

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2142

By: Hastings

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Sections 6453, 6455, 6456, 6457, 6458, 6459, as amended by Section 7, Chapter 150, O.S.L. 2003 and 6462 (36 O.S. Supp. 2003, Section 6459), which relate to the Oklahoma Risk Retention Act; modifying definitions; requiring revisions of plans to be filed; requiring certain records to contain certain information; prohibiting purchasing groups from providing insurance to certain persons; allowing purchasing groups to take certain actions; requiring certain information be contained in notice provided by purchasing groups; making standards applicable to purchasing groups; requiring license to conduct certain activities; creating the Oklahoma Captive Insurance Company Act; defining terms; providing for licensing; requiring certain documentation and fees; providing for renewal; allowing licensing of captive insurance companies; restricting adoption of certain similar names; providing capitalization requirements; requiring certain security for branch captives; restricting payment of certain dividends; requiring certain minimum capital requirements; requiring certain free surplus amounts for captives; requiring incorporation of a captive reinsurance company; providing incorporation requirements and options; requiring certain annual reports; allowing for discount of loss and loss adjustment of expense reserves; requiring inspections and examinations by Insurance Commissioner; providing for confidentiality of reports; providing for application of general provisions; providing for suspension or revocation of license; providing for applicability of investment requirements; allowing loans under certain circumstances; allowing for captive to provide reinsurance; allowing certain captives to not join a rating organization; prohibiting certain captives from participation in plan pool, association, or guaranty; providing tax rates for captives; defining term; providing for levy of tax; allowing for promulgation of rules; providing for applicability of provisions of act to certain reorganizations; creating Captive Insurance Regulatory and Supervision Revolving Fund; preventing use of assets in certain circumstances; requiring certain percentage of assets be managed by person domiciled in state; requiring regulations to set certain standards to ensure risk management control by parent company; providing for conversion of certain stock or mutual corporations into reciprocal insurers; providing for formation of

sponsored captive insurance companies; providing for requirements to be a sponsor; allowing certain entities to be sponsors; providing certain terms and conditions to be met by a protected cell; allowing for eligibility of captive insurance company for certificate of authority to act as insurer; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6453, is amended to read as follows:

Section 6453. As used in the Oklahoma Risk Retention Act:

1. "Commissioner" means the Insurance Commissioner of this state or the Commissioner, Director, or Superintendent of insurance in any other state;

2. "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

- a. any person who performs that work, or
- b. any person who hires an independent contractor to perform that work,

and shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

3. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

- a. for a corporation, the state in which the purchasing group is incorporated, and
- b. for an unincorporated entity, the state of its principal place of business;

4. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

- a. to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or
- b. to pay other obligations in the normal course of business;

5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state;

6. "Liability":

- a. means legal liability for damages, including but not limited to, costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:
 - (1) any business, trade, product, services, premises, or operations, or
 - (2) any activity of any state or local government, or any agency or political subdivision thereof, and
- b. does not include personal risk liability and the liability of an employer to employees, other than legal liability under the Federal Employers' Liability Act, 45 U.S.C. 51 et seq.;

7. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in paragraph 6 of this section;

8. "Plan of operation or feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, but not limited to:

- a. the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer,
- b. historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available,
- c. pro forma financial statements and projections,
- d. appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition,
- e. identification of management procedures, underwriting procedures, managerial oversight methods, investment policies, and reinsurance agreements,
- f. information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,
- g. identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state, and
- h. such other matters as may be prescribed by the Commissioner, for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered;

9. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic

damage, or property damage, including but not limited to damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

10. "Purchasing group" means any group which:

- a. has as one of its purposes the purchase of liability insurance on a group basis for its members to cover their similar or related liability exposure,
- b. is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations, and
- c. is domiciled in any state;

11. "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands, to assume and spread all, or any portion of, the liability exposure of its group members, and which:

- a. (1) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state, or
- (2) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the Insurance Commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall

be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the federal Product Liability Risk Retention Act of 1981, before the date of the enactment of the federal Liability Risk Retention Act of 1986,

- b. does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such person,
- c. (1) has as its members only persons who have an ownership interest in the group and who are provided insurance by the risk retention group, or
(2) has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group,
- d. has as its members persons or organizations which are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations,
- e. does not provide insurance coverage other than:
 - (1) liability insurance for assuming and spreading all or any portion of the liability of its group members, and
 - (2) reinsurance with respect to the liability of any other risk retention group, or any members of such other group, and

f. the name of which includes the phrase, "Risk Retention Group"; and

12. "State" means any state of the United States or the District of Columbia.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6455, is amended to read as follows:

Section 6455. Risk retention groups chartered in states other than this state and seeking to do business as risk retention groups in this state shall observe and abide by the laws of this state as follows:

A. Before offering insurance in this state, a risk retention group shall submit to the Commissioner of this state:

1. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering, its principal place of business, and such other information, including information on its membership, as the Commissioner of this state may require to verify that the group is qualified to be licensed as a risk retention group;

2. A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which:

~~(a)~~ a. was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, and

~~(b)~~ b. was offered before such date by a risk retention group which had been chartered and operating for not less than three (3) years before such date; and

3. A statement of registration which designates the Commissioner of this state as its agent for the purpose of receiving service of legal documents or process.

