

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1958

By: Peterson (Ron) of the House

and

6 Laster of the Senate

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to insurance; enacting the Oklahoma
11 Captive Insurer Implementation Act of 2008; defining
12 terms; authorizing applications to Insurance
13 Commissioner for captive insurance license; providing
14 exceptions; imposing limitations with respect to
15 captive insurers; prescribing requirements for
16 transaction of captive insurance business;
17 prohibiting certain reinsurance transactions;
18 imposing requirements with respect to certain captive
19 insurers engaged in life or disability insurance
20 business; prescribing procedural requirements;
21 requiring filing of certain organizational documents;
22 requiring disclosure of certain financial
23 information; imposing requirements with respect to
24 protected cell captive insurers; imposing
requirements to supplement filed information;
imposing certain fees; authorizing grant of license;
requiring disposition of applications within
prescribed time; prohibiting deceptively similar
names; imposing requirement with respect to certain
mutual insurance company; prohibiting issuance of
license without certain capital requirements;
specifying requirements; specifying method for
satisfaction of capital requirements; authorizing
Commissioner to impose additional requirements;
authorizing certain agreement; authorizing captive
insurer to enter into certain contracts; imposing
requirements with respect to agency captive insurers;
specifying authorized methods of formation;

1 authorizing methods of formation for pure captive
2 insurers; authorizing no par stock; imposing
3 requirements with respect to corporate organizations;
4 authorizing procedures related to corporate
5 governance; authorizing domestication of foreign
6 entities; prescribing procedures for formation of
7 protected cell captive insurers; imposing
8 limitations; imposing certain duties; imposing filing
9 requirements; requiring approval by Commissioner for
10 certain transactions; imposing limitations with
11 respect to risk retention groups; authorizing certain
12 entities to be participants in protected cell captive
13 insurer; imposing restrictions; requiring report of
14 financial conditions; authorizing certain accounting
15 methodology; requiring audit; prescribing audit
16 requirements; requiring opinion regarding reserve
17 levels; authorizing examination of business and
18 transactions of captive insurer by Insurance
19 Commissioner; providing for applicability of certain
20 statutory provisions; authorizing independent
21 contractors; providing for payment of certain
22 expenses; providing for alien captive insurer consent
23 to examination; providing for license suspension,
24 revocation or refusal for issuance of license;
specifying basis of suspension, revocation or
nonissuance; imposing certain investment
requirements; authorizing discretion by Commissioner
with respect to investment requirements; imposing
restrictions governing loans; imposing limitations
with respect to reinsurance; authorizing certain
credit; authorizing ceding or assumption of certain
risks; authorizing transaction of business without
requirement for membership in rating organization;
prohibiting certain transactions; providing
exception; authorizing administrative rules;
providing for applicability of certain laws;
requiring manager for captive insurer; imposing
duties; providing for discharge; providing for effect
of payment of fees; establishing Captive Insurance
Regulatory and Supervision Fund; providing for use of
monies; prohibiting appropriations for certain
purposes; authorizing branch captive insurers;
specifying circumstances pursuant to which branch
authorized; imposing requirements; imposing
requirements related to solvency; prescribing
procedures related to form and adequacy of security;
requiring filing of certain reports; requiring

1 certain written approval; providing for confidential
2 treatment of information; providing exceptions;
3 providing for codification; and providing an
4 effective date.

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

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 9101 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the "Oklahoma
10 Captive Insurer Implementation Act of 2008".

