

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2234

By: Mulready

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2011, Sections 1653, 1654, as last amended by Section 5, Chapter 73, O.S.L. 2016, 1655 and 1656 (36 O.S. Supp. 2016, Section 1654), which relate to subsidiaries of insurers; requiring confidential notice of proposed divestiture to the Insurance Commissioner to determine whether approval of transaction is required; requiring certain statement to contain certain information; providing consolidated hearing procedure; requiring certain information in registration statement; requiring material transaction agreements to contain certain provisions as required by the Commissioner; specifying types of transactions requiring approval from the Commissioner; authorizing the Commissioner to order certain records of registered insurers; authorizing the Commissioner to order registered insurers produce certain information not in their possession; granting the Commissioner certain powers to compel production and determine compliance; providing penalties for noncompliance; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1653, is amended to read as follows:

1 Section 1653. A. 1. No person other than the issuer shall
2 make a tender offer for, request or invite tenders of, or enter into
3 any agreement to exchange, seek to acquire or acquire, in the open
4 market or otherwise, any voting security of a domestic insurer or of
5 any other person controlling a domestic insurer if, after the
6 consummation of such action, such person would, directly or
7 indirectly, or by conversion or by exercise of any right to acquire,
8 be in control of such insurer. No person shall enter into an
9 agreement to merge with or otherwise to acquire control of a
10 domestic insurer unless, at the time any such offer, request, or
11 invitation is made or any such agreement is entered into, or prior
12 to the acquisition of such securities if no offer or agreement is
13 involved, such person has filed with the Insurance Commissioner and
14 has sent to such insurer, and such insurer has sent to its
15 shareholders, a statement containing the information required by
16 this section and such offer, request, invitation, agreement or
17 acquisition has been approved by the Commissioner in the manner
18 prescribed in subsection D of this section.

19 2. For purposes of this subsection, any controlling person of a
20 domestic insurer seeking to divest its controlling interest in the
21 domestic insurer, in any manner, shall file with the Commissioner,
22 and provide a copy to the insurer, a confidential notice of his or
23 her proposed divestiture at least thirty (30) days prior to the
24 cessation of control. The Commissioner shall determine those

1 instances in which the party or parties seeking to divest or to
2 acquire a controlling interest in an insurer will be required to
3 file for and obtain approval of the transaction. The information
4 shall remain confidential until the conclusion of the transaction
5 unless the Commissioner, in his or her discretion, determines that
6 confidential treatment will interfere with the enforcement of this
7 section. If the statement referred to in paragraph 1 of this
8 subsection is otherwise filed, this paragraph shall not apply.

9 B. The statement to be filed with the Commissioner as required
10 by paragraph 1 of subsection A of this section shall be made under
11 oath or affirmation and shall contain the following information
12 described in this subsection.

13 1. The name and address of each person, referred to in this
14 section as the "acquiring party", by whom or on whose behalf the
15 merger or other acquisition of control referred to in subsection A
16 of this section is to be effected.

17 a. If such person is an individual:

18 (1) his or her principal occupation and all offices
19 and positions held during the past five (5)
20 years,

21 (2) any conviction of any felony or of a misdemeanor
22 involving moral turpitude, dishonesty, or breach
23 of trust, during his or her lifetime, and
24

1 (3) any conviction of crimes other than minor traffic
2 violations and any administrative discipline
3 imposed during the past ten (10) years.

4 b. If such person is not an individual:

5 (1) a report of the nature of its business operations
6 during the past five (5) years or for such lesser
7 period as such person and any predecessors
8 thereof shall have been in existence,

9 (2) any conviction of any felony or of a misdemeanor
10 involving moral turpitude, dishonesty, or breach
11 of trust, during its existence, and any
12 administrative discipline imposed during the past
13 ten (10) years,

14 (3) an informative description of the business
15 intended to be done by such person and such
16 person's subsidiaries, and

17 (4) a list of all individuals who are or who have
18 been selected to become directors or executive
19 officers of such person, or who perform or will
20 perform functions appropriate to such positions.
21 Such list shall include for each such individual
22 the information required by subparagraph a of
23 this paragraph.
24

1 2. The source, nature and amount of the consideration used or
2 to be used in effecting the merger or other acquisition of control,
3 a description of any transaction wherein funds were or are to be
4 obtained for any such purpose, and the identity of persons
5 furnishing such consideration; provided, however, that where a
6 source of such consideration is a loan made in the lender's ordinary
7 course of business, the identity of the lender shall remain
8 confidential, if the person filing such statement so requests.

