

SB 2122

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THE STATE SENATE  
Monday, February 25, 2008

Senate Bill No. 2122  
As Amended

SENATE BILL NO. 2122 - By: SPARKS and BROWN of the Senate and  
PETERSON (Ron) of the House.

[ insurance - specifying actions the Insurance Commissioner  
may take regarding enforcement of Crimes by or Affecting  
Persons Engaged in the Business of Insurance Act -  
codification - effective date -  
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

1 this state or do any of the acts of an insurance business as set  
2 forth in Section 4 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           a. the execution of contracts of insurance with citizens  
10           of this or any other state,

11           b. maintaining files or records of contracts of  
12           insurance,

13           c. the processing of claims, and

14           d. the receiving or collection of any premiums,  
15           commissions, membership fees, assessments, dues or  
16           other consideration for any insurance or any part  
17           thereof;

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

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

- 1           a.    the solicitation, negotiation, procurement or  
2                    effectuation of insurance or renewals thereof,  
3           b.    the dissemination of information as to coverage or  
4                    rates, or forwarding of applications, or delivery of  
5                    policies or contracts,  
6           c.    inspection of risks,  
7           d.    fixing of rates or investigation or adjustment of  
8                    claims or losses,  
9           e.    the transaction of matters subsequent to effectuation  
10                   of the contract and arising out of it, or  
11           f.    in any other manner representing or assisting a person  
12                   or insurer in the transaction of insurance with  
13                   respect to subjects of insurance resident, located or  
14                   to be performed in this state.

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

19           7.    Contracting to provide indemnification or expense  
20    reimbursement in this state to persons domiciled in this state or  
21    for risks located in this state, whether as an insurer, agent,  
22    administrator, trust, funding mechanism, or by any other method, for  
23    any type of medical expenses including, but not limited to,

1 surgical, chiropractic, physical therapy, speech pathology,  
2 audiology, professional mental health, dental, hospital, or  
3 optometric expenses, whether this coverage is by direct payment,  
4 reimbursement, or otherwise;

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

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

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

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

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

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

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

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

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

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

1 the Insurance Commissioner receives the request for a hearing unless  
2 the parties mutually agree to a later hearing date.

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

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

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

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

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

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

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

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

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

7 Section 987. Rate Filings.

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

14 B. In a noncompetitive market, every insurer shall file with  
15 the Commissioner all rates, supplementary rate information and  
16 supporting information at least thirty (30) days before the proposed  
17 effective date. The Commissioner may give written notice, within  
18 thirty (30) days of receipt of the filing, that the Commissioner  
19 needs additional time, not to exceed thirty (30) days from the date  
20 of the notice to consider the filing. Upon written application of  
21 the insurer, the Commissioner may authorize rates to be effective  
22 before the expiration of the waiting period or an extension thereof.  
23 A filing shall be deemed to meet the requirements of the Property

1 and Casualty Competitive Loss Cost Rating Act and to become  
2 effective unless disapproved pursuant to this title by the  
3 Commissioner before the expiration of the waiting period or an  
4 extension thereof.

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

10 C. Every authorized insurer shall file with the Commissioner,  
11 except as to rates for those lines of insurance exempted from the  
12 provisions of the Property and Casualty Competitive Loss Cost Rating  
13 Act by the Commissioner under subsections E and F of this section  
14 and except for those risks designated as special risks under Section  
15 997 of this title, all rates, supplementary rate information and any  
16 changes and amendments which it proposes to use. An insurer may  
17 file its rates by either filing its final rates or by filing a  
18 multiplier and, if applicable, an expense constant adjustment to be  
19 applied to prospective loss costs that have been filed by an  
20 advisory organization as permitted by this title. Such loss cost  
21 multiplier filing and expense constant filings made by insurers  
22 shall remain in effect until amended or withdrawn by the insurer.  
23 Every filing shall state the effective date.

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

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

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

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

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

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

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

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

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

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

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

17           2.    A person who secures and furnishes information for the  
18    purpose of group life insurance, group property and casualty  
19    insurance, group annuities, group or blanket accident and health  
20    insurance; or for the purpose of enrolling individuals under plans,  
21    issuing certificates under plans or otherwise assisting in  
22    administering plans; or performs administrative services related to

1 mass-marketed property and casualty insurance, where no commission  
2 is paid to the person for the service;

3 3. An employer or association or its officers, directors,  
4 employees, or the trustees of an employee trust plan, to the extent  
5 that the employers, officers, employees, director or trustees are  
6 engaged in the administration or operation of a program of employee  
7 benefits for the employer's or association's own employees or the  
8 employees of its subsidiaries or affiliates, which program involves  
9 the use of insurance issued by an insurer, as long as the employers,  
10 associations, officers, directors, employees or trustees are not in  
11 any manner compensated, directly or indirectly, by the company  
12 issuing the contracts;

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

18 5. A person whose activities in this state are limited to  
19 advertising without the intent to solicit insurance in this state  
20 through communications in printed publications or other forms of  
21 electronic mass media whose distribution is not limited to residents  
22 of the state, provided that the person does not sell, solicit or

1 negotiate insurance that would insure risks residing, located or to  
2 be performed in this state;

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

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

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

1 volunteer counselor is providing volunteer services as part of a  
2 sponsoring agency or organization acceptable to the Commissioner,  
3 and that supporting documentation and/or verification is provided to  
4 the Commissioner as set out by rule.

5 SECTION 10. AMENDATORY 36 O.S. 2001, Section 1435.7, as  
6 last amended by Section 3, Chapter 338, O.S.L. 2007 (36 O.S. Supp.  
7 2007, Section 1435.7), is amended to read as follows:

8 Section 1435.7 A. A person applying for a resident insurance  
9 producer license shall make application to the Insurance  
10 Commissioner on the Uniform Application or an application approved  
11 by the Commissioner and declare under penalty of refusal, suspension  
12 or revocation of the license that the statements made in the  
13 application are true, correct and complete to the best of the  
14 individual's knowledge and belief. Before approving the  
15 application, the Insurance Commissioner shall find that the  
16 individual:

- 17 1. Is at least eighteen (18) years of age;
- 18 2. Has not committed any act that is a ground for denial,  
19 suspension or revocation set forth in Section 1435.13 of this title;
- 20 3. ~~Where required by the Insurance Commissioner, has~~ Has held a  
21 provisional insurance producer license ~~under Section 11 of Enrolled~~  
22 ~~House Bill No. 1960 of the 1st Session of the 51st Oklahoma~~  
23 ~~Legislature~~ or has been a participant in an approved training

1 program offered by an insurance company licensed in this state ~~or~~  
2 ~~has completed a prelicensing course of study for the lines of~~  
3 ~~authority for which the person has applied~~ except for title,  
4 aircraft title, or any other producer applicant exempt by rule;

5 4. Has paid the fees set forth in Section 1435.23 of this  
6 title; and

7 5. Has successfully passed the examinations for the lines of  
8 authority for which the person has applied.

