

1 **SENATE FLOOR VERSION**

2 March 26, 2015

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 1293

6 By: Kirby of the House

7 and

8 Brown of the Senate

9 An Act relating to insurance; amending 36 O.S. 2011,
10 Section 309.4, which relates to examination reports;
11 eliminating requirement that insurance companies
12 deliver certain reports and orders; amending 36 O.S.
13 2011, Section 312A, which relates to enforcement and
14 recording of penalties and fees; specifying types of
15 civil penalties and fees that may be enforced in
16 certain manner; amending 36 O.S. 2011, Section 348.1,
17 as amended by Section 3, Chapter 275, O.S.L. 2014 (36
18 O.S. Supp. 2014, Section 348.1), which relates to
19 fees and licenses; updating citation; amending 36
20 O.S. 2011, Sections 608 and 609, which relate to
21 authorization of insurers; updating and deleting
22 citations; amending 36 O.S. 2011, Section 903.2, as
23 amended by Section 16, Chapter 254, O.S.L. 2013 (36
24 O.S. Supp. 2014, Section 903.2), which relates to the
Oklahoma Insurance Rating Act; modifying filing
requirements; amending 36 O.S. 2011, Section 1435.2,
which relates to the Oklahoma Producer Licensing Act;
modifying definition; updating citations; amending 36
O.S. 2011, Section 1441.1, which relates to the
Third-Party Administrator Act; updating citations;
amending 36 O.S. 2011, Section 1524, as amended by
Section 6, Chapter 269, O.S.L. 2013 (36 O.S. Supp.
2014, Section 1524), which relates to the Risk-based
Capital for Insurers Act; modifying required contents
of certain required plan; amending 36 O.S. 2011,
Section 1674, which relates to the Business
Transacted with Producer Controlled Insurer Act;
updating reference; amending 36 O.S. 2011, Section
4502, which relates to group accident and health
insurance policies; modifying required policy
provisions; amending 36 O.S. 2011, Section 6041,

1 which relates to payments for emergency living
2 expenses; expanding authorized forms of payments;
3 amending 36 O.S. 2011, Section 6103.3, which relates
4 to acts of insurance business; specifying certain
5 persons for which certain remedies will be
6 applicable; specifying certain prohibited acts;
7 repealing 36 O.S. 2011, Sections 924.4, as amended by
8 Section 1, Chapter 44, O.S.L. 2012 and 924.5, as
9 amended by Section 2, Chapter 44, O.S.L. 2012 (36
10 O.S. Supp. 2014, Sections 924.4 and 924.5), which
11 relate to affidavits of exempt status; and providing
12 an effective date.

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

14 SECTION 1. AMENDATORY 36 O.S. 2011, Section 309.4, is
15 amended to read as follows:

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

23 B. No later than thirty (30) days following completion of the
24 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

1 more than twenty (20) days to make a written submission or written
2 rebuttal with respect to any matters contained in the examination
3 report.

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

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

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

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

22 D. 1. All orders entered pursuant to paragraph 1 of subsection
23 C of this section shall be accompanied by findings and conclusions
24 resulting from the Commissioner's consideration and review of the

1 examination report, relevant examiner work papers and any written
2 submissions or rebuttals. Any such order shall be considered a
3 final administrative decision and may be appealed pursuant to the
4 Administrative Procedures Act, and shall be served upon the company
5 by certified mail, together with a copy of the adopted examination
6 report. Within thirty (30) days of the issuance of the adopted
7 report, the company shall file affidavits executed by each of its
8 directors stating under oath that they have received a copy of the
9 adopted report and related orders. ~~Upon proper order of the~~
10 ~~Commissioner, the company shall deliver by mail or otherwise, within~~
11 ~~thirty (30) days of the date of the order, a copy of the adopted~~
12 ~~report and related orders to all states and jurisdictions in which~~
13 ~~the company is licensed to transact the business of insurance.~~

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

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

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

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

20 E. 1. Upon the adoption of the examination report under
21 paragraph 1 of subsection C of this section, the Commissioner shall
22 continue to hold the content of the examination report as private
23 and confidential information for a period of two (2) days except to
24 the extent provided in subsection B of this section and subsection F

1 of Section 309.3 of this title. Thereafter, the Commissioner may
2 open the report for public inspection so long as no court of
3 competent jurisdiction has stayed its publication.

4 2. Nothing contained in Sections 309.1 through 309.7 of this
5 title shall prevent or be construed as prohibiting the Commissioner
6 from disclosing the content of an examination report, preliminary
7 examination report or results, or any matter relating thereto, to
8 the insurance department of this or any other state or country, or
9 to law enforcement officials of this or any other state or agency of
10 the federal government at any time, so long as such agency or office
11 receiving the report or matters relating thereto agrees in writing
12 to hold it confidential and in a manner consistent with Sections
13 309.1 through 309.7 of this title.

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

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

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

9 SECTION 2. AMENDATORY 36 O.S. 2011, Section 312A, is
10 amended to read as follows:

11 Section 312A. Civil penalties and fees imposed by the Insurance
12 Commissioner pursuant to the provisions of this title Oklahoma law
13 may be enforced in the same manner in which civil judgments may be
14 enforced. All final orders of the Insurance Commissioner imposing
15 administrative charges, fees, civil penalties or fines may be
16 recorded in the office of the Clerk of the District Court of
17 Oklahoma County and, upon such recording, all appropriate writs and
18 process shall issue and shall be enforced by the judges of said
19 court upon application.

