

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 431

By: Brown of the Senate

and

Moore of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; amending 36 O.S. 2011,
12 Sections 305, 309.4, as last amended by Section 1,
13 Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section
14 309.4), 1622, 1624, 4101.1, as amended by Section 6,
15 Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2016, Section
16 4101.1), 6903.1, and 6937, which relate to
17 Commissioner appointing assistants, disclosure,
18 mortgages on real estate, acquiring or holding real
19 property, extension of policies to insure dependents,
20 exemption of certain health maintenance organizations
21 from certain provisions; and short title; modifying
22 earnings of certain employees; giving certain
23 documents confidential privilege; prohibiting more
24 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:

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

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

19 B. No deputy, assistant or employee of the Commissioner shall
20 be financially interested, directly or indirectly, in any insurer,
21 agency or insurance transaction except as a policyholder or claimant
22 under a policy; except, that as to such matters wherein a conflict
23 of interests does not exist on the part of any such individual, the
24 Commissioner may employ from time to time insurance actuaries or

1 other technicians who are independently practicing their professions
2 even though similarly employed by insurers and others. This section
3 shall not be deemed to prohibit employment by the Commissioner of
4 retired or pensioned personnel of insurers or insurance
5 organizations.

6 SECTION 2. AMENDATORY 36 O.S. 2011, Section 309.4, as
7 last amended by Section 1, Chapter 73, O.S.L. 2016 (36 O.S. Supp.
8 2016, Section 309.4), is amended to read as follows:

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

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

1 C. Within twenty (20) days of the end of the period allowed for
2 the receipt of written submissions or written rebuttals, the
3 Insurance Commissioner shall fully consider and review the report,
4 together with any written submissions or written rebuttals and any
5 relevant portions of the examiners' work papers and enter an order:

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

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

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

19 D. 1. All orders entered pursuant to paragraph 1 of subsection
20 C of this section shall be accompanied by findings and conclusions
21 resulting from the Commissioner's consideration and review of the
22 examination report, relevant examiner work papers and any written
23 submissions or rebuttals. Any such order shall be considered a
24 final administrative decision and may be appealed pursuant to the

1 Administrative Procedures Act, and shall be served upon the company
2 by certified mail, together with a copy of the adopted examination
3 report. Within thirty (30) days of the issuance of the adopted
4 report, the company shall file affidavits executed by each of its
5 directors stating under oath that they have received a copy of the
6 adopted report and related orders.

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

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

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

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

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

21 2. Nothing contained in Sections 309.1 through 309.7 of this
22 title shall prevent or be construed as prohibiting the Commissioner
23 from disclosing the content of an examination report, preliminary
24 examination report or results, or any matter relating thereto, to

1 the insurance department of this or any other state or country, or
2 to law enforcement officials of this or any other state or agency of
3 the federal government at any time, so long as such agency or office
4 receiving the report or matters relating thereto agrees in writing
5 to hold it confidential and in a manner consistent with Sections
6 309.1 through 309.7 of this title.

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

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

16 F. All working papers, recorded information, documents, data
17 calls, Market Conduct Annual Statements and copies thereof produced
18 by, obtained by or disclosed to the Commissioner or any other person
19 in the course of an examination made under Sections 309.1 through
20 309.7 of this title, or in the course of analysis by the
21 Commissioner or any other person of the financial condition or
22 market conduct of a company, shall be given confidential treatment
23 and are not subject to subpoena and may not be made public by the
24 Commissioner or any other person, except to the extent provided in

1 subsection E of this section and subsection F of Section 309.3 of
2 this title. Access may also be granted to the National Association
3 of Insurance Commissioners. Such parties shall agree in writing
4 prior to receiving the information to provide to it the same
5 confidential treatment as required by this section, unless the prior
6 written consent of the company to which it pertains has been
7 obtained.

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

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

18 B. Real property shall not be deemed to be encumbered within
19 the meaning of this section by reason of the existence of
20 instruments reserving mineral, oil or timber rights, rights-of-way,
21 sewer rights, rights in walls, nor by reason of any liens for taxes
22 or assessments not delinquent, nor by reason of building
23 restrictions or other restrictive covenants, nor when such real
24 property is subject to lease under which rents or profits are

1 reserved to the owner, if in any event the security for such loan
2 is a first lien upon such real property and if there is no
3 condition or right of reentry or forfeiture under which, in the
4 case of real property other than leaseholds, such lien can be cut
5 off, subordinated, or otherwise disturbed or under which, in the
6 case of leaseholds, the insurer is unable to continue the lease in
7 force for the duration of the loan.

8 C. No such mortgage loan or loans made or acquired by an
9 insurer on any one property shall, at the time of investment by the
10 insurer, exceed eighty percent (80%) of the value, or if the loan
11 is for purchase money, the lesser of eighty percent (80%) of the
12 value or purchase price of the real property or leasehold securing
13 the same, except that such loan or loans may equal the amount of
14 any guaranty by the United States of America or by any agency or
15 instrumentality of the United States of America or by any private
16 insurance company licensed as an authorized insurer by the
17 Insurance Department of the State of Oklahoma to write mortgage
18 insurance. Additionally, no single mortgage loan to any individual
19 shall exceed four percent (4%) of the company's admitted assets,
20 with no more than ~~twenty-five percent (25%)~~ thirty-five percent
21 (35%) of the company's admitted assets invested in total aggregate
22 amount in mortgage loans. The calculation of admitted assets is
23 based on the insurer's annual statement as of December 31 last
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1 preceding the date of investment, or as shown by a current
2 financial statement on file with the Commissioner.

