period, including any suspension of the period occurring on or after the filing of the initial petition in a delinquency proceeding; or

2. Thirty (30) days after termination or expiration of a court ordered stay with respect to the claim.

D. An allegation by the receiver of improper or fraudulent conduct against any person shall not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party, but the third party is not barred by this section from seeking to establish independently as a defense that the conduct was materially and substantially related to the contractual obligation for which enforcement is sought.

E. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages or

otherwise; except that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract and a principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated such property. Evidence of fraud in the inducement will be admissible only if it is contained in the records of the insurer.

F. No action or inaction by the insurance regulatory authorities may be asserted as a defense to a claim by the receiver.

G. A judgment or order entered against an insured or the insurer in contravention of any stay or injunction under the Uniform Insurers Liquidation Act, or at any time by default or collusion, shall not be considered as evidence of liability or of the quantum of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

H. The provisions of subsection G of this section do not apply to guaranty associations' claims for amounts paid on settlements and judgments in pursuit of their statutory obligations.

SECTION 19. AMENDATORY 36 O.S. 2001, Section 4424, is amended to read as follows:

Section 4424. Unless the context requires otherwise, the definitions in this section apply throughout the Long-Term Care Insurance Act.

1. a. "Long-term care insurance" means any insurance policy, certificate or rider, including qualified long-term care insurance contracts and long-term care partnership program contracts, which are advertised, marketed, offered or designed primarily to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance,

or personal care services, provided in a setting other than an acute care unit of a hospital.

- b. This term includes group and individual health policies or riders or group and individual life policies or annuities or riders which provide, directly or as a supplement, coverage for long-term care, whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, life care communities, or any similar organization.
- c. This term also includes a policy or rider which provides for payment of long-term care benefits based upon cognitive impairment or the loss of functional capacity.
- d. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage or related asset-protection coverage, catastrophic coverage, comprehensive coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.
- e. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

f. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this act.

2. "Applicant" means:

- a. in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, and
- b. in the case of a group long-term care insurance policy, the proposed certificate holder.

3. "Certificate" means any certificate issued under a group long-term care insurance policy, which certificate has been delivered, or issued for delivery, in this state.

4. "Group long-term care insurance" means a long-term care insurance policy which is delivered, or issued for delivery, in this state and issued to:

- a. one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees, or a combination thereof or for members or former members, or a combination thereof, of the labor organizations, or
- b. any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:
 - (1) is composed of individuals, all of whom are or were actively engaged in the same profession, trade or occupation, and
 - (2) has been maintained in good faith for purposes other than insurance, or

- c. an association, a trust, or the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the Insurance Commissioner that the association or associations shall have at the outset of transacting long-term care insurance in this state a minimum of one hundred (100) persons in the association or associations and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least one (1) year; and shall have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees. Thirty (30) days after such filing the association or associations shall be deemed to satisfy such organizational requirements, unless the Commissioner makes a finding that the association or associations do not satisfy those organizational requirements, or
- d. a group other than as described in subparagraphs a, b and c of this paragraph, subject to a finding by the Commissioner that:
- (1) the issuance of the group policy is not contrary to the best interest of the public,
 - (2) the issuance of the group policy would result in economies of acquisition or administration, and
 - (3) the benefits are reasonable in relation to the premiums charged.

5. "Life care community" means any arrangement pursuant to which a person contracts for a place of residence and personal care services, including but not limited to services which progress from independent living to semi-dependent nursing care to acute nursing care, in consideration of a payment or payments of fees prior to the delivery of services and accommodations. Life care community shall not include the following:

- a. traditional landlord and tenant agreements utilizing periodic rental and security deposit payments,
- b. residential care homes licensed pursuant to the Oklahoma Residential Care Act,
- c. assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act, or
- d. facilities licensed pursuant to the Oklahoma Nursing Home Care Act.

6. "Policy" means any policy, contract, certificate, subscriber agreement, rider or endorsement delivered, or issued for delivery, in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, life care community, or any similar organization.