20 SECTION 3. AMENDATORY 36 O.S. 2011, Section 348.1, as
21 amended by Section 3, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2014,
22 Section 348.1), is amended to read as follows:

23 Section 348.1 A. The Insurance Commissioner shall collect the
24 following fees and licenses for the Property and Casualty Division:

- 1 1. Rating organizations, statistical agents and advisory
- 2 organizations:
- 3 a. Application fee for issuance of
- 4 license.....\$200.00
- 5 b. License fee.....\$500.00
- 6 2. Miscellaneous:
- 7 a. Certificate of Insurance Commissioner,
- 8 under seal.....\$ 20.00
- 9 b. Upon each transaction of filing of
- 10 documents required pursuant to Section
- 11 3610 of this title and the Service
- 12 Warranty Act, as contained in Sections
- 13 141.1 through 141.32 of Title 15 of the
- 14 Oklahoma Statutes:
- 15 (1) For an individual insurer.....\$ 50.00
- 16 (2) For an approved joint underwriting
- 17 association, or rating or advisory
- 18 organization:
- 19 (a) Basic fee.....\$ 50.00
- 20 (b) Additional fee for each member
- 21 or subscriber insurer.....\$ 10.00,
- 22 not to exceed.....\$500.00.

1 3. For each rate, loss cost and rule filing request pursuant to
2 the ~~provisions of Sections 6821 and 981 et seq. of this title~~
3 Property and Casualty Competitive Loss Cost Rating Act:

4 a. For an individual insurer.....\$100.00

5 b. For an approved joint underwriting
6 association, rating or advisory
7 organization:

8 (1) Basic fee.....\$100.00

9 (2) Additional fee for each member
10 or subscriber insurer.....\$ 10.00,
11 not to exceed.....\$500.00.

12 B. The fees, licenses, and taxes imposed by the Commissioner
13 upon persons, firms, associations, or corporations licensed pursuant
14 to this section shall be payment in full with respect thereto of and
15 in lieu of all demands for any and all state, county, district, and
16 municipal license fees, license taxes, business privilege taxes,
17 business privilege fees, and charges of every kind now or hereafter
18 imposed upon all such persons, firms, associations, or corporations.
19 This subsection shall not affect other fees, licenses and taxes
20 imposed by the Insurance Code.

21 C. Any costs incurred by the Commissioner in the process of
22 review and analysis of a filing shall be assessed against the
23 company or organization making the filing.

1 SECTION 4. AMENDATORY 36 O.S. 2011, Section 608, is
2 amended to read as follows:

3 Section 608. A. A casualty insurer shall not be authorized to
4 transact workers' compensation insurance in this state without first
5 complying with the applicable provisions of Title ~~85~~ 85A of the
6 Oklahoma Statutes.

7 B. A claims adjuster for any insurer duly authorized to
8 transact workers' compensation insurance in Oklahoma shall be
9 licensed pursuant to the Insurance Adjusters Licensing Act.

10 SECTION 5. AMENDATORY 36 O.S. 2011, Section 609, is
11 amended to read as follows:

12 Section 609. An insurer which otherwise qualifies therefor may
13 be authorized to transact any one kind or combination of kinds of
14 insurance as defined in Section 701 et seq. of this title, except:

15 1. A life insurer shall not be authorized to transact any other
16 kind of insurance except accident and health and workers'
17 compensation and employer liability equivalent insurance if
18 otherwise qualified to do so on or after September 1, 1994, ~~pursuant~~
19 ~~to the provisions of Section 65 of Title 85 of the Oklahoma Statutes~~
20 or if immediately prior to the effective date of this Code any life
21 insurer lawfully held a subsisting certificate of authority granting
22 it the right to transact in Oklahoma additional kinds of insurance
23 other than accident and health, so long as the insurer is otherwise
24 in compliance with this Code the Insurance Commissioner shall

1 continue to authorize such insurer to transact the same kinds of
2 insurance as those specified in such prior certificate of authority;

3 2. A reciprocal insurer shall not transact life insurance;

4 3. A Lloyd's insurer shall not transact life insurance;

5 4. A title insurer shall be a stock insurer and shall not
6 transact any other kind of insurance; and

7 5. No insurer shall issue for delivery or deliver in this state
8 any contract of insurance which imposes contingent or assessment
9 liability upon a resident of this state.

10 SECTION 6. AMENDATORY 36 O.S. 2011, Section 903.2, as
11 amended by Section 16, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2014,
12 Section 903.2) is amended to read as follows:

13 Section 903.2 No insurance company shall request and the
14 Insurance Commissioner shall not approve an increase for the expense
15 portion of insurance company rate filings based upon the
16 requirements of Section 6701 of this title ~~and Section 355 of Title~~
17 ~~85 of the Oklahoma Statutes.~~

18 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1435.2, is
19 amended to read as follows:

20 Section 1435.2 As used in the Oklahoma Producer Licensing Act:

21 1. "Commissioner" means the Insurance Commissioner;

22 2. "Business entity" means a corporation, association,
23 partnership, limited liability company, limited partnership, or
24 other legal entity;

1 3. "Customer service representative" means an individual
2 appointed by an insurance producer, surplus lines insurance broker,
3 managing general agent, or insurance agency to assist the insurance
4 producer, broker, or agency in transacting the business of insurance
5 from the office of the insurance producer, broker, or agency and
6 whose salary may vary based on the production or volume of
7 applications or premiums;