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 9102 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in this act, unless the context otherwise requires:

15 1. "Accredited state" means a state in which the insurance
16 department or other regulatory agency has qualified as meeting the
17 minimum financial regulatory standards that are adopted and
18 established by the National Association of Insurance Commissioners;

19 2. "Affiliate" or person "affiliated" with a specific person
20 means a person that directly, or indirectly through one or more
21 intermediaries, controls, is controlled by or is under common
22 control with the person specified;

23 3. "Agency captive insurer" means a captive insurer that is
24 owned by one or more business entities that are licensed in any

1 state as insurance producers or managing general agents and that
2 only insure risks on policies placed through their owners;

3 4. "Alien captive insurer" means any insurer that is formed to
4 write insurance business for its affiliates and that is licensed
5 pursuant to the laws of an alien jurisdiction that imposes statutory
6 or regulatory standards that are acceptable to the Commissioner on
7 companies transacting the business of insurance in such a
8 jurisdiction;

9 5. "Association" means any lawfully formed association of
10 individuals or business entities that has been in existence for at
11 least one year and that is organized for a primary purpose other
12 than procuring or providing insurance for its members;

13 6. "Association captive insurer" means a captive insurer that
14 is completely under the direct or indirect voting control of an
15 association;

16 7. "Branch business" means any insurance business that is
17 transacted by a branch captive insurer in this state;

18 8. "Branch captive insurer" means an alien captive insurer that
19 is licensed to transact the business of insurance through a business
20 unit with a principal place of business in this state;

21 9. "Branch operations" means any business operations of a
22 branch captive insurer in this state;

23 10. "Business entity" means any legal entity other than an
24 individual or sole proprietorship;

1 11. "Captive insurer" means any pure captive insurer, agency
2 captive insurer, group captive insurer or protected cell captive
3 insurer that is domiciled in this state and that is formed and
4 licensed under this act;

5 12. "Commissioner" means the Oklahoma Insurance Commissioner;

6 13. "Continuing proxies" means proxies that are valid for more
7 than one annual or special meeting of security holders and any
8 adjournments thereof;

9 14. "Control" and "controlling" mean the possession, direct or
10 indirect, of the power to direct or cause the direction of the
11 management and policies of a person, whether through the ownership
12 of voting securities, by contract other than a commercial contract
13 for goods or nonmanagement services, or otherwise, unless the power
14 is the result of an official position with or corporate office held
15 by the person. Control shall be presumed to exist if any person,
16 directly or indirectly, owns, controls, holds with the power to vote
17 or holds proxies representing ten percent (10%) or more of the
18 voting securities of any other person;

19 15. "Controlled insurer" means a licensed insurer who is
20 controlled by a producer;

21 16. "Controlled unaffiliated business" means an individual or
22 business entity that satisfies all of the following:

23 a. is not an affiliate of the captive insurer providing
24 coverage or reinsurance,

1 b. has a contractual relationship with an affiliate of
2 the captive insurer providing coverage or reinsurance,
3 and

4 c. whose risk management function that is related to the
5 covered risk of loss is controlled by an affiliate of
6 the captive insurer providing coverage or reinsurance;

7 17. "Controlling producer" means a producer who controls,
8 directly or indirectly an insurer;

9 18. "Deductible reimbursement" means insurance coverage that
10 reimburses the insured for the deductible it paid under a separate
11 commercial insurance policy issued to the same insured, without
12 other conditions related to the underlying loss;

13 19. "Department" means the Oklahoma Insurance Department;

14 20. "Direct" or "directly", when used in this act to describe
15 the transaction of insurance business by a captive insurer, means a
16 transaction in which the captive insurer issues an insurance policy
17 that provides primary coverage to the insured under the policy and
18 that does not provide reinsurance coverage to another insurer;

19 21. "Group captive insurer" means any of the following:

- 20 a. a risk retention group,
- 21 b. an industry group captive insurer, and
- 22 c. an association captive insurer;

23 22. "Industry group" means two or more business entities that
24 are engaged in businesses or activities similar or related with

1 respect to the liability that they are exposed to by virtue of any
2 related, similar or common business, trade, product, services,
3 premises or operations;

4 23. "Industry group captive insurer" means a captive insurer
5 that is completely under the direct or indirect voting control of an
6 industry group;

7 24. "Insurance holding company system" means two or more
8 affiliated persons, one or more of whom is an insurer;

