STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1512 By: Mulready of the House

and

Brown of the Senate

COMMITTEE SUBSTITUTE

An Act relating to insurance; requiring confidential treatment of certain examinations; disallowing certain persons from testifying in certain actions; authorizing the Insurance Commissioner to share certain information; amending 36 O.S. 2011, Section 1452, which relates to the Third-Party Administrator Act; exempting certain administrators from an annual report requirement; amending 36 O.S. 2011, Section 1464, which relates to insurance broker licensure; removing certain bond requirements; amending 36 O.S. 2011, Sections 1522, 1523, 1524 and 1527, which relate to the Risk-based Capital for Insurers Act; including a fraternal benefit society in certain definitions; including certain references to fraternal benefit society; amending 36 O.S. 2011, Section 1651, which relates to subsidiaries of insurers; adding certain definition; amending 36 O.S. 2011, Section 1654, which relates to registration of insurers; requiring the filing of a certain annual report; amending 36 O.S. 2011, Section 4030.9, which relates to standard nonforfeiture law for individual deferred annuities; modifying the maturity date of certain contracts; amending 36 O.S. 2011, Sections 6123, 6125 and 6125.2, which relate to prepaid funeral services; extending period certain statements and lists must be kept on file; amending 36 O.S. 2011, Section 6217, as last amended by Section 14, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2012, Section 6217), which relates to insurance adjuster licensing; increasing hours for certain required continuing education; amending 36 O.S. 2011, Section 6515, which

relates to the Small Employer Health Insurance Reform Act; providing employers are not prohibited from including certain wellness programs in premium rate development; amending 36 O.S. 2011, Sections 7101 and 7102, which relate to the Perpetual Care Fund Act; modifying statutory citations; amending 36 O.S. 2011, Sections 7121, 7123, 7124, 7125, 7127, 7128 and 7129, which relate to the Cemetery Merchandise Trust Act; modifying statutory citations; modifying date certain applications will be accepted; amending 40 O.S. 2011, Section 500, which relates to nonsmoking as condition of employment; providing employers not be prohibited from offering incentives to employees to participate in certain wellness programs; repealing 36 O.S. 2011, Section 1657, which relates to confidential treatment of certain examinations; repealing 36 O.S. 2011, Section 6821, which relates to medical professional liability rate setting; providing for codification; and providing an effective date.

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 1657.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Documents, materials or other information in the possession or control of the Insurance Department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to Section 1656 of Title 36 of the Oklahoma Statutes and all information reported pursuant to subsection B of Section 1653 of Title 36 of the Oklahoma Statutes, and Sections 1654 and 1655 of Title 36 of the Oklahoma Statutes, shall be confidential by law and privileged, shall not be subject to open records or freedom of information requests, shall

not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Commissioner, a state, federal, or international regulatory agency, or the National Association of Insurance Commissioners, or any person or entity affiliated therewith. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the official duties of the Commissioner. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be deemed appropriate.

B. Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or other information subject to subsection A of this section.

C. In order to assist in the performance of the Commissioner's duties, the Commissioner:

1. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection A of this section, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;

2. Notwithstanding paragraph 1 of this subsection, the Commissioner may only share confidential and privileged documents, material or other information reported pursuant to Section 1654 of Title 36 of the Oklahoma Statutes with commissioners of states having statutes or regulations substantially similar to subsection A of this section and who have agreed in writing not to disclose such information;

3. May receive documents, materials or other information, including otherwise confidential and privileged documents, materials or other information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as

confidential or privileged any document, material or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

4. Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this section and consistent with this subsection that shall:

a. specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators,

b. specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the Commissioner and the NAIC's use of the information is subject to the direction of the Commissioner,

c. require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this section is subject to a request or subpoena to the NAIC for disclosure or production, and

d. require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any

judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this section.

D. The sharing of information by the Commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this section.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection C of this section.

F. Documents, materials or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be subject to open records or freedom of information requests, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if obtained from the Commissioner, a state, federal, or international regulatory agency, or the National Association of Insurance Commissioners, or any person or entity affiliated therewith.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 1452, is amended to read as follows:

Section 1452. A. On or before June 1 of each year, all licensed administrators shall file an annual report for the previous calendar year. The report shall have been reviewed by a certified public accountant who shall be independent of the administrator. The report shall be subscribed and sworn to by the president and attested to by the secretary or other proper officers substantiating that the information contained in the report is true and factual concerning each of the plans they administer which are governed pursuant to the provisions of the Third-party Administrator Act. The report shall include the name and address of each fund and a statement of fund equity, paid claims by the covered unit, the accumulated year-to-date paid claims, and the year-to-date reserve status. Failure of any third-party administrator to execute and file the annual reports as required by this section shall constitute cause, after notice and opportunity for hearing, for censure, suspension, or revocation of administrator licensure to transact business in this state, or a civil penalty of not less than One Hundred Dollars ($100.00) or more than One Thousand Dollars ($1,000.00) for each occurrence, or both censure, suspension, or revocation and civil penalty.

B. If a licensed administrator has had no business or activity in the past calendar year, has not administered any insurance plans

or business in the past calendar year and no funds are under the licensed administrator's oversight and administration, then the annual report described in subsection A of this section may be waived upon application to the Commissioner by the administrator. Upon applying for a waiver, the administrator shall state under oath that the administrator has had no business, has not administered any funds and the licensee's administration of claims has been dormant for the past calendar year. The application must be submitted no later than May 1st on the form prescribed by the Commissioner.

SECTION 3. AMENDATORY 36 O.S. 2011, Section 1464, is amended to read as follows:

Section 1464. A. 1. To be licensed as a resident life or accident and health insurance broker, an individual or legal entity shall have been a licensed resident agent or agency in this state continuously for at least two (2) years immediately prior to application and such agent's license shall remain in effect in order to maintain the broker's license. A nonresident life or accident and health insurance broker applicant may receive a license in this state if they are licensed and in good standing in their home state, and if the home state of the applicant awards nonresident licenses to residents of this state on the same basis.