7. "Qualified long-term care insurance contract" means any:

- a. individual or group insurance contract if the contract meets the requirements of Section 7702(B) of the Internal Revenue Code, as amended, and if:
 - (1) the only insurance protection provided under the contract is coverage of qualified long-term care services,
 - (2) the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under Title XVIII of the Social Security Act as amended, or would

be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph do not apply to contracts where Medicare is a secondary payor, or where the contract makes per diem or other periodic payments without regard to expenses,

- (3) the contract is guaranteed renewable,
- (4) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract, and
- (5) the contract contains the consumer protection provisions set forth in Section 7702(B)(g) of the Internal Revenue Code, or

- b. life insurance contract which provides long-term care coverage by rider or as part of the contract if the contract complies with the applicable provisions of Section 7702(B) of the Internal Revenue Code, as amended.

8. "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

SECTION 20. AMENDATORY 36 O.S. 2001, Section 4501, is amended to read as follows:

Section 4501. Group accident and health insurance is hereby declared to be that form of accident and health insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of persons in such groups, and issued upon the following basis:

1. Under a policy issued to an association, which has been in existence for at least twelve (12) months, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least ten members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein shall be deemed to include retired employees;

2. Under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions. The term "employees" as used herein shall be deemed to include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein shall be deemed to include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

3. Under a policy issued to any persons or organizations to which a policy of group life insurance may be delivered in this state, to insure any class or classes of individuals that could be insured under such group life policy;

4. Under a health insurance policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder insuring at least one employee of such employer for the benefit of persons other than the employer. The term "employee" as used herein shall be deemed to include the officers, managers,

and employees of the employer, the individual proprietor or partners if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employee" as used herein shall be deemed to include retired employees and their dependents and the dependents of employees eligible for Medicare. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials;

5. Under a policy issued to cover any other substantially similar group which, in the discretion of the Insurance Commissioner, may be subject to the issuance of a group accident and health policy or contract; and

6. Nothing in this article validates any charge or practice illegal under any rule of law or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such rule of law or regulation to any transaction not otherwise subject thereto.

SECTION 21. AMENDATORY 36 O.S. 2001, Section 5002, is amended to read as follows:

Section 5002. A. A domestic title insurer shall invest its capital accumulations, up to the sum of One Hundred Thousand Dollars (\$100,000.00), in capital investments as defined in ~~subsection A of section~~ Section 1606 of article Article 16 (Investments), but subject to the exception in subsection B of this section, below.

B. A domestic title insurer may invest its capital and accumulations in excess of One Hundred Thousand Dollars (\$100,000.00) in such investments as are made eligible for funds of domestic insurers by ~~article~~ Article 16; except, that any such insurer may invest an amount not exceeding fifty percent (50%) of its combined capital and surplus in the preparation and purchase of material or plants or both necessary to enable it to engage in the business of title insurance, and such materials and plants shall be deemed to be capital funds investments and shall be valued as the actual cost thereof.

C. ~~Subsections B and C of section~~ Section 1606 of article Article 16 shall not apply to domestic title insurers, nor shall such insurers be subject to the limitations as to amount invested in real estate for home office and branch office purposes contained in ~~subdivision A paragraph 1 of section~~ Section 1624 of article Article 16.

SECTION 22. AMENDATORY 36 O.S. 2001, Section 5005, is amended to read as follows:

Section 5005. A. Title insurers shall be governed by this article and, to the extent not modified by or inconsistent with the provisions of this article or the provisions of this code made applicable to such insurers, by the general laws of this state governing corporations organized for profit.

B. To the extent not modified by the provisions of this article, title insurers shall be subject to and governed by the other applicable provisions of this code.

C. No new insurance law hereafter enacted shall be deemed to apply to title insurers unless they be expressly referred to therein.

