

1 **SENATE FLOOR VERSION**

2 February 7, 2013

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 911

By: Brown of the Senate

and

Mulready of the House

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9 An Act relating to insurance; amending 36 O.S. 2011,
10 Section 307, which relates to the duties of the
11 insurance commissioner, clarifying responsibilities
12 of commissioner; amending 36 O.S. 2011, Section 607,
13 which relates to qualifications to transact insurance
14 in Oklahoma, exempting Native American tribes from
15 certain prohibition; amending 36 O.S. 2011, Section
16 1464, which relates to requirements for licensure as
17 life or accident and health insurance broker,
18 clarifying who may be licensed; deleting provision
19 requiring applicants to provide certain surety bond;
20 updating statutory reference; amending 36 O.S. 2011,
21 Section 1524, which relates to the definition of a
22 Company Action Level Event under the Risk-Based
23 Capital For Insurers Act, modifying definition to
24 include fraternal benefit societies; amending 36 O.S.
2011, Section 1651, which relates to subsidiary of
insurers definitions, correcting outline format;
clarifying language; updating statutory reference;
defining "Enterprise risk"; amending 36 O.S. 2011,
Section 1654, which relates to registration of
insurers; correcting outline format; clarifying
language; updating statutory reference; requiring
filing of an annual enterprise risk report; amending
36 O.S. 2011, Section 1657, which relates to
confidential treatment; declaring certain documents
and materials in the possession of the Commissioner
to be confidential; exempting certain information
from Open Records Act; providing permissible usage of
certain confidential information; requiring written
consent for public disclosure of certain information;

1 allowing for disclosure of certain information by the
2 Commissioner when deemed appropriate; providing the
3 Commissioner or others in possession of certain
4 confidential information shall not testify in any
5 civil action; allowing Commissioner to share
6 confidential information certain entities upon
7 obtaining written agreement to maintain
8 confidentiality; allowing the Commissioner to share
9 confidential information with Commissioners of other
10 states with substantially similar statutes; allowing
11 the Commissioner to accept confidential information
12 from certain entities; requiring the Commissioner to
13 enter written agreement with NAIC concerning sharing
14 of confidential information; specifying contents of
15 required agreement; providing that sharing of
16 confidential information shall not constitute
17 delegation of duties; providing that sharing of
18 certain confidential information shall not constitute
19 a waiver of privilege; declaring certain information
20 confidential; exempting from Oklahoma Open Records
21 Act; prohibiting certain information from being
22 obtained by subpoena; declaring certain confidential
23 information inadmissible evidence in civil action;
24 amending 36 O.S. 2011, Section 4030.9, which relates
to optional maturity dates for annuity contracts;
providing optional method of determining maturity
date of certain annuities; amending 36 O.S. 2011,
Sections 6123, 6125 and 6125.2, which relate to
prepaid funeral contracts; increasing the amount of
time recipients of monies from a prepaid funeral are
required to retain certain files; extending the time
period a certain statement shall be maintained by
certain organization; increasing the number of years
certain price lists shall be maintained; amending 36
O.S. 2011, Section 6217, as last amended by Section
14, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2012,
6217), which relates to Insurance Adjusters Licensing
Act; increasing the minimum number of hours certain
continuing education program curriculum shall
contain; amending 36 O.S. 2011, Sections 6515, which
relates to employee wellness programs; allowing for
incentives; amending 36 O.S. 2011, Sections 7101 and
7102, which relate to Perpetual Care Fund Act;
updating statutory references; amending 36 O.S. 2011,
Sections 7121, 7123, 7124, 7125, 7127, 7128 and 7129,
which relate to Cemetery Merchandise Trust Act;
updating statutory references; modifying date for

1 acceptance of certain renewal permit; amending 40
2 O.S. 2011, Section 500, which relates to conditions
3 of employment; allowing an employer to incentivize
4 employees to participate in certain wellness programs
5 in conjunction with employer provided health
6 insurance; repealing 36 O.S. 2011, Section 6821,
7 which relates to medical professional liability rate
8 setting; and providing an effective date.

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

10 SECTION 1. AMENDATORY 36 O.S. 2011, Section 307, is
11 amended to read as follows:

12 Section 307. The Insurance Commissioner shall be charged with
13 the duty of administration and enforcement of the provisions of the
14 Oklahoma Insurance Code and of any requirements placed on an
15 insurance company ~~pursuant to subsection I of section 1111 of Title~~
16 ~~47 of the Oklahoma Statutes~~ by law or rule. The Insurance
17 Commissioner shall have jurisdiction over complaints against all
18 persons engaged in the business of insurance, and shall hear all
19 matters either in person, by authorized disinterested employees, or
20 by hearing examiners appointed by the Commissioner for that purpose.
21 It shall be the duty of the Insurance Commissioner to file and
22 safely keep all books and papers required by law to be filed with
23 the Insurance Department, and to keep and preserve in permanent form
24 a full record of proceedings, including a concise statement of the
conditions of such insurers and other entities reported and examined
by the Department and its examiners. The Commissioner shall,

1 annually, at the earliest practicable date after returns are
2 received from the several authorized insurers and other
3 organizations, make a report to the Governor of the State of
4 Oklahoma of the affairs of the Office of the Insurance Commissioner,
5 which report shall contain a tabular statement and synopsis of the
6 several statements, as accepted by the Insurance Commissioner, which
7 shall include with respect to each insurance company the admitted
8 assets, liabilities except capital, capital and surplus, Oklahoma
9 premium income, amount of claims paid in Oklahoma, and such other
10 matters as may be of benefit to the public. The Commissioner may
11 educate consumers and make recommendations regarding the subject of
12 insurance in this state, and shall set forth in a statement the
13 various sums received and disbursed by the Department, from and to
14 whom and for what purpose. Such report shall be published by and
15 subject to the order of the said Insurance Commissioner. The
16 Insurance Commissioner shall, upon retiring from office, deliver to
17 the qualified successor all furniture, records, papers and property
18 of the office.