9 B. A business entity acting as an insurance producer is  
10 required to obtain an insurance producer license. Application shall  
11 be made using the Uniform Business Entity Application or an  
12 application approved by the Commissioner. Before approving the  
13 application, the Insurance Commissioner shall find that:

14 1. The business entity has paid the fees set forth in Section  
15 1435.23 of this title;

16 2. The business entity has designated a licensed producer  
17 responsible for the business entity's compliance with the insurance  
18 laws, rules and regulations of this state;

19 3. A domestic business entity is organized pursuant to the  
20 provisions of the laws of this state and maintains its principal  
21 place of business in this state; and

22 4. No person whose license as an insurance producer has been  
23 revoked by order of the Commissioner, nor any business entity in

1 which such person has a majority ownership interest, whether direct  
2 or indirect, owns any interest in the business entity licensed as an  
3 insurance producer, and

4 ~~5. The business entity has provided proof satisfactory to the~~  
5 ~~Commissioner that a trade name has been lawfully registered for an~~  
6 ~~insurance producer license to be issued in a trade name.~~

7 C. A business entity acting as an insurance producer shall  
8 notify the Commissioner of all changes among its members, directors  
9 and officers and all other individuals designated in the license  
10 within fifteen (15) days after the change.

11 D. An applicant for any license required by the provisions of  
12 the Oklahoma Producer Licensing Act shall demonstrate to the  
13 Insurance Commissioner that the applicant is competent, trustworthy,  
14 financially responsible, and of good personal and business  
15 reputation.

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

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

1 Section 1435.9 A. Unless denied licensure pursuant to Section  
2 1435.13 of this title, a nonresident person shall receive a  
3 nonresident producer license if:

4 1. The person is currently licensed as a resident and in good  
5 standing in that person's home state;

6 2. The person has submitted the proper request for licensure  
7 and has paid the fees required by Section 1435.23 of this title;

8 3. The person has submitted or transmitted to the Insurance  
9 Commissioner the application for licensure that the person submitted  
10 to the person's home state, or in lieu of the same, a completed  
11 Uniform Application; and

12 4. The person's home state awards nonresident producer licenses  
13 to residents of this state on the same basis.

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

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

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

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

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

1 in the associated major lines pursuant to subsection A of Section  
2 1435.8 of this title.

3 SECTION 12. AMENDATORY 36 O.S. 2001, Section 1435.20, as  
4 amended by Section 4, Chapter 150, O.S.L. 2003 (36 O.S. Supp. 2007,  
5 Section 1435.20), is amended to read as follows:

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

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

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

15 ~~3. To engage in the sale of motor vehicle insurance at a  
16 vehicle rental counter or at any other point of sale at which motor  
17 vehicle insurance is offered or sold in connection with the short-  
18 term renting or leasing of motor vehicles; provided, the branch  
19 manager of the rental or leasing company shall hold the license  
20 under which the employees working for the rental or leasing company  
21 operate;~~

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

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

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

10 ~~7. 2. Crop hail and multiperil crop hail - insurance providing~~  
11 ~~protection against damage to crops from unfavorable weather~~  
12 ~~conditions, fire or lightning, flood, hail, insect infestation,~~  
13 ~~disease or other yield-reducing conditions or perils provided by the~~  
14 ~~private insurance market, or that is subsidized by the Federal Crop~~  
15 ~~Insurance Corporation, including Multi-Peril Crop Insurance; and~~

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

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

- 1           a. is non-transferable,
- 2           b. applies only to the rental car that is the subject of  
3           the rental agreement, and
- 4           c. is limited to the following kinds of insurance:
- 5           (1) personal accident insurance for renters and other  
6           rental car occupants, for accidental death or  
7           dismemberment, and for medical expenses resulting  
8           from an accident that occurs with the rental car  
9           during the rental period,
- 10          (2) liability insurance that provides protection to  
11          the renters and other authorized drivers of a  
12          rental car for liability arising from the  
13          operation or use of the rental car during the  
14          rental period,
- 15          (3) personal effects insurance that provides coverage  
16          to renters and other vehicle occupants for loss  
17          of, or damage to, personal effects in the rental  
18          car during the rental period,
- 19          (4) roadside assistance and emergency sickness  
20          protection insurance, or
- 21          (5) any other coverage designated by the Insurance  
22          Commissioner;

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

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

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

18       B. 1. An insurance producer or limited lines producer may  
19 solicit applications for and issue travel accident policies or  
20 baggage insurance by means of mechanical vending machines supervised  
21 by the insurance producer or limited lines producer only if the  
22 Insurance Commissioner shall determine that the form of policy to be  
23 sold is reasonably suited for sale and issuance through vending

1 machines, that use of vending machines for the sale of said policies  
2 would be of convenience to the public, and that the type of vending  
3 machine to be used is reasonably suitable and practical for the sale  
4 and issuance of said policies. Policies so sold do not have to be  
5 countersigned.

6 2. The Commissioner shall issue to the insurance agent or  
7 limited insurance representative a special vending machine license  
8 for each such machine to be used. The license shall specify the  
9 name and address of the insurer and licensee, the kind of insurance  
10 and type of policy to be sold, and the place where the machine is to  
11 be in operation. The license shall expire, be renewable, and be  
12 suspended or revoked coincidentally with the insurance agent license  
13 or limited representative license of the licensee. The license fee  
14 for each vending machine shall be that stated in the provisions of  
15 Section ~~23~~ 1435.23 of this ~~act~~ title. Proof of existence of the  
16 license shall be displayed on or about each machine in such manner  
17 as the Commissioner may reasonably require.

18 SECTION 13. AMENDATORY 36 O.S. 2001, Section 1435.23, as  
19 last amended by Section 14, Chapter 125, O.S.L. 2007 (36 O.S. Supp.  
20 2007, Section 1435.22), is amended to read as follows:

21 Section 1435.22 A. All applications shall be accompanied by  
22 the applicable fees. An appointment may be deemed by the  
23 Commissioner to have terminated upon failure by the insurer to pay

1 the prescribed renewal fee. The Commissioner may also by order  
2 impose a civil penalty equal to double the amount of the unpaid  
3 renewal fee.

4 The Insurance Commissioner shall collect in advance the  
5 following fees and licenses:

- 6 1. For filing appointment of Insurance  
7 Commissioner as agent for service of process..... \$ 20.00
- 8 2. Miscellaneous:
  - 9 a. Certificate and Clearance of  
10 Commissioner..... \$ 3.00
  - 11 b. Insurance producer's study manual:
    - 12 Life, Accident & Health..... not to exceed  
13 \$ 40.00
    - 14 Property and Casualty..... not to exceed  
15 \$ 40.00
  - 16 c. For filing organizational documents of  
17 an entity applying for a license as an  
18 insurance producer..... \$ 20.00
- 19 3. Examination for license:
  - 20 For each examination covering laws  
21 and one or more lines of insurance.... not to exceed  
22 \$100.00
- 23 4. Licenses:



1 lines producer by insurer, each license of  
2 each insurance producer or representative..... \$ 40.00

3 6. Renewal fee for all licenses shall be the same as the  
4 current initial license fee.

5 7. The fee for a duplicate license shall be one-half (1/2) the  
6 fee of an original license.

7 8. The renewal of a license shall require a fee of double the  
8 current original license fee if the application for renewal is late,  
9 or incomplete on the renewal deadline.

10 B. 1. The fees and monies received by the Insurance  
11 Commissioner pursuant to the provisions of paragraphs 1, 2, 7 and 8  
12 of subsection A of this section shall be deposited with the State  
13 Treasurer, who shall place the same to the credit of the State  
14 Insurance Commissioner Revolving Fund for the purpose of fulfilling  
15 and accomplishing the conditions and purposes of the Oklahoma  
16 Producer Licensing Act, including the use of postal mail facilities  
17 for the Department.