9 25. "Insurer" means every person engaged in the business of
10 making contracts of insurance except:

- 11 a. agencies, authorities or instrumentalities of the
12 United States, its possessions and territories, the
13 Commonwealth of Puerto Rico, the District of Columbia
14 or a state or political subdivision of a state,
- 15 b. fraternal benefit societies,
- 16 c. nonprofit medical and hospital service associations,
17 and
- 18 d. credit life and disability reinsurers that are not
19 affiliated with another insurer;

20 26. "Licensed insurer" or "insurer" means a person, firm,
21 association or corporation that is duly licensed to transact
22 property or casualty insurance business in this state. For the
23 purposes of this act, licensed insurer or insurer does not include
24 a:

- 1 a. risk retention group as defined in the Superfund
2 Amendments and Reauthorization Act of 1986 (42 U.S.C.,
3 Section 9601), and the Risk Liability Retention Act
4 (15 U.S.C., Sections 3901, 3902, 3903, 3905 and 3906),
5 b. residual market pool and joint underwriting authority
6 or association, and
7 c. captive insurer. As used in this subparagraph,
8 "captive insurer" means an insurance company that is
9 owned by another organization and whose exclusive
10 purpose is to insure risks to member organizations or
11 group members and their affiliates;

12 27. "Manager" means a person who is experienced in the field of
13 captive insurance and who maintains all documents relating to a
14 captive insurer's operations, transactions and affairs in this state
15 and assists the captive insurer in its management and compliance
16 with this act;

17 28. "Member" means any individual or business entity that
18 belongs to a group captive insurer;

19 29. "Participant" means an entity and any affiliates of the
20 entity that are insured by a protected cell captive insurer pursuant
21 to a participant contract;

22 30. "Participant contract" means a contract by which a
23 protected cell captive insurer insures risks of one or more
24

1 participants and limits losses under the contract to the assets of a
2 protected cell;

3 31. "Person" means an individual, a corporation, a partnership,
4 an association, a joint stock company, a trust, an unincorporated
5 organization and any similar entity or any combination of the
6 foregoing acting in concert but does not include any securities
7 broker performing no more than the usual and customary broker's
8 function;

9 32. "Producer" means an insurance producer or any other person,
10 firm, association or corporation when, for any compensation,
11 commission or other thing of value, the person, firm, association or
12 corporation acts or aids in any manner in soliciting, negotiating or
13 procuring the making of an insurance contract on behalf of an
14 insured other than the person, firm, association or corporation;

15 33. "Protected cell" means a separate account that is
16 established and maintained by a protected cell captive insurer
17 pursuant to a participant contract;

18 34. "Protected cell captive insurer" means a captive insurer:
19 a. in which the minimum capital and surplus required by
20 applicable law is provided by one or more sponsors,
21 b. that is formed and licensed under this act,
22 c. that insures the risks of participants through
23 participant contracts, and
24

1 d. that segregates liability under a participant contract
2 through one or more protected cells;

3 35. "Pure captive insurer" means a captive insurer that insures
4 only the risks of its affiliates and controlled unaffiliated
5 business;

6 36. "Risk retention group" means a captive insurer that is
7 organized pursuant to the Liability Risk Retention Act of 1986 (15
8 U.S.C., Sections 3901 and 3902);

9 37. "Security holder of a specified person" means a person who
10 owns any security of such person, including common stock, preferred
11 stock, debt obligations, and any other security convertible into or
12 evidencing the right to acquire any of the foregoing;

13 38. "Sponsor" means an entity that meets the requirements of
14 this act and that the Commissioner has approved to provide all or
15 part of the capital and surplus required by applicable law to
16 operate a protected cell captive insurer;

17 39. "Subsidiary of a specified person" means an affiliate
18 controlled by such person directly or indirectly through one or more
19 intermediaries; and