19 SECTION 2. AMENDATORY 36 O.S. 2011, Section 607, is
20 amended to read as follows:

21 Section 607. A. To qualify for and hold authority to transact
22 insurance in Oklahoma an insurer must be otherwise in compliance
23 with the provisions of this Code and with its charter powers, and
24 must be an incorporated stock insurer, an incorporated mutual

1 insurer, a mutual benefit association, a nonprofit hospital service
2 and medical indemnity corporation, a farmers mutual fire insurance
3 association, a Lloyd's association or a reciprocal insurer, of the
4 same general type as may be formed as a domestic insurer under this
5 Code; except, that no foreign or alien insurer shall be authorized
6 to transact insurance in Oklahoma which does not maintain reserves
7 as required by Article 15 (Assets and Liabilities) applicable to the
8 kind or kinds of insurance transacted by such insurer.

9 B. No certificate of authority or license to transact any kind
10 of insurance business in this state shall be issued, renewed or
11 continued in effect, to any domestic, foreign or alien insurance
12 company or other insurance entity which is owned or financially
13 controlled in whole or in part by another state of the United
14 States, or by a foreign government, or by any political subdivision
15 of either, or which is an agency of any such state, government or
16 subdivision, except federally recognized Native American tribes.

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

19 Section 1464. A. 1. To be licensed as a resident life or
20 accident and health insurance broker, an individual or legal entity
21 shall have been a licensed resident ~~agent or agency~~ producer in this
22 state continuously for at least two (2) years immediately prior to
23 application and such ~~agent's~~ producer's license shall remain in
24 effect in order to maintain the broker's license. A nonresident

1 life or accident and health insurance broker applicant may receive a
2 license in this state if they are licensed and in good standing in
3 their home state, and if the home state of the applicant awards
4 nonresident licenses to residents of this state on the same basis.

5 2. Any applicant for a broker's license shall have no Oklahoma
6 Insurance Code violations or record with the Insurance Commissioner
7 or an insurance regulatory body of another state and shall not have
8 been convicted, or pleaded guilty or nolo contendere to any felony
9 or to a misdemeanor involving moral turpitude or dishonesty.

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

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

1 health insurance agents or brokers in an amount of not less than
2 Five Hundred Thousand Dollars (\$500,000.00) annual aggregate for all
3 claims made during the policy period.

4 2. Such policy shall be issued by an insurance company
5 authorized to do business in this state, shall be continuous in
6 form, and shall provide coverage acceptable to the Commissioner for
7 errors and omissions of the life or accident and health insurance
8 broker. The policy carrier shall notify the Commissioner of any
9 lapse or termination of errors and omissions coverage.

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

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

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

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

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

13 ~~D.~~ Life or accident and health insurance brokers shall be
14 subject to the same violations, fines, and penalties as stated in
15 Section ~~1428~~ 1435.13 of this title. Violations of the provisions of
16 the Oklahoma Life, Accident and Health Insurance Broker Act may
17 result, after notice and hearing, in censure, suspension, or
18 revocation of license or a civil penalty of not less than One
19 Hundred Dollars (\$100.00), nor more than One Thousand Dollars
20 (\$1,000.00), or a combination thereof for each occurrence.

21 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1524, is
22 amended to read as follows:

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

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

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

6 b. if a life or health insurer, or fraternal benefit
7 society as defined in Section 2701.1 of this title,
8 the insurer or fraternal benefit society has Total
9 Adjusted Capital which is greater than or equal to its
10 Company Action Level RBC but less than the product of
11 its Authorized Control Level RBC and ~~2.5~~ 3 and has a
12 negative trend, or

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

20 2. The notification by the Insurance Commissioner to the
21 insurer of an Adjusted RBC Report that indicates an event described
22 in paragraph 1 of this subsection, provided the insurer does not
23 challenge the Adjusted RBC Report under Section 1528 of this title;
24 or

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

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

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

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

15 3. Projections of the insurer's financial results in the
16 current year and at least the four (4) succeeding years, both in the
17 absence of proposed corrective actions and giving effect to the
18 proposed corrective actions, including projections of statutory
19 operating income, net income, or capital and surplus. Unless the
20 Commissioner otherwise directs, the projections for both new and
21 renewal business shall include separate projections for each major
22 line of business and separately identify each significant income,
23 expense and benefit component;

24

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

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

8 C. The RBC Plan shall be submitted:

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

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

15 D. Within sixty (60) days after the submission by an insurer of
16 an RBC Plan to the Commissioner, the Commissioner shall notify the
17 insurer whether the RBC Plan shall be implemented or is, in the
18 judgment of the Commissioner, unsatisfactory. If the Commissioner
19 determines the RBC Plan is unsatisfactory, the notification to the
20 insurer shall set forth the reasons for the determination, and may
21 set forth proposed revisions which will render the RBC Plan
22 satisfactory, in the judgment of the Commissioner. Upon
23 notification from the Commissioner, the insurer shall prepare a
24 Revised RBC Plan, which may incorporate by reference any revisions

1 proposed by the Commissioner, and shall submit the Revised RBC Plan
2 to the Commissioner:

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

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

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

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

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

22 2. The insurance commissioner of that state has notified the
23 insurer of its request for the filing in writing. If such a request
24

1 is made, the insurer shall file a copy of the RBC Plan or Revised
2 RBC Plan in that state no later than the later of:

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

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

8 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1651, is
9 amended to read as follows:

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

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

17 ~~(b) Commissioner.~~ 2. The term "Commissioner" shall mean the
18 Insurance Commissioner, ~~his~~ deputies of the Commissioner, or the
19 Insurance Department, as appropriate ~~;~~;

20 ~~(c) Control.~~ 3. The term "control" (including the terms
21 "controlling", "controlled by" and "under common control with")
22 means the possession, direct or indirect, of the power to direct or
23 cause the direction of the management and policies of a person,
24 whether through the ownership of voting securities, by contract or

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

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

23
24

1 ~~(d) Insurance Holding Company System.~~ 5. An "insurance holding
2 company system" consists of two or more affiliated persons, one or
3 more of which is an insurer-;

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

10 ~~(f) Person.~~ 7. A "person" is an individual, a corporation, a
11 partnership, an association, a joint stock company, a trust, an
12 unincorporated organization, any similar entity or any combination
13 of the foregoing acting in concert, but shall not include any
14 securities broker performing no more than the usual and customary
15 broker's function-;

16 ~~(g) Securityholder.~~ 8. A "securityholder" of a specified person
17 is one who owns any security of such person, including common stock,
18 preferred stock, debt obligations, and any other security
19 convertible into or evidencing the right to acquire any of the
20 foregoing-;

21 ~~(h) Subsidiary.~~ 9. A "subsidiary" of a specified person is an
22 affiliate controlled by such person directly, or indirectly, through
23 one or more intermediaries-; and

1 ~~(i) Voting Security.~~ 10. The term "voting security" shall
2 include any security convertible into or evidencing a right to
3 acquire a voting security.

4 SECTION 6. AMENDATORY 36 O.S. 2011, Section 1654, is
5 amended to read as follows:

6 Section 1654. ~~(a) Registration.~~ A. Every insurer which is
7 authorized to do business in this state and which is a member of an
8 insurance holding company system and every individual who controls
9 an insurer shall annually register with the Insurance Commissioner,
10 except a foreign insurer subject to disclosure requirements and
11 standards adopted by statute or regulation in the jurisdiction of
12 its domicile which are substantially similar to those contained in
13 this section. Any insurer which is subject to registration under
14 this section shall register thirty (30) days after it becomes
15 subject to registration, unless the Commissioner for good cause
16 shown extends the time for registration, and then within such
17 extended time. The Commissioner may require any authorized insurer
18 which is a member of a holding company system which is not subject
19 to registration under this section to furnish a copy to the
20 Commissioner of the registration statement or other information
21 filed by such insurance company with the insurance regulatory
22 authority of domiciliary jurisdiction.

23 ~~(b) Information and Form Required.~~ B. Every insurer subject to
24 registration shall file a registration statement on a form

1 prescribed by the National Association of Insurance Commissioners,
2 which shall contain current information about:

3 ~~(i) the~~

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

7 ~~(ii) the~~

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

10 ~~(iii) the~~

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

14 ~~(1)~~

15 a. loans, other investments or purchases, sales or
16 exchanges of securities of the affiliates by the
17 insurer or of the insurer by its affiliates~~†~~†

18 ~~(2)~~

19 b. purchases, sales or exchanges of assets~~†~~†

20 ~~(3)~~

21 c. transactions not in the ordinary course of business~~†~~†

22 ~~(4)~~

23 d. guarantees or undertakings for the benefit of an
24 affiliate which result in an actual contingent

1 exposure of the insurer's assets to liability, other
2 than insurance contracts entered into in the ordinary
3 course of the insurer's business~~†~~l

4 ~~(5)~~

5 e. all management and service contracts and all cost-
6 sharing arrangements~~†~~l

7 ~~(6)~~

8 f. reinsurance agreements covering all or substantially
9 all of one or more lines of insurance of the ceding
10 company~~†~~l

11 ~~(7)~~

12 g. dividends and other distributions to shareholders~~†~~l
13 and

14 ~~(8)~~

15 h. consolidated tax allocation agreements~~†~~i;

16 ~~(iv) other~~

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

20 ~~(v) any~~

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

24

1 ~~(c) Materiality.~~ C. No information need be disclosed on the
2 registration statement filed pursuant to subsection ~~(b)~~ B of this
3 section if such information is not material for the purposes of this
4 section. Unless the Commissioner by rule, regulation or order
5 provides otherwise, sales purchases, exchanges, loans or extensions
6 of credit, or investments, involving one-half of one percent (1/2 of
7 1%) or less of an insurer's admitted assets as of ~~the 31st day of~~
8 December 31 next preceding shall not be deemed material for purposes
9 of this section.

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

20 ~~(e) Termination of Registration.~~ E. The Commissioner shall
21 terminate the registration of any insurer which demonstrates that it
22 no longer is a member of an insurance holding company system.

23 ~~(f) Consolidated Filing.~~ F. The Commissioner may require two or
24 more affiliated insurers subject to registration hereunder to file a

1 consolidated registration statement or consolidated reports amending
2 their consolidated registration statement, so long as such
3 consolidated filings correctly reflect the condition of and
4 transactions between such persons.

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

12 ~~(h) Exemptions.~~ H. The provisions of this section shall not
13 apply to any insurer, information or transaction if and to the
14 extent that the Commissioner by rule, regulation, or order shall
15 exempt the same from the provisions of this section.

16 ~~(i) Disclaimer.~~ I. Any person may file with the Commissioner a
17 disclaimer of affiliation with any authorized insurer or such a
18 disclaimer may be filed by such insurer or any member of an
19 insurance holding company system. The disclaimer shall fully
20 disclose all material relationships and bases for affiliation
21 between such person and such insurer as well as the basis for
22 disclaiming such affiliation. After a disclaimer has been filed,
23 the insurer shall be relieved of any duty to register or report
24 under this section which may arise out of the insurer's relationship

1 with such person unless and until the Commissioner disallows such a
2 disclaimer. The Commissioner shall disallow such a disclaimer only
3 after furnishing all parties in interest with notice and opportunity
4 to be heard and after making specific findings of fact to support
5 such disallowance.