B. Any risk retention group doing business in this state shall submit to the Commissioner of this state:

1. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant or certified public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a loss reserve specialist qualified pursuant to criteria established by the National Association of Insurance Commissioners;

2. A copy of each examination of the risk retention group as certified by a Commissioner or public official conducting the examination;

3. Upon request by the Commissioner of this state, a copy of any audit performed with respect to the risk retention group; and

4. Such information as may be required to verify its continuing qualification as a risk retention group.

C. 1. All premiums paid for coverages within this state to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted insurers.

2. To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

3. To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

4. To the extent that insurance agents or brokers are utilized, such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record must be open to examination by the director or a designee of

the director or a representative of the director on demand. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

- a. the limit of liability,
- b. the time period covered,
- c. the effective date,
- d. the name of the risk retention group which issued the policy,
- e. the gross premium charged,
- f. the amount of return premiums, if any, and
- g. such additional information as the director or a designee of the director may require.

D. Any risk retention group, its agents and representatives shall comply with the provisions of the Claims Resolution Act.

E. Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the Commissioner of this state seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

F. Any risk retention group shall submit to an examination by the Commissioner of this state to determine its financial condition if the Commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty (60) days after a request to do so is made by the Commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition of examination by Commissioners of other states and shall be conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook.

G. Any policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

H. The following acts by a risk retention group are hereby prohibited:

1. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

2. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

I. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

J. No risk retention group shall offer insurance policy coverage prohibited by the Insurance Code or any other law of this state.

K. A risk retention group which is not chartered in this state but is doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by an Insurance Commissioner of any state if there has been a finding of financial impairment after an examination by any state Insurance Commissioner.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6456, is amended to read as follows:

Section 6456. A. No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk

retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

B. When a purchasing group obtains insurance covering its members' risks from an approved surplus lines insurer not admitted in this state or a risk retention group, no such risks, wherever resident is located, may be covered by any insurance guaranty fund or similar mechanism in this state.

C. When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the Oklahoma Property and Casualty Insurance Guaranty Association.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 6457, is amended to read as follows:

Section 6457. Any purchasing group meeting the criteria established pursuant to the provisions of the federal Liability Risk Retention Act of 1986 shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits:

1. Prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

2. Prohibits a purchasing group or its members from purchasing insurance on a group basis described in paragraph 1 of this section;

3. Prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

4. Requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

5. Requires that a certain percentage of a purchasing group must obtain insurance on a group basis;

6. Otherwise discriminates against a purchasing group or any of its members; or

7. Requires that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

A purchasing group shall be subject to all other applicable laws of this state.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6458, is amended to read as follows:

Section 6458. A. A purchasing group which intends to do business in this state shall furnish to the Commissioner of this state notice which shall:

1. Identify the state in which the group is domiciled;

2. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

3. Identify the insurance company or risk retention group, if known, which is licensed in this state, from which the group intends to purchase its insurance;

4. Identify the principal place of business of the group; and

5. Specify the method by which, and the person, if any, through whom insurance will be offered to its members whose risks are resident or located in this state; and

6. Provide such other information as may be required by the Commissioner of this state to verify that the purchasing group is qualified to do business in this state as a purchasing group.

B. The purchasing group shall register with and designate the Commissioner of this state as its agent solely for the purpose of receiving service of legal documents or process, except that such

requirements shall not apply to a purchasing group domiciled before April 1, 1986, and domiciled on and after October 27, 1986, in any state, which:

~~a.~~

1. Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, ~~and;~~

~~b.~~

2. Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state, ~~and;~~

~~c.~~

3. Was a purchasing group pursuant to the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986,~~;~~ and

~~d.~~

4. Does not purchase insurance that was not authorized for purposes of an exemption pursuant to the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

C. Each purchasing group that is required to give notice pursuant to subsection A of this section also shall furnish such information as may be required by the director or designee to:

1. Verify that the entity qualifies as a purchasing group; and

2. Determine appropriate tax treatment.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6459, as amended by Section 7, Chapter 150, O.S.L. 2003 (36 O.S. Supp. 2003, Section 6459), is amended to read as follows:

Section 6459. A. A purchasing group shall not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not licensed to transact insurance in this state, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this state.

B. A purchasing group which obtains liability insurance from an approved surplus lines insurer not admitted in this state or a risk retention group shall inform each of the members of the group which has a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the risk retention group or the insurer may not be subject to all insurance laws and regulations of this state.

C. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole. However, coverage may provide for a deductible or self-insured retention applicable to individual members.

D. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6462, is amended to read as follows:

Section 6462. A. Any person acting, or offering to act, as an agent or broker for a risk retention group ~~or purchasing group,~~ which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, before commencing any such activity, shall obtain a license from the Commissioner of this state.

B. 1. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person is licensed as an insurance agent for the insurer or risk retention group or is licensed as a broker.

2. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's

policy unless such person is licensed as an insurance agent for the insurer or is licensed as a broker.

3. No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an approved nonadmitted surplus lines insurer on behalf of a purchasing group located in this state unless such person is licensed as a broker.

C. For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subsections A and B of this section, the requirement of residence in this state does not apply.