20 40. "Voting security" means a security that carries with it a
21 right to vote in decisions and also includes securities that are
22 convertible into or evidence a right to acquire a security that
23 includes such right to vote.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 9103 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. If allowed by its articles of incorporation, bylaws or other
5 organizational document, an applicant may apply to the Commissioner
6 for a license to transact captive insurance, except that:

7 1. A pure captive insurer shall not insure risks other than the
8 risks of its affiliates and controlled unaffiliated business;

9 2. A group captive insurer, other than a risk retention group,
10 shall not insure risks other than the risks of its group members,
11 its affiliates and controlled unaffiliated business. A risk
12 retention group shall insure only the risks of its group members;

13 3. An agency captive insurer shall not:

14 a. insure any risks other than those placed by or through
15 its owners, and

16 b. directly insure life or disability insurance risks;
17 and

18 4. A protected cell captive insurer shall not insure any risks
19 other than those prescribed in its participant contracts.

20 B. The following apply to the transaction of insurance by a
21 captive insurer on a direct basis:

22 1. A captive insurer shall not directly insure any of the
23 following types of insurance business:

24

- a. hospital service corporations, medical service corporations, dental service corporations, optometric service corporations or hospital, medical, dental and optometric service corporations,
- b. health care services organizations,
- c. prepaid dental plan organizations,
- d. prepaid legal insurance contracts,
- e. business of title insurance,
- f. personal motor vehicle or homeowner's insurance coverage or any component of that insurance coverage,
- g. mortgage guaranty insurance, and
- h. workers' compensation or employers' liability insurance policies except in connection with a self-insurance program;

2. A pure captive insurer shall not provide direct coverage of workers' compensation or employers' liability in this state unless the coverage is provided under a self-insurance program that is approved by the Workers' Compensation Court;

3. A pure captive insurer shall not provide direct coverage of workers' compensation or employers' liability insurance in another state unless the coverage is provided under a self-insurance program that is qualified as a self-insurance program under the applicable state or federal law, as determined by the agency or other entity that has jurisdiction over the self-insurance program; and

1 4. This subsection does not prohibit a captive insurer from
2 directly insuring deductible reimbursement risk.

3 C. A captive insurer shall not accept or cede reinsurance
4 except as provided in Section 13 of this act.

5 D. A captive insurer that writes life insurance or disability
6 insurance shall comply with all applicable state and federal laws.

7 E. A captive insurer shall:

8 1. Hold at least one meeting of its board of directors or, for
9 reciprocal insurers, its subscribers' advisory committee each year
10 in this state;

11 2. Maintain its principal place of business in this state; and

12 3. Appoint a resident statutory agent to accept service of
13 process and to otherwise act on its behalf in this state and shall
14 file the appointment with the Commissioner. In the case of a
15 captive insurer formed as a corporation or reciprocal insurer, if
16 the statutory agent cannot with reasonable diligence be found at the
17 registered office of the captive insurer, the Commissioner is an
18 agent of the captive insurer on whom any process, notice or demand
19 may be served.

20 F. Before receiving a license, an applicant for a captive
21 insurer license shall file with the Commissioner the following:

22 1. If formed as a corporation, a certified copy of its articles
23 of incorporation, articles of organization or other organizational
24 document, a copy of its duly adopted bylaws or other governance

1 rules, a statement under oath of its president and secretary showing
2 its financial condition and any other statement or document required
3 by the Commissioner; and

4 2. If formed as a reciprocal insurer, a copy of the power of
5 attorney of its attorney-in-fact, a copy of its subscribers'
6 agreement, a copy of its duly adopted bylaws or other governance
7 rules, a statement under oath of its attorney-in-fact showing its
8 financial condition and any other statement or document required by
9 the Commissioner.

