STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 431 By: Brown of the Senate

and

Moore of the House

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2011, Sections 305, 309.4, as last amended by Section 1, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section 309.4), 1622, 1624, 4101.1, as amended by Section 6, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section 4101.1), 6903.1, and 6937, which relate to Commissioner appointing assistants, disclosure, mortgages on real estate, acquiring or holding real property, extension of policies to insure dependents, exemption of certain health maintenance organizations from certain provisions; and short title; modifying earnings of certain employees; giving certain documents confidential privilege; prohibiting more than a certain percentage of a company's assets from being invested in certain mortgage loans, money mortgages, and real property; updating references; eliminating exemption of certain domestic health maintenance organizations from certain provisions of act; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 305, is amended to read as follows:

Section 305. A. The Insurance Commissioner may appoint such deputies, assistants, examiners, actuaries, attorneys, clerks and employees, at ~~salaries~~ compensation to be fixed by the Insurance Commissioner, as may be necessary properly to discharge the duties imposed upon the Insurance Commissioner under this Code. The Insurance Commissioner shall appoint all examiners for ~~his~~ the office. The attorneys appointed by the Insurance Commissioner shall be the legal advisors for the office of Insurance Commissioner and are authorized to appear for and represent the Insurance Commissioner in any and all litigation that may arise in the discharge of his or her duties except as otherwise provided elsewhere in this Code. Provided, the Insurance Commissioner, whenever ~~he~~ the Insurance Commissioner deems it necessary, may call upon the Attorney General of the State of Oklahoma for legal counsel, and such assistance as may be required to enforce provisions of this Code.

B. No deputy, assistant or employee of the Commissioner shall be financially interested, directly or indirectly, in any insurer, agency or insurance transaction except as a policyholder or claimant under a policy; except, that as to such matters wherein a conflict of interests does not exist on the part of any such individual, the Commissioner may employ from time to time insurance actuaries or other technicians who are independently practicing their professions even though similarly employed by insurers and others. This section shall not be deemed to prohibit employment by the Commissioner of retired or pensioned personnel of insurers or insurance organizations.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 309.4, as last amended by Section 1, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section 309.4), is amended to read as follows:

Section 309.4. A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from such facts.

B. No later than thirty (30) days following completion of the examination, the examiner in charge shall file with the Insurance Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than twenty (20) days to make a written submission or written rebuttal with respect to any matters contained in the examination report.

C. Within twenty (20) days of the end of the period allowed for the receipt of written submissions or written rebuttals, the

Insurance Commissioner shall fully consider and review the report, together with any written submissions or written rebuttals and any relevant portions of the examiners' work papers and enter an order:

1. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure such violation;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection A of this section; or

3. Calling for an investigatory hearing with notice pursuant to the Administrative Procedures Act to the company for purposes of obtaining additional documentation, data, information and testimony.

D. 1. All orders entered pursuant to paragraph 1 of subsection C of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner work papers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to the Administrative Procedures Act, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

2. Any hearing conducted pursuant to paragraph 3 of subsection C of this section by the Commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within thirty (30) days of the conclusion of any such hearing, the Commissioner shall enter an order pursuant to paragraph 1 of subsection C of this section.

3. The Commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The Commissioner or a representative of the Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner or representative of the Commissioner shall be under oath and preserved for the record.

4. Nothing contained in this section shall require the Department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

5. The hearing shall proceed with the Commissioner or a representative of the Commissioner posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. The company and the Department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. 1. Upon the adoption of the examination report under paragraph 1 of subsection C of this section, the Commissioner shall continue to hold the content of the examination report as private and confidential information for a period of two (2) days except to the extent provided in subsection B of this section and subsection F of Section 309.3 of this title. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

2. Nothing contained in Sections 309.1 through 309.7 of this title shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of

the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections 309.1 through 309.7 of this title.

3. In the event the Commissioner determines that regulatory action is appropriate as a result of any examination, the Commissioner may initiate any proceedings or actions as provided by law.

4. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information provided to the Commissioner shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subparagraph 2 of this paragraph.