2. Any applicant for a broker's license shall have no Oklahoma Insurance Code violations or record with the Insurance Commissioner or an insurance regulatory body of another state and shall not have

been convicted, or pleaded guilty or nolo contendere to any felony or to a misdemeanor involving moral turpitude or dishonesty.

3. The fee for a life or accident and health insurance broker's license shall be Fifty Dollars ($50.00). The license may be renewed each year for the same fee. Late application for renewal of a license shall require a fee of double the amount of the original current license fee. The fees shall be placed in the State Insurance Commissioner Revolving Fund.

B. 1. Every applicant for a life or accident and health insurance broker's license shall file with the Commissioner and, upon approval of the application, maintain in force while licensed and for at least two (2) years following termination of the license, evidence satisfactory to the Commissioner of an errors and omissions policy covering the individual applicant in an amount of not less than One Hundred Thousand Dollars ($100,000.00) annual aggregate for all claims made during the policy period, or covering the applicant under a blanket liability policy insuring other life or accident and health insurance agents or brokers in an amount of not less than Five Hundred Thousand Dollars ($500,000.00) annual aggregate for all claims made during the policy period.

2. Such policy shall be issued by an insurance company authorized to do business in this state, shall be continuous in form, and shall provide coverage acceptable to the Commissioner for errors and omissions of the life or accident and health insurance

broker. The policy carrier shall notify the Commissioner of any lapse or termination of errors and omissions coverage.

3. Failure to maintain a policy in force shall result in automatic termination of licensure, and the license shall be returned by its lawful custodian to the Commissioner for further cancellation.

C. ~~1. Every applicant shall also provide a bond in favor of the people of Oklahoma executed by an authorized surety company and payable to any party injured under the term of the bond.~~

~~2. The bond shall be continuous in form and in the amount of Five Thousand Dollars ($5,000.00) total aggregate liability, or more if the Commissioner deems it necessary. The bond shall be conditioned upon full accounting and due payments to the person or company entitled thereto as an incident of life or accident and health insurance transactions and funds brought into the life or accident and health insurance broker's possession under his or her license.~~

~~3. The bond shall remain in force and effect until the surety is released from liability by the Commissioner or until the bond is canceled by the surety. The surety may cancel the bond and be released from further liability thereunder upon thirty (30) days of written notice, in advance, to the Commissioner. Said cancellation shall not affect any liability incurred or accrued thereunder before the termination of the thirty-day period. Upon receipt of any~~

~~notice of cancellation, the Commissioner shall immediately notify the licensee.~~

~~4. The license shall automatically terminate upon there being no bond in force, and the license shall be returned by its lawful custodian to the Commissioner for further cancellation.~~

~~D.~~ Life or accident and health insurance brokers shall be subject to the same violations, fines, and penalties as stated in Section ~~1428~~ 1435.13 of this title. Violations of the provisions of the Oklahoma Life, Accident and Health Insurance Broker Act may result, after notice and hearing, in censure, suspension, or revocation of license or a civil penalty of not less than One Hundred Dollars ($100.00), nor more than One Thousand Dollars ($1,000.00), or a combination thereof for each occurrence.

SECTION 4. AMENDATORY 36 O.S. 2011, Section 1522, is amended to read as follows:

Section 1522. As used in this act:

1. "Adjusted RBC Report" means an RBC report which has been adjusted by the Insurance Commissioner in accordance with subsection D of Section ~~4~~ 1523 of this ~~act~~ title;

2. "Corrective order" means an order issued by the Commissioner specifying corrective actions which the Commissioner has determined are required;

3. "Domestic insurer" means any insurance company domiciled in this state;

4. "Foreign insurer" means any insurance company which has a certificate of authority to do business in this state but is not domiciled in this state;

5. "Life or health insurer" means any insurance company with a certificate of authority to write life or health insurance, or a licensed property and casualty insurer writing only accident and health insurance;

6. "Negative trend" means, with respect to a life or health insurer or a fraternal benefit society, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life or Fraternal RBC Instructions;

7. "NAIC" means the National Association of Insurance Commissioners;

8. "Property and casualty insurer" means any insurance company with a certificate of authority to write property or casualty insurance, and shall not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers;

9. "RBC" means risk-based capital;

10. "RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as adopted by the Commissioner by rule, and any amendments thereto adopted by the Commissioner by rule;

11. "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC, where:

a. "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC,

b. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC,

c. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with RBC Instructions, and

d. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC;

12. "RBC Plan" means a comprehensive financial plan containing the elements specified in subsection B of Section ~~5~~ 1524 of this ~~act~~ title;

13. "Revised RBC Plan" means an RBC Plan which is rejected by the Commissioner and which is revised by the insurer with or without the Commissioner's recommendations;

14. "RBC Report" means the report required in Section ~~4~~ 1523 of this ~~act~~ title; and

15. "Total adjusted capital" means the sum of:

a. an insurer's statutory capital and surplus as determined in accordance with the statutory accounting

applicable to the annual financial statements required to be filed with the Commissioner, and

b. such other items, if any, as the RBC Instructions, as adopted by rule by the Commissioner, may provide.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 1523, is amended to read as follows:

Section 1523. A. Every domestic insurer shall, on or prior to each March 1, which shall be known as the filing date, prepare and submit to the Insurance Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions, as adopted by the Commissioner by rule. In addition, every domestic insurer shall file its RBC Report with the NAIC if required by the Commissioner.

B. 1. A life and health insurer's <u>or fraternal benefit society's</u> RBC shall be determined in accordance with the formula set forth in the RBC Instructions, as adopted by the Commissioner by rule. The formula shall take into account, and may adjust for the covariance between, the following factors:

a. the risk with respect to the insurer's assets,

b. the risk of adverse insurance experience with respect to the insurer's liabilities and obligations,

c. the interest rate risk with respect to the insurer's business, and

d. all other business risks and such other relevant risks as are set forth in the RBC Instructions.

2. These factors shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

C. 1. A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions, as adopted by the Commissioner by rule. The formula shall take into account, and may adjust for the covariance between, the following factors:

a. asset risk,

b. credit risk,

c. underwriting risk, and

d. all other business risks and such other relevant risks as are set forth in the RBC Instructions.