D. Every person licensed as an agent or broker as required in this section, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by the Oklahoma Risk Retention Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 8 through 40 of this act shall be known and may be cited as the "Oklahoma Captive Insurance Company Act".

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Captive Insurance Company Act:

1. "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in such jurisdiction;

2. "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;

3. "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year:

a. the member organizations of which collectively, or which does itself:

(1) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer, or

(2) have complete voting control over an association captive insurance company incorporated as a mutual insurer, or

b. the member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer;

4. "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies;

5. "Branch business" means any insurance business transacted by a branch captive insurance company in this state;

6. "Branch captive insurance company" means an alien captive insurance company licensed by the Insurance Commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state;

7. "Branch operations" means any business operations of a branch captive insurance company in this state;

8. "Captive insurance company" means a pure captive insurance company, association captive insurance company, captive reinsurance

company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under the Oklahoma Captive Insurance Company Act. For purposes of the Oklahoma Captive Insurance Company Act, a branch captive insurance company must be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the Insurance Commissioner;

9. "Captive reinsurance company" means a reinsurance company that is formed or licensed pursuant to the Oklahoma Captive Insurance Company Act and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation;

10. "Consolidated debt to total capital ratio" means the ratio of the sum of all debts and hybrid capital instruments including, but not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding to total capital, consisting of all debts and hybrid capital instruments described in this paragraph plus equity of the shareholders determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission;

11. "Consolidated GAAP net worth" means the consolidated shareholders' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission;

12. "Controlled unaffiliated business" means a company:
- a. that is not in the corporate system of a parent and affiliated companies,
 - b. that has an existing contractual relationship with a parent or affiliated company, and
 - c. whose risks are managed by a pure captive insurance company in accordance with Section 34 of this act;

13. "Insurance Commissioner" means the Insurance Commissioner of the State of Oklahoma or designee of the Insurance Commissioner;

14. "Department" means the Oklahoma Department of Insurance;

15. "GAAP" means generally accepted accounting principles;

16. "Industrial insured" means an insured insured under industrial life insurance as defined in Section 4202 of Title 36 of the Oklahoma Statutes;

17. "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies;

18. "Industrial insured group" means a group that meets either of the following criteria:

a. a group of industrial insureds that collectively:

(1) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer, or

(2) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer, or

b. a group which is created under the Liability Risk Retention Act of 1986, 15 U.S.C., Section 3901 et seq., as amended, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under this title;

19. "Member organization" means any individual, corporation, partnership, or association that belongs to an association;

20. "Parent" means any corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;

21. "Participant" means an entity as defined in Section 38 of this act, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the assets of a protected cell;

22. "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;

23. "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant;

24. "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof;

25. "Qualifying reinsurer parent company" means a reinsurer authorized to write reinsurance by this state and that has a consolidated GAAP net worth of not less than Five Hundred Million Dollars (\$500,000,000.00) and consolidated debt to total capital ratio not greater than 0.50;

26. "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under the Oklahoma Insurance Code that does not meet the definition of any other type of captive insurance company defined in this section;

27. "Sponsor" means an entity that meets the requirements of Section 37 of this act and is approved by the Insurance Commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company;

28. "Sponsored captive insurance company" means a captive insurance company:

- a. in which the minimum capital and surplus required by applicable law is provided by one or more sponsors,
- b. that is formed or licensed under the Oklahoma Captive Insurance Company Act,
- c. that insures the risks of separate participants through the contract, and
- d. that segregates the liability of each participant through one or more protected cells; and

29. "Treasury rates" means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive insurance company, when permitted by its articles of incorporation or charter, may apply to the Insurance Commissioner for a license to do any and all insurance, except workers' compensation insurance, authorized by Title 36 of the Oklahoma Statutes; however:

1. A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof;

2. An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;

3. An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

4. A special purpose captive insurance company may only insure the risks of its parent. Notwithstanding any other provisions of the Oklahoma Captive Insurance Company Act, a special purpose

captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the Insurance Commissioner;

5. A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages; and

6. A captive insurance company may not accept or cede reinsurance except as provided in Section 23 of this act.

B. To conduct insurance business in this state a captive insurance company shall:

1. Obtain from the Insurance Commissioner a license authorizing it to conduct insurance business in this state;

2. Hold at least one board of directors meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, each year in this state;

3. Maintain its principal place of business in this state, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this state; and

4. Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company:

a. formed as a corporation, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of the captive insurance company upon whom any process, notice, or demand may be served, or

b. formed as a reciprocal insurer, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director must be an agent of

the captive insurance company upon whom any process, notice, or demand may be served.

- C. 1. Before receiving a license, a captive insurance company:
- a. formed as a corporation, shall file with the director a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the Insurance Commissioner, or
 - b. formed as a reciprocal shall:
 - (1) file with the director a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition and any other statements or documents required by the director, and
 - (2) submit to the Insurance Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the director may reasonably require. If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the director for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the director. The reciprocal captive insurance company shall inform the Insurance Commissioner of any material change in rates within thirty (30) days of the adoption of the change.