F. All working papers, recorded information, documents, data calls, Market Conduct Annual Statements and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under Sections 309.1 through 309.7 of this title, or in the course of analysis by the Commissioner or any other person of the financial condition or market conduct of a company, shall be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in subsection E of this section and subsection F of Section 309.3 of this title. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

SECTION 3. AMENDATORY 36 O.S. 2011, Section 1622, is amended to read as follows:

Section 1622. A. An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved, unencumbered real property located in the United States, or which are secured by first mortgages or deeds of trust upon leasehold estates having an expired term of not less than twenty-one (21) years, inclusive of the term which may be provided by an enforceable option of renewal, in improved, unencumbered real property located in the United States.

B. Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving mineral, oil or timber rights, rights-of-way, sewer rights, rights in walls, nor by reason of any liens for taxes or assessments not delinquent, nor by reason of building restrictions or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, if in any event the security for such loan is a first lien upon such real property and if there is no condition or right of reentry or forfeiture under which, in the case of real property other than leaseholds, such lien can be cut off, subordinated, or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan.

C. No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed eighty percent (80%) of the value, or if the loan is for purchase money, the lesser of eighty percent (80%) of the value or purchase price of the real property or leasehold securing the same, except that such loan or loans may equal the amount of any guaranty by the United States of America or by any agency or instrumentality of the United States of America or by any private insurance company licensed as an authorized insurer by the Insurance Department of the State of Oklahoma to write mortgage insurance. Additionally, no single mortgage loan to any individual shall exceed four percent (4%) of the company's admitted assets, with no more than ~~twenty-five percent (25%)~~ thirty-five percent (35%) of the company's admitted assets invested in total aggregate amount in mortgage loans. The calculation of admitted assets is based on the insurer's annual statement as of December 31 last preceding the date of investment, or as shown by a current financial statement on file with the Commissioner.

Mortgage loans made or acquired by an insurer prior to December 31, 1992, shall be in compliance with the limitation provided in this subsection for total aggregate investment of admitted assets in mortgage loans by December 31, 1997. Mortgage loans made or acquired by an insurer on or after December 31, 1992, but prior to September 1, 1993, shall be in compliance with the limitations for investment of admitted assets in single mortgage loans to individuals and total aggregate investments of admitted assets in mortgage loans provided in this subsection by December 31, 1997. Insurers shall maintain accurate and adequate records reflecting the provisions of this section and submit such records with quarterly and annual statements.

D. No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment. No change or modification shall be made to such appraisal by any mortgage underwriter unless such person is licensed or certified as an appraiser pursuant to the Oklahoma Certified Real Estate Appraisers Act or unless such person has been provided by the person who made the appraisal written consent to make the modification. Such modification shall be disclosed to the seller and buyer and/or the seller's agent.

E. No such mortgage loan or loans made or acquired by an insurer after July 1, 2006, shall be made or acquired by an insurer unless the mortgages or mortgage loans are upon improved, unencumbered real property permitted as an investment pursuant to Section 1624 of this title.

F. No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths (4/5) of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

<u>G. Subject to specific limitations otherwise applicable, no more than an aggregate of thirty-five percent (35%) of the company's admitted assets may be invested in mortgage loans pursuant to this section, purchase money mortgages pursuant to Section 1623 of this title, and real property pursuant to Section 1624 of this title.</u>

SECTION 4. AMENDATORY 36 O.S. 2011, Section 1624, is amended to read as follows:

Section 1624. No insurance company, foreign, alien or domestic, doing business in Oklahoma, may acquire or hold real property therein, except as follows:

1. Such as shall be requisite for the convenient accommodation of the transaction of its own business; the amount invested in such real property shall not exceed ten percent (10%) of the investing

company's admitted assets but the Insurance Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as ~~he~~ the Insurance Commissioner may deem proper on the showing made, if upon a hearing held ~~before him he shall find~~ the Insurance Commissioner finds that the amount represented by such percentage of its admitted assets is insufficient to provide convenient accommodation for the company's business~~; real~~. Real estate maintained for the convenient accommodation of the transaction of its own business, permitted to be carried as an admitted asset of the company pursuant to this section shall be carried at an amount equal to its cost at the time of acquisition together with the actual cost of improvements made thereon, less encumbrances and less depreciation; provided, however, any real estate carried at fair market value as an admitted asset of the company on the effective date of this act shall be excluded from this provision;