18 2. The fees and monies received by the Insurance Commissioner  
19 pursuant to the provisions of paragraphs 3 through 6 of subsection A  
20 of this section shall be paid into the State Treasury to the credit  
21 of the General Revenue Fund of the state.

22 C. There is hereby created in the State Treasury the State  
23 Insurance Commissioner Revolving Fund which shall be a continuing

1 fund not subject to fiscal year limitations. The revolving fund  
2 shall consist of fees and monies received by the Insurance  
3 Commissioner as required by law to be deposited in said fund and any  
4 other funds not dedicated in the Oklahoma Insurance Code. The  
5 revolving fund shall be used to fund the general operations of the  
6 Insurance Commissioner's Office for the purpose of fulfilling and  
7 accomplishing the conditions and purposes of the Oklahoma Producer  
8 Licensing Act. All expenditures from said revolving fund shall be  
9 on claims approved by the Insurance Commissioner and filed with the  
10 Director of State Finance for payment.

11 D. All fees, fines, monies, and license fees authorized by the  
12 provisions of this section and not dedicated by the provisions of  
13 subsection B of this section to the State Insurance Commissioner  
14 Revolving Fund shall be paid into the State Treasury to the credit  
15 of the General Revenue Fund of this state.

16 E. If for any reason an insurance producer license or  
17 appointment is not issued or renewed by the Commissioner, all fees  
18 accompanying the appointment or application for the license shall be  
19 deemed earned and shall not be refundable except as provided in  
20 Section 352 of this title.

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

1 SECTION 14. AMENDATORY 36 O.S. 2001, Section 1435.29, as  
2 last amended by Section 15, Chapter 125, O.S.L. 2007 (36 O.S. Supp.  
3 2007, Section 1435.29), is amended to read as follows:

4 Section 1435.29 A. 1. Each insurance producer shall,  
5 biennially, complete not less than fourteen (14) clock hours of  
6 continuing insurance education which shall cover subjects in the  
7 lines for which the insurance producer is licensed. Such education  
8 may include a written or oral examination.

9 2. Each customer service representative shall, biennially,  
10 complete not less than ten (10) clock hours of continuing insurance  
11 education which shall cover subjects in the lines for which the  
12 licensee is authorized to conduct insurance-related business on  
13 behalf of the appointing agent, broker, or agency.

14 3. Licensees shall complete, in addition to the foregoing, two  
15 (2) clock hours of ethics course work in this same period.

16 B. 1. The Insurance Commissioner shall approve courses and  
17 providers of resident provisional producer pre-licensing education  
18 and continuing education. The Insurance Department may use one or  
19 more of the following to review and provide a nonbinding  
20 recommendation to the Insurance Commissioner on approval or  
21 disapproval of courses and providers of resident provisional  
22 producer pre-licensing education and continuing education:

23 a. employees of the Insurance Commissioner,

1           b.    a continuing education advisory committee, or  
2           c.    an independent service whose normal business  
3                activities include the review and approval of  
4                continuing education courses and providers. The  
5                Commissioner may negotiate agreements with such  
6                independent service to review documents and other  
7                materials submitted for approval of courses and  
8                providers and provide the Commissioner with its  
9                nonbinding recommendation. The Commissioner may  
10              require such independent service to collect the fee  
11              charged by the independent service for reviewing  
12              materials provided for review directly from the course  
13              providers.

14           The Insurance Commissioner has sole authority to approve courses  
15   and providers of resident provisional producer pre-licensing  
16   education and continuing education. If the Insurance Commissioner  
17   uses one of the entities listed above to provide a nonbinding  
18   recommendation, the Commissioner shall adopt or decline to adopt the  
19   recommendation within thirty (30) days of receipt of the  
20   recommendation. In the event the Insurance Commissioner takes no  
21   action within said thirty-day period, the recommendation made to the  
22   Commissioner will be deemed to have been adopted by the  
23   Commissioner.

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

5        2. Each insurance company shall be allowed to provide  
6 continuing education to insurance producers and customer service  
7 representatives as required by this section; provided that such  
8 continuing education meets the general standards for education  
9 otherwise established by the Insurance Commissioner.

10       3. An insurance producer who, during the time period prior to  
11 renewal, participates in an approved professional designation  
12 program shall be deemed to have met the biennial requirement for  
13 continuing education.

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

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

1 shall qualify for presumptive continuing education credit approval.  
2 The rules shall include standardized criteria for reviewing the  
3 professional associations' mission, membership, and other relevant  
4 information, and shall provide a procedure for the Department to  
5 disallow all or part of a presumptively approved course.

6 Professional association courses approved in accordance with this  
7 paragraph shall be reviewed every three (3) years to determine  
8 whether they continue to qualify for continuing education credit.

9       5. Subject to approval by the Commissioner, the active  
10 membership of the licensed producer or broker in local, regional,  
11 state, or national professional insurance organizations or  
12 associations may be approved for up to one (1) annual hour of  
13 instruction. The hour shall be credited upon timely filing with the  
14 Commissioner, or designee of the Commissioner, and appropriate  
15 written evidence acceptable to the Commissioner of such active  
16 membership in the organization or association.

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

21       C. Each provider of resident provisional producer pre-licensing  
22 education and continuing education shall, after approval by the  
23 Commissioner, submit an annual fee. A fee shall may be assessed for

1 each course submission at the time it is first submitted for review  
2 and upon submission for renewal at expiration. Annual fees and  
3 course submission fees shall be set forth as a rule by the  
4 Commissioner. The fees are payable to the Insurance Commissioner  
5 which shall be deposited in the State Insurance Commissioner  
6 Revolving Fund, created in subsection C of Section 1435.23 of this  
7 title, for the purposes of fulfilling and accomplishing the  
8 conditions and purposes of the Oklahoma Producer Licensing Act and  
9 the Insurance Adjusters Licensing Act. Provided, public-funded  
10 educational institutions, federal agencies, and Oklahoma state  
11 agencies shall be exempt from this subsection.

12 D. Failure of an insurance producer or customer service  
13 representative to comply with the requirements of ~~this act~~ the  
14 Oklahoma Producer Licensing Act may, after notice and opportunity  
15 for hearing, result in censure, suspension, nonrenewal of license or  
16 a civil penalty of up to Five Hundred Dollars (\$500.00) or by both  
17 such penalty and civil penalty. Said civil penalty may be enforced  
18 in the same manner in which civil judgments may be enforced. Any  
19 civil penalties collected under this act shall be deposited in the  
20 State Insurance Commissioner Revolving Fund.

21 E. Limited lines producers and nonresident agents who have  
22 successfully completed an equivalent or greater requirement shall be  
23 exempt from the provisions of this section.

1 F. Insurance producers and limited lines producers who are  
2 sixty-five (65) years of age or older and who have at least thirty  
3 (30) years of experience as insurance producers or limited lines  
4 producers, and who do not write new business, shall be exempt from  
5 the provisions of this section.

6 G. Members of the Legislature shall be exempt from this  
7 section.

8 H. The Commissioner shall adopt and promulgate such rules as  
9 are necessary for effective administration of this section.