2. In addition to the information required by paragraph 1 of this subsection, an applicant captive insurance company shall file with the Insurance Commissioner evidence of:

- a. the amount and liquidity of its assets relative to the risks to be assumed,
- b. the adequacy of the expertise, experience, and character of the person or persons who will manage it,
- c. the overall soundness of its plan of operation,
- d. the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable, and
- e. such other factors considered relevant by the Insurance Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

3. In addition to the information required by paragraphs 1 and 2 of this subsection, an applicant sponsored captive insurance company shall file with the Insurance Commissioner:

- a. a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Insurance Commissioner, and how it will report the experience to the Insurance Commissioner,
- b. a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the Insurance Commissioner,
- c. all contracts or sample contracts between the sponsored captive insurance company and any participants, and

- d. evidence that expenses will be allocated to each protected cell in an equitable manner.

4. Information submitted pursuant to this subsection is confidential and may not be made public by the Insurance Commissioner or an agent or employee of the Insurance Commissioner without the written consent of the company, except that:

- a. information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

- (1) the information sought is relevant to and necessary for the furtherance of the action or case,
- (2) the information sought is unavailable from other nonconfidential sources, and
- (3) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Insurance Commissioner; however, the provisions of this paragraph do not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group, and

- b. the Insurance Commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:
 - (1) the public official agrees in writing to maintain the confidentiality of the information, and
 - (2) the laws of the state in which the public official serves require the information to be confidential.

D. A captive insurance company shall pay to the Department a nonrefundable fee of Two Hundred Dollars (\$200.00) for examining, investigating, and processing its application for license, and the Insurance Commissioner may retain legal, financial, and examination services from outside the Department, the reasonable cost of which may be charged against the applicant. Title 36 of the Oklahoma Statutes applies to examinations, investigations, and processing conducted under the authority of this section. In addition, a captive insurance company shall pay a license fee for the year of registration and a renewal fee of Three Hundred Dollars (\$300.00).

E. If the Insurance Commissioner is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of the Oklahoma Captive Insurance Company Act, the Insurance Commissioner may grant a license authorizing the company to do insurance business in this state until March 1 at which time the license may be renewed.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the Insurance Commissioner for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the Insurance Commissioner may write reinsurance contracts covering risks in any state.

B. To conduct business in this state, a captive reinsurance company shall:

1. Obtain from the Insurance Commissioner a license authorizing it to conduct business as a captive reinsurance company in this state;

2. Hold at least one meeting of the board of directors each year in this state;

3. Maintain its principal place of business in this state; and
4. Appoint a registered agent to accept service of process and act otherwise on its behalf in this state.

C. Before receiving a license, a captive reinsurance company shall file with the Insurance Commissioner:

1. A certified copy of its charter and bylaws;
2. A statement under oath of its president and secretary showing its financial condition; and
3. Other documents required by the Insurance Commissioner.

D. In addition to the information required by subsection C of this section, the applicant captive reinsurance company shall file with the Insurance Commissioner evidence of:

1. The amount and liquidity of its assets relative to the risks to be assumed;
2. The adequacy of the expertise, experience, and character of the person who manages it;
3. The overall soundness of its plan of operation; and
4. Other overall factors considered relevant by the director in ascertaining if the proposed captive reinsurance company is able to meet its policy obligations.

E. Information submitted pursuant to this section is confidential and may not be made public by the Insurance Commissioner or an agent or employee of the director without the written consent of the company, except that:

1. Information may be discoverable by a party in a civil action or contested case to which the submitting captive reinsurance company is a party, upon a showing by the party seeking to discover the information that:
 - a. the information sought is relevant to and necessary for the furtherance of the action or case,
 - b. the information sought is unavailable from other nonconfidential sources, and

- c. a subpoena issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the director; and

2. The Insurance Commissioner may disclose the information to the public officer having jurisdiction over the regulation of insurance in another state if:

- a. the public official agrees in writing to maintain the confidentiality of the information, and
- b. the laws of the state in which the public official serves require the information to be confidential.

F. The provisions of subsection E of this section do not apply to an industrial insured captive reinsurance company insuring the risks of an industrial insured group.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A captive insurance company may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may not issue a license to a captive insurance company unless the company possesses and thereafter maintains unimpaired paid-in capital of:

1. In the case of a pure captive insurance company, not less than One Hundred Thousand Dollars (\$100,000.00);

2. In the case of an association captive insurance company incorporated as a stock insurer, not less than Four Hundred Thousand Dollars (\$400,000.00);

3. In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than Two Hundred Thousand Dollars (\$200,000.00);

4. In the case of a sponsored captive insurance company, not less than Five Hundred Thousand Dollars (\$500,000.00); and

5. In the case of a special purpose captive insurance company, an amount determined by the Insurance Commissioner after giving due consideration to the business plan of the company, feasibility study, and pro formas, including the nature of the risks to be insured. The capital may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the director.

B. The Insurance Commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted. This capital may be in the form of an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.

C. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the Insurance Commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the capital and surplus required by the Oklahoma Captive Insurance Company Act and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch

operations; however, the Insurance Commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this state or a member bank of the Federal Reserve System.

D. A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in the Oklahoma Insurance Code, without the prior approval of the Insurance Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Insurance Commissioner.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or free surplus of not less than the greater of Three Hundred Million Dollars (\$300,000,000.00) or ten percent (10%) of reserves. The surplus may be in the form of cash or securities.

