An Act

ENROLLED SENATE
BILL NO. 539

By: Montgomery of the Senate

and

Sneed of the House

An Act relating to insurance licensure; amending 36 O.S. 2021, Sections 1435.13, 1435.29, as amended by Section 7, Chapter 225, O.S.L. 2022 (36 O.S. Supp. 2022, Section 1435.29), 6206, 6217, and 6220, which relate to power over licensure, continuing education, license evidence, license expiration and renewal, and causes for disbarring licensure; removing certain parameters for license termination; modifying time period for review of certain continuing education courses; removing minimum fine amount; requiring licensee maintain updated information with the Insurance Commissioner; clarifying and conforming language; and providing an effective date.

SUBJECT: Insurance licensure

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 1435.13, is amended to read as follows:

Section 1435.13. A. The Insurance Commissioner may place on probation, censure, suspend, revoke or refuse to issue or renew a license issued pursuant to the Oklahoma Producer Licensing Act or may levy a civil penalty in accordance with subsection D of this section or any combination of actions, for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete or materially untrue information in the license application;

2. Violating any insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

6. Having been convicted of a felony;

7. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

8. Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

9. Having an insurance producer license, or its equivalent, denied, suspended, censured, placed on probation or revoked in any other state, province, district or territory;

10. Forging another's name to an application for insurance or to any document related to an insurance transaction;

11. Improperly using notes or any other reference material to complete an examination for an insurance license;

12. Knowingly accepting insurance business from an individual who is not licensed;

13. Failing to comply with an administrative or court order imposing a child support obligation;

14. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax;

15. Failing to respond to an inquiry from the Department as required in Section 1250.4 of this title; or

16. Any cause for which an original issuance of a license could have been refused.

B. ~~1.~~ In the event that the action by the Insurance Commissioner is to nonrenew or to deny an application for a license, the Insurance Commissioner shall notify the applicant or licensee and advise the applicant or licensee, in writing, of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Insurance Commissioner within thirty (30) days of the date of notification of the notification by the Insurance Commissioner for a hearing before the Insurance Commissioner or an independent hearing examiner to determine the reasonableness of the Insurance Commissioner's action. The hearing shall be heard within a reasonable time period and shall be held pursuant to the Oklahoma Administrative Procedures Act.

~~2. The Insurance Department shall only terminate a license issued pursuant to the Oklahoma Producer Licensing Act that failed to renew after a twelve-month inactive period upon notification by first-class mail ninety (90) days prior to termination of the license. The provisions of this subsection shall not apply to a licensee that willfully and knowingly violates any provision of this Code as to which refusal, suspension or revocation is mandatory.~~

C. The license of a business entity may be suspended, revoked or refused if the Insurance Commissioner finds, after opportunity for hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the Insurance Commissioner nor corrective action taken.

D. In addition to or in lieu of any applicable denial, probation, censure, suspension or revocation of a license, a person may, after opportunity for hearing, be subject to a civil fine of

not ~~less than One Hundred Dollars ($100.00) nor~~ more than One Thousand Dollars ($1,000.00) for each occurrence. The penalty may be enforced in the same manner in which civil judgments may be enforced.

E. Every licensee licensed pursuant to the provisions of the Oklahoma Producer Licensing Act shall keep at the licensee's place of business the usual and customary records pertaining to transactions authorized by the license. All records as to any particular transactions shall be kept available and open to the inspection of the Commissioner at any time during business hours during the three (3) years immediately following the date of completion of the transaction. The Commissioner may require a financial or market conduct examination during any investigation of a licensee. The cost of such examination shall be apportioned among all of the appointing insurers of the licensee.

F. The Insurance Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Oklahoma Producer Licensing Act and this title against any person who is under investigation for or charged with a violation of the Oklahoma Producer Licensing Act or this title even if the person's license or registration has been surrendered or has lapsed by operation of law.