9 3. Fully audited financial information as to the earnings and
10 financial condition of each acquiring party for the preceding five
11 (5) fiscal years for each such acquiring party, or for such lesser
12 period as such acquiring party and any predecessors thereof shall
13 have been in existence, and similar unaudited information as of a
14 date not earlier than ninety (90) days prior to the filing of the
15 statement. However, the Commissioner has the discretionary ability
16 to waive the audit requirements set forth in this section based upon
17 review of substantially similar financial disclosure statements
18 submitted by the acquiring party.

19 4. Any plans or proposals which each acquiring party may have
20 to liquidate such insurer, to sell its assets or merge or
21 consolidate it with any person, or to make any other material change
22 in its business or corporate structure or management.

23 5. The number of shares of any security referred to in
24 subsection A of this section which each acquiring party proposes to

1 acquire, and the terms of the offer, request, invitation, agreement,
2 or acquisition referred to in subsection A of this section,
3 including any requested documentary evidence of the same, and a
4 statement as to the method by which the fairness of the proposal was
5 arrived at.

6 6. The amount of each class of any security referred to in
7 subsection A of this section which is beneficially owned or
8 concerning which there is a right to acquire beneficial ownership by
9 each acquiring party.

10 7. A full description of any contracts, arrangements or
11 understandings with respect to any security referred to in
12 subsection A of this section in which any acquiring party is
13 involved, including but not limited to transfer of any of the
14 securities, joint ventures, loan or option arrangements, puts or
15 calls, guarantees of loans, guarantees against loss or guarantees of
16 profits, division of losses or profits, or the giving or withholding
17 of proxies, including any required documentary evidence of the same.
18 Such description shall identify the persons with whom such
19 contracts, arrangements or understandings have been entered into.

20 8. A description of the purchase of any security referred to in
21 subsection A of this section during the twelve (12) calendar months
22 preceding the filing of the statement, by any acquiring party,
23 including the dates of purchase, names of the purchasers, and
24 consideration paid or agreed to be paid therefor.

1 9. Copies of all tender offers for, advertisements for,
2 invitations for tenders of, exchange offers for, and agreements to
3 acquire or exchange any securities referred to in subsection A of
4 this section, and, if distributed, of additional soliciting material
5 relating thereto.

6 10. An agreement by the person required to file the statement
7 referred to in paragraph 1 of subsection A of this section that he
8 or she will provide the annual report, specified in subsection L of
9 Section 1654 of this title, for so long as control exists.

10 11. An acknowledgement by the person required to file the
11 statement referred to in paragraph 1 of subsection A of this section
12 that the person and all subsidiaries within his or her control in
13 the insurance holding company system will provide information to the
14 Commissioner upon request as necessary to evaluate enterprise risk
15 to the insurer.

16 12. Such additional information as the Commissioner may ~~require~~
17 ~~or~~ by rule or regulation prescribe as necessary or appropriate for
18 the protection of policyholders ~~and securityholders~~ of the insurer
19 or in the public interest.

20 C. 1. If the person required to file the statement referred to
21 in subsection A of this section is a partnership, limited
22 partnership, limited liability company, syndicate or other group or
23 legal entity, the Commissioner may require that the information
24 called for by subsection B of this section shall be given with

1 respect to each partner or each member of such entity, syndicate or
2 group, and each person who controls such partner or member. If any
3 such partner, member or person is a corporation or the person
4 required to file the statement referred to in paragraph 1 of
5 subsection A of this section is a corporation, the Commissioner may
6 require that the information called for by subsection B of this
7 section be given with respect to such corporation, each officer and
8 director of such corporation, and each person who is directly or
9 indirectly the beneficial owner of more than ten percent (10%) of
10 the outstanding voting securities of such corporation.