10 SECTION 15. AMENDATORY 36 O.S. 2001, Section 1442, is  
11 amended to read as follows:

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

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

- 20 a. ~~Any~~ any employer on behalf of the employees of that  
21 employer or the employees of one or more subsidiary or  
22 affiliated corporations of that employer~~+~~,
- 23 b. A a union on behalf of its members~~+~~,

- 1           c.   ~~An~~ an insurance company which is licensed to transact  
2                   insurance business in this state~~+~~1
- 3           d.   A a wholly owned subsidiary of an entity which is  
4                   subject to the jurisdiction of the Insurance  
5                   Commissioner~~+~~1
- 6           e.   ~~An~~ an insurance company acting as an insurer with  
7                   respect to a policy lawfully issued and delivered by  
8                   said company in and pursuant to the laws of this  
9                   state~~+~~1
- 10          f.   A a hospital, medical, dental, or optometric service  
11               corporation or a health care service organization,  
12               including their agents, authorized by the Commissioner  
13               to issue contracts in this state pursuant to the  
14               provisions of the Oklahoma Insurance Code when engaged  
15               in the performance of their duties~~+~~1
- 16          g.   A a life or disability agent or broker who is licensed  
17               in this state and whose activities are limited  
18               exclusively to the sale of insurance~~+~~1
- 19          h.   ~~An~~ an adjuster licensed in this state for the kinds of  
20               business for which he is acting as an adjuster~~+~~1
- 21          i.   A a creditor insuring a debt between the creditor and  
22               its debtors on behalf of said creditor's debtors~~+~~1

- 1           j.    A a financial institution which is subject to  
2                    supervision or examination by federal or state banking  
3                    authorities~~+~~;
- 4           k.    A a company which issues credit cards and advances  
5                    credit for and collects premiums or charges from its  
6                    credit card holders who have authorized said  
7                    collection, if the company does not adjust or settle  
8                    claims~~+~~;
- 9           l.    A a person who adjusts or settles claims in the normal  
10                   course of practice or employment as an attorney-at-law  
11                   and who does not collect charges or premiums in  
12                   connection with life or health insurance coverage or  
13                   annuities~~+~~;
- 14           m.    ~~The~~ the State Insurance Fund~~+~~;
- 15           n.    ~~Any~~ any workers' compensation trust~~+~~; or
- 16           o.    A a trust providing benefits to the employees of any  
17                   political subdivision of a city, county or the state~~+~~;  
18                   and

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

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

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

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

21 1. "Home state" means the United States jurisdiction that has  
22 adopted the Third-party Administrator Act or a substantially similar  
23 law governing third-party administrators and which has been

1 designated by the administrator as its principal regulator. The  
2 administrator may designate either its state of incorporation or its  
3 principal place of business within the United States if that  
4 jurisdiction has adopted the Third-party Administrator Act or a  
5 substantially similar law governing third-party administrators. If  
6 neither the administrator's state of incorporation nor its principal  
7 place of business within the United States has adopted the Third-  
8 party Administrator Act or a substantially similar law governing  
9 third-party administrators, then the third-party administrator shall  
10 designate a United State jurisdiction in which it does business and  
11 which has adopted the Third-party Administrator Act or a  
12 substantially similar law governing third-party administrators. For  
13 purposes of this definition, "United States jurisdiction" means the  
14 District of Columbia or a state or territory of the United States.

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

18 C. In the case of a partnership which has been licensed, each  
19 general partner ~~and each other individual acting for the~~  
20 ~~partnership, and in the case of any entity which has been licensed,~~  
21 ~~each individual acting for the entity as a third-party administrator~~  
22 shall be named in the license and shall qualify therefore as though  
23 an individual licensee. The Commissioner shall charge a full

1 additional license fee and a separate license shall be issued for  
2 each individual so named in such a license. The ~~entity~~ partnership  
3 shall notify the Commissioner within fifteen (15) days if any  
4 individual licensed on its behalf has been terminated, or is no  
5 longer associated with or employed by the ~~entity~~ partnership. Any  
6 entity or partnership licensed as administrators under the Third-  
7 party Administrators Act shall provide National Association of  
8 Insurance Commissioner Biographical Affidavits as required for  
9 domestic insurers pursuant to the insurance laws of this state.

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

15 ~~D.~~ E. The administrator's license shall continue in force no  
16 longer than twelve (12) months from the original month of issuance.  
17 Upon filing a renewal form prescribed by the Commissioner,  
18 accompanied by a fee of One Hundred Dollars (\$100.00), the license  
19 may be renewed annually for a one-year term. Late application for  
20 renewal of a license shall require a fee of double the amount of the  
21 original license fee. The administrator shall submit, together with  
22 the application for renewal, a list of the names and addresses of  
23 the persons with whom the administrator has contracted in accordance

1 with Section 1443 of this title. The Commissioner shall hold this  
2 information confidential except as provided in Section 1443 of this  
3 title.

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

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

20 ~~G.~~ H. Any person who is acting as or presenting himself or  
21 herself to be an administrator without a valid license shall be  
22 subject, upon conviction, to a fine of not less than One Thousand  
23 Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00)

1 for each occurrence. This fine shall be in addition to any other  
2 penalties which may be imposed for violations of the Oklahoma  
3 Insurance Code or other laws of this state.

4 ~~H.~~ I. Except as provided for in subsections ~~E~~ F and ~~F~~ G of this  
5 section, any person convicted of violating any provisions of the  
6 Third-party Administrator Act shall be guilty of a misdemeanor and  
7 shall be subject to a fine of not more than One Thousand Dollars  
8 (\$1,000.00).

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

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

16 Section 1922. ~~The monies collected by the Insurance~~  
17 ~~Commissioner in a proceeding under this article shall be from time~~  
18 ~~to time deposited in one or more state or national banks, savings~~  
19 ~~banks, or trust companies, and in the case of the insolvency or~~  
20 ~~voluntary or involuntary liquidation of any such depository which is~~  
21 ~~an institution organized and supervised under the laws of this~~  
22 ~~state, such deposits shall be entitled to priority of payment on an~~  
23 ~~equality with any other priority given by the banking laws of this~~

1 ~~state. The Insurance Commissioner may in his discretion deposit~~  
2 ~~such monies or any part thereof in a national bank or trust company~~  
3 ~~as a trust fund.~~

4 A. The receiver shall have the power:

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

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

16 3. To conduct litigation, including:

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

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

1           c. to collect all debts and moneys due and claims  
2           belonging to the insurer, wherever located, and in  
3           furtherance of this purpose to institute action in  
4           this or other jurisdictions in order to forestall  
5           garnishment and attachment proceedings against those  
6           debts, and, including the power to sell, compound,  
7           compromise or assign debts for purposes of collection  
8           upon such terms and conditions as the receiver deems  
9           consistent with the purpose of the Uniform Insurers  
10           Liquidation Act and pursue any creditor's remedies  
11           available to enforce the insurer's claims,  
12           d. to assert all defenses available to the insurer as  
13           against third persons, including statutes of  
14           limitation, statutes of frauds and the defense of  
15           usury. A waiver of any defense by the insurer after a  
16           petition for supervision, conservation, receivership,  
17           rehabilitation or liquidation has been filed shall not  
18           bind the receiver. Whenever a guaranty association  
19           has an obligation to defend any suit, the receiver  
20           shall defer to that obligation and may defend only in  
21           cooperation with the guaranty association or in the  
22           absence of the guaranty association's defense,

1           e. to exercise and enforce all the rights, remedies and  
2           powers of any creditor, shareholder, policyholder or  
3           member, including any power to avoid any transfer,  
4           transaction or lien that may be voidable under the  
5           Uniform Insurers Liquidation Act or otherwise, and  
6           f. to intervene in any proceeding wherever instituted  
7           that might lead to the appointment of a receiver or  
8           trustee for the insurer or any of its property, and to  
9           act as the receiver or trustee whenever the  
10           appointment is offered.