6 ~~(j) Summary of Registration Statement.~~ J. All registration
7 statements shall contain a summary outlining all items in the
8 current registration statement representing changes from the prior
9 registration statement.

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

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

1 ~~all or any part thereof in such manner as he may deem appropriate.~~
2 ~~Provided that said information, documents and copies shall be~~
3 ~~subject to subpoena.~~

4 ~~The provisions of this section shall not prohibit an~~
5 ~~investigating committee, duly authorized by the Senate or House of~~
6 ~~Representatives, from proceeding to carry out the instructions given~~
7 ~~the committee, and all information requested by said committee shall~~
8 ~~be duly furnished. Information received by such committee or~~
9 ~~legislative body shall receive such information in a confidential~~
10 ~~nature, until such time as it has determined that the public~~
11 ~~interest would be served by the release and/or publication thereof.~~

12 A. Documents, materials or other information in the possession
13 or control of the Insurance Department that are obtained by or
14 disclosed to the Commissioner or any other person in the course of
15 an examination or investigation conducted pursuant to Section 1656
16 of this title and all information reported pursuant to paragraph 10
17 of subsection B of Sections 1653, 1654 and 1655 of this title shall
18 be confidential by law and privileged, and shall not be subject to
19 the Oklahoma Open Records Act. Such materials or information
20 disclosed shall not be subject to subpoena, and shall not be subject
21 to discovery or admissible in evidence in any private civil action.
22 However, the Commissioner is authorized to use such documents,
23 materials or other information in the furtherance of any regulatory
24 or legal action brought as part of the Commissioner's official

1 duties. Except as provided by this subsection the Commissioner
2 shall not disclose the documents, materials or other information to
3 the public without the prior written consent of the insurer to which
4 it pertains unless the Commissioner, after giving the insurer and
5 its affected affiliates notice and opportunity to be heard,
6 determines that the interest of the policyholders, shareholders or
7 the public will be served by the publication thereof, in which event
8 the Commissioner may publish all or any part in such manner as may
9 be deemed appropriate.

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

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

19 1. May share documents, materials or other information,
20 including the confidential and privileged documents, materials or
21 information subject to subsection A of this section, with other
22 state, federal and international regulatory agencies, with the
23 National Association of Insurance Commissioners (NAIC) and its
24 affiliates and subsidiaries, and with state, federal, and

1 international law enforcement authorities,; provided that the
2 recipient agrees in writing to maintain the confidentiality and
3 privileged status of the document, material or other information,
4 and has verified in writing the legal authority to maintain
5 confidentiality;

6 2. May, Notwithstanding paragraph 1 of this subsection, share
7 confidential and privileged documents, material, or information
8 reported pursuant to subsection M of Section 1654 of this title,
9 with commissioners of states having statues or regulations
10 substantially similar to subsection A of this section and who have
11 agreed in writing not to disclose such information;

12 3. May receive documents, materials or information, including
13 otherwise confidential and privileged documents, materials or
14 information from the NAIC its affiliates and subsidiaries and from
15 regulatory and law enforcement officials of foreign or domestic
16 jurisdictions, and shall maintain as confidential or privileged any
17 document, material or information received with notice or the
18 understanding that it is confidential or privileged under the laws
19 of the jurisdiction that is the source of the document, material or
20 information; and

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

24

- 1 a. specify procedures and protocols regarding the
2 confidentiality and security of information shared
3 with the NAIC and its affiliates and subsidiaries
4 pursuant to this act, including procedures and
5 protocols for sharing by the NAIC with other state,
6 federal or international regulators,
- 7 b. specify that ownership of information shared with the
8 NAIC and its affiliates and subsidiaries pursuant to
9 this section remains with the Commissioner and the
10 NAIC's use of the information is subject to the
11 direction of the Commissioner,
- 12 c. require prompt notice to be given to an insurer whose
13 confidential information in the possession of the NAIC
14 pursuant to this section is subject to a request or
15 subpoena to the NAIC for disclosure or production, and
- 16 d. require the NAIC and its affiliates and subsidiaries
17 to consent to intervention by an insurer in any
18 judicial or administrative action in which the NAIC
19 and its affiliates and subsidiaries may be required to
20 disclose confidential information about the insurer
21 shared with the NAIC and its affiliates and
22 subsidiaries pursuant to this section.

23 D. The sharing of information by the Commissioner pursuant to
24 this section shall not constitute a delegation of regulatory

1 authority or rulemaking, and the Commissioner is solely responsible
2 for the administration, execution and enforcement of the provisions
3 of this section.

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

9 F. Documents, materials or other information in the possession
10 or control of the NAIC pursuant to this section shall be
11 confidential by law and privileged, shall not be subject to the
12 Oklahoma Open Records Act, shall not be subject to subpoena, and
13 shall not be subject to discovery or admissible in evidence in any
14 private civil action.

15 SECTION 8. AMENDATORY 36 O.S. 2011, Section 4030.9, is
16 amended to read as follows:

17 Section 4030.9. For the purpose of determining the benefits
18 calculated under Sections 4030.7 and 4030.8 of this title, ~~in the~~
19 ~~case of annuity contracts under which an election may be made to~~
20 ~~have annuity payments commence at optional maturity dates for~~
21 annuity contracts issued on or after November 1, 2013, the maturity
22 date shall be deemed to be the latest date for which election shall
23 be permitted by the contract, but shall not be deemed to be later
24 than the anniversary of the contract next following the annuitant's

1 seventieth birthday or the tenth anniversary of the contract,
2 whichever is later except that if surrender charge scales are
3 measured from the date of each premium payment, the maturity date
4 shall be deemed to be the latest date for which election shall be
5 permitted by the contract, but shall not be deemed to be later than
6 the anniversary of the contract next following the annuitant's
7 seventieth birthday or the tenth anniversary of the payment
8 whichever is later.