G. Files pertaining to investigations or legal matters which contain information concurring a current and ongoing investigation of allegations of violations of the Oklahoma Insurance Code by a licensed agent shall not be available for public inspection without proper judicial authorization; however, a licensee under investigation for alleged violations of the Oklahoma Insurance Code, or against whom an action for alleged violations of the Oklahoma Insurance Code has been commenced, may view evidence and complaints pertaining to the investigation, other than privileged information, at reasonable times at the Commissioner's office. All qualification examination materials, booklets and answers for any license authorized to be issued by the Commissioner under any statute shall not be available for public inspection. The residence address, residence telephone number, birth date and Social Security number of a licensee shall not be available for public inspection. A separate business or mailing address provided by the licensee shall be considered a public record. If the residence and business addresses

or residence and business telephone numbers are the same, such addresses or telephone numbers shall be considered a public record.

H. The Commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any censure, suspension, revocation or termination of license by the Commissioner.

I. Upon suspension, revocation or termination of the license of a resident or nonresident of this state, the Commissioner shall notify the Central Office of the National Association of Insurance Commissioners, or its appropriate nonprofit affiliates and the Insurance Commissioner of each state for whom the Commissioner has executed a certificate of licensure status.

J. The Commissioner may issue a duplicate license for any lost, stolen or destroyed license issued pursuant to the Oklahoma Producer Licensing Act upon an affidavit of the licensee prescribed by the Commissioner concerning the facts of such loss, theft or destruction.

SECTION 2. AMENDATORY 36 O.S. 2021, Section 1435.29, as amended by Section 7, Chapter 225, O.S.L. 2022 (36 O.S. Supp. 2022, Section 1435.29), is amended to read as follows:

Section 1435.29. A. 1. Each insurance producer, with the exception of title producers and aircraft title producers or any other producer exempt by rule, shall, biennially, complete not less than twenty-one (21) clock hours of continuing insurance education. Such education may include a written or oral examination.

2. Licensees, with the exception of title producers and aircraft title producers or any other producer exempt by rule, shall complete, in addition to the foregoing, three (3) clock hours of ethics course work in this same period.

3. Each title producer and aircraft title producer shall, biennially, complete not less than sixteen (16) clock hours of continuing insurance education, two (2) hours of which shall be ethics course work, which shall cover the line for which the producer is licensed. Such education may include a written or oral examination.

B. 1. The Insurance Commissioner shall approve courses and providers of continuing education. The Insurance Department may use one or more of the following to review and provide a nonbinding recommendation to the Insurance Commissioner on approval or disapproval of courses and providers of continuing education:

a. employees of the Insurance Commissioner,

b. a continuing education advisory committee, or

c. an independent service whose normal business activities include the review and approval of continuing education courses and providers. The Commissioner may negotiate agreements with such independent service to review documents and other materials submitted for approval of courses and providers and provide the Commissioner with its nonbinding recommendation. The Commissioner may require such independent service to collect the fee charged by the independent service for reviewing materials provided for review directly from the course providers.

The Insurance Commissioner has sole authority to approve courses and providers of continuing education. If the Insurance Commissioner uses one of the entities listed above to provide a nonbinding recommendation, the Commissioner shall adopt or decline to adopt the recommendation within thirty (30) days of receipt of the recommendation. In the event the Insurance Commissioner takes no action within said thirty-day period, the recommendation made to the Commissioner will be deemed to have been adopted by the Commissioner.

The Insurance Commissioner may certify providers and courses offered for license examination study. The Insurance Department shall use employees of the Insurance Commissioner to review and certify license examination study program providers and courses.

2. Each insurance company shall be allowed to provide continuing education to insurance producers as required by this section; provided that such continuing education meets the general

standards for education otherwise established by the Insurance Commissioner.

3. An insurance producer who, during the time period prior to renewal, participates in a professional designation program, approved by the Insurance Commissioner, shall be deemed to have met the biennial requirement for continuing education.

The curriculum for the program shall total a minimum of twenty-four (24) hours within a twenty-four-month period. Each approved professional designation program included in this section shall be reviewed for quality and compliance every ~~three (3)~~ two (2) years in accordance with standardized criteria promulgated by rule. Continuation of approved status is contingent upon the findings of the review. The list of professional designation programs approved under this paragraph shall be made available to producers and providers annually.

