HOUSE OF REPRESENTATIVES - FLOOR VERSION

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:

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

2. For purposes of this subsection, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the Commissioner, and provide a copy to the insurer, a confidential notice of his or

her proposed divestiture at least thirty (30) days prior to the cessation of control. The Commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the Commissioner, in his or her discretion, determines that confidential treatment will interfere with the enforcement of this section. If the statement referred to in paragraph 1 of this subsection is otherwise filed, this paragraph shall not apply.

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

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

a. If such person is an individual:

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

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

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

b. If such person is not an individual:

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

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

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

(4) a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual

the information required by subparagraph a of this paragraph.

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

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

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

5. The number of shares of any security referred to in subsection A of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection A of this section, including any requested documentary evidence of the same, and a statement as to the method by which the fairness of the proposal was arrived at.

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

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

8. A description of the purchase of any security referred to in subsection A of this section during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party,

including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

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

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

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

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

C. 1. If the person required to file the statement referred to in subsection A of this section is a partnership, limited partnership, limited liability company, syndicate or other group or legal entity, the Commissioner may require that the information called for by subsection B of this section shall be given with respect to each partner or each member of such entity, syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in <u>paragraph 1 of</u> subsection A of this section is a corporation, the Commissioner may require that the information called for by subsection B of this section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation.

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

3. If any offer, request, invitation, agreement or acquisition referred to in subsection A of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, Public Law 22, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934,

Public Law 291, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in paragraph 1 of subsection A of this section may utilize such documents in furnishing the information called for by that statement.

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

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

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

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

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

e. the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest, or

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

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

the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing, except by consent.

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

4. The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

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

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

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

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

B. Every insurer subject to registration shall file a registration statement on a form prescribed by the National

Association of Insurance Commissioners, which shall contain current information about:

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

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

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

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

b. purchases, sales or exchanges of assets,

c. transactions not in the ordinary course of business,

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

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

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

g. dividends and other distributions to shareholders, and

h. consolidated tax allocation agreements;

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

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

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

7. Statements that the insurer's board of directors oversees corporate governance and internal controls, and that the insurer's

officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

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

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

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

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

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

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

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

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

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

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

L. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report by May 1 of each year for the previous calendar year. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the

Financial Analyst Handbook adopted by the National Association of Insurance Commissioners.

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

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

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

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

(1) the terms shall be fair and reasonable;

(2) <u>agreements for cost-sharing services and management shall include such provisions as required by rule and regulation issued by the Commissioner;</u>

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

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

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

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

(b) Insurance Commissioner's Approval Required.

(1) The prior written approval of the Commissioner shall be required for the following transactions between a domestic insurer and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than three percent (3%) of the

insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is less, as of the latest statutory financial statement filed with the Commissioner; provided, however, that the Commissioner must either approve or disapprove within thirty (30) days after receiving written notification from the insurer of the proposed transaction and failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction;

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

(3) The following transactions involving a domestic insurer and any person in its holding company system,

including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subsection (a) of this section may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

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

(ii) reinsurance agreements or modifications thereto, including:

(a) all reinsurance pooling agreements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of (i) ten percent (10%) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

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

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

Section 1656. (a) Power of Commissioner. In addition to the powers which the Commissioner has under Sections 309.1 through 309.7 of the Insurance Code, relating to the examination of insurers, the

Commissioner shall also have the power to order any insurer registered under Section 1654 of this title to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between the insurer and its affiliates. In the event such insurer fails to comply with such order, the Commissioner shall have the power to examine such affiliates to obtain such information at the expense of such noncomplying insurer.

(b) Access to Books and Records.

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

(2) To determine compliance with this Article, the Commissioner may order any insurer registered under Section 1654 of this title to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or other method. In the event the insurer cannot obtain

the information requested by the Commissioner, the insurer shall provide the Commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the Commissioner that the detailed explanation is without merit, the Commissioner may require the insurer, after notice and an opportunity for hearing, to pay a penalty of Two Hundred Dollars ($200.00) for each day's delay or may suspend or revoke the insurer's license.

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

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

(e) Compelling Production. In the event the insurer fails to comply with an order, the Commissioner shall have the power to examine the affiliates to obtain the information. The Commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon failure or refusal of any person to obey a subpoena, the Commissioner may petition the District Court of Oklahoma County, Oklahoma, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in District Court of Oklahoma County, which fees, mileage and actual expense, if any, necessarily incurred in securing the attendance of witnesses and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

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

COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/01/2017 - DO PASS, As Amended.