9 SECTION 9. AMENDATORY 36 O.S. 2011, Section 6123, is
10 amended to read as follows:

11 Section 6123. Sections 6121 through 6136.18 of this title shall
12 be administered by the Insurance Commissioner. The Insurance
13 Commissioner is authorized to prescribe reasonable rules and
14 regulations concerning keeping and inspection of records, the filing
15 of contracts and reports, and all other matters incidental to the
16 orderly administration of this law; and the Insurance Commissioner
17 shall first approve all forms for sale contracts for prepaid funeral
18 benefits. All contracts for prepaid funeral benefits shall be in
19 writing and no contract form shall be used without first being
20 approved by the Insurance Commissioner. On any prepaid funeral when
21 the person dies and the funeral is performed, and the money is drawn
22 down, any organization receiving the monies so drawn down shall
23 retain the itemized statement of charges in the files of the
24 organization for at least ~~three (3)~~ six (6) years.

1 SECTION 10. AMENDATORY 36 O.S. 2011, Section 6125, is
2 amended to read as follows:

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

14 2. For outer enclosures at the option of the organization the
15 first thirty-five percent (35%) of the retail price of the outer
16 enclosures collected may be retained by the organization. The
17 remaining sixty-five percent (65%) of the retail price collected for
18 the outer enclosures shall be invested as otherwise provided by this
19 subsection pursuant to the provisions of contracts for prepaid
20 funeral benefits.

21 3. The funds required to be deposited pursuant to paragraphs 1
22 and 2 of this subsection shall be deposited within ten (10) days
23 after the collection of the funds and shall be held in a trust fund
24 in this state for the use, benefit, and protection of purchasers of

1 contracts for prepaid funeral benefits. Nothing contained within
2 this section shall be construed to prohibit an organization
3 authorized to accept prepaid funds from transferring the funds held
4 in trust from one trust depository to another if notice of the
5 transfer is given to the Insurance Commissioner within ten (10) days
6 before the transfer and the organization transferring the funds
7 remains the designated trustor. This subsection shall not affect
8 funds invested prior to November 1, 1988.

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

12 1. A contract for Specific and Described Funeral Merchandise
13 and Service at a Guaranteed Price. The provisions of this type of
14 contract shall provide that interest paid by the organization upon
15 monies deposited in trust shall be added to the principal and that
16 principal and interest shall become available for disbursement to
17 the organization upon the death of the beneficiary and if withdrawal
18 of monies occurs prior to death, the net value, plus the amount
19 withheld pursuant to paragraph 1 of subsection A of this section,
20 shall be paid to the purchaser. Net value of the contract for
21 purposes of this section shall be determined by adding the amount of
22 all principal paid in pursuant to the provisions of the contract
23 plus all interest payable pursuant to subsection D of this section
24 less taxes and administrative fees;

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

16 3. Notwithstanding the provisions of this section, at no time
17 shall the purchaser of a contract for Specific and Described Funeral
18 Merchandise and Service at a Guaranteed Price receive upon any
19 withdrawal or transfer a sum less than the original principal
20 collected; or

21 4. Notwithstanding the provisions of this section, at no time
22 shall the purchaser of a contract for Exact Funeral Merchandise and
23 Services to be Selected at Time of Death receive upon any full
24 withdrawal or transfer prior to death a sum less than the original

1 principal collected available at death, with the exception of those
2 accounts which bear principal reduced by previously made cash
3 withdrawals.

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

13 D. Funds deposited in trust pursuant to the provisions of
14 either type of contract authorized by the provisions of this section
15 shall earn for the account of the purchaser a rate of interest which
16 is not less than the minimum rate of interest offered by the
17 qualified investments specified in subsection A of this section to
18 the savings customers of the qualified investments having interest-
19 bearing accounts. The organization, in a nondiscriminatory manner,
20 may pay or accrue interest for the accounts of purchasers at any
21 rate greater than the minimum rate that the organization desires,
22 provided, however, that the organization may retain from the
23 interest, all interest incurred in excess of the minimum amount
24 payable pursuant to this subsection.

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

12 F. Following the death of a beneficiary for whom a contract has
13 been purchased, the organization shall prepare a statement,
14 acknowledged by the purchaser if the purchaser is not the
15 beneficiary, or by the personal representative of the purchaser if
16 the purchaser is the beneficiary, setting forth the use of the funds
17 deposited and the party to whom any unused funds were disbursed. A
18 copy of this statement shall remain in the files of the organization
19 for at least ~~three (3)~~ six (6) years and a copy shall be delivered
20 to the trust depository and the purchaser.

21 G. After thirty (30) days, a contract of either type authorized
22 by the provisions of this section may become irrevocable and not
23 subject to withdrawal prior to the death of the beneficiary if the
24 purchaser signs an election making the contract irrevocable. This

1 election shall not become effective until thirty (30) days after
2 signing the original contract.

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

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

19 J. Organizations contracting with purchasers for prepaid
20 funeral benefits pursuant to paragraphs 1 and 2 of subsection B of
21 this section shall be entitled to deduct from the principal and
22 interest allocable to the contracts an administrative fee which
23 shall not exceed the product of .001146 times the total contract
24

1 fund including accrued interest per month or any major portion
2 thereof.