4. The Insurance Department may promulgate rules providing that courses or programs offered by professional associations shall qualify for presumptive continuing education credit approval. The rules shall include standardized criteria for reviewing the professional associations' mission, membership, and other relevant information, and shall provide a procedure for the Department to disallow all or part of a presumptively approved course. Professional association courses approved in accordance with this paragraph shall be reviewed every ~~three (3)~~ two (2) years to determine whether they continue to qualify for continuing education credit.

5. Subject to approval by the Commissioner, the active membership of the licensed producer or broker in local, regional, state, or national professional insurance organizations or associations may be approved for up to one (1) annual hour of instruction. The hour shall be credited upon timely filing with the Commissioner, or designee of the Commissioner, and appropriate written evidence acceptable to the Commissioner of such active membership in the organization or association.

6. The active service of a licensed producer as a member of a continuing education advisory committee, as described in paragraph 1

of this subsection, shall be deemed to qualify for continuing education credit on an hour-for-hour basis.

C. 1. Annual fees and course submission fees shall be set forth as a rule by the Commissioner. The fees are payable to the Insurance Commissioner. Provided, public-funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations, and state agencies shall be exempt from this subsection.

2. The Commissioner may assess a civil penalty, after notice and opportunity for hearing, against a continuing education provider who fails to comply with the requirements of the Oklahoma Producer Licensing Act, of not ~~less than One Hundred Dollars ($100.00) nor~~ more than Five Hundred Dollars ($500.00), for each occurrence. The civil penalty may be enforced in the same manner in which civil judgments may be enforced.

D. ~~Failure of an insurance producer to comply with the requirements of the Oklahoma Producer Licensing Act may, after notice and opportunity for hearing, result in censure, suspension, nonrenewal of license or a civil penalty of up to Five Hundred Dollars ($500.00) or by both such penalty and civil penalty. Said civil penalty may be enforced in the same manner in which civil judgments may be enforced.~~

~~E.~~ Limited lines producers and nonresident agents who have successfully completed an equivalent or greater requirement shall be exempt from the provisions of this section.

~~F.~~ E. Members of the Legislature shall be exempt from this section.

~~G.~~ F. The Commissioner shall adopt and promulgate such rules as are necessary for effective administration of this section.

SECTION 3. AMENDATORY 36 O.S. 2021, Section 6206, is amended to read as follows:

Section 6206. A. The Insurance Commissioner shall license as an adjuster only an individual who has fully complied with the provisions of the Insurance Adjusters Licensing Act, including the

furnishing of evidence satisfactory to the Commissioner that the applicant:

1. Is at least eighteen (18) years of age;

2. Is a bona fide resident of this state or is a resident of a state or country which permits adjusters who are residents of this state to act as adjusters in such other state or country;

3. If a nonresident of the United States, has complied with all federal laws pertaining to employment and the transaction of business in the United States;

4. Is a trustworthy person;

5. Has had experience or special education or training of sufficient duration and extent with reference to the handling of loss claims pursuant to insurance contracts to make the applicant competent to fulfill the responsibilities of an adjuster;

6. Has successfully passed an examination as required by the Commissioner within two (2) years prior to date of application, or has been exempted from examination, in accordance with the provisions of Section 6208 of this title; and

7. If the application is for a public adjuster's license, the applicant has filed the bond required by Section 6214 of this title.

B. Residence addresses and telephone listings, birth dates, and social security numbers for insurance adjusters and public adjusters on file with the Insurance Department are exempt from disclosure as public records. A separate business or mailing address as provided by the adjuster shall be considered a public record and upon request shall be disclosed. If an adjuster's residence and business address or residence and business telephone number are the same, such address or telephone number shall be considered a public record.

C. The mailing address shall appear on all licenses of the licensee, and the licensee shall promptly notify the Insurance Commissioner within thirty (30) days of any change in legal name or preferred mailing address, physical business address, e-mail address, or physical residential address of the licensee. A change

in legal name or address thirty (30) days after the change must include an administrative fee of Fifty Dollars ($50.00). Failure to provide acceptable notification of a change of legal name or address to the Insurance Commissioner within forty-five (45) days of the date the administrative fee is assessed will result in penalties pursuant to Section 6220 of this title.