2. These factors shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

D. If a domestic insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner, after notice and opportunity for comment, shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report so adjusted shall be referred to as an "Adjusted RBC Report".

SECTION 6. AMENDATORY 36 O.S. 2011, Section 1524, is amended to read as follows:

Section 1524. A. "Company Action Level Event" means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

a. the insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC,

b. if a life or health insurer, the insurer or fraternal benefit society has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and ~~2.5~~ 3.0 and has a negative trend, or

c. if a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions;

2. The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates an event described in paragraph 1 of this subsection, provided the insurer does not

challenge the Adjusted RBC Report under Section 1528 of this title; or

3. If, pursuant to Section 1528 of this title, an insurer challenges an Adjusted RBC Report that indicates the event described in paragraph 1 of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

B. In the event of a Company Action Level Event, the insurer shall, unless otherwise directed by the Commissioner, prepare and submit to the Commissioner an RBC Plan which shall include the following five elements:

1. Conditions which contribute to the Company Action Level Event;

2. Proposals of corrective actions which the insurer intends to take and which would be expected to result in the elimination of the Company Action Level Event;

3. Projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, or capital and surplus. Unless the Commissioner otherwise directs, the projections for both new and renewal business shall include separate projections for each major

line of business and separately identify each significant income, expense and benefit component;

4. The key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

5. The quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

C. The RBC Plan shall be submitted:

1. Within forty-five (45) days of the Company Action Level Event; or

2. If the insurer challenges an Adjusted RBC Report pursuant to Section 1528 of this title, within forty-five (45) days after notification to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

D. Within sixty (60) days after the submission by an insurer of an RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory, in the judgment of the Commissioner. Upon

notification from the Commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the Revised RBC Plan to the Commissioner:

1. Within forty-five (45) days after the notification from the Commissioner; or

2. If the insurer challenges the notification from the Commissioner under Section 1528 of this title, within forty-five (45) days after a notification to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

E. In the event of a notification by the Commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the Commissioner may at the Commissioner's discretion, subject to the insurer's right to a hearing under Section 1528 of this title, specify in the notification that the notification constitutes a Regulatory Action Level Event.

F. Every domestic insurer that files an RBC Plan or Revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

1. The state has an RBC provision substantially similar to subsection A of Section 1531 of this title; and

2. The insurance commissioner of that state has notified the insurer of its request for the filing in writing. If such a request is made, the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

a. fifteen (15) days after the receipt of the request to file a copy of its RBC Plan or Revised RBC Plan with the state, or

b. the date on which the RBC Plan or Revised RBC Plan is filed under subsections C and D of this section.

SECTION 7. AMENDATORY 36 O.S. 2011, Section 1527, is amended to read as follows:

Section 1527. A. "Mandatory Control Level Event" means any of the following events:

1. The filing of an RBC Report which indicates that the insurer's Total Adjusted Capital is less than its Mandatory Control Level RBC;

2. Notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted RBC Report under Section ~~9~~ 1528 of this ~~act~~ title; or

3. If, pursuant to Section ~~9~~ 1528 of this ~~act~~ title, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph 1 of this subsection, notification by the Commissioner

to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

B. In the event of a Mandatory Control Level Event:

1. With respect to a life insurer or fraternal benefit society, the Commissioner may take the actions necessary to place the insurer under regulatory control under Article 18 or 19 of the Insurance Code. In that event, the Mandatory Control Level Event is deemed sufficient grounds for the Commissioner to take action under Article 18 or 19 of the Insurance Code, and the Commissioner shall have the rights, powers, and duties with respect to the insurer which are set forth in Article 18 or 19 of the Insurance Code. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to notice and opportunity for a hearing as required by the provisions of Article 18 or 19 of the Insurance Code; and

2. With respect to a property and casualty insurer, the Commissioner may take the actions necessary to place the insurer under regulatory control under Article 18 or 19 of the Insurance Code, or, in case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the Mandatory Control Level Event is deemed sufficient grounds for the Commissioner to take action under Article 18 or 19 of the Insurance Code and the Commissioner shall have the rights,

powers, and duties with respect to the insurer which are set forth in Article 18 or 19 of the Insurance Code. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to notice and opportunity for a hearing as required by the provisions of Article 18 or 19 of the Insurance Code.

SECTION 8. AMENDATORY 36 O.S. 2011, Section 1651, is amended to read as follows:

Section 1651. As used in this act, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

~~(a) Affiliate.~~

1. An "affiliate" of, or person "affiliated" with, the specific person, is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified~~.~~;

~~(b) Commissioner.~~

2. The term "Commissioner" shall mean the Insurance Commissioner, ~~his~~ the deputies, or the Insurance Department, as appropriate~~.~~;

~~(c) Control.~~

3. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether

through the ownership of voting securities, by contract or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact in the manner provided in ~~Section 4(i)~~ subsection I of Section 1654 of this title. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect~~.~~;

~~(d) Insurance Holding Company System.~~

4. "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in Section 1524 of this title or would cause the insurer to be in hazardous financial condition as specified by the Insurance Commissioner by rule;

5. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.;

~~(e) Insurer. The term "insurer"~~

6. "Insurer" shall have the same meaning as set forth in ~~36 Oklahoma Statutes,~~ Section 103 of this title, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.;

~~(f) Person.~~

7. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.;

~~(g) Securityholder.~~

8. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.;

~~(h) Subsidiary.~~

9. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.; and

~~(i) Voting Security.~~

10. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

SECTION 9. AMENDATORY 36 O.S. 2011, Section 1654, is amended to read as follows:

Section 1654. ~~(a) Registration.~~

A. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system and every individual who controls an insurer shall annually register with the Insurance Commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register thirty (30) days after it becomes subject to registration, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy to the Commissioner of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