3 K. No organization holding a permit issued pursuant to the
4 provisions of Sections 6121 and 6124 of this title shall accept any
5 funds except pursuant to the provisions of a contract for prepaid
6 funeral or burial benefits authorized by the provisions of Sections
7 6121 through 6136.18 of this title, and no organization shall accept
8 funds from a purchaser in excess of the contracted price of prepaid
9 funeral or burial benefits purchased.

10 L. Any organization which knowingly commits any of the acts set
11 forth in the first sentence of Section 6121 of this title without
12 first having obtained a permit to engage in the stated activity from
13 the Insurance Commissioner, or any organization which commits the
14 acts while knowingly operating with an invalid or expired permit,
15 upon conviction, shall be guilty of a misdemeanor. Each separate
16 act performed without a valid permit shall be deemed a separate
17 offense. The punishment upon conviction for the offense shall be a
18 fine not to exceed One Thousand Dollars (\$1,000.00) or imprisonment
19 in the county jail for not less than sixty (60) days nor more than
20 one (1) year, or both such fine and imprisonment.

21 SECTION 11. AMENDATORY 36 O.S. 2011, Section 6125.2, is
22 amended to read as follows:

23 Section 6125.2. A. Contracts for prepaid funeral benefits
24 provided for pursuant to Section 6125 of this title may be funded by

1 assignments of life insurance proceeds to the contracting
2 organization.

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

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

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

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

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

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

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

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

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

8 D. A violation of this section shall constitute a misdemeanor
9 and shall be punished by a fine of not less than One Hundred Dollars
10 (\$100.00) nor more than Five Hundred Dollars (\$500.00) or by
11 imprisonment in the county jail for not less than one (1) month nor
12 more than six (6) months, or by both such fine and imprisonment.

13 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6217, as
14 last amended by Section 14, Chapter 44, O.S.L. 2012 (36 O.S. Supp.
15 2012, Section 6217), is amended to read as follows:

16 Section 6217. A. All licenses issued pursuant to the
17 provisions of the Insurance Adjusters Licensing Act shall continue
18 in force not longer than twenty-four (24) months. The renewal dates
19 for the licenses may be staggered throughout the year by notifying
20 licensees in writing of the expiration and renewal date being
21 assigned to the licensees by the Insurance Commissioner and by
22 making appropriate adjustments in the biennial licensing fee.

23 B. Any licensee applying for renewal of a license as an
24 adjuster shall have completed not less than twenty-four (24) clock

1 hours of continuing insurance education, of which three (3) hours
2 shall be in ethics, within the previous twenty-four (24) months
3 prior to renewal of the license. The Insurance Commissioner shall
4 approve courses and providers of continuing education for insurance
5 adjusters as required by this section.

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

10 1. Employees of the Insurance Commissioner;

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

14 3. An independent service whose normal business activities
15 include the review and approval of continuing education courses and
16 providers. The Commissioner may negotiate agreements with such
17 independent service to review documents and other materials
18 submitted for approval of courses and providers and present the
19 Commissioner with its nonbinding recommendation. The Commissioner
20 may require such independent service to collect the fee charged by
21 the independent service for reviewing materials provided for review
22 directly from the course providers.

23 C. An adjuster who, during the time period prior to renewal,
24 participates in an approved professional designation program shall

1 be deemed to have met the biennial requirement for continuing
2 education. Each course in the curriculum for the program shall
3 total a minimum of ~~twenty (20)~~ twenty-four (24) hours. Each
4 approved professional designation program included in this section
5 shall be reviewed for quality and compliance every three (3) years
6 in accordance with standardized criteria promulgated by rule.
7 Continuation of approved status is contingent upon the findings of
8 the review. The list of professional designation programs approved
9 under this subsection shall be made available to producers and
10 providers annually.

11 D. The Insurance Department may promulgate rules providing that
12 courses or programs offered by professional associations shall
13 qualify for presumptive continuing education credit approval. The
14 rules shall include standardized criteria for reviewing the
15 professional associations' mission, membership, and other relevant
16 information, and shall provide a procedure for the Department to
17 disallow a presumptively approved course. Professional association
18 courses approved in accordance with this subsection shall be
19 reviewed every three (3) years to determine whether they continue to
20 qualify for continuing education credit.

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

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

15 2. The Commissioner may assess a civil penalty, after notice
16 and opportunity for hearing, against a continuing education provider
17 who fails to comply with the requirements of the Insurance Adjusters
18 Licensing Act, of not less than One Hundred Dollars (\$100.00) nor
19 more than Five Hundred Dollars (\$500.00), for each occurrence. The
20 civil penalty may be enforced in the same manner in which civil
21 judgments may be enforced.

22 G. Subject to the right of the Commissioner to suspend, revoke,
23 or refuse to renew a license of an adjuster, any such license may be
24 renewed by filing on the form prescribed by the Commissioner on or

1 before the expiration date a written request by or on behalf of the
2 licensee for such renewal and proof of completion of the continuing
3 education requirement set forth in subsection B of this section,
4 accompanied by payment of the renewal fee.