D. Notwithstanding anything to the contrary, the following sections, acts and articles of the Insurance Code and related rules of the Insurance Department shall apply to title insurers in addition to those applicable to title insurers on November 1, 2008:

1. Section 311 of this title, Annual Financial Statements;

2. Section 615.2 of this title, Duty of Domestic Insurers and Health Maintenance Organizations to Keep Biographical Information Current;

3. Article 12, Unfair Practices and Frauds;

4. Article 12A-1, Unfair Claims Settlement Practices Act;

5. Article 16A, Subsidiaries of Insurers;

6. Article 18, Supervision and Conservatorship of Insurers Act;
and

7. Article 19, Rehabilitation and Liquidation.

SECTION 23. AMENDATORY 36 O.S. 2001, Section 6060, as amended by Section 1, Chapter 78, O.S.L. 2002 (36 O.S. Supp. 2007, Section 6060), is amended to read as follows:

Section 6060. A. All individual and group health insurance policies providing coverage on an expense incurred basis, and all individual and group service or indemnity type contracts issued by a nonprofit corporation, including the Oklahoma State and Education Employees Group Insurance Board, which provide coverage for a female thirty-five (35) years old or older in this state, except for policies that provide coverage for specified disease or other limited benefit coverage, shall include the coverage specified by this section for a ~~routine low-dose~~ mammography screening in a reimbursement amount not to exceed One Hundred Fifteen Dollars (\$115.00) for the presence of occult breast cancer. Such coverage shall not:

1. Be subject to the policy deductible, co-payments and co-insurance limits of the plan; or

2. Require that a female undergo a mammography screening at a specified time as a condition of payment.

B. 1. Any female thirty-five (35) through thirty-nine (39) years of age shall be entitled pursuant to the provisions of this section to coverage for a ~~low-dose~~ mammography screening once every five (5) years.

2. Any female forty (40) years of age or older shall be entitled pursuant to the provisions of this section to coverage for an annual ~~low-dose~~ mammography screening.

~~C. For the purposes of this section, the term "low-dose mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens,~~

~~films, and cassettes, with an average radiation exposure delivery of less than one rad mid breast, with two views for each breast.~~

SECTION 24. AMENDATORY 36 O.S. 2001, Section 6210, as amended by Section 27, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 6210), is amended to read as follows:

Section 6210. A. The answers of the applicant to any examination for licensing as an adjuster shall be written by the applicant under supervision of the Insurance Commissioner.

B. The examination shall be given at such times and places within this state as the Commissioner deems necessary to reasonably serve the convenience of both the Commissioner and the applicants.

C. An applicant who has failed to pass the first examination for the license for which applied may take a second examination within thirty (30) days following the first examination. An applicant who has failed to pass the first two examinations for the license for which applied shall not be permitted to take a subsequent examination until the expiration of thirty (30) days after the last previous examination. ~~A current~~ An applicant shall take and pass the examination within one hundred eighty (180) days of the date of the initial application and. If the applicant fails to pass an examination within the specified time period, the applicant shall submit a new application accompanied by any applicable fees shall be submitted with each request to take a. Examination fees for subsequent examination examinations shall not be waived.

SECTION 25. AMENDATORY 36 O.S. 2001, Section 6217, as amended by Section 29, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 6217), is amended to read as follows:

Section 6217. A. A license as an adjuster shall expire two (2) years from the month of original issuance of the license or subsequent renewal of the license.

B. Any licensee applying for renewal of a license as an adjuster shall have completed not less than twelve (12) clock hours of continuing insurance education within the previous twenty-four (24) months prior to renewal of the license. Such continuing

education shall cover subjects in the classes of insurance for which the adjuster is licensed. Such continuing education shall not include a written or oral examination. The Insurance Commissioner shall approve courses and providers of continuing education for insurance adjusters as required by this section.

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:

1. Employees of the Insurance Commissioner;

2. A continuing education advisory committee. The continuing education advisory committee is separate and distinct from the Advisory Board established by Section 6221 of this title;

3. 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 present 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.

C. An adjuster who, during the time period prior to renewal, participates in an approved professional designation program shall be deemed to have met the biennial requirement for continuing education. ~~Course~~ Each course in the curriculum for the program shall total a minimum of twenty (20) hours. Each approved professional designation program included in this section shall be reviewed for quality and compliance every three (3) years in accordance with standardized criteria promulgated by rule. Continuation of approved status is contingent upon the findings of the review. The list of professional designation programs approved under this subsection shall be made available to producers and providers annually.