10 G. In addition to the information required by subsection F of
11 this section, each applicant for a captive insurer license shall
12 file with the Commissioner evidence of all of the following:

13 1. The amount and liquidity of its assets relative to the risks
14 to be assumed;

15 2. The adequacy of the expertise, experience and character of
16 the directors and officers of the captive insurer;

17 3. The overall soundness of its plan of operation;

18 4. The adequacy of the loss prevention programs of its
19 insureds;

20 5. The engagement of a competent manager that does business at
21 a location in this state;

22 6. The establishment of business relationships with any
23 accountants, banks, attorneys and other professionals that are
24 acceptable to the Department;

1 7. The ability of the captive insurer's owners or members to
2 pay claims to third parties if the captive insurer is unable to pay
3 those claims; and

4 8. Other factors deemed relevant by the Commissioner in
5 ascertaining whether the proposed captive insurer will be able to
6 meet its policy obligations.

7 H. In addition to the information required by subsections F and
8 G of this section, if the applicant is seeking authority as a
9 protected cell captive insurer, the applicant shall file:

10 1. A business plan that demonstrates, in a manner acceptable to
11 the Commissioner, how the applicant will account for the loss and
12 expense experience of each protected cell and report that
13 information to the Commissioner;

14 2. A statement acknowledging that all financial records of the
15 protected cell captive insurer, including records pertaining to
16 protected cells, shall be available for inspection or examination by
17 the Commissioner or the Commissioner's designee;

18 3. Its form for all participant contracts; and

19 4. Evidence that the protected cell captive insurer will
20 allocate expenses fairly and equitably to each protected cell.

21 I. Before the issuance of a license, an applicant shall
22 promptly notify the Commissioner of any material change in the
23 information filed pursuant to this section.

1 J. An applicant for a captive insurer license shall pay to the
2 Commissioner a nonrefundable fee for the issuance of a captive
3 insurance license. The captive insurer shall pay the license
4 renewal fee when the captive insurer files the annual report
5 prescribed in Section 9 of this act.

6 K. If the Commissioner is satisfied that the documents and
7 statements that the applicant has filed comply with this act, the
8 Commissioner may grant the applicant a captive insurer license that
9 authorizes the captive insurer to transact captive insurance
10 business in this state.

11 L. The Commissioner shall approve or deny an application for a
12 license to transact captive insurance business within thirty (30)
13 days after the Commissioner deems the application complete.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 9104 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A captive insurer shall not adopt a name that is the same,
18 deceptively similar to or likely to be confused with or mistaken for
19 any other existing business name registered in this state.

20 B. The name of a captive insurer that is a mutual company shall
21 contain the word "mutual".

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 9105 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The Commissioner shall not issue a license to a captive
2 insurer unless the insurer possesses and thereafter maintains
3 minimum unimpaired paid-in capital and surplus in combination as
4 follows:

5 1. In the case of a pure captive insurer, at least Two Hundred
6 Fifty Thousand Dollars (\$250,000.00);

7 2. In the case of a group captive insurer, at least Five
8 Hundred Thousand Dollars (\$500,000.00);

9 3. In the case of an agency captive insurer, at least Five
10 Hundred Thousand Dollars (\$500,000.00);

11 4. In the case of a protected cell captive insurer, at least
12 Five Hundred Thousand Dollars (\$500,000.00);

13 5. In the case of a captive insurer that is organized as a
14 reciprocal insurer, at least Five Hundred Thousand Dollars
15 (\$500,000.00); and

16 6. In the case of a pure or group captive insurer that
17 transacts only reinsurance, one-half (1/2) of the applicable amount
18 prescribed in paragraph 1 or 2 of this subsection.

19 B. All minimum capital and surplus requirements shall be in the
20 form of cash or an irrevocable and unconditional letter of credit
21 that contains an evergreen clause, that is payable to, filed with
22 and held by the Commissioner in trust for the protection of all
23 policyholders, ceding insurers and related expenses and that meets
24 the following conditions:

1 1. The letter of credit shall be issued or confirmed by a
2 qualified United States financial institution and shall comply with
3 the requirements prescribed by the Commissioner; and

4 2. The captive insurer shall not be directly or contingently
5 liable for any letter of credit comprising its capital or surplus,
6 and its assets shall not be pledged as security for the letter of
7 credit.