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

16 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6515, is
17 amended to read as follows:

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

21 1. The rate manual developed for use by a small employer
22 carrier shall be filed and approved by the Insurance Commissioner
23 prior to use. Any changes to the rate manual shall be filed and
24 approved by the Insurance Commissioner prior to use. Every filing

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

16 2. A small employer health benefit plan shall not be delivered
17 or issued for delivery unless the policy form or certificate form
18 can be expected to return to policyholders and certificate holders
19 in the form of aggregate benefits provided under the policy form or
20 certificate form at least sixty percent (60%) of the aggregate
21 amount of premiums earned. The rate of return shall be estimated
22 for the entire period for which rates are computed to provide
23 coverage. The rate of return shall be calculated on the basis of
24 incurred claims experience or incurred health care expenses where

1 coverage is provided by a health maintenance organization on a
2 service rather than reimbursement basis and earned premiums for the
3 period in accordance with accepted actuarial principles and
4 practices;

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

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

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

17 a. the percentage change in the new business premium rate
18 measured from the first day of the prior rating period
19 to the first day of the new rating period. In the
20 case of a health benefit plan into which the small
21 employer carrier is no longer enrolling new small
22 employers, the small employer carrier shall use the
23 percentage change in the base premium rate, provided
24 that the change does not exceed, on a percentage

1 basis, the change in the new business premium rate for
2 the most similar health benefit plan into which the
3 small employer carrier is actively enrolling new small
4 employers,

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

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

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

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

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

9 a. the percentage change in the new business premium rate
10 measured from the first day of the prior rating period
11 to the first day of the new rating period. In the
12 case of a health benefit plan into which the small
13 employer carrier is no longer enrolling new small
14 employers, the small employer carrier shall use the
15 percentage change in the base premium rate, provided
16 that the change does not exceed, on a percentage
17 basis, the change in the new business premium rate for
18 the most similar health benefit plan into which the
19 small employer carrier is actively enrolling new small
20 employers, and

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

1 9. Small employer carriers shall:

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

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

13 10. For the purposes of this subsection, a health benefit plan
14 that utilizes a restricted provider network shall not be considered
15 similar coverage to a health benefit plan that does not utilize such
16 a network, provided that utilization of the restricted provider
17 network results in substantial differences in claims costs;

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

22 a. assuring that differences in rates charged for health
23 benefit plans by small employer carriers are
24 reasonable and reflect objective differences in plan

1 design, not including differences due to claims
2 experience, health status or duration of coverage, and
3 b. prescribing the manner in which case characteristics
4 may be used by small employer carriers.

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

12 C. The Commissioner may suspend for a specified period the
13 application of paragraph 3 of subsection A of this section as to the
14 premium rates applicable to one or more small employers included
15 within a class of business of a small employer carrier for one or
16 more rating periods upon a filing by the small employer carrier and
17 a finding by the Commissioner either that the suspension is
18 reasonably necessary in light of the financial condition of the
19 small employer carrier or that the suspension would enhance the
20 efficiency and fairness of the marketplace for small employer health
21 insurance.

22 D. Nothing in the Small Employer Health Insurance Reform Act
23 shall prohibit a small employer carrier from including in premium
24 rate development an employer's bona fide wellness program for its

1 employees including, but not limited to, a tobacco cessation
2 program.

3 SECTION 14. AMENDATORY 36 O.S. 2011, Section 7101, is
4 amended to read as follows:

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

8 SECTION 15. AMENDATORY 36 O.S. 2011, Section 7102, is
9 amended to read as follows:

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

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

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

17 3. "Purchase price" means the gross dollar amount the customer
18 shall pay the cemetery under a contractual agreement between the two
19 to exchange ownership of, or rights to, certain burial spaces.

20 Purchase price shall not include finance charges, sales tax, charges
21 for credit life insurance, opening and closing costs and setting
22 fees, but shall include any amount which the customer is required to
23 pay as a deposit to the Perpetual Care Fund, described in Section
24 ~~163~~ 7103 of this title. On sales of burial spaces wherein discounts

1 or free spaces are granted to the customer by the cemetery, the
2 purchase price shall be the fair market value or the normal selling
3 price of that particular type of burial space as sold by the
4 cemetery;

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

8 5. "Income", except as provided in subsection D of Section ~~163~~
9 7103 of this title, means the return derived from the principal
10 amount;

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

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

16 SECTION 16. AMENDATORY 36 O.S. 2011, Section 7121, is
17 amended to read as follows:

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

21 SECTION 17. AMENDATORY 36 O.S. 2011, Section 7123, is
22 amended to read as follows:

23 Section 7123. A. Any organization which shall accept money or
24 anything of value for cemetery merchandise pursuant to a prepaid

1 cemetery merchandise contract shall first obtain a permit from the
2 Insurance Commissioner authorizing the transaction of this type of
3 business before entering into the contract. It shall be unlawful to
4 sell any prepaid cemetery merchandise unless the organization holds
5 a valid, current permit at the time the contract is made. The
6 organization shall not be entitled to enforce a contract made in
7 violation of the Cemetery Merchandise Trust Act, but the purchaser,
8 or the heirs or legal representative of the purchaser, shall be
9 entitled to recover triple the amounts paid to the organization with
10 interest thereon at the rate of six percent (6%) per annum under any
11 contract made in violation of this act.

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

24

1 or the applicant has obtained a surety bond pursuant to the
2 provisions of Section ~~307~~ 7127 of this title.

3 SECTION 18. AMENDATORY 36 O.S. 2011, Section 7124, is
4 amended to read as follows:

5 Section 7124. A. The Cemetery Merchandise Trust Act, ~~Sections~~
6 ~~301 through 316 of this title,~~ shall be administered by the
7 Insurance Commissioner. The Commissioner is authorized to
8 promulgate reasonable rules concerning the keeping and inspection of
9 records, the filing of contracts and reports, investments of and
10 handling of the trust funds, and all other matters concerning the
11 orderly administration and implementation of the Cemetery
12 Merchandise Trust Act. All prepaid cemetery merchandise contracts
13 shall be in writing, and no contract form created after the
14 effective date of this act shall be used without first being
15 submitted to, and approved by, the Commissioner.