~~(b) Information and Form Required.~~

B. Every insurer subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

~~(i) the~~

1. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

~~(ii) the~~

2. The identity and relationship of every member of the insurance holding company system;

~~(iii) the~~

3. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the previous calendar year between such insurer and its affiliates:

~~(1)~~

a. loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates~~;~~,

~~(2)~~

b. purchases, sales or exchanges of assets~~;~~,

~~(3)~~

c. transactions not in the ordinary course of business~~;~~,

~~(4)~~

d. guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business~~.~~,

~~(5)~~

e. all management and service contracts and all cost-sharing arrangements~~.~~,

~~(6)~~

f. reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company~~.~~,

~~(7)~~

g. dividends and other distributions to shareholders~~.~~, and

~~(8)~~

h. consolidated tax allocation agreements~~.~~;

~~(iv) other~~

4. Other matters concerning transactions between registered insurers or fraternal benefit society and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner; and

~~(v) any~~

5. Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

~~(c) Materiality.~~

C. No information need be disclosed on the registration statement filed pursuant to subsection ~~(b)~~ B of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an insurer's admitted assets as of ~~the 31st day of~~ December 31 next preceding shall not be deemed material for purposes of this section.

~~(d) Amendments to Registration Statements.~~

D. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition~~,~~; provided, however, that subject to subsection (c) of Section 1655 of this title, each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

~~(e) Termination of Registration.~~

E. The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

~~(f) Consolidated Filing.~~

F. The Commissioner may require two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement, so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

~~(g) Alternative Registration.~~

G. The Commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection ~~(a)~~ A of this section and to file all information and material required to be filed under ~~Section~~ Sections 1651 et seq. through 1662 of this title.

~~(h) Exemptions.~~

H. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

~~(i) Disclaimer.~~

I. Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

~~(j) Summary of Registration Statement.~~

J. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

~~(k) Reporting Dividends to Shareholders.~~

K. Every domestic insurer that is a member of a holding company system shall report to the Insurance Department all dividends to shareholders within five (5) business days following declaration and at least ten (10) days, commencing from date of receipt by the Department, prior to payment thereof.

~~(l) Information of Insurers.~~

L. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analyst Handbook adopted by the National Association of Insurance Commissioners.

M. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer where such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

~~(m) Violations.~~

N. The failure to file a registration statement, any summary of the registration statement thereto, or any additional information required by this section within the time specified for such filing shall be a violation of this section.

SECTION 10. AMENDATORY 36 O.S. 2011, Section 4030.9, is amended to read as follows:

Section 4030.9 For the purpose of determining the benefits calculated under Sections 4030.7 and 4030.8 of this title for annuity contracts issued on or after November 1, 2013, in the case

of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later. Except that if surrender charge scales are measured from the date of each premium payment, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the payment, whichever is later.

SECTION 11. AMENDATORY 36 O.S. 2011, Section 6123, is amended to read as follows:

Section 6123. Sections 6121 through 6136.18 of this title shall be administered by the Insurance Commissioner. The Insurance Commissioner is authorized to prescribe reasonable rules and regulations concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this law; and the Insurance Commissioner shall first approve all forms for sale contracts for prepaid funeral benefits. All contracts for prepaid funeral benefits shall be in writing and no contract form shall be used without first being

approved by the Insurance Commissioner. On any prepaid funeral when the person dies and the funeral is performed, and the money is drawn down, any organization receiving the monies so drawn down shall retain the itemized statement of charges in the files of the organization for at least three (3) six (6) years.

SECTION 12. AMENDATORY 36 O.S. 2011, Section 6125, is amended to read as follows:

Section 6125. A. 1. The organization may retain from the first funds collected, the first ten percent (10%) of the purchase price of all contracts issued pursuant to paragraph 1 of subsection B of this section. Thereafter, one hundred percent (100%) of all funds collected pursuant to the provisions of contracts for prepaid funeral benefits, except for outer enclosures as defined by the Funeral Services Licensing Act, shall be placed in interest-bearing investments authorized by Article 16 of the Insurance Code, except to the extent the Insurance Commissioner may determine that a particular asset may be inappropriate for investment for prepaid funeral benefits.

2. For outer enclosures at the option of the organization the first thirty-five percent (35%) of the retail price of the outer enclosures collected may be retained by the organization. The remaining sixty-five percent (65%) of the retail price collected for the outer enclosures shall be invested as otherwise provided by this

subsection pursuant to the provisions of contracts for prepaid funeral benefits.

3. The funds required to be deposited pursuant to paragraphs 1 and 2 of this subsection shall be deposited within ten (10) days after the collection of the funds and shall be held in a trust fund in this state for the use, benefit, and protection of purchasers of contracts for prepaid funeral benefits. Nothing contained within this section shall be construed to prohibit an organization authorized to accept prepaid funds from transferring the funds held in trust from one trust depository to another if notice of the transfer is given to the Insurance Commissioner within ten (10) days before the transfer and the organization transferring the funds remains the designated trustor. This subsection shall not affect funds invested prior to November 1, 1988.

B. An organization authorized to accept prepaid funds shall be authorized to provide purchasers with a choice of either of the following types of contracts:

1. A contract for Specific and Described Funeral Merchandise and Service at a Guaranteed Price. The provisions of this type of contract shall provide that interest paid by the organization upon monies deposited in trust shall be added to the principal and that principal and interest shall become available for disbursement to the organization upon the death of the beneficiary and if withdrawal of monies occurs prior to death, the net value, plus the amount

withheld pursuant to paragraph 1 of subsection A of this section, shall be paid to the purchaser. Net value of the contract for purposes of this section shall be determined by adding the amount of all principal paid in pursuant to the provisions of the contract plus all interest payable pursuant to subsection D of this section less taxes and administrative fees;

2. A contract establishing a fund for prepaid funeral benefits. The provisions of this type of contract shall require an initial minimum deposit of Twenty-five Dollars ($25.00) and shall grant the purchaser the right to add to the fund at the discretion of the purchaser. The provisions of this contract shall provide that the funds accumulated shall apply to the cost of the funeral services and merchandise selected and that any funds remaining unused shall be refunded to the purchaser or to the personal representative or designated beneficiary of the purchaser and if withdrawal of monies occurs prior to death, the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to subsection D of this section less taxes and administrative fees. This type of contract shall also bear upon it the language: "Exact Funeral Merchandise and Services to be Selected at Time of Death";

3. Notwithstanding the provisions of this section, at no time shall the purchaser of a contract for Specific and Described Funeral Merchandise and Service at a Guaranteed Price receive upon any

withdrawal or transfer a sum less than the original principal collected; or

4. Notwithstanding the provisions of this section, at no time shall the purchaser of a contract for Exact Funeral Merchandise and Services to be Selected at Time of Death receive upon any full withdrawal or transfer prior to death a sum less than the original principal collected available at death, with the exception of those accounts which bear principal reduced by previously made cash withdrawals.

