1	STATE OF OKLAHOMA
2	2nd Session of the 59th Legislature (2024)
3	HOUSE BILL 3081 By: Hays
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6	AS INTRODUCED
7	An Act relating to insurance; amending 36 O.S. 2021,
8	Section 902, which relates to excessive, inadequate, or unfairly discriminatory rates; modifying certain
9	compliance burden; amending 36 O.S. 2021, Section 908, which relates to penalties; clarifying
10	applicability to rules and orders; modifying penalty; stipulating no penalty without hearing; amending 36
11	O.S. 2021, Section 1106.1, as amended by Section 1, Chapter 154, O.S.L. 2022 (36 O.S. Supp. 2023, Section
12	1106.1), which relates to exemption from due diligence search; modifying conditions requiring a
13	due diligence search; amending 36 O.S. 2021, Section 1107, which relates to required application and
14	informational filings; requiring certain filings; clarifying method of filing; amending 36 O.S. 2021, Section 1114, which relates to swenking lines.
15	Section 1114, which relates to surplus lines licensee's or broker's annual statement; clarifying
16	method for filing; amending 36 O.S. 2021, Section 1250.9, which relates to unfair claims settlement practices act, modifying required information.
17	practices act; modifying required information; amending 36 O.S. 2021, Section 1450, as amended by Section 1, Chapter 149, O.S.L. 2023 (36 O.S. Supp.
18	2023, Section 1450), which relates to third-party administrator licensure; modifying licensing
19	procedures; permitting Insurance Commissioner to deny or refuse to renew license in certain circumstances;
20	amending 36 O.S. 2021, Section 1682, which relates to the Insurance Business Transfer Act; modifying
21	district court approval; amending 36 O.S. 2021,
22	Section 2122, which relates to domestic mutual and stock insurers; modifying definition; amending 36 O.S. 2021, Section 6060.4, as amended by Section 2,
23	Chapter 199, O.S.L. 2022 (36 O.S. Supp. 2023, Section
24	6060.4), which relates to coverage for child
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1	immunization; modifying definition; and providing an
2	effective date.
3	BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
4	SECTION 1. AMENDATORY 36 O.S. 2021, Section 902, is
5	amended to read as follows:
6	Section 902. A. The Insurance Commissioner shall not approve
7	rates for insurance which are excessive, inadequate, or unfairly
8	discriminatory.
9	1. An excessive rate is one which:
10	a. is unreasonably high for the insurance provided, or
11	b. is unreasonable because (1) a reasonable degree of
12	competition does not exist in the area with respect to
13	the classification to which such rate is applicable
14	and (2) the rate is unreasonably high for the
15	insurance provided.
16	2. An inadequate rate is one which:
17	a. is (1) unreasonably low for the insurance provided and
18	(2) the continued use of such rate endangers, or if
19	continued would endanger, the solvency of the insurer,
20	or
21	b. is (1) unreasonably low for the insurance provided and
22	(2) the continued use of such rate by the insurer has,
23	or if continued would have, the effect of destroying
24	competition or creating a monopoly, or

1	c. is insufficient to cover projected losses, expenses
2	and a reasonable margin for profit for the line of
3	insurance coverage to be offered in this state by the
4	filer.
5	3. A rate shall not be unfairly discriminatory.
6	a. A rate is not unfairly discriminatory because it is
7	based in part upon the establishment or modification
8	of classifications of risks based upon:
9	(1) the size of the risk,
10	(2) the expense or difficulty in management of the
11	risk,
12	(3) the individual experience of the risk,
13	(4) the location or dispersion of the risk, or
14	(5) any other reasonable consideration attributable
15	to the risk.
16	b. A rate is not unfairly discriminatory in relation to
17	another in the same class of business if it reflects
18	equitably the differences in expected losses and
19	expenses. Rates are not unfairly discriminatory
20	because different premiums result for policyholders
21	with like loss exposures but different expense
22	factors, or with like expense factors but different
23	loss exposures, if the rates reflect the differences
24	with reasonable accuracy.