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

20 C. The provisions of the Cemetery Merchandise Trust Act shall
21 not be applicable to any organization that has obtained a permit
22 pursuant to Section 6121 of ~~Title 36 of the Oklahoma Statutes~~ this
23 title if the organization is in compliance with the provisions of
24 Sections 6121 through 6136.18 of ~~Title 36 of the Oklahoma Statutes~~

1 this title with respect to items that are considered cemetery
2 merchandise pursuant to the Cemetery Merchandise Trust Act.

3 D. Unless sold pursuant to a permit issued under Section 6121
4 of ~~Title 36 of the Oklahoma Statutes~~ this title, no organization in
5 Oklahoma may sell, in advance of actual need, the services of
6 opening or closing a burial space, as defined in Section ~~162~~ 7102 of
7 this title, unless the organization deposits in trust no less than
8 sixty-five percent (65%) of the principal amount of the services
9 sold, or maintains a surety bond for the full principal amount of
10 the services sold. Any contracts for services sold before July 1,
11 2010, remain enforceable by the purchaser against the seller.

12 SECTION 19. AMENDATORY 36 O.S. 2011, Section 7125, is
13 amended to read as follows:

14 Section 7125. A. Each organization desiring to accept money or
15 anything of value for prepaid cemetery merchandise shall file an
16 application for a permit with the Insurance Commissioner, and shall
17 at the time of filing the application pay one initial filing fee of
18 Two Hundred Dollars (\$200.00). The Commissioner shall issue a
19 permit upon the receipt of the application and payment of the filing
20 fee, and upon making a finding that the applicant has complied with
21 the rules as may be established pursuant to the Cemetery Merchandise
22 Trust Act by the Commissioner. All applications shall be signed by
23 the organization requesting the permit, and shall contain a
24 statement that the applicant will comply with all the requirements

1 as established pursuant to the Cemetery Merchandise Trust Act. All
2 permits shall expire on the 15th day of March of the year following
3 the year the permit is first issued, unless renewed. Permits shall
4 be renewed for a period not to exceed the succeeding March 15 upon
5 the payment of a renewal fee of Two Hundred Dollars (\$200.00). Late
6 application for renewal of a permit shall require a fee of double
7 the renewal fee. No application for renewal of a permit shall be
8 accepted after ~~March 15~~ April 15 of each year. Late applicants
9 shall be required to reapply as if they were a new applicant, and
10 pay an application fee equal to an amount that is double the renewal
11 fee in addition to any fines that may have been imposed with respect
12 to an expired permit.

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

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

24

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

4 SECTION 20. AMENDATORY 36 O.S. 2011, Section 7127, is
5 amended to read as follows:

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

10 B. The surety bond shall be made payable to the State of
11 Oklahoma for the benefit of the Insurance Commissioner and all
12 purchasers of prepaid cemetery merchandise. The bond shall be
13 approved by the Commissioner.

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

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

1 SECTION 21. AMENDATORY 36 O.S. 2011, Section 7128, is
2 amended to read as follows:

3 Section 7128. Each organization shall file an annual report
4 with the Insurance Commissioner on or before March 15 of each year
5 in a form as the Commissioner may require, showing the name of the
6 financial institution holding the cemetery merchandise trust fund
7 and the amount of the trust fund under each contract on the
8 preceding December 31, and also showing the method of determination
9 of the wholesale costs made pursuant to Section ~~306~~ 7126 of this
10 title. The total required deposits to the cemetery merchandise
11 trust fund during the year shall also be reported. Each cemetery is
12 responsible for maintaining satisfactory books and records, which
13 will adequately justify all information contained in the annual
14 report required by this section. Any organization which has
15 discontinued the sale of prepaid cemetery merchandise, but which
16 still has funds deposited in a cemetery merchandise trust fund or
17 surety, shall not be required to obtain a renewal of its permit, but
18 it shall continue to make annual reports to the Commissioner until
19 all the funds have been disbursed pursuant to the Cemetery
20 Merchandise Trust Act. A filing fee of Two Hundred Dollars
21 (\$200.00) shall accompany each report. If any officer of any
22 organization fails or refuses to file an annual report, or fails or
23 refuses to cause it to be filed within thirty (30) days after the
24 organization has been notified by the Commissioner that the report

1 is due and has not been received, the officer shall be guilty of a
2 misdemeanor and shall be punished as prescribed in Section ~~315~~ 7134
3 of this title.

4 SECTION 22. AMENDATORY 36 O.S. 2011, Section 7129, is
5 amended to read as follows:

6 Section 7129. The Insurance Commissioner may examine each
7 organization so as to approve the determination by the organization
8 of the wholesale costs made pursuant to Section ~~306~~ 7126 of this
9 title. The examination shall be conducted pursuant to Sections
10 309.1 through 309.7 of ~~Title 36 of the Oklahoma Statutes~~ this title
11 and the cost of the examination shall be paid by the cemetery owner.
12 The cost of the examination shall be billed directly to the cemetery
13 owner by the examiner.

14 SECTION 23. AMENDATORY 40 O.S. 2011, Section 500, is
15 amended to read as follows:

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

- 17 1. Discharge any individual, or otherwise disadvantage any
18 individual, with respect to compensation, terms, conditions or
19 privileges of employment because the individual is a nonsmoker or
20 smokes or uses tobacco products during nonworking hours; or
- 21 2. Require as a condition of employment that any employee or
22 applicant for employment abstain from smoking or using tobacco
23 products during nonworking hours.

24

1 Nothing in this section shall prohibit an employer from
2 incentivizing an employee to participate in wellness programs,
3 including but not limited to, smoking cessation programs, in
4 conjunction with the employer providing the employee health
5 insurance coverage.

6 SECTION 24. REPEALER 36 O.S. 2011, Section 6821, is
7 hereby repealed.

8 SECTION 25. This act shall become effective November 1, 2013.

9 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 2-7-13 - DO PASS,
10 As Amended.

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