C. If an organization other than the organization with which the purchaser contracted provides funeral merchandise and services upon the death of the beneficiary of the contract, the organization with whom the purchaser contracted shall forward, upon receipt of request in writing from the purchaser or the personal representative of the purchaser, the net value of the contract plus the amount withheld pursuant to paragraph 1 of subsection A of this section to the organization which provided the merchandise and services or to the purchaser or the personal representative of the purchaser.

D. Funds deposited in trust pursuant to the provisions of either type of contract authorized by the provisions of this section shall earn for the account of the purchaser a rate of interest which is not less than the minimum rate of interest offered by the qualified investments specified in subsection A of this section to the savings customers of the qualified investments having interest-

bearing accounts. The organization, in a nondiscriminatory manner, may pay or accrue interest for the accounts of purchasers at any rate greater than the minimum rate that the organization desires, provided, however, that the organization may retain from the interest, all interest incurred in excess of the minimum amount payable pursuant to this subsection.

E. A purchaser of either of the types of contracts authorized by the provisions of this section may withdraw the net value of the contract by signing a statement requesting the withdrawal. The organization shall retain in its files a copy of the statement requesting the withdrawal. Withdrawal of funds deposited pursuant to the provisions of a contract authorized by the provisions of paragraph 1 of subsection B of this section shall void the obligation of the contracting organization to provide funeral merchandise and services at a guaranteed price. Withdrawal forms shall be retained on file for at least ~~three (3)~~ six (6) years by the organization.

F. Following the death of a beneficiary for whom a contract has been purchased, the organization shall prepare a statement, acknowledged by the purchaser if the purchaser is not the beneficiary, or by the personal representative of the purchaser if the purchaser is the beneficiary, setting forth the use of the funds deposited and the party to whom any unused funds were disbursed. A copy of this statement shall remain in the files of the organization

for at least ~~three (3)~~ six (6) years and a copy shall be delivered to the trust depository and the purchaser.

G. After thirty (30) days, a contract of either type authorized by the provisions of this section may become irrevocable and not subject to withdrawal prior to the death of the beneficiary if the purchaser signs an election making the contract irrevocable. This election shall not become effective until thirty (30) days after signing the original contract.

H. In no event shall more funds be withdrawn or paid pursuant to the provisions of one contract than were deposited with the organization and which were accumulated as interest. All funds deposited pursuant to the provisions of a contract authorized by the provisions of this section and deposited pursuant to the terms of this section and the interest earned on the funds shall be exempt from attachment, garnishment, execution, and the claims of creditors, receivers, or trustees in bankruptcy, until the time the funds have been withdrawn from the trust account and paid to the organization or refunded to the purchaser.

I. Each organization subject to the provisions of this section shall furnish a bond in the form of a cash bond, letter of credit, or fidelity bond, to be approved by the Insurance Commissioner, in the amount of Three Hundred Thousand Dollars ($300,000.00) or fifteen percent (15%) of all funds collected for prepaid funeral benefits, whichever is less.

J. Organizations contracting with purchasers for prepaid funeral benefits pursuant to paragraphs 1 and 2 of subsection B of this section shall be entitled to deduct from the principal and interest allocable to the contracts an administrative fee which shall not exceed the product of .001146 times the total contract fund including accrued interest per month or any major portion thereof.

K. No organization holding a permit issued pursuant to the provisions of Sections 6121 and 6124 of this title shall accept any funds except pursuant to the provisions of a contract for prepaid funeral or burial benefits authorized by the provisions of Sections 6121 through 6136.18 of this title, and no organization shall accept funds from a purchaser in excess of the contracted price of prepaid funeral or burial benefits purchased.

L. Any organization which knowingly commits any of the acts set forth in the first sentence of Section 6121 of this title without first having obtained a permit to engage in the stated activity from the Insurance Commissioner, or any organization which commits the acts while knowingly operating with an invalid or expired permit, upon conviction, shall be guilty of a misdemeanor. Each separate act performed without a valid permit shall be deemed a separate offense. The punishment upon conviction for the offense shall be a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment

in the county jail for not less than sixty (60) days nor more than one (1) year, or both such fine and imprisonment.

SECTION 13. AMENDATORY 36 O.S. 2011, Section 6125.2, is amended to read as follows:

Section 6125.2 A. Contracts for prepaid funeral benefits provided for pursuant to Section 6125 of this title may be funded by assignments of life insurance proceeds to the contracting organization.

B. A guaranteed contract for prepaid funeral benefits provided for pursuant to paragraph 1 of subsection B of Section 6125 of this title which is to be funded by assignment of life insurance proceeds shall provide that:

1. The contract be funded by a life insurance policy issued in the face amount of the current purchase price of the contract for prepaid funeral benefits;

2. All accrued benefits under the policy shall become available for disbursement to the organization upon the death of the beneficiary of the prepaid funeral contract;

3. The beneficiary shall be the same individual under the contract as the insured under the life insurance policy; and

4. The disbursement of life insurance proceeds to the organization shall constitute payment in full to the organization for the services and merchandise contracted for.