D. The Insurance Department may promulgate rules providing that courses or programs offered by ~~specified~~ professional associations

shall qualify for presumptive continuing education credit approval. The rules shall include standardized criteria for reviewing the professional associations' mission, membership, and other relevant information, and shall provide a procedure for the Department to disallow ~~all or part of~~ a presumptively approved course. Professional association courses approved in accordance with this subsection shall be reviewed every three (3) years to determine whether they continue to qualify for continuing education credit.

E. The active service of a licensed adjuster as a member of a continuing education advisory committee, as described in paragraph 2 of subsection B of this section, shall be deemed to qualify for continuing education credit on an hour-for-hour basis.

F. Each provider of continuing education shall, after approval by the Commissioner, submit an annual fee. A fee may be assessed for each course submission at the time it is first submitted for review and upon submission for renewal at expiration. Annual fees and course submission fees shall be set forth as a rule by the Commissioner. The fees are payable to the Insurance Commissioner and 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. Public-funded educational institutions, federal agencies and Oklahoma state agencies shall be exempt from this subsection.

G. Subject to the right of the Commissioner to suspend, revoke, or refuse to renew a license of an adjuster, any such license may be renewed by filing on the form prescribed by the Commissioner on or before the expiration date a written request by or on behalf of the licensee for such renewal and proof of completion of the continuing education requirement set forth in subsection B of this section, accompanied by payment of the renewal fee.

~~G.~~ H. If the request, proof of compliance with the continuing education requirement and fee for renewal of a license as an adjuster are filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act pursuant to said license, unless revoked or suspended prior to the expiration date, until the issuance of a renewal license or until the

expiration of ten (10) days after the Commissioner has refused to renew the license and has mailed notice of said refusal to the licensee. Any request for renewal filed after the date of expiration may be considered by the Commissioner as an application for a new license.

SECTION 26. AMENDATORY 36 O.S. 2001, Section 6602, as last amended by Section 31, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 6602), is amended to read as follows:

Section 6602. As used in the Service Warranty Insurance Act:

1. "Commissioner" means the Insurance Commissioner;
2. "Consumer product" means tangible personal property primarily used for personal, family, or household purposes;
3. "Department" means the Insurance Department;
4. "Gross income" means the total amount of revenue received in connection with business-related activity;
5. "Gross written premiums" means the total amount of premiums, inclusive of commissions, for which the association is obligated under service warranties issued in this state;
6. "Impaired" means having liabilities in excess of assets;
7. "Indemnify" means to undertake repair or replacement of a consumer product or a newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated premium, when the consumer product or residential structure becomes defective or suffers operational failure;
8. "Insolvent" means any actual or threatened delinquency including, but not limited to, any one or more of the following circumstances:
 - a. an association's total liabilities exceed the association's total assets of the association excluding goodwill, franchises, customer lists,

patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. In order to include receivables from affiliated companies as assets as defined pursuant to this subparagraph and paragraph 10 of this section, the service warranty association shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies. The written guarantee must be made by a guaranteeing organization which:

- (1) has been in continuous operation for ten (10) years or more and has net assets in excess of Fifty Million Dollars (\$50,000,000.00),
- (2) submits a guarantee on a form provided by the Insurance Commissioner by rule that contains a provision which requires that the guarantee be irrevocable and contains a provision setting out that the Commissioner may pursue appropriate legal actions in the courts of this state or any other state against the guaranteeing company to collect the receivable on behalf of the service warranty association in the event of the insolvency or threatened insolvency of the association, unless the guaranteeing organization can demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,
- (3) initially submits a statement from an independent certified public accountant of the guaranteeing agency attesting that the net assets of the guaranteeing company meets or exceeds the net assets requirement as provided in division (1) of this subparagraph,

(4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, a statement from an independent certified public accountant of the guaranteeing agency attesting that the net assets of the guaranteeing company meet or exceed the net assets requirement as provided in division (1) of this subparagraph, and