11           The receiver shall have exclusive standing in any action that  
12           may exist to assert claims or defenses on behalf of the creditors,  
13           members, policyholders or shareholders of the insurer or the public  
14           against any person, except to the extent that a claim is personal to  
15           a specific creditor, member, policyholder or shareholder and  
16           recovery on the claim would not inure to the benefit of the estate.  
17           If the receiver sells or dissolves the corporate entity or charter  
18           of the insurer, the receiver shall have the power to apply to any  
19           court in this state or elsewhere for leave to substitute the  
20           receiver for the insurer as a party. This subparagraph does not  
21           infringe or impair any of the rights provided to a guaranty  
22           association pursuant to its enabling statute or otherwise;



1                   applicable law prohibits the transfer of rights under  
2                   the reinsurance agreement. Except as provided in this  
3                   subparagraph, any transfer of rights pursuant to this  
4                   provision shall not impair any rights or defenses of  
5                   the reinsurer that existed prior to the transfer or  
6                   would have existed in the absence of the transfer.  
7                   Except as otherwise provided in this subparagraph, any  
8                   transfer of rights pursuant to this provision shall  
9                   not relieve the transferee or the receiver from  
10                  obligations owed to the reinsurer pursuant to the  
11                  reinsurance or other agreement, and  
12                  c. to execute, acknowledge and deliver any deeds,  
13                  assignments, releases and other instruments necessary  
14                  or proper to effectuate any sale of property or other  
15                  transaction in connection with the liquidation or  
16                  rehabilitation and to file any necessary documents for  
17                  record in the office of any recorder of deeds or  
18                  record office in this state or elsewhere where  
19                  property of the insurer is located;  
20                  5. a. To use property of the estate to transfer policy  
21                  obligations to a solvent assuming insurer, if the  
22                  transfer can be arranged without prejudice to

1                   applicable priorities under Section 1927.1 of this  
2                   title,  
3            b. To use property of the estate to transfer the  
4                   insurer's obligations under surety bonds and surety  
5                   undertakings, and collateral held by the insurer with  
6                   respect to the reimbursement obligations of the  
7                   principals under those surety bonds and surety  
8                   undertakings, to a solvent assuming insurer, if the  
9                   transfer can be arranged without prejudice to  
10                  applicable priorities under Section 1927.1 of this  
11                  title; and if the receivership court so orders, the  
12                  estate shall have no further liability under the  
13                  transferred policies, surety bonds, or surety  
14                  undertakings after the transfer is made, and  
15            c. Upon the issuance of an order of liquidation and a  
16                  finding of insolvency, policies or portions of  
17                  policies of life, disability income, long term care or  
18                  health insurance or annuities covered by one or more  
19                  guaranty associations, under applicable law, shall  
20                  continue in force, subject to the terms of the policy,  
21                  including any terms restructured pursuant to a court-  
22                  approved rehabilitation plan, to the extent necessary  
23                  to permit the guaranty associations to discharge their

1           statutory obligations. Policies or portions of  
2           policies of life, disability income, long term care or  
3           health insurance or annuities, not covered by one or  
4           more guaranty associations, and other types of  
5           policies, shall terminate by operation of law, except  
6           to the extent the liquidator proposes and the  
7           receivership court approves the use of property of the  
8           estate, consistent with subparagraphs a and b of this  
9           paragraph, for the purpose of continuing the contracts  
10           or coverage by transferring them to an assuming  
11           reinsurer;

12           6. To borrow money on the security of the property of the  
13           estate or without security and to execute and deliver all documents  
14           necessary to that transaction for the purpose of facilitating the  
15           liquidation or rehabilitation. Any such funds borrowed may be  
16           repaid as an administrative expense and have priority over any other  
17           claims in Class 1 under the priority of distribution in Section  
18           1927.1 of this title;

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

1 any provision of any contract of or by the insurer which requires  
2 arbitration;

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

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

10 10. To invest the assets of the estate;

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

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

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

19 C. The enumeration, in this section, of the powers and  
20 authority of the receiver shall not be construed as a limitation  
21 upon the receiver, nor shall it exclude in any manner the right to  
22 do other acts not specifically enumerated or otherwise provided for,

1 to the extent necessary or appropriate for the accomplishment of or  
2 in aid of the purpose of liquidation or rehabilitation.

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

11 SECTION 18. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1924.2 of Title 36, unless there  
13 is created a duplication in numbering, reads as follows:

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

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

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

7           B. Except as provided in subsection A of this section, if  
8 applicable law, an order or an agreement fixes, defines, extends or  
9 tolls a period within which the insurer may file any pleading,  
10 demand, notice, or proof of claim or loss, or cure a default in a  
11 case or proceeding, or perform any other similar act, and the period  
12 has not expired before the date of the filing of the initial  
13 petition in a delinquency proceeding, the receiver shall not by  
14 reason thereof be barred from filing, curing or performing, as the  
15 case may be, if the receiver does so on or before the later of:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 1. a. "Long-term care insurance" means any insurance policy,  
5 certificate or rider, including qualified long-term  
6 care insurance contracts and long-term care  
7 partnership program contracts, which are advertised,  
8 marketed, offered or designed primarily to provide  
9 coverage for not less than twelve (12) consecutive  
10 months for each covered person on an expense incurred,  
11 indemnity, prepaid, or other basis, for one or more  
12 necessary or medically necessary diagnostic,  
13 preventive, therapeutic, rehabilitative, maintenance,  
14 or personal care services, provided in a setting other  
15 than an acute care unit of a hospital.

16 b. This term includes group and individual health  
17 policies or riders or group and individual life  
18 policies or annuities or riders which provide,  
19 directly or as a supplement, coverage for long-term  
20 care, whether issued by insurers, fraternal benefit  
21 societies, nonprofit health, hospital, and medical  
22 service corporations, prepaid health plans, health

1 maintenance organizations, life care communities, or  
2 any similar organization.

3 c. This term also includes a policy or rider which  
4 provides for payment of long-term care benefits based  
5 upon cognitive impairment or the loss of functional  
6 capacity.

7 d. Long-term care insurance shall not include any  
8 insurance policy which is offered primarily to provide  
9 basic Medicare supplement coverage, basic hospital  
10 expense coverage, basic medical-surgical expense  
11 coverage, hospital confinement indemnity coverage,  
12 major medical expense coverage, disability income  
13 protection coverage or related asset-protection  
14 coverage, catastrophic coverage, comprehensive  
15 coverage, accident only coverage, specified disease or  
16 specified accident coverage, or limited benefit health  
17 coverage.

18 e. With regard to life insurance, this term does not  
19 include life insurance policies which accelerate the  
20 death benefit specifically for one or more of the  
21 qualifying events of terminal illness, medical  
22 conditions requiring extraordinary medical  
23 intervention, or permanent institutional confinement,

1 and which provide the option of a lump-sum payment for  
2 those benefits and in which neither the benefits nor  
3 the eligibility for the benefits is conditioned upon  
4 the receipt of long-term care.

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

9 2. "Applicant" means:

10 a. in the case of an individual long-term care insurance  
11 policy, the person who seeks to contract for such  
12 benefits, and

13 b. in the case of a group long-term care insurance  
14 policy, the proposed certificate holder.