C. A nonspecified contract for prepaid funeral benefits provided for pursuant to paragraph 2 of subsection B of Section 6125 of this title which is to be funded by assignment of life insurance proceeds shall provide that:

1. The total proceeds paid to the organization under the policy shall not exceed the actual retail cost of the funeral services and merchandise at the time of delivery;

2. Any funds remaining unused shall be refunded to the purchaser or to the personal representative of the purchaser or designated beneficiary; and

3. After November 1, 2009, all price lists reflecting the actual retail cost of funeral services and merchandise used at the time of the delivery of services shall be retained for a period of at least ~~three (3)~~ six (6) years.

D. A violation of this section shall constitute a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment.

SECTION 14. AMENDATORY 36 O.S. 2011, Section 6217, as last amended by Section 14, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2012, Section 6217), is amended to read as follows:

Section 6217. A. All licenses issued pursuant to the provisions of the Insurance Adjusters Licensing Act shall continue

in force not longer than twenty-four (24) months. The renewal dates for the licenses may be staggered throughout the year by notifying licensees in writing of the expiration and renewal date being assigned to the licensees by the Insurance Commissioner and by making appropriate adjustments in the biennial licensing fee.

B. Any licensee applying for renewal of a license as an adjuster shall have completed not less than twenty-four (24) clock hours of continuing insurance education, of which three (3) hours shall be in ethics, within the previous twenty-four (24) months prior to renewal of the license. The Insurance Commissioner shall approve courses and providers of continuing education for insurance adjusters as required by this section.

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

1. Employees of the Insurance Commissioner;

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

3. An independent service whose normal business activities include the review and approval of continuing education courses and providers. The Commissioner may negotiate agreements with such independent service to review documents and other materials

submitted for approval of courses and providers and present the Commissioner with its nonbinding recommendation. The Commissioner may require such independent service to collect the fee charged by the independent service for reviewing materials provided for review directly from the course providers.

C. An adjuster who, during the time period prior to renewal, participates in an approved professional designation program shall be deemed to have met the biennial requirement for continuing education. Each course in the curriculum for the program shall total a minimum of ~~twenty (20)~~ twenty-four (24) hours. Each approved professional designation program included in this section shall be reviewed for quality and compliance every three (3) years in accordance with standardized criteria promulgated by rule. Continuation of approved status is contingent upon the findings of the review. The list of professional designation programs approved under this subsection shall be made available to producers and providers annually.

D. The Insurance Department may promulgate rules providing that courses or programs offered by professional associations shall qualify for presumptive continuing education credit approval. The rules shall include standardized criteria for reviewing the professional associations' mission, membership, and other relevant information, and shall provide a procedure for the Department to disallow a presumptively approved course. Professional association

courses approved in accordance with this subsection shall be reviewed every three (3) years to determine whether they continue to qualify for continuing education credit.

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

F. 1. Each provider of continuing education shall, after approval by the Commissioner, submit an annual fee. A fee may be assessed for each course submission at the time it is first submitted for review and upon submission for renewal at expiration. Annual fees and course submission fees shall be set forth as a rule by the Commissioner. The fees are payable to the Insurance Commissioner and shall be deposited in the State Insurance Commissioner Revolving Fund, created in Section 307.3 of this title, for the purposes of fulfilling and accomplishing the conditions and purposes of the Oklahoma Producer Licensing Act and the Insurance Adjusters Licensing Act. Public-funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations and Oklahoma state agencies shall be exempt from this subsection.

2. The Commissioner may assess a civil penalty, after notice and opportunity for hearing, against a continuing education provider who fails to comply with the requirements of the Insurance Adjusters

Licensing Act, of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), for each occurrence. The civil penalty may be enforced in the same manner in which civil judgments may be enforced.

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

H. If the request, proof of compliance with the continuing education requirement and fee for renewal of a license as an adjuster are filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act pursuant to said license, unless revoked or suspended prior to the expiration date, until the issuance of a renewal license or until the expiration of ten (10) days after the Commissioner has refused to renew the license and has mailed notice of said refusal to the licensee. Any request for renewal filed after the date of expiration may be considered by the Commissioner as an application for a new license.

SECTION 15. AMENDATORY 36 O.S. 2011, Section 6515, is amended to read as follows:

Section 6515. A. Premium rates for health benefit plans subject to the Small Employer Health Insurance Reform Act shall be subject to the following provisions:

1. The rate manual developed for use by a small employer carrier shall be filed and approved by the Insurance Commissioner prior to use. Any changes to the rate manual shall be filed and approved by the Insurance Commissioner prior to use. Every filing shall be made not less than thirty (30) days prior to the date the small employer carrier intends to implement the rates. The rate manual so filed shall be deemed approved upon expiration of the thirty-day waiting period unless, prior to the end of the period, it has been affirmatively approved or disapproved by order of the Commissioner. Approval of a rate manual by the Commissioner shall constitute a waiver of any unexpired portion of the thirty-day waiting period. The Commissioner may extend the period to approve or disapprove a rate manual by not more than an additional thirty (30) days by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of an extended period, the rate filing shall be deemed approved unless otherwise approved or disapproved by the Commissioner. The Commissioner may at any time, after notice and for cause shown, withdraw approval of a filed rate;

2. A small employer health benefit plan shall not be delivered or issued for delivery unless the policy form or certificate form

can be expected to return to policyholders and certificate holders in the form of aggregate benefits provided under the policy form or certificate form at least sixty percent (60%) of the aggregate amount of premiums earned. The rate of return shall be estimated for the entire period for which rates are computed to provide coverage. The rate of return shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period in accordance with accepted actuarial principles and practices;

3. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent (20%);

4. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent (25%) of the index rate;

5. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

a. the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers,

b. any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the rate manual for the class of business of the small employer carrier, and

c. any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the rate manual for the class of business of the small employer carrier;

6. Adjustments in rates for claim experience, health status and duration of coverage shall not be charged to individual employees or dependents. Any adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer;

7. A small employer carrier may utilize industry as a case characteristic in establishing premium rates; provided, the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent (15%);

8. In the case of health benefit plans issued prior to the effective date of the Small Employer Health Insurance Reform Act, a premium rate for a rating period may exceed the ranges set forth in paragraphs 3 and 4 of this subsection for a period of three (3) years following the effective date of the Small Employer Health Insurance Reform Act. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

a. the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided

that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers, and

b. any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the rate manual of the carrier for the class of business;

9. Small employer carriers shall:

a. apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups within the same class of business which differ only by amounts attributable to plan design and do not reflect differences due to claims experience, health status and duration of coverage, and

b. treat all health benefit plans issued or renewed in the same calendar month as having the same rating period;

10. For the purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such

a network, provided that utilization of the restricted provider network results in substantial differences in claims costs;

11. The Insurance Commissioner may establish rules to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of the Small Employer Health Insurance Reform Act, including:

a. assuring that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to claims experience, health status or duration of coverage, and

b. prescribing the manner in which case characteristics may be used by small employer carriers.