8 4. "Home state" means the District of Columbia and any state or
9 territory of the United States in which an insurance producer
10 maintains the producer's principal place of residence or principal
11 place of business and is licensed to act as an insurance producer;

12 5. "Insurance" means any of the lines of authority in ~~Title 36~~
13 ~~of the Oklahoma Statutes~~ this title, including workers' compensation
14 insurance. Any insurer approved to offer workers' compensation
15 ~~equivalent~~ insurance pursuant to the provisions of ~~Section 65 of~~
16 ~~Title 85 of the Oklahoma Statutes~~ may appoint ~~property and casualty~~
17 insurance producers. All producers appointed for workers'
18 compensation ~~equivalent~~ insurance products must be licensed as
19 ~~property and casualty~~ insurance producers by the Oklahoma Insurance
20 Department;

21 6. "Insurance consultant" means an individual or legal entity
22 who, for a fee, is held out to the public as engaged in the business
23 of offering any advice, counsel, opinion or service with respect to
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1 the benefits, advantages, or disadvantages promised under any policy
2 of insurance that could be issued or delivered in this state;

3 7. "Insurance producer" means a person required to be licensed
4 under the laws of this state to sell, solicit or negotiate
5 insurance. Any person not duly licensed as an insurance producer,
6 surplus lines insurance broker, or limited lines producer who
7 solicits a policy of insurance on behalf of an insurer shall be
8 deemed to be acting as an insurance agent within the meaning of the
9 Oklahoma Producer Licensing Act, and shall thereby become liable for
10 all the duties, requirements, liabilities, and penalties to which an
11 insurance producer of the company is subject, and the company by
12 issuing the policy of insurance shall thereby accept and acknowledge
13 the person as its agent in the transaction. For purposes of the
14 laws of this state and the Oklahoma Insurance Code, the term
15 "insurance agent" shall have the same meaning as the term "insurance
16 producer";

17 8. "Insurer" has the meaning set out in Section 103 of this
18 title;

19 9. "License" means a document issued by the Insurance
20 Commissioner of this state authorizing a person to act as an
21 insurance producer for the lines of authority specified in the
22 document. The license itself does not create any authority, actual,
23 apparent or inherent, in the holder to represent or commit an
24 insurance carrier;

1 10. "Limited line credit insurance" includes credit life,
2 credit disability, credit property, credit unemployment, involuntary
3 unemployment, mortgage life, mortgage guaranty, mortgage disability,
4 guaranteed automobile protection insurance, known as "gap"
5 insurance, and any other form of insurance offered in connection
6 with an extension of credit that is limited to partially or wholly
7 extinguishing that credit obligation that the Insurance Commissioner
8 determines should be designated a form of limited line credit
9 insurance;

10 11. "Limited line credit insurance producer" means a person who
11 sells, solicits or negotiates one or more forms of limited line
12 credit insurance coverage to individuals through a master,
13 corporate, group or individual policy;

14 12. "Limited lines insurance" means limited line credit and
15 those lines of insurance defined in Section ~~20~~ 1435.20 of this ~~act~~
16 title or any other line of insurance the Insurance Commissioner
17 deems necessary to recognize for the purposes of complying with
18 subsection E of Section ~~9~~ 1435.9 of this ~~act~~ title;

19 13. "Limited lines producer" means a person who is authorized
20 by the Commissioner to sell, solicit or negotiate limited lines
21 insurance. For purposes of the laws of this state and the Oklahoma
22 Insurance Code, the term "limited insurance representative" shall
23 have the same meaning as the term "limited lines producer";

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1 14. "Managing general agent" means an individual or legal
2 entity appointed, as an independent contractor, by one or more
3 insurers to exercise general supervision over the business of the
4 insurer in this state, with authority to appoint insurance producers
5 for the insurer, and to terminate appointments for the insurer;

6 15. "Negotiate" means the act of conferring directly with or
7 offering advice directly to a purchaser or prospective purchaser of
8 a particular contract of insurance concerning any of the substantive
9 benefits, terms or conditions of the contract, provided that the
10 person engaged in that act either sells insurance or obtains
11 insurance from insurers for purchaser;

12 16. "Person" means an individual or a business entity;

13 17. "Sell" means to exchange a contract of insurance, by any
14 means, for money or its equivalent, on behalf of an insurance
15 company;

16 18. "Solicit" means attempting to sell insurance or asking or
17 urging a person to apply for a particular kind of insurance from a
18 particular company;

19 19. "Surplus lines insurance broker" means an individual or
20 legal entity who solicits, negotiates, or procures a policy of
21 insurance in an insurance company not licensed to transact business
22 in this state which cannot be procured from insurers licensed to do
23 business in this state. All transactions under such license shall
24 be subject to Article 11 of the Oklahoma Insurance Code;

1 20. "Terminate" means the cancellation of the relationship
2 between an insurance producer and the insurer or the termination of
3 a producer's authority to transact insurance;

4 21. "Uniform Business Entity Application" means the current
5 version of the National Association of Insurance Commissioners
6 (NAIC) Uniform Business Entity Application for resident and
7 nonresident business entities; and

8 22. "Uniform Application" means the current version of the NAIC
9 Uniform Application for resident and nonresident producer licensing.