- 1c. A rate shall be deemed unfairly discriminatory as to a2risk or group of risks if the application of premium3discounts, credits, or surcharges among such risks4does not bear a reasonable relationship to the5expected loss and expense experience among the various6risks.
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- d. A rate shall never be based upon race, color, creed or national origin.

<sup>9</sup> B. The systems of expense provisions included in the rates for <sup>10</sup> use by any insurer or group of insurers may differ from those of <sup>11</sup> other insurers or groups of insurers to reflect the requirements of <sup>12</sup> the operating methods of any such insurer or group with respect to <sup>13</sup> any kind of insurance or subdivision or combination thereof for <sup>14</sup> which subdivision or combination separate expense provisions are <sup>15</sup> applicable.

<sup>16</sup> C. Nothing in this act shall be construed to require uniformity <sup>17</sup> in insurance rates, classifications, rating plans, or practices.

D. Nothing in this act shall abridge or restrict the freedom of contract of insurers, agents, brokers or employees with reference to the commissions, compensation, or salaries to be paid to such agents, brokers, or employees by insurers.

E. The burden of compliance with the provisions of this act shall rest upon the insurer or rating organization in all matters involving a filing made pursuant to Section 6821 of this title.

1 SECTION 2. AMENDATORY 36 O.S. 2021, Section 908, is
2 amended to read as follows:

Section 908. The Insurance Commissioner may, if the Commissioner finds that any person or organization has violated the provisions of any statute, rule, or order for which the Commissioner has jurisdiction, impose a penalty of not less than One Hundred Dellars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) for each such violation. Such penalties may be in addition to any other penalty provided by law.

10 No penalty shall be imposed except upon a written order of the 11 Commissioner, stating the findings of the Commissioner made after a 12 hearing held not less than ten (10) days after written notice to a 13 person or organization alleged to have violated any statute for 14 which the Commissioner has jurisdiction specifying the alleged 15 violation or their appointed independent hearing examiner after 16 notice and opportunity for a hearing in accordance with Article II 17 of the Administrative Procedures Act.

SECTION 3. AMENDATORY 36 O.S. 2021, Section 1106.1, as amended by Section 1, Chapter 154, O.S.L. 2022 (36 O.S. Supp. 2023, Section 1106.1), is amended to read as follows:

Section 1106.1 A. A surplus lines licensee or broker is not required to make a due diligence search to determine whether the full amount or type of insurance can be obtained from admitted insurers when the surplus lines licensee or broker is seeking to 1 procure or place nonadmitted insurance for an exempt commercial 2 purchaser, provided : unless the

<sup>3</sup> 1. The licensee or broker procuring or placing the surplus <sup>4</sup> lines insurance has disclosed to the exempt commercial purchaser <sup>5</sup> that such insurance may or may not be available from the admitted <sup>6</sup> market that may provide greater protection with more regulatory <sup>7</sup> oversight; and

8 2. The exempt commercial purchaser has subsequently requested 9 in writing for the surplus lines broker to procure or place such 10 insurance from a nonadmitted insurer.

B. For purposes of this section, the term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

14 1. The person employs or retains a qualified risk manager to 15 negotiate insurance coverage;

16 2. The person has paid aggregate nationwide commercial property 17 and casualty insurance premiums in excess of One Hundred Thousand 18 Dollars (\$100,000.00) in the immediately preceding twelve (12) 19 months;

3. The person meets at least one of the following criteria:

a. the person possesses a net worth in excess of TwentyFour Million Dollars (\$24,000,000.00), as such amount
is adjusted pursuant to paragraph 4 of this
subsection,

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- b. the person generates annual revenues in excess of Sixty Million Dollars (\$60,000,000.00), as such amount is adjusted pursuant to paragraph 4 of this subsection,
- 5 c. the person employs more than five hundred full-time-6 equivalent employees per individual insured or is a 7 member of an affiliated group employing more than one 8 thousand employees in the aggregate,
- 9 d. the person is a not-for-profit organization or public 10 entity generating annual budgeted expenditures of at 11 least Thirty-Six Million Dollars (\$36,000,000.00), as 12 such amount is adjusted pursuant to paragraph 4 of 13 this subsection, or

14 the person is a municipality with a population in e. 15 excess of fifty thousand (50,000) persons; and 16 Effective on January 1, 2015, and every five (5) years 4. 17 thereafter, the amounts in subparagraphs a, b and d of paragraph 3 18 of this subsection shall be adjusted to reflect the percentage 19 change for such five-year period in the Consumer Price Index of All 20 Urban Consumers published by the Bureau of Labor Statistics of the 21 U.S. Department of Labor.