11 2. If any material change occurs in the facts set forth in the
12 statement filed with the Commissioner and sent to such insurer
13 pursuant to this section, an amendment setting forth such change,
14 together with copies of all documents and other material relevant to
15 such change, shall be filed with the Commissioner and sent to such
16 insurer within two (2) business days after the person learns of such
17 change. Such insurer shall send such amendment to its shareholders.

18 3. If any offer, request, invitation, agreement or acquisition
19 referred to in subsection A of this section is proposed to be made
20 by means of a registration statement under the Securities Act of
21 1933, Public Law 22, or in circumstances requiring the disclosure of
22 similar information under the Securities Exchange Act of 1934,
23 Public Law 291, or under a state law requiring similar registration
24 or disclosure, the person required to file the statement referred to

1 in paragraph 1 of subsection A of this section may utilize such
2 documents in furnishing the information called for by that
3 statement.

4 D. 1. The Commissioner shall approve any merger or other
5 acquisition of control referred to in subsection A of this section
6 unless, after a public hearing thereon, he or she finds that:

7 a. after the change of control, the domestic insurer
8 referred to in subsection A of this section would not
9 be able to satisfy the requirements for the issuance
10 of a license to write the line or lines of insurance
11 for which it is presently licensed,

12 b. the effect of the merger or other acquisition of
13 control would be substantially to lessen competition
14 in insurance in this state or tend to create a
15 monopoly therein,

16 c. the financial condition of any acquiring party is such
17 as might jeopardize the financial stability of the
18 insurer, or prejudice the interest of its
19 policyholders,

20 d. the terms of the offer, request, invitation, agreement
21 or acquisition referred to in subsection A of this
22 section are unfair and unreasonable,

23 e. the plans or proposals which the acquiring party has
24 to liquidate the insurer, sell its assets or

1 consolidate or merge it with any person, or to make
2 any other material change in its business or corporate
3 structure or management, are unfair and unreasonable
4 to policyholders of the insurer and not in the public
5 interest, or

6 f. the competence, experience and integrity of those
7 persons who would control the operation of the insurer
8 are such that it would not be in the interest of
9 policyholders or the public to permit the merger or
10 other acquisition of control.

11 2. The public hearing referred to in paragraph 1 of this
12 subsection shall be held within thirty (30) days after the statement
13 required by subsection A of this section is filed, or after the
14 information required by the Commissioner has been supplied, and at
15 least twenty (20) days' notice thereof shall be given by the
16 Commissioner to the person filing the statement, unless the notice
17 is waived. Not less than fourteen (14) days' notice of the public
18 hearing shall be given by the person filing the statement to the
19 insurer and to such other persons as may be designated by the
20 Commissioner, unless the notice is waived in writing. The insurer
21 shall give notice to its securityholders. The Commissioner shall
22 make a determination within thirty (30) days after the conclusion of
23 the hearing. At the hearing, the person filing the statement, the
24 insurer, any person to whom notice of hearing was sent, and any

1 other person whose interests may be affected thereby shall have the
2 right to present evidence, examine and cross-examine witnesses, and
3 offer oral and written arguments. All discovery proceedings shall
4 be concluded not later than three (3) days prior to the commencement
5 of the public hearing, except by consent.

6 3. If the proposed acquisition of control will require the
7 approval of more than one Commissioner, the public hearing referred
8 to in paragraph 1 of this subsection may be held on a consolidated
9 basis upon request of the person filing the statement referred to in
10 subsection A of this section. Such person shall file the statement
11 referred to in paragraph 1 of subsection A of this section with the
12 National Association of Insurance Commissioners (NAIC) within five
13 (5) days of making the request for a public hearing. A Commissioner
14 may opt out of a consolidated hearing and shall provide notice to
15 the applicant of the opt-out within ten (10) days of the receipt of
16 the statement referred to in paragraph 1 of subsection A of this
17 section. A hearing conducted on a consolidated basis shall be
18 public and shall be held within the United States before the
19 Commissioners of the states in which the insurers are domiciled.
20 Such Commissioners shall hear and receive evidence. A Commissioner
21 may attend such hearing in person or by telecommunication.