10 SECTION 8. AMENDATORY 36 O.S. 2011, Section 1441.1, is
11 amended to read as follows:

12 Section 1441.1 The provisions of Section 1441 et seq. of ~~Title~~
13 ~~36 of the Oklahoma Statutes~~ this title shall not apply to
14 administrators of group self-insurance associations created pursuant
15 to Section ~~149.2~~ 399 of Title 85 of the Oklahoma Statutes.

16 SECTION 9. AMENDATORY 36 O.S. 2011, Section 1524, as
17 amended by Section 6, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2014,
18 Section 1524), is amended to read as follows:

19 Section 1524. A. "Company Action Level Event" means any of the
20 following events:

21 1. The filing of an RBC Report by an insurer which indicates
22 that:

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- 1 a. the insurer's Total Adjusted Capital is greater than
2 or equal to its Regulatory Action Level RBC but less
3 than its Company Action Level RBC,
4 b. if a life or health insurer, the insurer or fraternal
5 benefit society has Total Adjusted Capital which is
6 greater than or equal to its Company Action Level RBC
7 but less than the product of its Authorized Control
8 Level RBC and 3.0 and has a negative trend, or
9 c. if a property and casualty insurer, the insurer has
10 total adjusted capital which is greater than or equal
11 to its Company Action Level RBC but less than the
12 product of its Authorized Control Level RBC and 3.0
13 and triggers the trend test determined in accordance
14 with the trend test calculation included in the
15 Property and Casualty RBC instructions;

16 2. The notification by the Insurance Commissioner to the
17 insurer of an Adjusted RBC Report that indicates an event described
18 in paragraph 1 of this subsection, provided the insurer does not
19 challenge the Adjusted RBC Report under Section 1528 of this title;
20 or

21 3. If, pursuant to Section 1528 of this title, an insurer
22 challenges an Adjusted RBC Report that indicates the event described
23 in paragraph 1 of this subsection, the notification by the
24

1 Commissioner to the insurer that the Commissioner has, after
2 opportunity for a hearing, rejected the insurer's challenge.

3 B. In the event of a Company Action Level Event, the insurer
4 shall, unless otherwise directed by the Commissioner, prepare and
5 submit to the Commissioner an RBC Plan which shall include the
6 following five elements:

7 1. Conditions which contribute to the Company Action Level
8 Event;

9 2. Proposals of corrective actions which the insurer intends to
10 take and which would be expected to result in the elimination of the
11 Company Action Level Event;

12 3. Projections of the insurer's financial results in the
13 current year and at least the four (4) succeeding years, both in the
14 absence of proposed corrective actions and giving effect to the
15 proposed corrective actions, including projections of statutory
16 operating income, net income, ~~or~~ and capital and surplus. Unless
17 the Commissioner otherwise directs, the projections for both new and
18 renewal business shall include separate projections for each major
19 line of business and separately identify each significant income,
20 expense and benefit component;

21 4. The key assumptions impacting the insurer's projections and
22 the sensitivity of the projections to the assumptions; and

23 5. The quality of, and problems associated with, the insurer's
24 business, including, but not limited to, its assets, anticipated

1 business growth and associated surplus strain, extraordinary
2 exposure to risk, mix of business, and use of reinsurance, if any,
3 in each case.

4 C. The RBC Plan shall be submitted:

5 1. Within forty-five (45) days of the Company Action Level
6 Event; or

7 2. If the insurer challenges an Adjusted RBC Report pursuant to
8 Section 1528 of this title, within forty-five (45) days after
9 notification to the insurer that the Commissioner has, after
10 opportunity for a hearing, rejected the insurer's challenge.

11 D. Within sixty (60) days after the submission by an insurer of
12 an RBC Plan to the Commissioner, the Commissioner shall notify the
13 insurer whether the RBC Plan shall be implemented or is, in the
14 judgment of the Commissioner, unsatisfactory. If the Commissioner
15 determines the RBC Plan is unsatisfactory, the notification to the
16 insurer shall set forth the reasons for the determination, and may
17 set forth proposed revisions which will render the RBC Plan
18 satisfactory, in the judgment of the Commissioner. Upon
19 notification from the Commissioner, the insurer shall prepare a
20 Revised RBC Plan, which may incorporate by reference any revisions
21 proposed by the Commissioner, and shall submit the Revised RBC Plan
22 to the Commissioner:

23 1. Within forty-five (45) days after the notification from the
24 Commissioner; or

1 2. If the insurer challenges the notification from the
2 Commissioner under Section 1528 of this title, within forty-five
3 (45) days after a notification to the insurer that the Commissioner
4 has, after opportunity for a hearing, rejected the insurer's
5 challenge.

6 E. In the event of a notification by the Commissioner to an
7 insurer that the insurer's RBC Plan or Revised RBC Plan is
8 unsatisfactory, the Commissioner may at the Commissioner's
9 discretion, subject to the insurer's right to a hearing under
10 Section 1528 of this title, specify in the notification that the
11 notification constitutes a Regulatory Action Level Event.

12 F. Every domestic insurer that files an RBC Plan or Revised RBC
13 Plan with the Commissioner shall file a copy of the RBC Plan or
14 Revised RBC Plan with the insurance commissioner in any state in
15 which the insurer is authorized to do business if:

16 1. The state has an RBC provision substantially similar to
17 subsection A of Section 1531 of this title; and

18 2. The insurance commissioner of that state has notified the
19 insurer of its request for the filing in writing. If such a request
20 is made, the insurer shall file a copy of the RBC Plan or Revised
21 RBC Plan in that state no later than the later of:

22 a. fifteen (15) days after the receipt of the request to
23 file a copy of its RBC Plan or Revised RBC Plan with
24 the state, or

1 b. the date on which the RBC Plan or Revised RBC Plan is
2 filed under subsections C and D of this section.