SECTION 4. AMENDATORY 36 O.S. 2021, Section 1107, is amended to read as follows:

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1 Section 1107. A. After procuring any surplus line insurance 2 where Oklahoma is the home state and the insurance involves a 3 multistate risk, the surplus lines licensee and broker shall submit 4 such information relating to the transaction as may be established 5 by the Insurance Commissioner. The data shall be provided to the 6 Insurance Commissioner until and unless in the exercise of his or 7 her sole discretion and judgment, the Insurance Commissioner decides 8 to enter or join the Nonadmitted Insurance Multi-State Agreement or 9 any other multistate agreement or compact with the same function and 10 purpose and other reporting requirements are thereby established.

11 When Oklahoma is the home state of the insured, the surplus в. 12 lines licensee or broker shall make all informational and tax 13 filings and fee and tax payments electronically in the manner and 14 form required or to be established by the Insurance Commissioner, 15 along with any applicable transaction fees. When Oklahoma is the 16 home state of the insured, the premium tax filings and premium tax 17 payments shall be provided entirely to the Insurance Commissioner 18 until and unless, in the exercise of his or her sole discretion and 19 judgment, the Insurance Commissioner decides to enter or join the 20 Nonadmitted Insurance Multi-State Agreement or any other multistate 21 agreement or compact with the same function and purpose.

C. Failure to file the required information, any required fee payments and make the required premium tax payments in the manner established by the Insurance Commissioner pursuant to this section and Section 1115 of this title where Oklahoma is the home state of the insured shall result, after notice and hearing, in censure, suspension, or revocation of license or a fine of up to Five Hundred Dollars (\$500.00) for each occurrence or by both such fine and licensure penalty.

<sup>6</sup> SECTION 5. AMENDATORY 36 O.S. 2021, Section 1114, is
<sup>7</sup> amended to read as follows:

8 Section 1114. Each surplus lines licensee or broker licensed or 9 transacting business in Oklahoma shall on or before April 1 of each 10 year file electronically, along with any applicable transaction 11 fees, with the Insurance Commissioner a verified statement of all 12 surplus lines insurance transacted by the broker during the 13 preceding calendar year where Oklahoma is the home state of the 14 insured. The statement shall be on a form prescribed and furnished 15 by the Insurance Commissioner and shall show such information 16 required to be submitted as established by the Insurance 17 Commissioner. The information shall be provided to the Insurance 18 Commissioner until and unless, in the exercise of his or her sole 19 discretion and judgment, the Insurance Commissioner decides to enter 20 or join the Nonadmitted Insurance Multi-State Agreement or any other 21 multistate agreement or compact with the same function and purpose 22 and other transaction reporting requirements are thereby 23 established.

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1 SECTION 6. AMENDATORY 36 O.S. 2021, Section 1250.9, is 2 amended to read as follows:

3 Section 1250.9 A. If the Insurance Commissioner determines, 4 based on an investigation of complaints of unfair claim settlement 5 practices, that an insurer has engaged in unfair claim settlement 6 practices with such frequency as to indicate a general business 7 practice and that such insurer should be subjected to closer 8 supervision with respect to such practices, the Commissioner may 9 require the insurer to file a report at such periodic intervals as 10 the Commissioner deems necessary. The Commissioner shall also 11 devise a statistical plan for such periodic reports, which shall 12 contain but not be limited to the following information:

13 1. The total number of written claims filed, including the 14 original amount filed for by the insured and the classification by 15 line of insurance of each individual written claim, for the past 16 twelve-month period or from the date of the insurer's last periodic 17 report, whichever time is shorter;

18 2. The total number of written claims denied, for the past 19 twelve-month period or from the date of the insurer's last periodic 20 report, whichever time is shorter;

3. The total number of written claims settled, including the original amount filed for by the insured, the settled amount, and the classification of line of insurance of each individual settled 24

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1 claim, for the past twelve-month period or from the date of the 2 insurer's last periodic report, whichever time is shorter;

4. The total number of written claims for which lawsuits were instituted against the insurer, including the original amount of the claim filed for by the insured, the amount of final adjudication, the reason for the lawsuit and the classification by line of insurance of each individual written claim, for the past twelvemonth period or from the date of the insurer's last periodic report, whichever time is shorter; and

10 5. All information required by paragraph 12 14 of Section 11 1250.5 of this title.