(5) the receivables are maintained as cash or as securities described in Sections 1607, 1608, 1610 and 1620 of this title,

- b. the business of any such association is being conducted fraudulently, or
- c. the association has knowingly overvalued its assets;

9. "Insurer" means any property or casualty insurer duly authorized to transact such business in this state;

10. "Net assets" means the amount by which the total assets of an association, excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, exceed the total liabilities of the association. For purposes of the Service Warranty Insurance Act, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earnings of an association;

11. "Person" includes an individual, company, corporation, association, insurer, agent and any other legal entity;

12. "Premium" means the total consideration received or to be received, by whatever name called, by an insurer or service warranty association for, or related to, the issuance and delivery of a service warranty, including any charges designated as assessments or fees for membership, policy, survey, inspection, or service or other charges. However, a repair charge is not a premium unless it exceeds the usual and customary repair fee charged by the association, provided the repair is made before the issuance and delivery of the warranty;

13. "Sales representative" means any person utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties and includes any individual possessing a certificate of competency who has the power to legally obligate the insurer or service warranty association or who merely acts as the qualifying agent to qualify the association in instances when a state statute or local ordinance requires a certificate of competency to engage in a particular business. However, in the case of service warranty associations selling service warranties from five or more business locations, the store manager or other person in charge of each such location shall be considered the sales representative;

14. "Service warranty" means any warranty, home warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise entered into between a consumer and a service warranty association under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product or newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated charge by the consumer; however:

- a. maintenance service contracts under the terms of which there are no provisions for such indemnification are expressly excluded from this definition,
- b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from an insurer licensed in the state, which covers one hundred percent (100%) of the claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,
- c. the term "service warranty" does not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which

consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property,

- d. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which performs at least seventy percent (70%) of the service work itself and not through subcontractors, which has been selling and honoring such contracts in Oklahoma for at least twenty (20) years, and
- e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00). The calculation of the net assets shall include the assets of a parent company. When the net assets of the parent company are used to calculate the total net assets of the company, the net assets of the company issuing the policy shall total at least Twenty-five Million Dollars (\$25,000,000.00);

15. "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties; provided, this term shall not mean any person engaged in the business of erecting or otherwise constructing a new home;

16. "Warrantor" means any service warranty association engaged in the sale of service warranties and deriving not more than fifty percent (50%) of its gross income from the sale of service warranties; and

17. "Warranty seller" means any service warranty association engaged in the sale of service warranties and deriving more than fifty percent (50%) of its gross income from the sale of service warranties.

SECTION 27. AMENDATORY 36 O.S. 2001, Section 6609, is amended to read as follows:

Section 6609. Each license issued to a service warranty association shall expire on ~~June~~ November 1 following the date of issuance. If the association is then qualified therefor under the provisions of the Service Warranty Insurance Act, its license may be renewed annually, upon its request, and upon payment to the Insurance Commissioner of the license fee in the amount of Two Hundred Dollars (\$200.00) in advance for each such license year.

SECTION 28. AMENDATORY 36 O.S. 2001, Section 6615, as last amended by Section 32, Chapter 125, O.S.L. 2007 (36 O.S. Supp. 2007, Section 6615), is amended to read as follows:

Section 6615. A. In addition to the license fees provided in the Service Warranty Insurance Act for service warranty associations each such association and insurer shall, annually on or before ~~the last day of February~~ May 1, file with the Insurance Commissioner its annual statement in the form prescribed by the Commissioner showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and other relevant financial information as deemed necessary by the Commissioner, using accounting principles which will enable the Commissioner to ascertain whether the financial requirements set forth in Section 6607 of this title have been satisfied.

B. The Commissioner may levy a fine of up to One Hundred Dollars (\$100.00) a day for each day an association neglects to file the annual statement in the form and within the time provided by the Service Warranty Insurance Act.

C. In addition to an annual statement, the Commissioner may require of licensees, under oath and in the form prescribed by it, quarterly statements or special reports which the Commissioner deems necessary for the proper supervision of licensees under the Service Warranty Insurance Act.