3 SECTION 10. AMENDATORY 36 O.S. 2011, Section 1674, is
4 amended to read as follows:

5 Section 1674. A. Applicability of section.

6 1. The provisions of this section shall apply if, in any
7 calendar year, the aggregate amount of gross written premium on
8 business placed with a controlled insurer by a controlling producer
9 is equal to or greater than five percent (5%) of the admitted assets
10 of the controlled insurer, as reported in the controlled insurers'
11 quarterly statement filed as of September 30 of the prior year.

12 2. Notwithstanding paragraph 1 of this subsection, the
13 provisions of this section shall not apply if:

14 a. the controlling producer:

15 (1) places insurance only with the controlled
16 insurer, or only with the controlled insurer and
17 a member or members of the controlled insurer's
18 holding company system, or the controlled
19 insurer's parent, affiliate or subsidiary and
20 receives no compensation based upon the amount of
21 premiums written in connection with such
22 insurance, and

1 (2) accepts insurance placements only from
2 nonaffiliated subproducers, and not directly from
3 insureds, and

4 b. the controlled insurer, except for insurance business
5 written through a residual market facility, accepts
6 insurance business only from a controlling producer, a
7 producer controlled by the controlled insurer, or a
8 producer that is a subsidiary of the controlled
9 insurer.

10 B. Required contract provisions. A controlled insurer shall
11 not accept business from a controlling producer and a controlling
12 producer shall not place business with a controlled insurer unless
13 there is a written contract between the controlling producer and the
14 insurer specifying the responsibilities of each party, which
15 contract has been approved by the board of directors of the insurer
16 and contains the following minimum provisions:

17 1. The controlled insurer may terminate the contract for cause,
18 upon written notice to the controlling producer. The controlled
19 insurer shall suspend the authority of the controlling producer to
20 write business during the pendency of any dispute regarding the
21 cause for the termination;

22 2. The controlling producer shall render accounts to the
23 controlled insurer detailing all material transactions, including
24

1 information necessary to support all commissions, charges and other
2 fees received by, or owing to, the controlling producer;

3 3. The controlling producer shall remit all funds due under the
4 terms of the contract to the controlled insurer on at least a
5 monthly basis. The due date shall be fixed so that premiums or
6 installments thereof collected shall be remitted no later than
7 ninety (90) days after the effective date of any policy placed with
8 the controlled insurer under this contract;

9 4. All funds collected for the controlled insurer's account
10 shall be held by the controlling producer in a fiduciary capacity,
11 in one or more appropriately identified bank accounts in banks that
12 are members of the Federal Reserve System, in accordance with the
13 provisions of the insurance law as applicable. However, funds of a
14 controlling producer not required to be licensed in this state shall
15 be maintained in compliance with the requirements of the controlling
16 producer's domiciliary jurisdiction;

17 5. The controlling producer shall maintain separately
18 identifiable records of business written for the controlled insurer;

19 6. The contract shall not be assigned in whole or in part by
20 the controlling producer;

21 7. The controlled insurer shall provide the controlling
22 producer with its underwriting standards, rules and procedures,
23 manuals setting forth the rates to be charged, and the conditions
24 for the acceptance or rejection of risks. The controlling producer

1 shall adhere to the standards, rules, procedures, rates and
2 conditions. The standards, rules, procedures, rates and conditions
3 shall be the same as those applicable to comparable business placed
4 with the controlled insurer by a producer other than the controlling
5 producer;

6 8. The rate and terms of the controlling producer's
7 commissions, charges or other fees and the purposes for those
8 charges or fees. The rates of the commissions, charges and other
9 fees shall be no greater than those applicable to comparable
10 business placed with the controlled insurer by producers other than
11 controlling producers. For purposes of this paragraph and paragraph
12 7 of this subsection, examples of "comparable business" include the
13 same lines of insurance, same kinds of insurance, same kinds of
14 risks, similar policy limits, and similar quality of business;

15 9. If the contract provides that the controlling producer, on
16 insurance business placed with the insurer, is to be compensated
17 contingent upon the insurer's profits on that business, then such
18 compensation shall not be determined and paid until at least five
19 (5) years after the premiums on liability insurance are earned and
20 at least one (1) year after the premiums are earned on any other
21 insurance. In no event shall the commissions be paid until the
22 adequacy of the controlled insurer's reserves on remaining claims
23 has been independently verified pursuant to subsection C D of this
24 section;

1 10. A limit on the controlling producer's writings in relation
2 to the controlled insurer's surplus and total writings. The insurer
3 may establish a different limit for each line or subline of
4 business. The controlled insurer shall notify the controlling
5 producer when the applicable limit is approached and shall not
6 accept business from the controlling producer if the limit is
7 reached. The controlling producer shall not place business with the
8 controlled insurer if it has been notified by the controlled insurer
9 that the limit has been reached; and

10 11. The controlling producer may negotiate but shall not bind
11 reinsurance on behalf of the controlled insurer on business the
12 controlling producer places with the controlled insurer, except that
13 the controlling producer may bind facultative reinsurance contracts
14 pursuant to obligatory facultative agreements if the contract with
15 the controlled insurer contains underwriting guidelines including,
16 for both reinsurance assumed and ceded, a list of reinsurers with
17 which such automatic agreements are in effect, the coverages and
18 amounts of percentages that may be reinsured and commission
19 schedules.