B. The Insurance Commissioner may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted.

C. A captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations, without the prior approval of the Insurance Commissioner. Approval of an ongoing plan for the payment of

dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Insurance Commissioner.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may not issue a license to a captive insurance company unless the company possesses and thereafter maintains free surplus of:

1. In the case of a pure captive insurance company, not less than One Hundred Fifty Thousand Dollars (\$150,000.00);

2. In the case of an association captive insurance company incorporated as a stock insurer, not less than Three Hundred Fifty Thousand Dollars (\$350,000.00);

3. In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than Three Hundred Thousand Dollars (\$300,000.00);

4. In the case of an association captive insurance company incorporated as a mutual insurer, not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00);

5. In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than Five Hundred Thousand Dollars (\$500,000.00);

6. In the case of a sponsored captive insurance company, not less than Five Hundred Thousand Dollars (\$500,000.00); and

7. In the case of a special purpose captive insurance company, an amount determined by the director after giving due consideration to the business plan of the company, feasibility study, and pro formas, including the nature of the risks to be insured.

The surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this

state or a member bank of the Federal Reserve System and approved by the Insurance Commissioner.

B. Notwithstanding the requirements of subsection A of this section, a captive insurance company organized as a reciprocal insurer under the Oklahoma Captive Insurance Company Act may not be issued a license unless it possesses and thereafter maintains free surplus of One Million Dollars (\$1,000,000.00).

C. The Insurance Commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted. This capital may be in the form of an irrevocable letter of credit issued by a bank chartered by this state, or a member bank of the Federal Reserve System.

D. A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in the Oklahoma Insurance Code without the prior approval of the Insurance Commissioner. Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Insurance Commissioner.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

B. A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this state.

C. Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the Insurance Commissioner to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general

good of this state. In arriving at this finding, the Insurance Commissioner shall consider:

1. The character, reputation, financial standing, and purposes of the incorporators;

2. The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

3. Other factors the director considers advisable.

D. The capital stock of a captive reinsurance company must be issued at par value or greater.

E. At least one of the members of the board of directors of a captive reinsurance company incorporated in this state must be a resident of this state.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

B. An association captive insurance company or an industrial insured captive insurance company may be:

1. Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

2. Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or

3. Organized as a reciprocal insurer.

C. A captive insurance company may not have fewer than three incorporators of whom not fewer than two must be residents of this state.

D. In the case of a captive insurance company formed as a corporation, before the articles of incorporation are transmitted to

the Secretary of State, the incorporators shall petition the Insurance Commissioner to issue a certificate setting forth a finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at this finding, the Insurance Commissioner shall consider:

1. The character, reputation, financial standing, and purposes of the incorporators;

2. The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

3. Other aspects as the Insurance Commissioner considers advisable.

E. The articles of incorporation, the certificate issued pursuant to subsection D of this section, and the organization fees must be transmitted to the Secretary of State, who shall record both the articles of incorporation and the certificate.

F. In the case of a captive insurance company formed as a reciprocal insurer, the organizers shall petition the Insurance Commissioner to issue a certificate setting forth the finding of the Insurance Commissioner that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at this finding, the Insurance Commissioner shall consider:

1. The character, reputation, financial standing, and purposes of the incorporators;

2. The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

3. Other aspects the Insurance Commissioner considers advisable.

G. In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the Insurance Commissioner to issue a

certificate setting forth the finding of the Insurance Commissioner that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the state. The alien captive insurance company may register to do business in this state after certificate of the Insurance Commissioner has been issued.

H. The capital stock of a captive insurance company incorporated as a stock insurer must be issued at not less than par value.

I. In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this state must be a resident of this state.

J. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the advisory committee of the subscribers must be a resident of this state.

K. A captive insurance company formed as a corporation under the Oklahoma Captive Insurance Company Act has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in the Oklahoma Captive Insurance Company Act. If a conflict occurs between a provision of the general corporation law and a provision of the Oklahoma Captive Insurance Company Act, the latter controls. The provisions of the Oklahoma Insurance Code pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions, except the director may waive or modify the requirements for public notice and hearing in accordance with regulations which the Insurance Commissioner may promulgate addressing categories of

transactions. If a notice of public hearing is required, but no one requests a hearing, the director may cancel the hearing.

L. 1. A captive insurance company formed as a reciprocal insurer under the Oklahoma Captive Insurance Company Act has the privileges and is subject to the Oklahoma Insurance Code in addition to the applicable provisions of the Oklahoma Captive Insurance Company Act. If a conflict occurs, the provisions of the Oklahoma Captive Insurance Company Act control. To the extent a reciprocal insurer is made subject to other provisions of the Oklahoma Insurance Code, the provisions are not applicable to a reciprocal insurer formed under the Oklahoma Captive Insurance Company Act unless the provisions are expressly made applicable to a captive insurance company under the Oklahoma Captive Insurance Company Act.

2. In addition to the provisions of paragraph 1 of this subsection, a captive insurance company organized as a reciprocal insurer that is an industrial insured group has the privileges and is subject to the provisions of the Oklahoma Insurance Code.

