

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 2909

By: Peterson (Ron) and
Rousselot of the House

and

Aldridge of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; amending Sections 8, 10, 11 and 33, Chapter 334, O.S.L. 2004 (36 O.S. Supp. 2005, Sections 6470.1, 6470.3, 6470.4 and 6470.26), which relate to the Oklahoma Captive Insurance Company Act; modifying short title; placing requirements on resident registered agents and asset managers; and providing an effective date.

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

SECTION 1. AMENDATORY Section 8, Chapter 334, O.S.L. 2004 (36 O.S. Supp. 2005, Section 6470.1), is amended to read as follows:

Section 6470.1 Sections ~~8~~ 6470.1 through ~~40~~ 6470.33 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Captive Insurance Company Act".

SECTION 2. AMENDATORY Section 10, Chapter 334, O.S.L. 2004 (36 O.S. Supp. 2005, Section 6470.3), is amended to read as follows:

Section 6470.3 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~~ 6470.16 of this ~~act~~ title.

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. The agent shall be licensed by the Oklahoma Insurance Department as a licensed third-party administrator or managing general agent and maintain its principal place of business 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 Insurance Commissioner 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 Insurance Commissioner 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 Insurance Commissioner 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 Insurance Commissioner 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 Insurance Commissioner, and

- (2) submit to the Insurance Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the Insurance Commissioner 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 Insurance Commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the Insurance Commissioner. 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 3. AMENDATORY Section 11, Chapter 334, O.S.L. 2004 (36 O.S. Supp. 2005, Section 6470.4), is amended to read as follows:

Section 6470.4 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. The agent shall be licensed by the Oklahoma Insurance Department as a licensed third-party administrator or managing general agent and maintain its principal place of business 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 Insurance Commissioner 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 Insurance Commissioner 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 Insurance Commissioner; 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 4. AMENDATORY Section 33, Chapter 334, O.S.L. 2004 (36 O.S. Supp. 2005, Section 6470.26), is amended to read as follows:

Section 6470.26 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. The manager shall be licensed by the Oklahoma Insurance Department as a licensed third-party administrator or managing general agent and maintain its principal place of business in this state.

SECTION 5. This act shall become effective November 1, 2006.

50-2-10379 SD 05/25/06