22 4. The Commissioner may retain at the acquiring person's
23 expense any attorneys, actuaries, accountants and other experts not
24 otherwise a part of the Commissioner's staff as may be reasonably

1 necessary to assist the Commissioner in reviewing the proposed
2 acquisition of control.

3 E. The provisions of this section shall not apply to any offer,
4 request, invitation, agreement or acquisition which the Commissioner
5 by order shall exempt therefrom as not having been made or entered
6 into for the purpose and not having the effect of changing or
7 influencing the control of a domestic insurer, or as otherwise not
8 comprehended within the purposes of this section.

9 F. The courts of this state are hereby vested with jurisdiction
10 over every person not resident, domiciled, or authorized to do
11 business in this state who files a statement with the Commissioner
12 under this section, and over all actions involving such person
13 arising out of violations of this section. Each such person shall
14 be deemed to have performed acts equivalent to and constituting an
15 appointment by such a person of the Commissioner to be the person's
16 true and lawful agent upon whom may be served all lawful process in
17 any action, suit or proceeding arising out of violations of this
18 section. Copies of all such lawful process shall be served on the
19 Commissioner in triplicate and transmitted by certified mail with
20 return receipt requested by the Commissioner to such person at the
21 person's last-known address.

22 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1654, as
23 last amended by Section 5, Chapter 73, O.S.L. 2016 (36 O.S. Supp.
24 2016, Section 1654), is amended to read as follows:

1 Section 1654. A. Every insurer which is authorized to do
2 business in this state and which is a member of an insurance holding
3 company system and every individual who controls an insurer shall
4 annually register with the Insurance Commissioner, except a foreign
5 insurer subject to disclosure requirements and standards adopted by
6 statute or regulation in the jurisdiction of its domicile which are
7 substantially similar to those contained in this section. Any
8 insurer which is subject to registration under this section shall
9 register thirty (30) days after it becomes subject to registration,
10 and annually thereafter by May 1 of each year for the previous
11 calendar year, unless the Commissioner for good cause shown extends
12 the time for registration, and then within such extended time. The
13 Commissioner may require any authorized insurer which is a member of
14 a holding company system which is not subject to registration under
15 this section to furnish a copy to the Commissioner of the
16 registration statement or other information filed by such insurance
17 company with the insurance regulatory authority of domiciliary
18 jurisdiction.

19 B. Every insurer subject to registration shall file a
20 registration statement on a form prescribed by the National
21 Association of Insurance Commissioners, which shall contain current
22 information about:
23
24

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

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

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

9 a. loans, other investments or purchases, sales or
10 exchanges of securities of the affiliates by the
11 insurer or of the insurer by its affiliates,

12 b. purchases, sales or exchanges of assets,

13 c. transactions not in the ordinary course of business,

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

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

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

24 g. dividends and other distributions to shareholders, and

1 h. consolidated tax allocation agreements;

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

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

9 6. If requested by the Commissioner, financial statements of or
10 within an insurance holding company system, including all
11 affiliates. Financial statements may include but are not limited to
12 annual audited financial statements filed with the United States
13 Securities and Exchange Commission (SEC) pursuant to the Securities
14 Act of 1933, as amended, or the Securities Exchange Act of 1934, as
15 amended. An insurer required to file financial statements pursuant
16 to this paragraph may satisfy the request by providing the
17 Commissioner with the most recently filed parent corporation
18 financial statements that have been filed with the SEC;

19 7. Statements that the insurer's board of directors oversees
20 corporate governance and internal controls, and that the insurer's
21 officers or senior management have approved, implemented, and
22 continue to maintain and monitor corporate governance and internal
23 control procedures; and

1 8. Any other information required by the Commissioner by rule
2 or regulation.

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

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

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

23 F. The Commissioner may require two or more affiliated insurers
24 subject to registration hereunder to file a consolidated

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

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

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

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

1 shall disallow such a disclaimer only after furnishing all parties
2 in interest with notice and opportunity to be heard and after making
3 specific findings of fact to support such disallowance.

