

An Act

ENROLLED SENATE
BILL NO. 1252

By: Quinn of the Senate

and

Sneed of the House

An Act relating to Oklahoma Producer Licensing; amending 36 O.S. 2021, Sections 1435.2, 1435.3, 1435.6, 1435.22, 1435.23, 1435.26, and 1435.29, which relate to the Oklahoma Producer Licensing Act; modifying definitions; requiring customer service representative and insurance consultant hold certain license; conforming language; updating statutory language; repealing 36 O.S. 2021, Sections 1435.24, 1435.30, and 1435.31, which relate to insurance consultant licensure and customer service representative licensure and appointment; and providing an effective date.

SUBJECT: Insurance producer licensing

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

SECTION 1. AMENDATORY 36 O.S. 2021, Section 1435.2, is amended to read as follows:

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

1. "Commissioner" means the Insurance Commissioner;
2. "Business entity" means a corporation, association, partnership, limited liability company, limited partnership, or other legal entity;

3. "Customer service representative" means an individual who is required to be licensed as an insurance producer under the laws of this state ~~appointed by an insurance producer, surplus lines insurance broker, managing general agent, or insurance agency to assist~~ and assists the insurance producer, broker, or agency in transacting the business of insurance from the office of the insurance producer, broker, or agency ~~and whose salary may vary based on the production or volume of applications or premiums;~~

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

5. "Insurance" means any of the lines of authority in this title, ~~including workers' compensation insurance.~~ Any insurer approved to offer workers' compensation insurance may appoint insurance producers. All producers appointed for workers' compensation insurance products must be licensed as insurance producers by the Oklahoma Insurance Department;

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

7. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance and includes a customer service representative and an insurance consultant. Any person not duly licensed as an insurance producer, surplus lines insurance broker, or limited lines producer who solicits a policy of insurance on behalf of an insurer shall be deemed to be acting as an insurance agent within the meaning of the Oklahoma Producer Licensing Act, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance producer of the company is subject, and the company by issuing the policy of insurance shall thereby accept and acknowledge the person as its agent in the transaction. For purposes of the laws of this state and the Oklahoma Insurance Code, the term

"insurance agent" means an insurance producer properly appointed by an insurance carrier to act as an agent for that insurance carrier, pursuant to Section 1435.15 of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AMENDATORY 36 O.S. 2021, Section 1435.3, is amended to read as follows:

Section 1435.3. A. Every insurance producer, ~~customer service representative,~~ as defined pursuant to paragraph 7 of Section 1435.2 of this title, or limited lines producer who solicits or negotiates an application for insurance of any kind shall, in any controversy between the insured or the insured's beneficiary and the insurer, be regarded as representing the insurer and not the insured or the insured's beneficiary. This provision shall not affect the apparent authority of an insurance producer.

B. Every surplus lines insurance broker who solicits an application for insurance of any kind shall, in any controversy between the insured or the insured's beneficiary and the insurer issuing any policy upon such application, be regarded as representing the insured or the insured's beneficiary and not the insurer. Any company which directly or through its agents delivers in this state to any insurance broker, a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself or herself, shall be deemed to have authorized such broker to receive on its behalf, payment of any premium which is due on such policy of insurance at the time of its issuance or delivery.

C. Every licensed insurance producer shall be entitled to commissions on all premiums collected for group insurance policies negotiated by the insurance producer on behalf of an insurer and an insurer shall be required to pay such commissions to the insurance producer, except entitlement to commissions shall automatically terminate without notice, effective on the date of the occurrence of any of the following events:

1. The insurance producer's license to engage in accident and health insurance business is terminated or revoked by ~~the State of Oklahoma~~ this state or any other public authority for cause. As used in this paragraph, "cause" shall be defined as perpetration by the insurance producer of fraud or embezzlement;

2. Material breach of the insurance producer's contract with the account or insurer, excluding production requirements;

3. Termination of the insurance producer's "Agent of Record" relationship with the employer or account; or

4. Death of the insurance producer, unless the contract between the insurer states otherwise or the right to the commission has vested.

Recovery of such commissions shall be through civil action. In any action brought pursuant to this subsection, the court may award reasonable ~~attorneys~~ attorney fees to the prevailing party.

SECTION 3. AMENDATORY 36 O.S. 2021, Section 1435.6, is amended to read as follows:

Section 1435.6. A. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to Section 1435.10 of this title. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Insurance Commissioner.