M. The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive insurance company may not be required to make an annual report except as provided in the Oklahoma Captive Insurance Company Act.

B. Before March 1 of each year, a captive insurance company or a captive reinsurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Sections 13 and 15 of this act, a captive insurance company or a captive

reinsurance company shall report using generally accepted accounting principles, unless the Insurance Commissioner approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the Insurance Commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Insurance Commissioner. Except as otherwise provided, an association captive insurance company and an industrial insured group shall file their report in the form required by the Insurance Commissioner, and each industrial insured group shall comply with the requirements set forth in the Oklahoma Insurance Code. The Insurance Commissioner by regulation shall prescribe the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report.

C. A pure captive insurance company may make written application for filing the required report on a fiscal year-end that is consistent with the fiscal year of the parent company. If an alternative reporting date is granted:

1. The annual report is due sixty (60) days after the fiscal year-end; and

2. In order to provide sufficient detail to support the premium tax return, the pure captive insurance company shall file before March 1 of each year for each calendar year-end, pages 1 through 7 of the "Captive Annual Statement: Pure or Industrial Insured", verified by oath of two of its executive officers.

D. Sixty (60) days after the fiscal year-end, a branch captive insurance company shall file with the Insurance Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of its executive officers. If the Insurance Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction

provides adequate information concerning the financial condition of the alien captive insurance company, the Insurance Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction. Such waiver must be in writing and subject to public inspection.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.12 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A sponsored captive insurance company and a captive reinsurance company may discount their loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

B. A sponsored captive insurance company and a captive reinsurance company shall file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

C. The director may disallow the discounting of reserves if a sponsored captive insurance company or a captive reinsurance company violates a provision of this title.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.13 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. At least once in three (3) years, and whenever the Insurance Commissioner determines it to be prudent, the Insurance Commissioner personally, or by a competent person appointed by the director, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the Oklahoma Captive Insurance Company Act. The Insurance Commissioner upon application, in his or her discretion, may enlarge

the three-year period to five (5) years, if a captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the Insurance Commissioner by independent auditors approved by the Insurance Commissioner. The expenses and charges of the examination must be paid to the state by the company or companies examined, and the Department shall issue its warrants for the proper charges incurred in all examinations.

B. All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of documents produced by, obtained by, or disclosed to the director or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the Insurance Commissioner or an employee or agent of the Insurance Commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection prevents the Insurance Commissioner from using this information in furtherance of the regulatory authority of the Insurance Commissioner under the Oklahoma Captive Insurance Company Act. The Insurance Commissioner may grant access to this information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

C. 1. This section applies to all business written by a captive insurance company; however, the examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the Insurance Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance

company is formed and demonstrates to the satisfaction of the Insurance Commissioner that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

2. As a condition of licensure, the alien captive insurance company shall grant authority to the Insurance Commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.14 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The license of a captive insurance company to conduct an insurance business in this state may be suspended or revoked by the director for:

1. Insolvency or impairment of capital or surplus;
2. Failure to meet the requirements of Sections 13 and 15 of this act;
3. Refusal or failure to submit an annual report, as required by Section 18 of this act, or any other report or statement required by law or by lawful order of the director;
4. Failure to comply with its own charter, bylaws, or other organizational document;
5. Failure to submit to examination or any legal obligation relative to an examination, as required by this section;
6. Refusal or failure to pay the cost of examination;
7. Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
8. Failure otherwise to comply with laws of this state.

B. If the Insurance Commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in subsection A of this section, the Insurance Commissioner may suspend or revoke such license if the director considers it in the best interest of the public and the policy holders of the captive insurance company.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.15 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An association captive insurance company and an industrial insured captive insurance company insuring the risks of an industrial insured group shall comply with the investment requirements contained in the Oklahoma Insurance Code. The Insurance Commissioner may approve the use of alternative reliable methods of valuation and rating.

B. A pure captive insurance company, an industrial insured captive insurance company, and a sponsored captive insurance company are not subject to any restrictions on allowable investments contained in the Oklahoma Insurance Code; however, the director may prohibit or limit an investment that threatens the solvency or liquidity of the company.

C. Only a pure captive insurance company may make loans to its parent company or affiliates and only upon the prior written approval of the Insurance Commissioner and must be evidenced by a note in a form approved by the Insurance Commissioner. Loans of minimum capital and surplus funds required by Sections 13 and 15 of this act are prohibited.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.16 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive insurance company may provide reinsurance, as authorized in the Oklahoma Insurance Code, on risks ceded by any other insurer.