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

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

12 L. The ultimate controlling person of every insurer subject to
13 registration shall also file an annual enterprise risk report by May
14 1 of each year for the previous calendar year. The report shall, to
15 the best of the ultimate controlling person's knowledge and belief,
16 identify the material risks within the insurance holding company
17 system that could pose enterprise risk to the insurer. The report
18 shall be filed with the lead state commissioner of the insurance
19 holding company system as determined by the procedures within the
20 Financial Analyst Handbook adopted by the National Association of
21 Insurance Commissioners.

22 M. Any person within an insurance holding company system
23 subject to registration shall be required to provide complete and
24 accurate information to an insurer where such information is

1 reasonably necessary to enable the insurer to comply with the
2 provisions of this article.

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

7 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1655, is
8 amended to read as follows:

9 Section 1655. (a) Transactions with Affiliates. Material
10 transactions by registered insurers with their affiliates shall be
11 subject to the provisions of Section 1604 of this title. The board
12 of directors will be charged with exercising that degree of care
13 which a prudent person would have exercised under similar
14 circumstances. Material transactions shall be subject to the
15 following standards:

16 (1) the terms shall be fair and reasonable;

17 (2) agreements for cost-sharing services and management
18 shall include such provisions as required by rule and
19 regulation issued by the Commissioner;

20 (3) charges or fees for services performed shall be
21 reasonable;

22 ~~(3)~~ (4) expenses incurred and payment received shall be
23 allocated to the insurer in conformity with customary
24 insurance accounting practices consistently applied;

1 ~~(4)~~ (5) the books, accounts and records of each party to all
2 such transactions shall be so maintained as to clearly
3 and accurately disclose the precise nature and details
4 of the transaction including such accounting
5 information as is necessary to support the
6 reasonableness of the charges or fees to the
7 respective parties; and

8 ~~(5)~~ (6) the insurer's surplus as regards policyholders
9 following any dividends or distributions to
10 shareholder affiliates shall be reasonable in relation
11 to the insurer's outstanding liabilities and adequate
12 to meet its financial needs.

13 (b) Insurance Commissioner's Approval Required.

14 (1) The prior written approval of the Commissioner shall
15 be required for the following transactions between a
16 domestic insurer and its affiliates: sales,
17 guarantees, purchases, exchanges, loans or extensions
18 of credit or investments which, based upon an annual
19 aggregate, involve more than three percent (3%) of the
20 insurer's admitted assets or twenty-five percent (25%)
21 of the insurer's surplus as regards policyholders,
22 whichever is less, as of the latest statutory
23 financial statement filed with the Commissioner;
24 provided, however, that the Commissioner must either

1 approve or disapprove within thirty (30) days after
2 receiving written notification from the insurer of the
3 proposed transaction and failure to disapprove the
4 proposed transaction within thirty (30) days shall
5 constitute approval of the transaction;

6 (2) The prior written approval of the Commissioner shall
7 be required for any transactions between a domestic
8 insurer and its affiliates where the insurer is found
9 by the Commissioner to be in unsound condition or in
10 such condition as to render its further transaction of
11 insurance in Oklahoma hazardous to its policyholders
12 or to the people of Oklahoma; provided, however, that
13 the Commissioner must either approve or disapprove
14 within ninety (90) days after written notification by
15 the insurer and failure to disapprove the proposed
16 transaction within ninety (90) days shall constitute
17 approval of the transaction;

18 (3) The following transactions involving a domestic
19 insurer and any person in its holding company system,
20 including amendments or modifications of affiliate
21 agreements previously filed pursuant to this section,
22 which are subject to any materiality standards
23 contained in subsection (a) of this section may not be
24 entered into unless the insurer has notified the

1 Commissioner in writing of its intention to enter into
2 such transaction at least thirty (30) days prior
3 thereto, or such shorter period as the Commissioner
4 may permit, and the Commissioner has not disapproved
5 it within such period.

