

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 463

BY: ROBINSON

AS INTRODUCED

AN ACT RELATING TO INSURANCE; AMENDING SECTION 10, CHAPTER 328, O.S.L. 1985 (36 O.S. SUPP. 1990, SECTION 1431.1), WHICH RELATES TO TERMINATION OF INSURANCE AGENT CONTRACTS; PROVIDING CERTAIN EXCEPTIONS; SETTING FORTH CERTAIN GROUNDS FOR TERMINATION OF INSURANCE AGENT CONTRACTS; REQUIRING NOTICE; ESTABLISHING A CAUSE OF ACTION; PROVIDING CERTAIN REMEDIES; SETTING FORTH CERTAIN GUIDELINES CONCERNING TERMINATION; PROVIDING LIMITATIONS; DEFINING TERMS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY Section 10, Chapter 328, O.S.L. 1985 (36 O.S. Supp. 1990, Section 1431.1), is amended to read as follows:

Section 1431.1 ~~No~~ Except as provided in Section 2 of this act, no insurer shall terminate its contract with an agent without first providing the agent and the Insurance Commissioner with written notification at least thirty (30) days prior to the date of termination, stating the reason for the insurer's action. Any information, document, record or statement provided pursuant to this

section may be used by the Commissioner in any action taken pursuant to Section 1428 of this title; however, such information shall be deemed privileged in any civil action between the reporting insurer and such terminated agent.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1431.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No insurer shall cancel, refuse to renew, or otherwise terminate a written contractual relationship with any insurance agent who has been employed or appointed by such insurer pursuant to the written contract for a period of more than five (5) years, except for good cause as set forth in this section. If an insurer proposes to terminate a contractual relationship with the agent, the insurer shall so notify the agent by certified mail at least ninety (90) days prior to the date upon which the insurer proposes to terminate the contractual relationship. Such notice shall include a statement of the grounds upon which the insurer bases its decision to cancel, refuse to renew, or terminate the contractual relationship.

B. As used in this section, "good cause" means:

1. Criminal misconduct or gross negligence by the insurance agent relating to the business or premises of the agent;

2. Fraud or moral turpitude committed by the agent;

3. Abandonment or unattendance of the business or premises of the insurance agent for such period of time as may unreasonably interfere with the transacting of insurance business;

4. Improper withholding, misappropriation, or conversion to his own use by the agent of any monies belonging to policyholders, insurers, beneficiaries, or others received in the course of the agent's insurance business;

5. Death or disability of the agent;

6. Insolvency of the insurer or discontinuation by the insurer of any line of insurance for any business purpose. If termination is for the reason set forth in this subparagraph, the Insurance Commissioner shall notify or cause to be notified in writing all agents of such insolvent insurer that they are no longer entitled to any benefit under their contract with the insolvent insurer; or

7. Revocation, suspension, or nonrenewal of the agent's license by the Insurance Commissioner pursuant to the provisions of Section 1428 of Title 36 of the Oklahoma Statutes.

C. If, upon receipt by the insurance agent of the notice of proposed cancellation provided by this section, the insurance agent, prior to the established cancellation date as stated in the notice, rectifies or eliminates the stated ground constituting good cause for cancellation of the contract, the notice and cancellation shall be void.

D. If any insurer cancels, refuses to renew, or otherwise terminates the contractual relationship with any agent in violation of the provisions of this section, the agent who has been damaged thereby shall have a cause of action against the insurer for specific performance, injunctive relief or for damages sustained by the agent as a result of the termination of the relationship, including but not limited to, ascertainable loss of goodwill. Any action brought by an insurance agent against an insurer for wrongful termination of the contractual relationship shall be commenced within two (2) years after such wrongful termination.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1431.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An insurer shall not cancel a written agreement with an agent or reduce or restrict the underwriting authority of the agent with respect to property or casualty insurance based solely on the loss ratio experience on that agent's book of business, if:

1. the insurer required the agent to submit the application for underwriting approval;

2. all material information on the application was fully completed; and

3. the agent has not omitted or altered any information provided by the applicant.

An insurer may reduce or restrict an agent's underwriting authority with respect to property or casualty insurance if the insurer first obtains written approval for such reduction from the agent.

B. This section shall apply only to captive agents and direct writer's agents who are not in the direct employ of the insurer.

C. As used in this section:

1. "Loss ratio experience" means the ratio of premiums paid divided by the claims paid during the previous two-year period.

2. "Captive agent" means a representative of a single insurer who is obliged to submit business only to that insurer, or give said insurer first refusal rights on a sale.

3. "Direct writer's agent" means the agent of a property and casualty insurer that distributes its products through its own employees.

SECTION 4. This act shall become effective September 1, 1991.

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