B. A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage.

C. The Commissioner may suspend for a specified period the application of paragraph 3 of subsection A of this section as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or

more rating periods upon a filing by the small employer carrier and a finding by the Commissioner either that the suspension is reasonably necessary in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

D. Nothing in the Small Employer Health Insurance Reform Act shall prohibit a small employer carrier from including in premium rate development an employer's bona fide wellness program for its employees including, but not limited to, a tobacco cessation program.

SECTION 16. AMENDATORY 36 O.S. 2011, Section 7101, is amended to read as follows:

Section 7101. Sections ~~161~~ 7101 through ~~170~~ 7112 of this title~~, as recodified by this act,~~ shall be known and may be cited as the "Perpetual Care Fund Act".

SECTION 17. AMENDATORY 36 O.S. 2011, Section 7102, is amended to read as follows:

Section 7102. As used in the Perpetual Care Fund Act:

1. "Cemetery" or "cemeteries" means any land or structure in this state dedicated to or used, or intended to be used, for the interment of human remains;

2. "Burial space" means any grave space, lot, mausoleum crypt or niche, whether above or below ground, which is used or intended to be used for the interment of human remains;

3. "Purchase price" means the gross dollar amount the customer shall pay the cemetery under a contractual agreement between the two to exchange ownership of, or rights to, certain burial spaces. Purchase price shall not include finance charges, sales tax, charges for credit life insurance, opening and closing costs and setting fees, but shall include any amount which the customer is required to pay as a deposit to the Perpetual Care Fund, described in Section ~~163~~ 7103 of this title. On sales of burial spaces wherein discounts or free spaces are granted to the customer by the cemetery, the purchase price shall be the fair market value or the normal selling price of that particular type of burial space as sold by the cemetery;

4. "Financial institution" means a federally insured bank or savings and loan authorized to exercise trust powers or a trust company that is authorized to do business in this state;

5. "Income", except as provided in subsection D of Section ~~163~~ 7103 of this title, means the return derived from the principal amount;

6. "Insurance Commissioner" or "Commissioner" means the Insurance Commissioner of the State of Oklahoma; and

7. "Designated agent" means one or more individuals designated by the cemetery owner and whom the owner has acknowledged as having fiduciary responsibilities under the Perpetual Care Fund Act.

SECTION 18. AMENDATORY 36 O.S. 2011, Section 7121, is amended to read as follows:

Section 7121. Sections ~~301~~ 7121 through ~~316~~ 7135 of this title~~, as recodified by this act,~~ shall be known and may be cited as the "Cemetery Merchandise Trust Act".

SECTION 19. AMENDATORY 36 O.S. 2011, Section 7123, is amended to read as follows:

Section 7123. A. Any organization which shall accept money or anything of value for cemetery merchandise pursuant to a prepaid cemetery merchandise contract shall first obtain a permit from the Insurance Commissioner authorizing the transaction of this type of business before entering into the contract. It shall be unlawful to sell any prepaid cemetery merchandise unless the organization holds a valid, current permit at the time the contract is made. The organization shall not be entitled to enforce a contract made in violation of the Cemetery Merchandise Trust Act, but the purchaser, or the heirs or legal representative of the purchaser, shall be entitled to recover triple the amounts paid to the organization with interest thereon at the rate of six percent (6%) per annum under any contract made in violation of this act.

B. An organization with any prepaid cemetery merchandise contracts subject to the provisions of the Cemetery Merchandise Trust Act shall apply for, and obtain, approval of the Commissioner before transferring or conveying in any manner the cemetery, its obligations or both the cemetery and its obligations under the prepaid cemetery merchandise contracts. The application shall be accompanied by a fee equal to that required under Section ~~305~~ 7125 of this title and shall include such information as the Commissioner may prescribe. The Commissioner shall not approve any such transfer or conveyance until the applicant has provided sufficient evidence that a cemetery merchandise trust fund equal to the minimum funding requirement is maintained pursuant to Section ~~306~~ 7126 of this title or the applicant has obtained a surety bond pursuant to the provisions of Section ~~307~~ 7127 of this title.

SECTION 20. AMENDATORY 36 O.S. 2011, Section 7124, is amended to read as follows:

Section 7124. A. The Cemetery Merchandise Trust Act, Sections ~~301~~ 7121 through ~~316~~ 7135 of this title, shall be administered by the Insurance Commissioner. The Commissioner is authorized to promulgate reasonable rules concerning the keeping and inspection of records, the filing of contracts and reports, investments of and handling of the trust funds, and all other matters concerning the orderly administration and implementation of the Cemetery Merchandise Trust Act. All prepaid cemetery merchandise contracts

shall be in writing, and no contract form created after ~~the effective date of this act~~ July 1, 2010, shall be used without first being submitted to, and approved by, the Commissioner.

B. An organization aggrieved by an action or order of the Commissioner may appeal the action or order to the Oklahoma Insurance Department in accordance with Article II of the Administrative Procedures Act.

C. The provisions of the Cemetery Merchandise Trust Act shall not be applicable to any organization that has obtained a permit pursuant to Section 6121 of ~~Title 36 of the Oklahoma Statutes~~ this title if the organization is in compliance with the provisions of Sections 6121 through 6136.18 of ~~Title 36 of the Oklahoma Statutes~~ this title with respect to items that are considered cemetery merchandise pursuant to the Cemetery Merchandise Trust Act.