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

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

21 a. one or more employers or labor organizations, or to a  
22 trust or to the trustees of a fund established by one  
23 or more employers or labor organizations, or a

1 combination thereof, for employees or former  
2 employees, or a combination thereof or for members or  
3 former members, or a combination thereof, of the labor  
4 organizations, or  
5 b. any professional, trade or occupational association  
6 for its members or former or retired members, or  
7 combination thereof, if such association:  
8 (1) is composed of individuals, all of whom are or  
9 were actively engaged in the same profession,  
10 trade or occupation, and  
11 (2) has been maintained in good faith for purposes  
12 other than insurance, or  
13 c. an association, a trust, or the trustee or trustees of  
14 a fund established, created, or maintained for the  
15 benefit of members of one or more associations. Prior  
16 to advertising, marketing or offering such policy  
17 within this state, the association or associations, or  
18 the insurer of the association or associations, shall  
19 file evidence with the Insurance Commissioner that the  
20 association or associations shall have at the outset  
21 of transacting long-term care insurance in this state  
22 a minimum of one hundred (100) persons in the  
23 association or associations and shall have been

1 organized and maintained in good faith for purposes  
2 other than that of obtaining insurance; shall have  
3 been in active existence for at least one (1) year;  
4 and shall have a constitution and bylaws which provide  
5 that (i) the association or associations hold regular  
6 meetings not less than annually to further purposes of  
7 the members, (ii) except for credit unions, the  
8 association or associations collect dues or solicit  
9 contributions from members, and (iii) the members have  
10 voting privileges and representation on the governing  
11 board and committees. Thirty (30) days after such  
12 filing the association or associations shall be deemed  
13 to satisfy such organizational requirements, unless  
14 the Commissioner makes a finding that the association  
15 or associations do not satisfy those organizational  
16 requirements, or

17 d. a group other than as described in subparagraphs a, b  
18 and c of this paragraph, subject to a finding by the  
19 Commissioner that:

20 (1) the issuance of the group policy is not contrary  
21 to the best interest of the public,

22 (2) the issuance of the group policy would result in  
23 economies of acquisition or administration, and

1                   (3) the benefits are reasonable in relation to the  
2                   premiums charged.

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

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

19           6. "Policy" means any policy, contract, certificate, subscriber  
20 agreement, rider or endorsement delivered, or issued for delivery,  
21 in this state by an insurer, fraternal benefit society, nonprofit  
22 health, hospital, or medical service corporation, prepaid health

1 plan, health maintenance organization, life care community, or any  
2 similar organization.

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

4 a. individual or group insurance contract if the contract  
5 meets the requirements of Section 7702(B) of the  
6 Internal Revenue Code, as amended, and if:

7 (1) the only insurance protection provided under the  
8 contract is coverage of qualified long-term care  
9 services,

10 (2) the contract does not pay or reimburse expenses  
11 incurred for services or items to the extent that  
12 such expenses are reimbursable under Title XVIII  
13 of the Social Security Act as amended, or would  
14 be so reimbursable but for the application of a  
15 deductible or coinsurance amount. The  
16 requirements of this subparagraph do not apply to  
17 contracts where Medicare is a secondary payor, or  
18 where the contract makes per diem or other  
19 periodic payments without regard to expenses,

20 (3) the contract is guaranteed renewable,

21 (4) the contract does not provide for a cash  
22 surrender value or other money that can be paid,  
23 assigned, pledged as collateral for a loan, or

1 borrowed. All refunds of premiums and all  
2 policyholder dividends or similar amounts, under  
3 such contract are to be applied as a reduction in  
4 future premiums or to increase future benefits,  
5 except that a refund of the aggregate premium  
6 paid under the contract may be allowed in the  
7 event of death of the insured or a complete  
8 surrender or cancellation of the contract, and

9 (5) the contract contains the consumer protection  
10 provisions set forth in Section 7702(B)(g) of the  
11 Internal Revenue Code, or

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

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

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

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

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

19 2. Under a policy issued to the trustees of a fund established  
20 by two or more employers or by one or more labor unions or by one or  
21 more employers and one or more labor unions, which trustees shall be  
22 deemed the policyholder, to insure employees of the employers or  
23 members of the unions for the benefit of persons other than the

1 employers or the unions. The term "employees" as used herein shall  
2 be deemed to include the officers, managers and employees of the  
3 employer, and the individual proprietor or partners if the employer  
4 is an individual proprietor or partnership. The term "employees" as  
5 used herein shall be deemed to include retired employees. The  
6 policy may provide that the term "employees" shall include the  
7 trustees or their employees, or both, if their duties are  
8 principally connected with such trusteeship;

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

13 4. Under a health insurance policy issued to an employer or  
14 trustees of a fund established by an employer, who shall be deemed  
15 the policyholder insuring at least one employee of such employer for  
16 the benefit of persons other than the employer. The term "employee"  
17 as used herein shall be deemed to include the officers, managers,  
18 and employees of the employer, the individual proprietor or partners  
19 if the employer is an individual proprietor or partnership, the  
20 officers, managers, and employees of subsidiary or affiliated  
21 corporations, the individual proprietors, partners and employees of  
22 individuals and firms, if the business of the employer and such  
23 individual or firm is under common control through stock ownership,

1 contract, or otherwise. The term "employee" as used herein shall be  
2 deemed to include retired employees and their dependents and the  
3 dependents of employees eligible for Medicare. A policy issued to  
4 insure employees of a public body may provide that the term  
5 "employees" shall include elected or appointed officials;

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

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

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

17 Section 5002. A. A domestic title insurer shall invest its  
18 capital accumulations, up to the sum of One Hundred Thousand Dollars  
19 (\$100,000.00), in capital investments as defined in ~~subsection A of~~  
20 section 1606 of article 16 (Investments), but subject to the  
21 exception in subsection B, below.

22 B. A domestic title insurer may invest its capital and  
23 accumulations in excess of One Hundred Thousand Dollars

1 (\$100,000.00) in such investments as are made eligible for funds of  
2 domestic insurers by article 16; except, that any such insurer may  
3 invest an amount not exceeding fifty per cent (50%) of its combined  
4 capital and surplus in the preparation and purchase of material or  
5 plants or both necessary to enable it to engage in the business of  
6 title insurance, and such materials and plants shall be deemed to be  
7 capital funds investments and shall be valued as the actual cost  
8 thereof.

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

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

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

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

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

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

- 8 1. Section 311 of this title, Annual Financial Statements;
- 9 2. Section 615.2 of this title, Duty of Domestic Insurers and  
10 Health Maintenance Organizations to Keep Biographical Information  
11 Current;
- 12 3. Article 12, Unfair Practices and Frauds Act;
- 13 4. Article 12A-1, Unfair Claims Settlement Practices Act;
- 14 5. Article 16A, the Insurance Holding Company System Act;
- 15 6. Article 18, The Supervision and Conservation of Insurers  
16 Act; and
- 17 7. Article 19, The Rehabilitation and Liquidation Act.