20 C. Audit Committee. Every controlled insurer shall have an
21 Audit Committee of the Board of Directors composed of independent
22 directors. The Audit Committee shall annually meet with management,
23 the insurer's licensed public accountant or a certified public
24 accountant holding a permit to practice in this state and an

1 independent casualty actuary or other independent loss reserve
2 specialist acceptable to the Commissioner to review the adequacy of
3 the insurer's loss reserves.

4 D. Reporting requirements.

5 1. In addition to any other required loss reserve
6 certification, the controlled insurer shall annually, on April 1 of
7 each year, file with the Commissioner an opinion of an independent
8 casualty actuary, or such other independent loss reserve specialist
9 acceptable to the Commissioner, reporting loss ratios for each line
10 of business written and attesting to the adequacy of loss reserves
11 established for losses incurred and outstanding as of year-end,
12 including incurred but not reported losses, on business placed by
13 the producer; and

14 2. The controlled insurer shall annually report to the
15 Commissioner the amount of commissions paid to the producer, the
16 percentage such amount represents of the net premiums written and
17 comparable amounts and percentage paid to noncontrolling producers
18 for placements of the same kinds of insurance.

19 SECTION 11. AMENDATORY 36 O.S. 2011, Section 4502, is
20 amended to read as follows:

21 Section 4502. A. Each group accident and health policy shall
22 contain in substance the following provisions:

23 1. A provision that, in the absence of fraud, all statements
24 made by the policyholder or by any insured person shall be deemed

1 representations and not warranties, and that no statement made for
2 the purpose of effecting insurance shall avoid such insurance or
3 reduce benefits unless contained in a written instrument signed by
4 the policyholder or the insured person, a copy of which has been
5 furnished to such policyholder or to such person or his
6 beneficiary-;

7 2. A provision that the insurer will furnish to the
8 policyholder, for delivery to each employee or member of the insured
9 group, an individual certificate setting forth in summary form a
10 statement of the essential features of the insurance coverage of
11 such employee or member and to whom benefits are payable. If
12 dependents or family members are included in the coverage,
13 additional certificates need not be issued for delivery to such
14 dependents or family members-; and

15 3. A provision that to the group originally insured may be
16 added from time to time eligible new employees or members or
17 dependents, as the case may be, in accordance with the terms of the
18 policy.

19 B. Each group health policy certificate subject to the
20 provisions of the Federal Health Insurance Portability and
21 Accountability Act, Public Law 104-191, (HIPAA) laws shall contain
22 in substance the following provisions, which shall be in addition to
23 the provisions required by subsection A of this section.

24

1 1. A provision that a health benefit plan shall not deny,
2 exclude or limit benefits for a covered individual for losses
3 incurred more than twelve (12) months following the effective date
4 of the individual's coverage due to a preexisting condition;

5 2. A provision that a health benefit plan shall not define a
6 preexisting condition more restrictively than:

7 a. a condition for which medical advice, diagnosis, care
8 or treatment was recommended or received during the
9 six (6) months immediately preceding the effective
10 date of coverage,

11 b. pregnancy and genetic information shall not be
12 considered preexisting conditions,

13 c. a health benefit plan may exclude a preexisting
14 condition for late enrollees for a period not to
15 exceed eighteen (18) months from the date the
16 individual enrolls for coverage,

17 d. the period of any such preexisting condition exclusion
18 shall be reduced by the aggregate of the periods of
19 creditable coverage as defined in the Federal HIPAA
20 laws,

21 e. a period of creditable coverage shall not be counted
22 if after such period and before the enrollment date,
23 there was a sixty-three-day period during all of which
24

1 the individual was not covered under any creditable
2 coverage,

3 f. "enrollment date" means the date of enrollment of the
4 individual in the plan or coverage or, if earlier, the
5 first day of the waiting period for such enrollment,
6 and

7 g. "late enrollee" means a participant or beneficiary who
8 enrolls under the plan other than during the first
9 period in which the individual is eligible to enroll
10 under the plan or a special enrollment period;

11 3. A provision that individuals losing other coverage shall be
12 permitted to enroll for coverage under the terms of the plan if each
13 of the following conditions is met:

14 a. the employee or dependent was covered under a group
15 health plan or had health insurance coverage at the
16 time coverage was previously offered to the employee
17 or dependent,

18 b. the employee stated in writing at such time that
19 coverage under a group health plan or health insurance
20 coverage was the reason for declining enrollment, but
21 only if the plan sponsor or issuer required such a
22 statement at such time and provided the employee with
23 notice of such requirement, and the consequences of
24 such requirement, at such time,

1 c. the employee's or dependent's coverage was under a
2 COBRA continuation provision and the coverage under
3 such provision was exhausted; or was not under such a
4 provision and either the coverage was terminated as a
5 result of loss of eligibility for the coverage,
6 including as a result of legal separation, divorce,
7 death, termination of employment, or reduction in the
8 number of hours of employment, or employer
9 contributions toward such coverage were terminated,
10 and

11 d. under the terms of the plan, the employee requests
12 such enrollment not later than thirty (30) days after
13 the date of exhaustion of coverage;