D. An adjuster doing business in this state under any name other than the adjuster's legal name shall notify the Insurance Commissioner and submit any payment necessary electronically and in the form and manner prescribed by the Commissioner prior to using the assumed name.

SECTION 4. AMENDATORY 36 O.S. 2021, Section 6217, is amended to read as follows:

Section 6217. A. All licenses issued pursuant to the provisions of the Insurance Adjusters Licensing Act shall continue in force not longer than twenty-four (24) months. The renewal dates for the licenses may be staggered throughout the year by notifying licensees in writing of the expiration and renewal date being assigned to the licensees by the Insurance Commissioner and by making appropriate adjustments in the biennial licensing fee.

B. Any licensee applying for renewal of a license as an adjuster shall have completed not less than twenty-four (24) clock hours of continuing insurance education, of which three (3) hours shall be in ethics, within the previous twenty-four (24) months prior to renewal of the license. The Insurance Commissioner shall approve courses and providers of continuing education for insurance adjusters as required by this section.

The Insurance Department may use one or more of the following to review and provide a nonbinding recommendation to the Insurance Commissioner on approval or disapproval of courses and providers of continuing education:

1. Employees of the Insurance Commissioner;

2. A continuing education advisory committee;

3. An independent service whose normal business activities include the review and approval of continuing education courses and providers. The Commissioner may negotiate agreements with such independent service to review documents and other materials submitted for approval of courses and providers and present the Commissioner with its nonbinding recommendation. The Commissioner may require such independent service to collect the fee charged by the independent service for reviewing materials provided for review directly from the course providers.

C. An adjuster who, during the time period prior to renewal, participates in an approved professional designation program shall be deemed to have met the biennial requirement for continuing education. Each course in the curriculum for the program shall total a minimum of twenty-four (24) hours. Each approved professional designation program included in this section shall be reviewed for quality and compliance every ~~three (3)~~ two (2) years in accordance with standardized criteria promulgated by rule. Continuation of approved status is contingent upon the findings of the review. The list of professional designation programs approved under this subsection shall be made available to producers and providers annually.

D. The Insurance Department may promulgate rules providing that courses or programs offered by professional associations shall qualify for presumptive continuing education credit approval. The rules shall include standardized criteria for reviewing the professional associations' mission, membership, and other relevant information, and shall provide a procedure for the Department to disallow a presumptively approved course. Professional association courses approved in accordance with this subsection shall be reviewed every ~~three (3)~~ two (2) years to determine whether they continue to qualify for continuing education credit.

E. The active service of a licensed adjuster as a member of a continuing education advisory committee, as described in paragraph 2 of subsection B of this section, shall be deemed to qualify for continuing education credit on an hour-for-hour basis.

F. 1. Each provider of continuing education shall, after approval by the Commissioner, submit an annual fee. A fee may be assessed for each course submission at the time it is first

submitted for review and upon submission for renewal at expiration. Annual fees and course submission fees shall be set forth as a rule by the Commissioner. The fees are payable to the Insurance Commissioner and shall be deposited in the State Insurance Commissioner Revolving Fund, created in Section 307.3 of this title, for the purposes of fulfilling and accomplishing the conditions and purposes of the Oklahoma Producer Licensing Act and the Insurance Adjusters Licensing Act. Public-funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations and Oklahoma state agencies shall be exempt from this subsection.

2. The Commissioner may assess a civil penalty, after notice and opportunity for hearing, against a continuing education provider who fails to comply with the requirements of the Insurance Adjusters Licensing Act, of not ~~less than One Hundred Dollars ($100.00) nor~~ more than Five Hundred Dollars ($500.00), for each occurrence. The civil penalty may be enforced in the same manner in which civil judgments may be enforced.

G. Subject to the right of the Commissioner to suspend, revoke, or refuse to renew a license of an adjuster, any such license may be renewed by filing on the form prescribed by the Commissioner on or before the expiration date a written request by or on behalf of the licensee for such renewal and proof of completion of the continuing education requirement set forth in subsection B of this section, accompanied by payment of the renewal fee.