6 (i) loans or extensions of credit to any person who
7 is not an affiliate, where the insurer makes such
8 loans or extensions of credit with the agreement
9 or understanding that the proceeds of such
10 transactions, in whole or in substantial part,
11 are to be used to make loans or extensions of
12 credit to, to purchase assets of, or to make
13 investments in, any affiliate of the insurer
14 making such loans or extensions of credit
15 provided such transactions are equal to or
16 exceed: (a) with respect to nonlife insurers,
17 the lesser of three percent (3%) of the insurer's
18 admitted assets or twenty-five percent (25%) of
19 surplus as regards policyholders; (b) with
20 respect to life insurers, three percent (3%) of
21 the insurer's admitted assets; each as of the
22 31st day of December next preceding;

23 (ii) reinsurance agreements or modifications thereto,
24 including:

1 (a) all reinsurance pooling agreements;
2 (b) agreements in which the reinsurance premium
3 or a change in the insurer's liabilities, or
4 the projected insurance premium or a change
5 in the insurer's liabilities in any of the
6 next three (3) years, equals or exceeds five
7 percent (5%) of the insurer's surplus as
8 regards policyholders, as of the 31st day of
9 December next preceding, including those
10 agreements which may require as
11 consideration the transfer of assets from an
12 insurer to a nonaffiliate, if an agreement
13 or understanding exists between the insurer
14 and nonaffiliate that any portion of such
15 assets will be transferred to one or more
16 affiliates of the insurer;

17 (iii) all management agreements, service contracts, tax
18 allocation agreements, guarantees and all cost-
19 sharing arrangements; and

20 (4) The Insurance Commissioner shall promulgate reasonable
21 rules and regulations governing the form and content
22 of the notice required pursuant to subsection (b) of
23 this section.
24

1 (c) Nothing in this section shall supersede approvals granted
2 under other sections of this title or transactions occurring prior
3 to the effective date of this section.

4 (d) Adequacy of Surplus. For purposes of Section 1651 et seq.
5 of this title, in determining whether an insurer's surplus as
6 regards policyholders is reasonable in relation to the insurer's
7 outstanding liabilities and adequate to its financial needs, the
8 following factors, among others, shall be considered:

9 (1) the size of the insurer as measured by its assets,
10 capital and surplus, reserves, premium writing,
11 insurance in force and other appropriate criteria;

12 (2) the extent to which the insurer's business is
13 diversified among the several lines of insurance;

14 (3) the number and size of risks insured in each line of
15 business;

16 (4) the extent of the geographical dispersion of the
17 insurer's insured risks;

18 (5) the nature and extent of the insurer's reinsurance
19 program;

20 (6) the quality, diversification, and liquidity of the
21 insurer's investment portfolio;

22 (7) the recent past and projected future trend in the size
23 of the insurer's investment portfolio;

1 (8) the surplus as regards policyholders maintained by
2 other comparable insurers;

3 (9) the adequacy of the insurer's reserves;

4 (10) the quality and liquidity of investments in
5 subsidiaries made pursuant to Section 1652 of this
6 title. The Commissioner may treat any such investment
7 as a disallowed asset for purposes of determining the
8 adequacy of surplus as regards policyholders whenever
9 in his judgment such investment so warrants; and

10 (11) the quality of the insurer's earnings and the extent
11 to which the reported earnings include extraordinary
12 items.

13 (e) Dividends and Other Distributions. No insurer subject to
14 registration under Section 1654 of this title shall pay any
15 extraordinary dividend or make any other extraordinary distribution
16 to its shareholders until (i) thirty (30) days after the
17 Commissioner has received notice of the declaration thereof and has
18 not within such period disapproved such payment, or (ii) the
19 Commissioner shall have approved such payment within such thirty-day
20 period.

21 For purposes of this section, an extraordinary dividend or
22 distribution includes any dividend or distribution of cash or other
23 property, whose fair market value together with that of other
24 dividends or distributions made within the preceding twelve (12)

1 months exceeds the greater of (i) ten percent (10%) of such
2 insurer's surplus as regards policyholders as of the 31st day of
3 December next preceding, or (ii) the net gain from operations of
4 such insurer, if such insurer is a life insurer, or the net income,
5 if such insurer is not a life insurer, not including realized
6 capital gains, for the twelve-month period ending the 31st day of
7 December next preceding, but shall not include pro rata
8 distributions of any class of the insurer's own securities.