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

21 Section 6060. A. All individual and group health insurance  
22 policies providing coverage on an expense incurred basis, and all  
23 individual and group service or indemnity type contracts issued by a

1 nonprofit corporation, including the Oklahoma State and Education  
2 Employees Group Insurance Board, which provide coverage for a female  
3 thirty-five (35) years old or older in this state, except for  
4 policies that provide coverage for specified disease or other  
5 limited benefit coverage, shall include the coverage specified by  
6 this section for a ~~routine low dose~~ mammography screening in a  
7 reimbursement amount not to exceed One Hundred Fifteen Dollars  
8 (\$115.00) for the presence of occult breast cancer. Such coverage  
9 shall not:

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

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

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

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

21 ~~C. For the purposes of this section, the term "low dose~~  
22 ~~mammography" means the x ray examination of the breast using~~  
23 ~~equipment dedicated specifically for mammography, including but not~~

1 ~~limited to the x-ray tube, filter, compression device, screens,~~  
2 ~~films, and cassettes, with an average radiation exposure delivery of~~  
3 ~~less than one rad mid breast, with two views for each breast.~~

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

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

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

13 C. An applicant who has failed to pass the first examination  
14 for the license for which applied may take a second examination  
15 within thirty (30) days following the first examination. An  
16 applicant who has failed to pass the first two examinations for the  
17 license for which applied shall not be permitted to take a  
18 subsequent examination until the expiration of thirty (30) days  
19 after the last previous examination. ~~A current application and~~  
20 ~~applicable fees shall be submitted with each request to take a~~  
21 ~~subsequent examination.~~ An applicant shall take and pass the  
22 examination within one hundred eighty (180) days of the date of the  
23 initial application. If the applicant fails to pass an examination

1 within the specified time period, the applicant shall submit a new  
2 application accompanied by any applicable fees. Examination fees  
3 for subsequent examinations shall not be waived.

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

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

10 B. Any licensee applying for renewal of a license as an  
11 adjuster shall have completed not less than twelve (12) clock hours  
12 of continuing insurance education within the previous twenty-four  
13 (24) months prior to renewal of the license. Such continuing  
14 education shall cover subjects in the classes of insurance for which  
15 the adjuster is licensed. Such continuing education shall not  
16 include a written or oral examination. The Insurance Commissioner  
17 shall approve courses and providers of continuing education for  
18 insurance adjusters as required by this section.

19 The Insurance Department may use one or more of the following to  
20 review and provide a nonbinding recommendation to the Insurance  
21 Commissioner on approval or disapproval of courses and providers of  
22 continuing education:

23 1. Employees of the Insurance Commissioner;

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

4           3. An independent service whose normal business activities  
5 include the review and approval of continuing education courses and  
6 providers. The Commissioner may negotiate agreements with such  
7 independent service to review documents and other materials  
8 submitted for approval of courses and providers and present the  
9 Commissioner with its nonbinding recommendation. The Commissioner  
10 may require such independent service to collect the fee charged by  
11 the independent service for reviewing materials provided for review  
12 directly from the course providers.

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

1 under this subsection shall be made available to producers and  
2 providers annually.

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

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

17 F. Each provider of continuing education shall, after approval  
18 by the Commissioner, submit an annual fee. A fee may be assessed  
19 for each course submission at the time it is first submitted for  
20 review and upon submission for renewal at expiration. Annual fees  
21 and course submission fees shall be set forth as a rule by the  
22 Commissioner. The fees are payable to the Insurance Commissioner  
23 and shall be deposited in the State Insurance Commissioner Revolving

1 Fund, created in subsection C of Section 1435.23 of this title, for  
2 the purposes of fulfilling and accomplishing the conditions and  
3 purposes of the Oklahoma Producer Licensing Act and the Insurance  
4 Adjusters Licensing Act. Public-funded educational institutions,  
5 federal agencies and Oklahoma state agencies shall be exempt from  
6 this subsection.

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

14 ~~G.~~ H. If the request, proof of compliance with the continuing  
15 education requirement and fee for renewal of a license as an  
16 adjuster are filed with the Commissioner prior to the expiration of  
17 the existing license, the licensee may continue to act pursuant to  
18 said license, unless revoked or suspended prior to the expiration  
19 date, until the issuance of a renewal license or until the  
20 expiration of ten (10) days after the Commissioner has refused to  
21 renew the license and has mailed notice of said refusal to the  
22 licensee. Any request for renewal filed after the date of

1 expiration may be considered by the Commissioner as an application  
2 for a new license.

3 SECTION 26. AMENDATORY 36 O.S. 2001, Section 6602, as  
4 last amended by Section 31, Chapter 125, O.S.L. 2007 (36 O.S. Supp.  
5 2007, Section 6602), is amended to read as follows:

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

- 7 1. "Commissioner" means the Insurance Commissioner;
- 8 2. "Consumer product" means tangible personal property  
9 primarily used for personal, family, or household purposes;
- 10 3. "Department" means the Insurance Department;
- 11 4. "Gross income" means the total amount of revenue received in  
12 connection with business-related activity;
- 13 5. "Gross written premiums" means the total amount of premiums,  
14 inclusive of commissions, for which the association is obligated  
15 under service warranties issued in this state;
- 16 6. "Impaired" means having liabilities in excess of assets;
- 17 7. "Indemnify" means to undertake repair or replacement of a  
18 consumer product or a newly-constructed residential structure,  
19 including any appliances, electrical, plumbing, heating, cooling or  
20 air conditioning systems, in return for the payment of a segregated  
21 premium, when the consumer product or residential structure becomes  
22 defective or suffers operational failure;

1           8. "Insolvent" means any actual or threatened delinquency  
2 including, but not limited to, any one or more of the following  
3 circumstances:

4           a. an association's total liabilities exceed the  
5 association's total assets of the association  
6 excluding goodwill, franchises, customer lists,  
7 patents or trademarks, and receivables from or  
8 advances to officers, directors, employees, salesmen,  
9 and affiliated companies. In order to include  
10 receivables from affiliated companies as assets as  
11 defined pursuant to this subparagraph and paragraph 10  
12 of this section, the service warranty association  
13 shall provide a written guarantee to assure repayment  
14 of all receivables, loans, and advances from  
15 affiliated companies. The written guarantee must be  
16 made by a guaranteeing organization which:

17           (1) has been in continuous operation for ten (10)  
18           years or more and has net assets in excess of  
19           Fifty Million Dollars (\$50,000,000.00),

20           (2) submits a guarantee on a form provided by the  
21           Insurance Commissioner by rule that contains a  
22           provision which requires that the guarantee be  
23           irrevocable and contains a provision setting out

1 that the Commissioner may pursue appropriate  
2 legal actions in the courts of this state or any  
3 other state against the guaranteeing company to  
4 collect the receivable on behalf of the service  
5 warranty association in the event of the  
6 insolvency or threatened insolvency of the  
7 association, unless the guaranteeing organization  
8 can demonstrate to the Commissioner's  
9 satisfaction that the cancellation of the  
10 guarantee will not result in the net assets of  
11 the service warranty association falling below  
12 its minimum net asset requirement and the  
13 Commissioner approves cancellation of the  
14 guarantee,

15 (3) initially submits a statement from an independent  
16 certified public accountant of the guaranteeing  
17 agency attesting that the net assets of the  
18 guaranteeing company meets or exceeds the net  
19 assets requirement as provided in division 1 of  
20 this subparagraph,

21 (4) submits annually to the Commissioner, within  
22 three (3) months after the end of its fiscal  
23 year, a statement from an independent certified

1                   public accountant of the guaranteeing agency  
2                   attesting that the net assets of the guaranteeing  
3                   company meets or exceeds the net assets  
4                   requirement as provided in division 1 of this  
5                   subparagraph, and  
6                   (5) the receivables are maintained as cash or as  
7                   securities described in Sections 1607, 1608, 1610  
8                   and 1620 of this title,

9                   b. the business of any such association is being  
10                   conducted fraudulently, or

11                   c. the association has knowingly overvalued its assets;