H. If the request, proof of compliance with the continuing education requirement and fee for renewal of a license as an adjuster are filed with the Commissioner prior to the expiration of the existing license, the licensee may continue to act pursuant to said license, unless revoked or suspended prior to the expiration date, until the issuance of a renewal license or until the expiration of ten (10) days after the Commissioner has refused to renew the license and has mailed notice of said refusal to the licensee. Any request for renewal filed after the date of expiration may be considered by the Commissioner as an application for a new license.

SECTION 5. AMENDATORY 36 O.S. 2021, Section 6220, is amended to read as follows:

Section 6220. A. The Commissioner may censure, suspend, revoke, or refuse to issue or renew a license ~~after hearing~~ pursuant to the Insurance Adjusters Licensing Act, levy a civil penalty in accordance with subsection B of this section, or any combination of actions for any of the following causes:

1. Material misrepresentation or fraud in obtaining an adjuster's license;

2. Any cause for which original issuance of a license could have been refused;

3. Misappropriation, conversion to the personal use of the licensee, or illegal withholding of monies required to be held by the licensee in a fiduciary capacity;

4. Material misrepresentation of the terms and effect of any insurance contract, with intent to deceive, or engaging in, or attempting to engage in, any fraudulent transaction with respect to a claim or loss that the licensee or the trainee is adjusting and, in the case of a public adjuster, misrepresentation of the services offered or the fees or commission to be charged;

5. Conviction of or pleading guilty or nolo contendere to a felony pursuant to the laws of this state, any other state, the United States, or any foreign country;

6. If in the conduct of business affairs, the licensee or trainee has shown himself to be, and is so deemed by the Commissioner, incompetent, untrustworthy or a source of injury to the public;

7. Refusal to comply with any lawful order of the Commissioner;

8. Violation of any provision of the Insurance Adjusters Licensing Act;

9. Adjusting losses or negotiating claim settlements arising pursuant to provisions of insurance contracts on behalf of an insurer or insured without proper licensing from the Commissioner and authority from the licensed insurer or the insured party;

10. Failing to respond to any inquiry (including electronic communications) from the Department within thirty (30) calendar days of receipt of such inquiry;

11. Forging another's name to any document;

12. Improperly using notes or any other reference material to complete an examination for an insurance license;

13. Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;

14. Having an insurance adjuster license or its equivalent denied, suspended, censured, placed on probation or revoked in any other state, province, district or territory;

15. Failing to inform the Department, by any means acceptable to the Department, of a change of address, change of legal name or change of information submitted on the application within thirty (30) days of the change; or

16. Providing services as a public adjuster, company adjuster or independent adjuster on the same claim.

B. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the provisions of the Insurance Adjusters Licensing Act may be subject to a civil fine of not more than One Thousand Dollars ($1,000.00) for each violation. This fine may be enforced in the same manner in which civil judgment may be enforced.

C. ~~If the license of an adjuster is suspended, revoked, or not renewed, the licensee shall surrender the license to the Commissioner.~~

~~D.~~ The Commissioner shall not reinstate a license to any person whose license has been suspended, revoked, or refused renewal until the Commissioner determines that the cause or causes for the suspension, revocation, or nonrenewal of the license no longer exist.

~~E.~~ D. The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

~~F.~~ E. It shall be unlawful for any person, firm, association, company or corporation to act as an adjuster without first obtaining a license pursuant to the Insurance Adjusters Licensing Act. Any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and shall be punished as set forth in Section 10 of Title 21 of the Oklahoma Statutes. The restriction set forth in this subsection shall apply regardless of whether the person, firm, association, company or corporation has obtained power of attorney from an insurance claimant or has entered into any other agreement with an insurance claimant to act on the behalf of the claimant.

SECTION 6. This act shall become effective November 1, 2023.

Passed the Senate the 13th day of February, 2023.

Brent Howard
Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th

day of April, 20 23, at 12:35 o'clock p. M.

By: Samuel Cleveland

Approved by the Governor of the State of Oklahoma this 2nd

day of May, 20 23, at 11:11 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 2nd

day of May, 20 23, at 1:49 o'clock p M.

By: Brian Bingman