9 Notwithstanding any other provision of law, an insurer may
10 declare an extraordinary dividend or distribution which is
11 conditional upon the Commissioner's approval thereof, and such a
12 declaration shall confer no rights upon shareholders until (i) the
13 Commissioner has approved the payment of such dividend or
14 distribution or (ii) the Commissioner has not disapproved such
15 payment within the thirty-day period referred to above.

16 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1656, is
17 amended to read as follows:

18 Section 1656. (a) Power of Commissioner. In addition to the
19 powers which the Commissioner has under Sections 309.1 through 309.7
20 of the Insurance Code, relating to the examination of insurers, the
21 Commissioner shall also have the power to order any insurer
22 registered under Section 1654 of this title to produce such records,
23 books, or other information papers in the possession of the insurer
24 or its affiliates as shall be necessary to verify the information

1 required to be contained in the insurer's registration statement,
2 and any additional information pertinent to transactions between the
3 insurer and its affiliates. In the event such insurer fails to
4 comply with such order, the Commissioner shall have the power to
5 examine such affiliates to obtain such information at the expense of
6 such noncomplying insurer.

7 (b) Access to Books and Records.

8 (1) The Commissioner may order any insurer registered
9 under Section 1654 of this title to produce such
10 records, books or other information papers in the
11 possession of the insurer or its affiliates as are
12 reasonably necessary to determine compliance with this
13 Article.

14 (2) To determine compliance with this Article, the
15 Commissioner may order any insurer registered under
16 Section 1654 of this title to produce information not
17 in the possession of the insurer if the insurer can
18 obtain access to such information pursuant to
19 contractual relationships, statutory obligations or
20 other method. In the event the insurer cannot obtain
21 the information requested by the Commissioner, the
22 insurer shall provide the Commissioner a detailed
23 explanation of the reason that the insurer cannot
24 obtain the information and the identity of the holder

1 of information. Whenever it appears to the
2 Commissioner that the detailed explanation is without
3 merit, the Commissioner may require the insurer, after
4 notice and an opportunity for hearing, to pay a
5 penalty of Two Hundred Dollars (\$200.00) for each
6 day's delay or may suspend or revoke the insurer's
7 license.

8 (c) Use of Consultants. The Commissioner may retain at the
9 registered insurer's expense such attorneys, actuaries, accountants
10 and other experts not otherwise a part of the Commissioner's staff
11 as shall be reasonably necessary to assist in the conduct of the
12 examination under subsection (a) above. Any persons so retained
13 shall be under the direction and control of the Commissioner and
14 shall act in a purely advisory capacity.

15 ~~(c)~~ (d) Expenses. Each registered insurer producing for
16 examination records, books and papers pursuant to subsection (a)
17 above shall be liable for and shall pay the expense of such
18 examination in accordance with Section 309.6 of the Insurance Code.

19 (e) Compelling Production. In the event the insurer fails to
20 comply with an order, the Commissioner shall have the power to
21 examine the affiliates to obtain the information. The Commissioner
22 shall also have the power to issue subpoenas, to administer oaths,
23 and to examine under oath any person for purposes of determining
24 compliance with this section. Upon failure or refusal of any person

1 to obey a subpoena, the Commissioner may petition the District Court
2 of Oklahoma County, Oklahoma, and upon proper showing, the court may
3 enter an order compelling the witness to appear and testify or
4 produce documentary evidence. Failure to obey the court shall be
5 punishable as contempt of court. Every person shall be obliged to
6 attend as a witness at the place specified in the subpoena, when
7 subpoenaed, anywhere within the state. He or she shall be entitled
8 to the same fees and mileage, if claimed, as a witness in District
9 Court of Oklahoma County, which fees, mileage and actual expense, if
10 any, necessarily incurred in securing the attendance of witnesses
11 and their testimony, shall be itemized and charged against, and be
12 paid by, the company being examined.

13 SECTION 5. This act shall become effective November 1, 2017.

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