B. A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the Oklahoma Insurance Code. A captive insurer may not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with the Oklahoma Insurance Code.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.17 of Title 36, unless there is created a duplication in numbering, reads as follows:

A captive insurance company may not be required to join a rating organization.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.18 of Title 36, unless there is created a duplication in numbering, reads as follows:

A captive insurance company, including a captive insurance company organized as a reciprocal insurer under the Oklahoma Captive Insurance Company Act, may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, or its insured or its parent or any affiliated company or any member organization of its association, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company, may not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.19 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive insurance company shall pay to the Department, by March 1 of each year, a tax at the rate of four-tenths of one

percent (0.4%) on the first Twenty Million Dollars (\$20,000,000.00) and three-tenths of one percent (0.3%) on the next Twenty Million Dollars (\$20,000,000.00) and two-tenths of one percent (0.2%) on the next Twenty Million Dollars and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

B. A captive insurance company shall pay to the Department, by March 1 of each year, a tax at the rate of two hundred and twenty-five thousandths of one percent (0.225%) on the first Twenty Million Dollars (\$20,000,000.00) of assumed reinsurance premium, and one hundred fifty thousandths of one percent (0.150%) on the next Twenty Million Dollars and fifty thousandths of one percent (0.050%) on the next Twenty Million Dollars (\$20,000,000.00) and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection A of this section. A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

C. If the aggregate taxes to be paid by a captive insurance company calculated under subsections A and B of this section amount to less than Five Thousand Dollars (\$5,000.00) in any year, the captive insurance company shall pay a minimum tax of Five Thousand

Dollars (\$5,000.00) for that year. However, in the calendar year in which a captive is first licensed, the minimum tax will be prorated on a quarterly basis. For captives licensed in the first quarter, the prorated minimum tax is Five Thousand Dollars (\$5,000.00). For captives licensed in the second quarter, the prorated minimum tax is Three Thousand Seven Hundred Fifty Dollars (\$3,750.00). For captives licensed in the third quarter, the prorated minimum tax is Two Thousand Five Hundred Dollars (\$2,500.00). For captives licensed in the fourth quarter, the prorated minimum tax is One Thousand Two Hundred Fifty Dollars (\$1,250.00). In the calendar year in which a captive is first licensed, if the aggregate taxes to be paid by a captive insurance company calculated under subsections A and B of this section amount to less than the minimum tax prorated on a quarterly basis, the captive insurance company shall pay the prorated minimum tax for that calendar year.

D. A captive insurance company, failing to make returns or to pay all taxes required by this section, is subject to the relevant sanctions of the Oklahoma Insurance Code.

E. Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

F. As used in this section, "common ownership and control" means:

1. In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

2. In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two or more corporations by the same member or members.

G. In the case of a branch captive insurance company, the tax provided for in this section applies only to the branch business of the company.

H. The tax provided for in this section constitutes all taxes collectible under the laws of this state from a captive insurance company, and no other occupation tax or other taxes may be levied or collected from a captive insurance company by the state or a county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.20 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A captive reinsurance company shall pay to the Department, by March 1 of each year, a captive reinsurance tax of Five Thousand Dollars (\$5,000.00).

B. The tax provided in this section is the only tax collectible pursuant to the laws of this state from a captive reinsurance company, and no tax on reinsurance premiums, other than occupation tax, nor any other taxes may be levied or collected from a captive reinsurance company by the state or a county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

C. A captive reinsurance company failing to make returns or to pay all taxes required by this section is subject to sanctions provided in the Oklahoma Insurance Code.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.21 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may promulgate and, from time to time, amend rules and issue orders relating to captive insurance companies as are necessary to enable the Insurance Commissioner to

carry out the provisions of the Oklahoma Captive Insurance Company Act.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.22 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may, by rule, regulation, or order, exempt special purpose captive insurance companies, on a case-by-case basis, from provisions of the Oklahoma Captive Insurance Company Act that he determines to be inappropriate given the nature of the risks to be insured.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.23 of Title 36, unless there is created a duplication in numbering, reads as follows:

The terms and conditions set forth in the Oklahoma Insurance Code pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed under the Oklahoma Captive Insurance Company Act.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.24 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a revolving fund to be known as the "Captive Insurance Regulatory and Supervision Revolving Fund" for the purpose of providing the financial means for the Insurance Commissioner to administer the Oklahoma Captive Insurance Company Act and for reasonable expenses incurred in promoting the captive insurance industry in the state. The transfer of ten percent (10%) of the taxes collected by the Department, pursuant to the Oklahoma Captive Insurance Company Act, and all fees and assessments received by the Department, pursuant to the administration of the Oklahoma Captive Insurance Company Act, shall be credited to this fund. All fees received by the Department from reinsurers who assume risk solely from captive insurance companies shall be deposited into the

Captive Insurance Regulatory and Supervision Revolving Fund. All fines and administrative penalties, however, shall be deposited directly into the General Fund.

B. All payments from the Captive Insurance Regulatory and Supervision Revolving Fund for the maintenance of staff and associated expenses, including contractual services as necessary, shall be disbursed from the State Treasury only upon warrants after receipt of proper documentation regarding services rendered and expenses incurred.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.25 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, the terms and conditions set forth in the Oklahoma Insurance Code pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under the Oklahoma Captive Insurance Company Act.

B. In the case of a sponsored captive insurance company:

1. The assets of the protected cell may not be used to pay expenses or claims other than those attributable to the protected cell; and

2. Its capital and surplus at all times must be available to pay expenses of or claims against the sponsored captive insurance company and may not be used to pay expenses or claims attributable to a protected cell.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.26 of Title 36, unless there is created a duplication in numbering, reads as follows:

At least thirty-five percent (35%) of the assets of a captive reinsurance company must be managed by an asset manager domiciled in this state.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.27 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner shall promulgate regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company; however, until such time as these regulations are promulgated, the Insurance Commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.28 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan and the provisions of this section.