D. Premiums and assessments received by associations and insurers for service warranties shall not be subject to the premium tax provided for in Section 624 of this title, but shall be subject

to an administrative fee of Two Dollars (\$2.00) for each service warranty issued that provides coverage not to exceed Seventy-five Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty issued that provides coverage in excess of Seventy-five Dollars (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and Ten Dollars (\$10.00) for each service warranty that provides coverage in excess of Two Hundred Fifty Dollars (\$250.00). However, associations and insurers that have contractual liability insurance in place, from a company licensed in the state, which covers one hundred percent (100%) of the claims exposure of the association or insurer on all contracts written shall be subject to an annual administrative fee of Two Thousand Five Hundred Dollars (\$2,500.00). Said fees shall be paid quarterly to the Insurance Commissioner. All such fees, up to a maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00) per year, received by the Insurance Commissioner shall be deposited into the State Treasury to the credit of the Insurance Commissioner Revolving Fund for the payment of costs incurred by the Insurance Department in the administration of the Service Warranty Insurance Act. Amounts received in excess of the annual limitation shall be deposited to the credit of the General Revenue Fund.

SECTION 29. AMENDATORY 59 O.S. 2001, Section 1316, as last amended by Section 4, Chapter 386, O.S.L. 2005 (59 O.S. Supp. 2007, Section 1316), is amended to read as follows:

Section 1316. A. 1. A bail bondsman shall neither sign nor countersign in blank any bond, nor shall the bondsman give a power of attorney to, or otherwise authorize, anyone to countersign his or her name to bonds unless the person so authorized is a licensed surety bondsman or managing general agent directly employed by a licensed professional bondsman giving such power of attorney. The professional bondsman shall submit to the Insurance Commissioner the agreement between the professional bondsman and the employed bondsman. The agreement shall be submitted to the Commissioner prior to the employed bondsman writing bonds on behalf of the professional. The professional bondsman shall notify the Commissioner whenever any agreement is canceled. If the bondsman surrenders the professional qualification, or the professional qualification is suspended or revoked, then the Commissioner shall suspend the appointment of all of the professional bondsman's bail agents. The Commissioner shall immediately notify any bail agent

whose license is affected and the court clerk of the agent's resident county upon such suspension or revocation of the professional bondsman's qualification. If the professional qualification is reinstated within twenty-four (24) hours, the Commissioner shall not be required to suspend the bail agent appointments. If the Commissioner reinstates the professional qualification within twenty-four (24) hours, the Commissioner shall also reinstate the appointment of the professional bondsman's bail agents. If more than twenty-four (24) hours elapse following the suspension or revocation, then the professional bondsman shall submit new agent appointments to the Commissioner.

2. Bail bondsmen shall not allow other licensed bondsmen to present bonds that have previously been signed and completed by other licensed bondsmen unless a written authorization is on file with the court clerk where the bond is filed. The individual that presents the bond shall sign the form in the presence of the official that receives the bond.

B. Premium charged must be indicated on the appearance bond prior to the filing of the bond.

C. A bail bondsman shall provide the indemnitors with a proper receipt which shall include fees, premium or other payments and copies of any agreements executed relating to the appearance bond.

D. All surety bondsmen or managing general agents shall attach a completed power of attorney to the appearance bond that is filed with the court clerk on each bond written.

E. Any bond written in this state shall contain the name and last-known mailing address of the bondsman and, if applicable, of the insurer.

SECTION 30. AMENDATORY 59 O.S. 2001, Section 1317, as amended by Section 1, Chapter 167, O.S.L. 2004 (59 O.S. Supp. 2007, Section 1317), is amended to read as follows:

Section 1317. A. Every surety who appoints a surety bondsman or managing general agent in the state, shall give notice thereof to the Insurance Commissioner. The filing fee for appointment of each surety bondsman or managing general agent shall be Ten Dollars

(\$10.00), payable to the Commissioner and shall be submitted with the appointment. The appointment shall remain in effect until the surety submits a notice of cancellation to the Commissioner, the bail bondsman's license expires, or the Commissioner cancels the appointment. If the surety changes the liability limitations of the surety bondsman or the managing general agent, or any other provisions of the appointment, the surety shall submit an amended appointment form and a filing fee of Ten Dollars (\$10.00) payable to the Commissioner.