B. For the purposes of this section, "written claims" means those claims reduced to writing and filed by a resident of this state with an insurer.

SECTION 7. AMENDATORY 36 O.S. 2021, Section 1450, as amended by Section 1, Chapter 149, O.S.L. 2023 (36 O.S. Supp. 2023, Section 1450), is amended to read as follows:

Section 1450. A. No person shall act as or present himself or herself to be an administrator, as defined by the provisions of the Third-party Administrator Act, in this state, unless the person holds a valid license as an administrator which is issued by the Insurance Commissioner.

B. An administrator shall not be eligible for a nonresident administrator license under this section if the administrator does

1 not hold a home state certificate of authority or license in a state 2 that has adopted the Third-party Administrator Act or that applies 3 substantially similar provisions as are contained in the Third-party 4 Administrator Act to that administrator. If the Third-party 5 Administrator Act in the administrator's home state does not extend 6 to stop-loss insurance, but if the home state otherwise applies 7 substantially similar provisions as are contained in the Third-party 8 Administrator Act to that administrator, then that omission shall 9 not operate to disqualify the administrator from receiving a 10 nonresident administrator license in this state.

11 "Home state" means the United States jurisdiction that has 1. 12 adopted the Third-party Administrator Act or a substantially similar 13 law governing third-party administrators and which has been 14 designated by the administrator as its principal regulator. The 15 administrator may designate either its state of incorporation or its 16 principal place of business within the United States if that 17 jurisdiction has adopted the Third-party Administrator Act or a 18 substantially similar law governing third-party administrators. Ιf 19 neither the administrator's state of incorporation nor its principal 20 place of business within the United States has adopted the Third-21 party Administrator Act or a substantially similar law governing 22 third-party administrators, then the third-party administrator shall 23 designate a United States jurisdiction in which it does business and 24 which has adopted the Third-party Administrator Act or a \_ \_

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<sup>1</sup> substantially similar law governing third-party administrators. For <sup>2</sup> purposes of this paragraph, "United States jurisdiction" means the <sup>3</sup> District of Columbia or a state or territory of the United States.

<sup>4</sup> 2. "Nonresident administrator" means a person who is applying <sup>5</sup> for licensure or is licensed in any state other than the <sup>6</sup> administrator's home state.

7 С. In the case of a partnership which has been licensed, each 8 general partner shall be licensed and shall qualify therefore as 9 though an individual licensee. The Commissioner shall charge a full 10 additional license fee and a separate license shall be issued for 11 each individual so named in the license. The partnership shall 12 notify the Commissioner within thirty (30) days if any individual 13 licensed on its behalf has been terminated, or is no longer 14 associated with or employed by the partnership. Any person making 15 application as an administrator or currently licensed as an 16 administrator under the Third-party Administrator Act shall provide 17 a National Association of Insurance Commissioners (NAIC) 18 Biographical Affidavit.

D. An application for an administrator's license shall be in a form prescribed by the Commissioner and shall be accompanied by a fee of One Hundred Dollars (\$100.00). The application shall be filed and the fee shall be paid electronically in a form and manner prescribed by the Commissioner. This fee shall not be refundable if

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<sup>1</sup> the application is denied or refused for any reason by either the <sup>2</sup> applicant or the Commissioner.