3 Mortgage loans made or acquired by an insurer prior to December
4 31, 1992, shall be in compliance with the limitation provided in
5 this subsection for total aggregate investment of admitted assets
6 in mortgage loans by December 31, 1997. Mortgage loans made or
7 acquired by an insurer on or after December 31, 1992, but prior to
8 September 1, 1993, shall be in compliance with the limitations for
9 investment of admitted assets in single mortgage loans to
10 individuals and total aggregate investments of admitted assets in
11 mortgage loans provided in this subsection by December 31, 1997.
12 Insurers shall maintain accurate and adequate records reflecting
13 the provisions of this section and submit such records with
14 quarterly and annual statements.

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

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

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

14 G. Subject to specific limitations otherwise applicable, no
15 more than an aggregate of thirty-five percent (35%) of the
16 company's admitted assets may be invested in mortgage loans
17 pursuant to this section, purchase money mortgages pursuant to
18 Section 1623 of this title, and real property pursuant to Section
19 1624 of this title.

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

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

1 1. Such as shall be requisite for the convenient accommodation
2 of the transaction of its own business; the amount invested in such
3 real property shall not exceed ten percent (10%) of the investing
4 company's admitted assets but the Insurance Commissioner may grant
5 permission to the company to invest in real property for such
6 purpose in such increased amount as ~~he~~ the Insurance Commissioner
7 may deem proper on the showing made, if upon a hearing held ~~before~~
8 ~~him he shall find~~ the Insurance Commissioner finds that the amount
9 represented by such percentage of its admitted assets is
10 insufficient to provide convenient accommodation for the company's
11 business; ~~real.~~ Real estate maintained for the convenient
12 accommodation of the transaction of its own business, permitted to
13 be carried as an admitted asset of the company pursuant to this
14 section shall be carried at an amount equal to its cost at the time
15 of acquisition together with the actual cost of improvements made
16 thereon, less encumbrances and less depreciation; provided, however,
17 any real estate carried at fair market value as an admitted asset of
18 the company on the effective date of this act shall be excluded from
19 this provision;

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

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

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

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

6 6. Real property and improvements thereon located in
7 incorporated cities and towns and as additions thereto or real
8 property and improvements wherever located acquired for sale or
9 lease ~~to any other corporation~~, if such ~~latter corporation~~ lessee or
10 purchaser could have legally acquired the same in the first
11 instance, and may make improvements thereon for commercial and
12 industrial purposes as an investment for the production of income.
13 The phrase "commercial and industrial purposes" shall not include
14 real property primarily intended for use or valued as agricultural,
15 horticultural, farm, and ranch, unless adjacent to other real
16 property the ownership of which is permitted under this section and
17 was acquired prior to July 1, 2006. The total amount invested in
18 such real property and improvements thereon shall not exceed the
19 company's capital and/or surplus, or ten percent (10%) of its
20 admitted assets whichever is the lesser; provided, however, the
21 amount invested in any one investment shall not exceed four percent
22 (4%) of the company's admitted assets. The admitted assets shall be
23 determined by the company's last annual report made as of December
24 31, immediately preceding and which has been filed with the

1 Insurance Commissioner as required by law, or as shown by a current
2 financial statement on file with the Commissioner; ~~and~~

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

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

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

13 Section 4101.1. A. Insurance under any group life insurance
14 policy issued pursuant to ~~subsections A, C, and D~~ paragraphs 1, 3,
15 4, 5 and 6, of Section 4101 of this title, may be extended to insure
16 the dependents, or any class or classes thereof, of each insured
17 employee or member who so elects in amounts in accordance with a
18 plan which precludes individual selection. The term "dependent" ~~is~~
19 means the spouse of the insured employee or member ~~and~~ or an insured
20 employee's or member's child under twenty-six (26) years of age or
21 his or her child twenty-six (26) years or older who is attending an
22 educational institution and relying upon the insured employee or
23 member for financial support.

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

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

9 D. Notwithstanding the provisions of paragraph 7 of Section
10 4103 of this title, only one certificate need be issued for each
11 family unit if a statement concerning any dependent's coverage is
12 included in such certificate.

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

15 Section 6903.1. Domestic health maintenance organizations that
16 contract with the Oklahoma Health Care Authority to provide basic
17 health services to Medicaid recipients and that do not provide basic
18 health care services to any other group of persons shall be exempt
19 from the provisions of Sections 6911, ~~6913~~, 6914, 6915, and 6932 ~~and~~
20 ~~6937 of Title 36 of the Oklahoma Statutes~~ this title.

21 SECTION 7. AMENDATORY 36 O.S. 2011, Section 6937, is
22 amended to read as follows:
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1 Section 6937. ~~A.~~ This act shall be known and may be cited as
2 the "Risk-based Capital (RBC) for Health Maintenance Organizations
3 Act of 2003".

4 ~~B. Domestic health maintenance organizations that contract with
5 the Oklahoma Health Care Authority to provide basic health services
6 to Medicaid recipients and that do not provide basic health care
7 services to any other group of persons shall be exempt from the
8 provisions of the Risk-based Capital (RBC) for Health Maintenance
9 Organizations Act of 2003.~~

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

11
12 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/29/2017 - DO
13 PASS, As Amended.