B. A surety terminating the appointment of a surety bondsman or managing general agent immediately shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman or managing general agent. The notice filed with the Commissioner shall state the reasons, if any, for the termination.

C. Prior to issuance of a new surety appointment for a surety bondsman or managing general agent, the bondsman or agent shall file an affidavit with the Commissioner stating that no forfeitures are owed to any court, no fines are owed to the insurance department, and no premiums or indemnification for forfeitures or fines are owed to any insurer. This provision shall not require that all outstanding liabilities have been exonerated, but may provide that the liabilities are still being monitored by the bondsman or agent.

D. Every bail bondsman who negotiates and posts a bond shall, in any controversy between the defendant, indemnitor, or guarantor and the bail bondsman or surety, be regarded as representing the surety. This provision shall not affect the apparent authority of a bail bondsman as an agent for the insurer.

SECTION 31. AMENDATORY Section 1, Chapter 322, O.S.L. 2006, as amended by Section 14, Chapter 326, O.S.L. 2007 (47 O.S. Supp. 2007, Section 7-600.2), is amended to read as follows:

Section 7-600.2 A. The Department of Public Safety shall promulgate and adopt rules for an online verification system for motor vehicle insurance or bond as required by the Compulsory Insurance Law, subject to the following:

1. The Oklahoma Tax Commission and the Insurance Department shall cooperate with the Oklahoma Tax Commission Department of Public Safety in the development of the verification system;

2. The verification system shall be accessible through the Internet, World Wide Web or a similar proprietary or common carrier electronic system by authorized personnel of the Department, the Oklahoma Tax Commission, the courts, law enforcement personnel, and any other entities authorized by the Department;

3. The verification system shall provide for direct inquiry and response between the Department and insurance carriers, or such other method of inquiry and response as agreed to by the Department and individual insurance carriers, and direct access to insurers' records by personnel authorized by the Department;

4. The verification system shall be available twenty-four (24) hours a day to verify the insurance status of any vehicle registered in this state through the vehicle's identification number, policy number, registered owner's name or other identifying characteristic or marker as prescribed by the Department in its rules;

5. The Department shall conduct a pilot project to test the system prior to statewide use;

6. The verification system shall be installed and operational no later than ~~July 1~~ December 31, 2008, following an appropriate testing period;

7. The Department may contract with a private vendor to assist in establishing and maintaining the verification system;

8. The verification system shall include appropriate provisions, consistent with industry standards, to secure its data against unauthorized access and to maintain a record of all information requests;

9. Information contained in the verification system shall not be considered a public record; ~~and~~

10. Any law enforcement officer, during a traffic stop or accident investigation, may access information from the online

verification system to establish compliance with the Compulsory Insurance Law and to verify the current validity of the policy described on a security verification form and produced by the operator of a motor vehicle during the traffic stop or accident investigation; and

11. All information exchanged between the Department and insurance companies, any database created, and all reports, responses, or other information generated for the purposes of the verification system shall not be subject to the Oklahoma Open Records Act.

B. This section shall not apply to a policy issued pursuant to paragraph 3 of subsection A of Section 7-601.1 of this title or paragraph 3 of subsection A of Section 7-602 of this title to insure a commercial motor vehicle.

C. Insurance carriers shall cooperate with the Department in establishing and maintaining the insurance verification system and shall provide access to motor vehicle insurance policy status information as provided in the Department's rules.

SECTION 32. REPEALER 36 O.S. 2001, Sections 1435.25, 1435.32, 1435.34, 1435.35, as amended by Section 11, Chapter 129, O.S.L. 2005, 1435.37 and 1924 (36 O.S. Supp. 2007, Section 1435.35), are hereby repealed.

SECTION 33. This act shall become effective July 1, 2008.

SECTION 34. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 8th day of May, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of April, 2008.

Presiding Officer of the House
of Representatives