3 The administrator's license shall continue in force no Ε. 4 longer than twelve (12) months from the original month of issuance. 5 Upon filing a renewal form prescribed by the Commissioner, 6 accompanied by a fee of One Hundred Dollars (\$100.00), the license 7 may be renewed annually for a one-year term. The renewal shall be 8 filed, and the fee shall be paid electronically in a form and manner 9 prescribed by the Commissioner. A license that expires for failure 10 to submit a renewal application may be reinstated within ninety (90) 11 days after the expiration date by electronically submitting a fee in 12 an amount of Two Hundred Dollars (\$200.00) in a form and manner 13 prescribed by the Commissioner and any other transaction or other 14 fee deemed necessary by the Commissioner. All applications received 15 after the license has expired for more than ninety (90) days shall 16 include a detailed report of administrator services provided in this 17 state during the period of expired licensure. The administrator 18 shall submit, together with the application for renewal, a list of 19 the names and addresses of the persons with whom the administrator 20 has contracted in accordance with Section 1443 of this title. The 21 Commissioner shall hold this information confidential except as 22 provided in Section 1443 of this title.

F. 1. The administrator's license shall may be issued or renewed by the Commissioner unless, after notice and opportunity for

<sup>1</sup> hearing, the Commissioner determines that the administrator is not <sup>2</sup> competent, trustworthy, or financially responsible, or has had any <sup>3</sup> insurance license denied for cause by any state, has been convicted <sup>4</sup> or has pleaded guilty or nolo contendere to any felony or to a <sup>5</sup> misdemeanor involving moral turpitude or dishonesty.

6 The administrator shall report to the Insurance Commissioner 2. 7 any administrative or criminal action taken against the 8 administrator in another jurisdiction or by another governmental 9 agency in this state within thirty (30) calendar days of the final 10 disposition of the matter. This report shall include a copy of the 11 order, consent to order, copy of any payment required as a result of 12 the administrative or criminal action, or other relevant legal 13 documents.

14 3. Any entity making application to the Insurance Department as 15 a third-party administrator (TPA) or within thirty (30) days of a 16 change for a licensed TPA shall provide current National Association 17 of Insurance Commissioners (NAIC) Biographical Affidavits on behalf 18 of all officers, directors and key managerial personnel of the TPA, 19 and individuals with a ten percent (10%) or more beneficial 20 ownership in the TPA and the TPA's ultimate controlling person 21 (affiant) as required for insurers pursuant to the laws of this 22 state.

G. After notice and opportunity for hearing, and upon determining that the administrator has violated any of the

1 provisions of the Oklahoma Insurance Code or upon finding reasons 2 for which the issuance or nonrenewal renewal of such license could 3 have been denied, the Commissioner may either deny, refuse to renew, 4 suspend or revoke an administrator's license or assess a civil 5 penalty not more than Five Thousand Dollars (\$5,000.00) for each 6 occurrence, or any combination thereof. The payment of the penalty 7 may be enforced in the same manner as civil judgments may be 8 enforced.

9 H. Any person who is acting as or presenting himself or herself 10 to be an administrator without a valid license shall be subject, 11 upon conviction, to a fine not less than One Thousand Dollars 12 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for each 13 occurrence. This fine shall be in addition to any other penalties 14 which may be imposed for violations of the Oklahoma Insurance Code 15 or other laws of this state.

I. Except as provided for in subsections F and G of this section, any person convicted of violating any provisions of the Third-party Administrator Act shall be guilty of a misdemeanor and shall be subject to a fine not more than One Thousand Dollars (\$1,000.00).

J. Each administrator shall electronically submit, in a form and manner prescribed by the Commissioner, any change of legal business name, "doing business as" or assumed name, address, service agent contact information, or contact email address, and any

<sup>1</sup> necessary fees within thirty (30) days after the change occurred.
<sup>2</sup> Any submission of a change under this subsection that is received
<sup>3</sup> more than thirty (30) days after the change occurred shall be
<sup>4</sup> accompanied by a fee of Fifty Dollars (\$50.00).

K. Upon receipt of any inquiry from the Insurance Commissioner, a licensed administrator shall furnish the Commissioner with an adequate response to the inquiry within twenty (20) days from receipt of the inquiry.