B. A plan for this conversion or merger:

1. Must be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

2. Shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder or a dissenting policyholder.

C. In the case of a conversion authorized under subsection A of this section:

1. The conversion must be accomplished under a reasonable plan and procedure as may be approved by the Insurance Commissioner;

however, the Insurance Commissioner may not approve the plan of conversion unless the plan:

- a. satisfies the provisions of subsection B of this section,
- b. provides for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing, except that the Insurance Commissioner may waive or modify the requirements for the hearing; however, if a notice of hearing is required, but no hearing is requested, the Insurance Commissioner may cancel the hearing,
- c. provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer, and
- d. is approved:
 - (1) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present, or
 - (2) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;

2. The Insurance Commissioner shall approve the plan of conversion if the director finds that the conversion will promote the general good of the state in conformity with those standards set forth in Section 17 of this act;

3. If the director approves the plan the director shall amend the certificate of authority of the converting insurer to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the attorney-in-fact of the company;

4. Upon issuance of an amended certificate of authority of a reciprocal insurer by the director, the conversion is effective; and

5. Upon the effectiveness of the conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

D. A merger authorized under subsection A of this section must be accomplished substantially in accordance with the procedures set forth in the Oklahoma Insurance Code except that, solely for purposes of the merger:

1. The plan or merger shall satisfy subsection B of this section;

2. The advisory committee of subscribers of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company;

3. The subscribers of a reciprocal insurer must be the equivalent of the policyholders of a mutual insurance company;

4. If an advisory committee of subscribers does not have a president or secretary, the officers of the committee having substantially equivalent duties are deemed the president and secretary of the committee;

5. The Insurance Commissioner shall approve the articles of merger if the Insurance Commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in Section 17 of this act. If the Insurance Commissioner approves the articles of merger, the Insurance Commissioner shall endorse his or her approval on the articles and

the surviving insurer shall present the name to the Secretary of State at the office of the Secretary of State;

6. Notwithstanding Section 13 of this act, the Insurance Commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section; however, there may be no more than one authorized insurance company surviving the merger; and

7. An alien insurer may be a party to a merger authorized under subsection A of this section if the requirements for the merger between a domestic and a foreign insurer apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer must be treated as a foreign insurer and other jurisdictions must be the equivalent of a state.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.29 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. One or more sponsors may form a sponsored captive insurance company under the Oklahoma Captive Insurance Company Act.

B. A sponsored captive insurance company formed or licensed under the Oklahoma Captive Insurance Company Act may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

1. The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;

2. Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the Insurance Commissioner;

3. The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

4. No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

5. No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the approval of the Insurance Commissioner and in no event may the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

6. A sponsored captive insurance company annually shall file with the Insurance Commissioner financial reports the Insurance Commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;

7. A sponsored captive insurance company shall notify the Insurance Commissioner in writing within ten (10) business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and

8. No participant contract shall take effect without the prior written approval of the Insurance Commissioner, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan requiring the prior written approval of the Insurance Commissioner.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.30 of Title 36, unless there is created a duplication in numbering, reads as follows:

A sponsor of a sponsored captive insurance company must be an insurer licensed pursuant to the laws of a state, an insurance holding company that controls an insurer licensed pursuant to the

laws of any state and subject to registration pursuant to the insurance holding company system laws of the state of domicile of the insurer, a reinsurer authorized or approved pursuant to the laws of a state, or a captive insurance company formed or licensed pursuant to the Oklahoma Captive Insurance Company Act. A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company. The business written by a sponsored captive insurance company with respect to each protected cell must be:

1. Fronted by an insurance company licensed pursuant to the laws of:

- a. any state, or
- b. any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed pursuant to the laws of any state;

2. Reinsured by a reinsurer authorized or approved by this state; or

3. Secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset acceptable to the Insurance Commissioner. The amount of security provided by the trust fund may not be less than the reserves associated with those liabilities, including reserves for losses, allocated loss adjustment expenses, incurred but unreported losses, and unearned premiums for business written through the protected cell of the participant. The Insurance Commissioner may require the sponsored captive to increase the funding of a trust established pursuant to this item. If the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the Insurance Commissioner. A trust and trust

instrument maintained pursuant to this item must be in a form and upon terms approved by the Insurance Commissioner.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.31 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed pursuant to the Oklahoma Captive Insurance Company Act.

B. A sponsor may be a participant in a sponsored captive insurance company.

C. A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.

D. A participant shall insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the Insurance Commissioner.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.32 of Title 36, unless there is created a duplication in numbering, reads as follows:

In the case of a sponsored captive insurance company:

1. A protected cell need not be established solely for the purpose of effecting insurance securitizations, but may be established for the purpose of isolating the expenses and claims of a sponsored captive insurance company participant; and

2. The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to the risks of the participant to the protected cell of the participant.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.33 of Title 36, unless there is created a duplication in numbering, reads as follows:

A licensed captive insurance company that meets the necessary requirement of the Oklahoma Insurance Code imposed upon an insurer

must be considered for issuance of a certificate of authority to act as an insurer in this state.

SECTION 41. This act shall become effective November 1, 2004.

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