B. The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in Section 1435.23 of this title.

C. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Insurance Commissioner as set forth in Section 1435.23 of this title.

D. Prior to completion and filing of the application, the Insurance Commissioner shall subject each applicant for license as an insurance producer, as defined pursuant to paragraph 7 of Section 1435.2 of this title, ~~insurance consultant, limited insurance representative, or customer service representative~~ to an examination approved by the Commissioner as to competence to act as a licensee, which each applicant shall personally take and pass to the satisfaction of the Commissioner except as provided in Section 1435.10 of this title. The Commissioner may accept examinations

administered by a testing service as satisfying the examination requirements of persons seeking license as agents, solicitors, counselors, or adjusters under the Oklahoma Insurance Code. The Commissioner may negotiate agreements with such testing services to include performance of examination development, test scheduling, examination site arrangements, test administration, grading, reporting, and analysis. The Commissioner may require such testing services to correspond directly with the applicants with regard to the administration of such examinations and that such testing services collect fees for administering such examinations directly from the applicants. The Commissioner may stipulate that any agreements with such testing services provide for the administration of examinations in specific locales and at specified frequencies. The Commissioner shall retain the authority to establish the scope and type of all examinations.

E. If the applicant is a legal entity, the examination shall be taken by each individual who is to act for the entity as a licensee.

F. Each examination for a license shall be approved for use by the Commissioner and shall reasonably test the knowledge of the applicant as to the lines of insurance, policies, and transactions to be handled pursuant to the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

G. Examination for licensing shall be at such reasonable times and places as are designated by the Commissioner.

H. The Commissioner or testing service shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination among individuals examined.

I. The applicant shall pass the examination with a grade determined by the Commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten (10) days after the examination, the Commissioner shall inform the applicant and the appointing insurer, when applicable, as to whether or not the applicant has passed. An application for licensure shall be made within two (2) years after passing the examination.

J. An applicant who has failed to pass the examination for the license applied for may take the examination subsequent times. Examination fees for subsequent examinations shall not be waived.

K. An applicant for a license as a resident surplus lines broker shall have passed the property and casualty insurance examination on the line or lines of insurance to be written to qualify for a surplus lines broker license.

SECTION 4. AMENDATORY 36 O.S. 2021, Section 1435.22, is amended to read as follows:

Section 1435.22. ~~A. Application for a customer service representative license or license renewal shall be accompanied by a written appointment, which shall remain in effect until expressly terminated in writing, signed by the insurance agent or broker who will supervise the customer service representative, on forms prescribed by the Insurance Commissioner.~~

~~B.~~ 1. Prior to issuance of a license as ~~an insurance consultant or~~ a surplus lines insurance broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in an amount of not less than Five Thousand Dollars (\$5,000.00) and not more than Forty Thousand Dollars (\$40,000.00) with an authorized corporate surety approved by the Commissioner. The exact amount of the bond shall be determined pursuant to the rules of the Commissioner and shall be based upon the actual or reasonably estimated premium for policies issued in connection with the services of the licensee. The surety shall notify the Commissioner of any changes in the bond of any licensee. The aggregate liability of the surety for any and all claims on a bond required by the provisions of this subsection shall in no event exceed the amount of the bond. No such bond shall be terminated unless at least thirty (30) days' prior written notice of the termination is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the licensee shall notify the surety within ten (10) working days.

2. The Commissioner may waive bonding requirements for nonresident surplus lines insurance brokers.

3. All surety protection required by the provisions of this section is to inure to the benefit of any party aggrieved by the acts of a ~~consultant or~~ broker arising pursuant to conduct as a licensed ~~insurance consultant or~~ surplus lines insurance broker.

SECTION 5. AMENDATORY 36 O.S. 2021, Section 1435.23, is amended to read as follows:

Section 1435.23. A. All applications shall be accompanied by the applicable fees. An appointment may be deemed by the Commissioner to have terminated upon failure by the insurer to pay the prescribed renewal fee. The Commissioner may also by order impose a civil penalty equal to double the amount of the unpaid renewal fee.