D. Unless sold pursuant to a permit issued under Section 6121 of ~~Title 36 of the Oklahoma Statutes~~ this title, no organization in Oklahoma may sell, in advance of actual need, the services of opening or closing a burial space, as defined in Section ~~162~~ 7102 of this title, unless the organization deposits in trust no less than sixty-five percent (65%) of the principal amount of the services sold, or maintains a surety bond for the full principal amount of the services sold. Any contracts for services sold before July 1, 2010, remain enforceable by the purchaser against the seller.

SECTION 21. AMENDATORY 36 O.S. 2011, Section 7125, is amended to read as follows:

Section 7125. A. Each organization desiring to accept money or anything of value for prepaid cemetery merchandise shall file an application for a permit with the Insurance Commissioner, and shall at the time of filing the application pay one initial filing fee of Two Hundred Dollars ($200.00). The Commissioner shall issue a permit upon the receipt of the application and payment of the filing fee, and upon making a finding that the applicant has complied with the rules as may be established pursuant to the Cemetery Merchandise Trust Act by the Commissioner. All applications shall be signed by the organization requesting the permit, and shall contain a statement that the applicant will comply with all the requirements as established pursuant to the Cemetery Merchandise Trust Act. All permits shall expire on ~~the 15th day of~~ March 15 of the year following the year the permit is first issued, unless renewed. Permits shall be renewed for a period not to exceed the succeeding March 15 upon the payment of a renewal fee of Two Hundred Dollars ($200.00). Late application for renewal of a permit shall require a fee of double the renewal fee. No application for renewal of a permit shall be accepted after ~~March~~ April 15 of each year. Late applicants shall be required to reapply as if they were a new applicant, and pay an application fee equal to an amount that is

double the renewal fee in addition to any fines that may have been imposed with respect to an expired permit.

B. The Commissioner may cancel a permit or refuse to issue a permit or refuse to issue a renewal of a permit for failure to comply with any provisions of the Cemetery Merchandise Trust Act or any rules promulgated thereto by the Commissioner, after reasonable notice to the permittee and opportunity for hearing before the Commissioner in accordance with Article II of the Administrative Procedures Act.

C. No organization shall be entitled to a new permit after cancellation, or refusal by the Commissioner to renew a permit, but shall thereafter be issued a new permit upon satisfactory proof of compliance with the Cemetery Merchandise Trust Act.

D. Any person or organization aggrieved by the actions of the Commissioner may appeal therefrom to the Oklahoma Insurance Department as provided by the Administrative Procedures Act.

SECTION 22. AMENDATORY 36 O.S. 2011, Section 7127, is amended to read as follows:

Section 7127. A. As an alternative to the trust requirements of Section ~~306~~ 7126 of this title, an organization may purchase a surety bond in an amount not less than the minimum funding requirement.

B. The surety bond shall be made payable to the State of Oklahoma for the benefit of the Insurance Commissioner and all

purchasers of prepaid cemetery merchandise. The bond shall be approved by the Commissioner.

C. The Commissioner may establish by rule the requirements and guidelines for the surety bonds required pursuant to this section.

D. A surety bond maintained under the provisions of this section or Section ~~304~~ 7124 of this title may be cancelled or terminated by the surety only by providing notice to the Commissioner, no later than ninety (90) days before the effective date of the cancellation or termination. Notwithstanding the cancellation, termination, or expiration of a bond maintained under this section or Section ~~304~~ 7124 of this title, the surety shall remain liable for obligations arising during the term of the bond and prior to the termination, cancellation or expiration.

SECTION 23. AMENDATORY 36 O.S. 2011, Section 7128, is amended to read as follows:

Section 7128. Each organization shall file an annual report with the Insurance Commissioner on or before March 15 of each year in a form as the Commissioner may require, showing the name of the financial institution holding the cemetery merchandise trust fund and the amount of the trust fund under each contract on the preceding December 31, and also showing the method of determination of the wholesale costs made pursuant to Section ~~306~~ 7126 of this title. The total required deposits to the cemetery merchandise trust fund during the year shall also be reported. Each cemetery is

responsible for maintaining satisfactory books and records, which will adequately justify all information contained in the annual report required by this section. Any organization which has discontinued the sale of prepaid cemetery merchandise, but which still has funds deposited in a cemetery merchandise trust fund or surety, shall not be required to obtain a renewal of its permit, but it shall continue to make annual reports to the Commissioner until all the funds have been disbursed pursuant to the Cemetery Merchandise Trust Act. A filing fee of Two Hundred Dollars ($200.00) shall accompany each report. If any officer of any organization fails or refuses to file an annual report, or fails or refuses to cause it to be filed within thirty (30) days after the organization has been notified by the Commissioner that the report is due and has not been received, the officer shall be guilty of a misdemeanor and shall be punished as prescribed in Section ~~315~~ 7134 of this title.

SECTION 24. AMENDATORY 36 O.S. 2011, Section 7129, is amended to read as follows:

Section 7129. The Insurance Commissioner may examine each organization so as to approve the determination by the organization of the wholesale costs made pursuant to Section ~~306~~ 7126 of this title. The examination shall be conducted pursuant to Sections 309.1 through 309.7 of Title 36 of ~~the Oklahoma Statutes~~ this title and the cost of the examination shall be paid by the cemetery owner.

The cost of the examination shall be billed directly to the cemetery owner by the examiner.

SECTION 25. AMENDATORY 40 O.S. 2011, Section 500, is amended to read as follows:

Section 500. A. It shall be unlawful for an employer to:

1. Discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a nonsmoker or smokes or uses tobacco products during nonworking hours; or

2. Require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours.

B. Nothing in this section shall prohibit an employer from offering incentives to an employee to participate in wellness programs, including but not limited to smoking cessation programs, in conjunction with the employer providing the employee health insurance coverage.

SECTION 26. REPEALER 36 O.S. 2011, Sections 1657 and 6821, are hereby repealed.

SECTION 27. This act shall become effective November 1, 2013.

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