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

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

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

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

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

22       14. "Service warranty" means any warranty, home warranty,  
23 guaranty, extended warranty or extended guaranty, contract

1 agreement, or other written promise entered into between a consumer  
2 and a service warranty association under the terms of which there is  
3 an undertaking to indemnify against the cost of repair or  
4 replacement of a consumer product or newly-constructed residential  
5 structure, including any appliances, electrical, plumbing, heating,  
6 cooling or air conditioning systems, in return for the payment of a  
7 segregated charge by the consumer; however:

8           a. maintenance service contracts under the terms of which  
9                   there are no provisions for such indemnification are  
10                   expressly excluded from this definition,

11           b. those contracts issued solely by the manufacturer,  
12                   distributor, importer or seller of the product, or any  
13                   affiliate or subsidiary of the foregoing entities,  
14                   whereby such entity has contractual liability  
15                   insurance in place, from an insurer licensed in the  
16                   state, which covers one hundred percent (100%) of the  
17                   claims exposure on all contracts written without being  
18                   predicated on the failure to perform under such  
19                   contracts, are expressly excluded from this  
20                   definition,

21           c. the term "service warranty" does not include service  
22                   contracts entered into between consumers and nonprofit  
23                   organizations or cooperatives the members of which

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

5 d. the term "service warranty" does not include  
6 warranties, guarantees, extended warranties, extended  
7 guarantees, contract agreements or any other service  
8 contracts issued by a company which performs at least  
9 seventy percent (70%) of the service work itself and  
10 not through subcontractors, which has been selling and  
11 honoring such contracts in Oklahoma for at least  
12 twenty (20) years, and

13 e. the term "service warranty" does not include  
14 warranties, guarantees, extended warranties, extended  
15 guarantees, contract agreements or any other service  
16 contracts issued by a company which has net assets in  
17 excess of One Hundred Million Dollars  
18 (\$100,000,000.00). The calculation of the net assets  
19 shall include the assets of a parent company. When  
20 the net assets of the parent company are used to  
21 calculate the total net assets of the company, the net  
22 assets of the company issuing the policy shall total  
23 at least Twenty-five Million Dollars (\$25,000,000.00);

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

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

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

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

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

1 SECTION 28. AMENDATORY 36 O.S. 2001, Section 6615, as  
2 last amended by Section 32, Chapter 125, O.S.L. 2007 (36 O.S. Supp.  
3 2007, Section 6615), is amended to read as follows:

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

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

20 C. In addition to an annual statement, the Commissioner may  
21 require of licensees, under oath and in the form prescribed by it,  
22 quarterly statements or special reports which the Commissioner deems

1 necessary for the proper supervision of licensees under the Service  
2 Warranty Insurance Act.

3 D. Premiums and assessments received by associations and  
4 insurers for service warranties shall not be subject to the premium  
5 tax provided for in Section 624 of this title, but shall be subject  
6 to an administrative fee of Two Dollars (\$2.00) for each service  
7 warranty issued that provides coverage not to exceed Seventy-five  
8 Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty  
9 issued that provides coverage in excess of Seventy-five Dollars  
10 (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and  
11 Ten Dollars (\$10.00) for each service warranty that provides  
12 coverage in excess of Two Hundred Fifty Dollars (\$250.00). However,  
13 associations and insurers that have contractual liability insurance  
14 in place, from a company licensed in the state, which covers one  
15 hundred percent (100%) of the claims exposure of the association or  
16 insurer on all contracts written shall be subject to an annual  
17 administrative fee of Two Thousand Five Hundred Dollars (\$2,500.00).  
18 Said fees shall be paid quarterly to the Insurance Commissioner.  
19 All such fees, up to a maximum of Two Hundred Seventy-five Thousand  
20 Dollars (\$275,000.00) per year, received by the Insurance  
21 Commissioner shall be deposited into the State Treasury to the  
22 credit of the Insurance Commissioner Revolving Fund for the payment  
23 of costs incurred by the Insurance Department in the administration

1 of the Service Warranty Insurance Act. Amounts received in excess  
2 of the annual limitation shall be deposited to the credit of the  
3 General Revenue Fund.

4 SECTION 29. AMENDATORY 59 O.S. 2001, Section 1316, as  
5 last amended by Section 4, Chapter 386, O.S.L. 2005 (59 O.S. Supp.  
6 2007, Section 1316), is amended to read as follows:

7 Section 1316. A. 1. A bail bondsman shall neither sign nor  
8 countersign in blank any bond, nor shall the bondsman give a power  
9 of attorney to, or otherwise authorize, anyone to countersign his or  
10 her name to bonds unless the person so authorized is a licensed  
11 surety bondsman or managing general agent directly employed by a  
12 licensed professional bondsman giving such power of attorney. The  
13 professional bondsman shall submit to the Insurance Commissioner the  
14 agreement between the professional bondsman and the employed  
15 bondsman. The agreement shall be submitted to the Commissioner  
16 prior to the employed bondsman writing bonds on behalf of the  
17 professional. The professional bondsman shall notify the  
18 Commissioner whenever any agreement is canceled. If the bondsman  
19 surrenders the professional qualification, or the professional  
20 qualification is suspended or revoked, then the Commissioner shall  
21 suspend the appointment of all of the professional bondsmen's bail  
22 agents. The Commissioner shall immediately notify any bail agent  
23 whose license is affected and the court clerk of the agent's

1 resident county upon such suspension or revocation of the  
2 professional bondsman's qualification. If the professional  
3 qualification is reinstated within twenty-four (24) hours, the  
4 Commissioner shall not be required to suspend the bail agent  
5 appointments. If the Commissioner reinstates the professional  
6 qualification within twenty-four (24) hours, the Commissioner shall  
7 also reinstate the appointment of the professional bondsman's bail  
8 agents. If more than twenty-four (24) hours elapse following the  
9 suspension or revocation, then the professional bondsman shall  
10 submit new agent appointments to the Commissioner.

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

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

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

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

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

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

10 Section 1317. A. Every surety who appoints a surety bondsman  
11 or managing general agent in the state, shall give notice thereof to  
12 the Insurance Commissioner. The filing fee for appointment of each  
13 surety bondsman or managing general agent shall be Ten Dollars  
14 (\$10.00), payable to the Commissioner and shall be submitted with  
15 the appointment. The appointment shall remain in effect until the  
16 surety submits a notice of cancellation to the Commissioner, the  
17 bail bondsman's license expires, or the Commissioner cancels the  
18 appointment. If the surety changes the liability limitations of the  
19 surety bondsman or the managing general agent, or any other  
20 provisions of the appointment, the surety shall submit an amended  
21 appointment form and a filing fee of Ten Dollars (\$10.00) payable to  
22 the Commissioner.

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

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

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

20           SECTION 31.           REPEALER           36 O.S. 2001, Sections 1435.25,  
21 1435.32, 1435.34, 1435.35, as amended by Section 11, Chapter 129,  
22 O.S.L. 2005, 1435.37 and 1924 (36 O.S. Supp. 2007, Section 1435.35),  
23 are hereby repealed.

1 SECTION 32. This act shall become effective July 1, 2008.

2 SECTION 33. It being immediately necessary for the preservation  
3 of the public peace, health and safety, an emergency is hereby  
4 declared to exist, by reason whereof this act shall take effect and  
5 be in full force from and after its passage and approval.

6 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated  
7 2-21-08 - DO PASS, As Amended and Coauthored.