The Insurance Commissioner shall collect in advance the following fees and licenses:

1. For filing appointment of Insurance Commissioner as agent for service of process..... \$ 20.00
2. Miscellaneous:
 - a. Insurance producer's study manual:
 - (1) Life, Accident & Health..... not to exceed \$ 40.00
 - (2) Property and Casualty..... not to exceed \$ 40.00
 - b. For filing organizational documents of an entity applying for a license as an insurance producer..... \$ 20.00
3. Examination for license:

For each examination covering laws and one or more lines of insurance.... not to exceed

\$100.00

4. Licenses:

- a. Insurance producer's biennial license..... \$ 60.00
- b. Nonresident insurance producer's
biennial license..... \$100.00
- c. Insurance producer's biennial license
for sale or solicitation of variable
insurance products..... \$ 60.00
- d. Limited lines producer biennial license..... \$ 40.00
- e. Nonresident limited lines producer
biennial license..... \$100.00
- f. (1) Car rental limited lines biennial
license, one or two locations,
resident or nonresident..... \$ 40.00
- (2) Car rental limited lines biennial
license, three or more locations,
resident or nonresident..... \$500.00
- g. Temporary license as agent..... \$ 20.00
- h. Managing general agent's biennial
license..... \$ 60.00
- i. Surplus lines broker's biennial license..... \$100.00
- j. Insurance vending machine, each machine,
biennial fee..... \$100.00
- ~~k. Insurance consultant's biennial license,
resident or nonresident..... \$100.00~~
- ~~l. Customer service representative biennial
license..... \$ 40.00~~

5. Annual fee for each appointed insurance producer, managing general agent, or limited lines producer by insurer, each license of each insurance producer or representative..... \$30.00

6. Renewal fee for all licenses shall be the same as the current initial license fee.

7. The fee for a duplicate license shall be one-half (1/2) the fee of an original license.

8. The renewal of a license shall require a fee of double the current original license fee if the application for renewal is late, or incomplete on the renewal deadline.

9. The administrative fee for submission of a change of legal name or address more than thirty (30) days after the change occurred shall be Fifty Dollars (\$50.00).

B. If for any reason an insurance producer license or appointment is not issued or renewed by the Commissioner, all fees accompanying the appointment or application for the license shall be deemed earned and shall not be refundable except as provided in Section 352 of this title.

C. The Insurance Commissioner, by order, may waive licensing fees in extraordinary circumstances for a class of producers where the Commissioner deems that the public interest will be best served.

SECTION 6. AMENDATORY 36 O.S. 2021, Section 1435.26, is amended to read as follows:

Section 1435.26. A. It shall be unlawful for any person whose license to act as an insurance producer, limited lines producer, managing general agent, ~~insurance consultant,~~ or surplus lines insurance broker, ~~or customer service representative~~ has been suspended, revoked, surrendered, or refused to do or perform any of the acts of an insurance producer, limited lines producer, managing general agent, ~~insurance consultant,~~ or surplus lines insurance broker, ~~or customer service representative~~. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than

Five Thousand Dollars (\$5,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.

B. It shall be unlawful for any insurance producer, limited lines producer, managing general agent, ~~insurance consultant, or~~ surplus lines insurance broker, ~~or customer service representative~~ to assist, aid, or conspire with a person whose license as an insurance producer, limited lines producer, managing general agent, ~~insurance consultant, or~~ surplus lines insurance broker, ~~or customer service representative~~ has been suspended, revoked, surrendered, or refused to engage in any acts as an insurance producer, limited lines producer, managing general agent, ~~insurance consultant, or~~ surplus lines insurance broker, ~~or customer service representative~~. Any person convicted of violating the provisions of this section shall be guilty of a felony and shall be punished by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00) or shall be committed to the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or be punished by both said fine and commitment to custody.

C. Except for those persons exempt from licensure, it shall be unlawful for any person to do or perform any of the acts of an insurance producer, limited lines producer, managing general agent, ~~or surplus lines insurance broker, insurance consultant, or customer service representative~~ without being duly licensed. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or be punished by both said fine and imprisonment.

SECTION 7. AMENDATORY 36 O.S. 2021, 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. Each customer service representative shall, biennially, complete not less than ten (10) clock hours of continuing insurance education.~~

~~3.~~ 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.

~~4.~~ 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 ~~and customer service representatives~~ 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) 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) 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 ~~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 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 ~~or customer service representative~~ 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. Members of the Legislature shall be exempt from this section.

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

SECTION 8. REPEALER 36 O.S. 2021, Section 1435.24, is hereby repealed.

SECTION 9. REPEALER 36 O.S. 2021, Section 1435.30, is hereby repealed.

SECTION 10. REPEALER 36 O.S. 2021, Section 1435.31, is hereby repealed.

SECTION 11. This act shall become effective November 1, 2022.

Passed the Senate the 7th day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 28th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____