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted for moneys due;

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in course of its dealings;

4. Such as shall have been purchased at sales on judgments, decrees, or mortgages obtained or made for such debts;

5. Such real property as shall have been acquired in whole or in part, in exchange for real property of approximately the same value theretofore legally acquired and held by it;

6. Real property and improvements thereon located in incorporated cities and towns and as additions thereto or real property and improvements wherever located acquired for sale or lease ~~to any other corporation~~, if such ~~latter corporation~~ lessee or purchaser could have legally acquired the same in the first instance, and may make improvements thereon for commercial and industrial purposes as an investment for the production of income. The phrase "commercial and industrial purposes" shall not include real property primarily intended for use or valued as agricultural, horticultural, farm, and ranch, unless adjacent to other real property the ownership of which is permitted under this section and was acquired prior to July 1, 2006. The total amount invested in such real property and improvements thereon shall not exceed the company's capital and/or surplus, or ten percent (10%) of its admitted assets whichever is the lesser; provided, however, the amount invested in any one investment shall not exceed four percent (4%) of the company's admitted assets. The admitted assets shall be determined by the company's last annual report made as of December 31, immediately preceding and which has been filed with the Insurance Commissioner as required by law, or as shown by a current financial statement on file with the Commissioner; ~~and~~

7. Real property acquired and held under Section 1612.1 of this title; and

8. Subject to specific limitations otherwise applicable, no more than an aggregate of thirty-five percent (35%) of the company's admitted assets may be invested in real property pursuant to this section, purchase money mortgages pursuant to Section 1623 of this title, and mortgage loans pursuant to Section 1622 of this title.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 4101.1, as amended by Section 6, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section 4101.1), is amended to read as follows:

Section 4101.1. A. Insurance under any group life insurance policy issued pursuant to ~~subsections A, C, and D~~ paragraphs 1, 3, 4, 5 and 6~~,~~ of Section 4101 of this title, may be extended to insure the dependents, or any class or classes thereof, of each insured employee or member who so elects in amounts in accordance with a plan which precludes individual selection. The term "dependent" ~~is~~ means the spouse of the insured employee or member ~~and~~ or an insured employee's or member's child under twenty-six (26) years of age or his or her child twenty-six (26) years or older who is attending an educational institution and relying upon the insured employee or member for financial support.

B. Premiums for the insurance on such dependents shall be paid by the policyholder either wholly from policyholder's funds, or from funds contributed wholly by the employees or members, or partly from funds contributed by the policyholder and partly by the employees or members.

C. A dependent pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or union member.

D. Notwithstanding the provisions of paragraph 7 of Section 4103 of this title, only one certificate need be issued for each family unit if a statement concerning any dependent's coverage is included in such certificate.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 6903.1, is amended to read as follows:

Section 6903.1. Domestic health maintenance organizations that contract with the Oklahoma Health Care Authority to provide basic health services to Medicaid recipients and that do not provide basic health care services to any other group of persons shall be exempt from the provisions of Sections 6911, ~~6913,~~ 6914, 6915~~,~~ and 6932 ~~and 6937~~ of ~~Title 36 of the Oklahoma Statutes~~ this title.

SECTION 7. AMENDATORY 36 O.S. 2011, Section 6937, is amended to read as follows:

Section 6937. ~~A.~~ This act shall be known and may be cited as the "Risk-based Capital (RBC) for Health Maintenance Organizations Act of 2003".

~~B. Domestic health maintenance organizations that contract with the Oklahoma Health Care Authority to provide basic health services~~

~~to Medicaid recipients and that do not provide basic health care services to any other group of persons shall be exempt from the provisions of the Risk-based Capital (RBC) for Health Maintenance Organizations Act of 2003.~~

SECTION 8. This act shall become effective November 1, 2017.

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