14 4. A provision that for any period that an individual is in a
15 waiting period for any coverage under a group health plan or for
16 group health insurance coverage or is in an affiliation period, that
17 period shall not be taken into account in determining the continuous
18 period of creditable coverage. "Affiliation period" means a period
19 which, under the terms of the health insurance coverage offered by a
20 health maintenance organization, must expire before the health
21 insurance coverage becomes effective. The organization is not
22 required to provide health care services or benefits during such
23 period and no premium shall be charged to the participant or
24 beneficiary for any coverage during the period;

1 5. A provision that preexisting condition exclusions will not
2 apply to newborns, who, as the last day of the thirty-day period
3 beginning with the date of birth, are covered under creditable
4 coverage;

5 6. A provision that preexisting condition exclusions will not
6 apply to a child who is adopted or placed for adoption before
7 attaining eighteen (18) years of age;

8 7. A provision that dependents are eligible for a special
9 enrollment period if the group health plan makes coverage available
10 with respect to a dependent of an individual, and the individual is
11 a participant under the plan, or has met any waiting period
12 applicable to becoming a participant under the plan and is eligible
13 to be enrolled under the plan but for a failure to enroll during a
14 previous enrollment period, and a person becomes such a dependent of
15 the individual through marriage, birth or adoption or placement for
16 adoption. The special enrollment period shall apply to that person
17 or, if not otherwise enrolled, the individual, the dependent of the
18 individual, and in the case of the birth or adoption of a child, the
19 spouse of the individual may be enrolled as a dependent of the
20 individual if such spouse is otherwise eligible for coverage.

21 a. The dependent special enrollment period shall be a
22 period of not less than thirty (30) days and shall
23 begin on the later of the date dependent coverage is
24

1 made available, or the date of the marriage, birth, or
2 adoption or placement for adoption.

3 b. There is no waiting period if an individual seeks to
4 enroll a dependent during the first thirty (30) days
5 of such a dependent special enrollment period.

6 c. The coverage for the dependent shall become effective
7 in the case of marriage, not later than the first day
8 of the first month beginning after the date the
9 completed request for enrollment is received, in the
10 case of a dependent's birth, as of the date of such
11 birth, in the case of a dependent's adoption or
12 placement for adoption, the date of such adoption or
13 placement for adoption;

14 8. A provision that eligibility or continued eligibility of any
15 individual will not be based on any of the following health-status-
16 related factors in relation to the individual or a dependent of the
17 individual: health status, medical condition, including both
18 physical and mental illnesses, claims experience, receipt of health
19 care, medical history, genetic information, evidence of
20 insurability, including conditions arising out of acts of domestic
21 violence or disability.

22 a. Carriers are not required to provide particular
23 benefits other than those provided under the terms of
24 the plan or coverage.

1 b. Carriers may establish limitations or restrictions on
2 the amount, level, extent, and nature of the benefits
3 or coverage for similarly situated individuals
4 enrolled in the plan or coverage; and

5 9. A provision that the group health plan is guaranteed
6 renewable, except as provided pursuant to the federal provisions
7 found in HIPAA, which are as follows:

- 8 a. nonpayment of premium,
9 b. fraud,
10 c. violation of participation and/or contribution rules,
11 d. termination of coverage:

12 (1) in any case in which an issuer decides to
13 discontinue offering a particular type of group
14 health insurance coverage offered in the large or
15 small group market, coverage of such type may be
16 discontinued by the issuer only if: the issuer
17 provides notice to each plan sponsor provided
18 coverage of this type in such market, and
19 participants and beneficiaries covered under such
20 coverage, of such discontinuation at least ninety
21 (90) days prior to the date of the
22 discontinuation of such coverage and makes
23 available the option to purchase all or, in the
24 case of the large group market, any other health

1 insurance coverage currently being offered by the
2 issuer to a group health plan in such market and
3 in exercising the option to discontinue coverage
4 of this type and in offering the option of
5 coverage pursuant to this provision, the issuer
6 acts uniformly without regard to the claims
7 experience of those sponsors or any health-
8 status-related factor relating to any
9 participants or beneficiaries covered or new
10 participants or beneficiaries who may become
11 eligible for such coverage,

12 (2) in any case in which an issuer decides to
13 discontinue offering a particular type of group
14 health insurance coverage offered in the large or
15 small group market, coverage of such type may be
16 discontinued by the issuer only if: the issuer
17 provides notice to the Oklahoma Insurance
18 Department and to each plan sponsor and
19 participants and beneficiaries covered under such
20 coverage of such discontinuation at least one
21 hundred eighty (180) days prior to the date of
22 the discontinuation of such coverage; and all
23 health insurance issued or delivered for issuance
24 in the state in such market or markets are

1 discontinued and coverage under such health
2 insurance coverage in such market or markets is
3 not renewed, and

4 (3) in the case of a discontinuation under division
5 (2) of this subparagraph in a market, the issuer
6 shall not provide for the issuance of any health
7 insurance coverage in the market and in this
8 state during the five-year period beginning on
9 the date of the discontinuation of the last
10 health insurance coverage not so renewed,

11 e. movement outside the service area, and

12 f. association membership ceases; ~~and~~

13 ~~10. A provision that certification of creditable coverage will~~
14 ~~be issued individuals covered:~~

15 ~~a. at the time an individual ceases to be covered under~~
16 ~~the plan or otherwise becomes covered under a COBRA~~
17 ~~continuation provision,~~

18 ~~b. in the case of an individual becoming covered under~~
19 ~~such a provision, at the time the individual ceases to~~
20 ~~be covered under such provision, and~~