9 SECTION 8. AMENDATORY 36 O.S. 2021, Section 1682, is 10 amended to read as follows:

11 Section 1682. This act is adopted to provide options to address 12 the significant limitations in the current methods available to 13 insurers to transfer or assume blocks of insurance business in an 14 efficient and cost-effective manner that provides needed legal 15 finality for such transfers in order to provide for improved 16 operational and capital efficiency for insurance companies, 17 stimulates the economy by attracting segments of the insurance 18 industry to the state, makes Oklahoma an attractive home 19 jurisdiction for insurance companies, encourages economic growth and 20 increased investment in the financial services sector and increases 21 the availability of quality insurance industry jobs in Oklahoma. 22 These purposes are accomplished by providing a basis and procedures 23 for the transfer and statutory novation of policies from a 24 transferring insurer to an assuming insurer by way of an Insurance \_ \_

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1 Business Transfer without the affirmative consent of policyholders 2 or reinsureds. The novation is effected by court order. This act 3 establishes the requirements for notice and disclosure and standards 4 and procedures for the approval of the transfer and novation by the 5 Oklahoma Insurance Commissioner and the District Court of Oklahoma 6 County pursuant to an Insurance Business Transfer Plan. This act 7 does not limit or restrict other means of effecting a transfer or 8 novation.

9 SECTION 9. AMENDATORY 36 O.S. 2021, Section 2122, is 10 amended to read as follows:

Section 2122. A. A domestic stock insurer shall not pay any ordinary cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business. The restriction shall apply to all extraordinary dividends, as defined in <u>subsection B of</u> Section 1655 1636 of this title.

B. A stock dividend may be paid out of any available surplus
 funds in excess of the aggregate amount of surplus loaned to the
 insurer pursuant to Section 2125 of this article.

C. A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

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1	SECTION 10. AMENDATORY 36 O.S. 2021, Section 6060.4, as
2	amended by Section 2, Chapter 199, O.S.L. 2022 (36 O.S. Supp. 2023,
3	Section 6060.4), is amended to read as follows:
4	Section 6060.4 A. A health benefit plan delivered, issued for
5	delivery or renewed in this state on or after January 1, 1998, that
6	provides benefits for the dependents of an insured individual shall
7	provide coverage for each child of the insured, from birth through
8	the date the child is eighteen (18) years of age for:
9	1. Immunization against:
10	a. diphtheria,
11	b. hepatitis B,
12	c. measles,
13	d. mumps,
14	e. pertussis,
15	f. polio,
16	g. rubella,
17	h. tetanus,
18	i. varicella,
19	j. haemophilus influenzae type B, and
20	k. hepatitis A; and
21	2. Any other immunization subsequently required for children by
22	the State Board of Health.
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B. Benefits required pursuant to subsection A of this section shall not be subject to a deductible, co-payment, or coinsurance requirement.

4 C. 1. For purposes of this section, "health benefit plan" 5 means group hospital or coverage, individual and group medical 6 insurance coverage, a not-for-profit hospital or medical service or 7 indemnity plan, a prepaid health plan, a health maintenance 8 organization plan, a preferred provider organization plan, the State 9 and Education Employees Group Health Insurance Plan, and coverage 10 provided by a Multiple Employer Welfare Arrangement or employee 11 self-insured plan as permitted under Employee Retirement Income 12 Security Act of 1974.

13	2. The term "health benefit plan" shall not include:
14	a. a plan that provides coverage:
15	(1) only for a specified disease or diseases or under
16	an individual limited benefit policy,
17	(2) only for accidental death or dismemberment,
18	(3) only for dental or vision care,
19	(4) a hospital confinement indemnity policy,
20	(5) disability income insurance or a combination of
21	accident-only and disability income insurance, or
22	(6) as a supplement to liability insurance,
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1	b. a Medicare supplemental policy as defined by Section
2	1882(g)(1) of the Social Security Act (42 U.S.C.,
3	Section 1395ss),
4	c. workers' compensation insurance coverage,
5	d. medical payment insurance issued as part of a motor
6	vehicle insurance policy,
7	e. a long-term care policy, including a nursing home
8	fixed indemnity policy, unless a determination is made
9	that the policy provides benefit coverage so
10	comprehensive that the policy meets the definition of
11	a health benefit plan, or
12	f. short-term health insurance issued on a nonrenewable
13	basis with a duration of six (6) months or less.
14	SECTION 11. This act shall become effective November 1, 2024.
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