21 ~~e. on the request on behalf of an individual made not~~
22 ~~later than twenty-four (24) months after the date of~~
23 ~~cessation of the coverage described in subparagraph a~~
24 ~~or b of this paragraph, whichever is later.~~

1 ~~The certification described in this paragraph is a written~~
2 ~~certification of the period of creditable coverage of the individual~~
3 ~~under such plan and the coverage, if any, under such COBRA~~
4 ~~continuation provision, and the waiting period, if any, and~~
5 ~~affiliation period, if applicable, imposed with respect to the~~
6 ~~individual for any coverage under such plan.~~

7 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6041, is
8 amended to read as follows:

9 Section 6041. ~~A.~~ Payment or each periodic payment not
10 exceeding One Thousand Dollars (\$1,000.00) for emergency living
11 expenses made to any policyholder or his dependents or beneficiaries
12 under an insurance policy for:

- 13 1. Fire insurance;
- 14 2. Casualty insurance;
- 15 3. Property insurance, including what may be termed a
16 homeowner's policy; or
- 17 4. Any other type of policy that insures against personal loss
18 as a consequence of loss of or damage to real or personal property;
19 which provides for payment or periodic payments for emergency living
20 expenses; and payments made under workers' compensation or
21 employers' liability insurance as defined in Section 707 of ~~Title 36~~
22 ~~of the Oklahoma Statutes~~ this title, shall be made through the use
23 of United States legal tender, or through a means acceptable to the
24 recipient of the payment, including, but not limited to, electronic

1 funds transfer, prepaid cards, negotiable instruments payable on
2 demand or negotiable drafts.

3 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6103.3, is
4 amended to read as follows:

5 Section 6103.3 A. For the purposes of Sections 6103.1 through
6 6103.11 of this title, "person" shall include an individual, a
7 partnership, a corporation, a limited liability company, an
8 association, a joint stock company, a trust, an unincorporated
9 organization, any similar group, entity or any combination of the
10 foregoing acting in concert.

11 B. No person or insurer shall directly or indirectly do any of
12 the acts of an insurance business set forth in Sections 6103.1
13 through 6103.11 of this title, except as provided by and in
14 accordance with the specific authorization of statute. In respect
15 to the insurance of subjects resident, located or to be performed
16 within this state, this section shall not prohibit the collection of
17 premium or other acts performed outside of this state by persons or
18 insurers authorized to do business in this state provided such
19 transactions and insurance contracts otherwise comply with statute.

20 C. Any person which the Insurance Commissioner has reason to
21 believe is doing any of the acts specified in Section 6103.2 of this
22 title, upon written request by the Commissioner, shall immediately
23 provide to the Commissioner such information as requested in
24 relation to such acts.

1 D. A person or entity who violates any provision of Sections
2 6103.1 through 6103.11 of this title is subject to a civil penalty
3 of not more than Ten Thousand Dollars (\$10,000.00) for each act of
4 violation and for each day of violation to be recovered as provided
5 in this section.

6 E. Whenever the Commissioner has reason to believe or it
7 appears that any person or insurer has violated or is threatening to
8 violate any provision of Sections 6103.1 through 6103.11 of this
9 title or any rule promulgated pursuant thereto, or that any person
10 or insurer acting in violation of Sections 6103.1 through 6103.11 of
11 this title has engaged in or is threatening to engage in any unfair
12 method of competition or any unfair or deceptive act or practice as
13 defined by Section 1201 et seq. of this title or any rule
14 promulgated pursuant thereto, the Commissioner may:

- 15 1. Issue an ex parte cease and desist order under the
16 procedures provided by Sections 6103.5 and 6103.6 of this title;
- 17 2. Institute in the district court of Oklahoma County a civil
18 suit for injunctive relief to restrain the person from continuing
19 the violation or threat of violation;
- 20 3. Institute in the district court of Oklahoma County a civil
21 suit to recover a civil penalty as provided for in this section; or
- 22 4. Exercise any combination of the acts provided for in this
23 subsection.

1 F. On application for injunctive relief and a finding that a
2 person is violating or threatening to violate any provision of
3 Sections 6103.1 through 6103.11 of this title, the district court
4 shall grant the injunctive relief and the injunction shall be issued
5 without bond.

6 G. The remedies provided in Sections 6103.1 through 6103.11 of
7 this title for administrative action against unauthorized insurers
8 shall also apply to unauthorized individuals or persons engaged in
9 the business of bail bonds or any other business which is subject to
10 the jurisdiction of the Insurance Commissioner.

11 H. This section shall not be construed to limit the Insurance
12 Commissioner to the remedies specified herein. It is the intent of
13 the Legislature that persons engaging in the business of insurance,
14 or any other business for which authorization from the Insurance
15 Commissioner is required, without statutory authorization constitute
16 an imminent peril to the public welfare and should immediately be
17 stopped and enjoined from doing so, provided, the Insurance
18 Commissioner and the State of Oklahoma should be able to choose at
19 any time any available remedy or action to bring about such a result
20 without regard to prior proceedings under this section.

21 SECTION 14. REPEALER 36 O.S. 2011, Sections 924.4, as
22 amended by Section 1, Chapter 44, O.S.L. 2012 and 924.5, as amended
23 by Section 2, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2014, Sections
24 924.4 and 924.5), are hereby repealed.

1 SECTION 15. This act shall become effective November 1, 2015.

2 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE
3 March 26, 2015 - DO PASS AS AMENDED
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