8 C. The Commissioner may prescribe additional capital and
9 surplus requirements based on the type, volume and nature of
10 insurance. The captive insurer may pledge, with the approval of the
11 Department, any additional prescribed capital and surplus, whether
12 in the form of cash, another allowable asset or any irrevocable and
13 unconditional letter of credit that contains an evergreen clause.

14 D. Notwithstanding any other provision of this act, a written
15 agreement under which a captive insurer borrows monies that are
16 required to be repaid only out of the insurer's surplus in excess of
17 that stipulated in the agreement may provide for interest at any
18 rate agreed on and approved by the Commissioner.

19 E. A captive insurer that is established solely for the purpose
20 of reinsuring risks as part of a program filed and approved by the
21 Commissioner to facilitate the securitization of risks ceded to the
22 captive insurer may be a party to contracts that provide that
23 subsequent purchasers of interests in the program assume the
24

1 interests on a nonrecourse basis, both as to the captive insurer and
2 any affiliate.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 9106 of Title 36, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An agency captive insurer or protected cell captive insurer
7 shall be incorporated as a stock insurer with its capital divided
8 into shares and held by the stockholders. Each owner of an agency
9 captive insurer shall be licensed as an insurance producer or
10 managing general agent.

11 B. A group captive insurer may be formed in any of the
12 following ways:

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

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

18 3. Organized as a reciprocal insurer; and

19 4. Incorporated as a nonprofit corporation.

20 C. A pure captive insurer may be formed in any of the following
21 ways:

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

24 2. Incorporated as a nonprofit corporation; and

1 3. Incorporated as a limited liability company.

2 D. The capital stock of a captive insurer that is incorporated
3 as a stock insurer may be authorized with no par value.

4 E. A captive insurer that is formed as a corporation shall have
5 at least three incorporators, at least one of whom shall be a
6 resident of this state. A captive insurer that is formed as a
7 reciprocal insurer shall be organized by three or more subscribers,
8 at least one of whom shall be a resident of this state.

9 F. A pure captive insurer shall have at least one director.
10 Any other kind of corporate captive insurer shall have at least
11 three directors. Any group captive insurer formed as a reciprocal
12 insurer shall have at least three subscribers' advisory committee
13 members. In addition to independent directors, a group captive
14 insurer may have as many directors as it has members.

15 G. A captive insurer that is formed as a corporation shall have
16 at least one member of the board of directors who is a resident of
17 this state. A captive insurer that is formed as a reciprocal
18 insurer shall have at least one member of the subscribers' advisory
19 committee who is a resident of this state.

20 H. The articles of incorporation or bylaws of a captive insurer
21 that is formed as a corporation with more than one director may
22 authorize a quorum of a board of directors to consist of at least
23 one-third (1/3) of the fixed or prescribed number of directors, but
24 at least two directors. The subscribers' agreement or other

1 organizing document of a captive insurer formed as a reciprocal
2 insurer may authorize a quorum of a subscribers' advisory committee
3 to consist of at least one-third (1/3) of the number of its members,
4 but at least two members.

5 I. Any foreign or alien insurer may become a domestic captive
6 insurer by complying with the requirements of this act relating to
7 the licensing of a domestic captive insurer and by complying with
8 all applicable requirements of the laws of this state relating to
9 the domestication of a corporation in this state. The effective
10 date of a license that is issued to a foreign or alien insurer
11 domesticated in this state shall be the date of filing its articles
12 of domestication with the Secretary of State.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 9107 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 A. One or more sponsors may form a protected cell captive
17 insurer as prescribed in this act.

18 B. A protected cell captive insurer may establish and maintain
19 one or more protected cells to insure the risks of one or more
20 participants, subject to the following conditions:

21 1. A protected cell captive insurer shall not have any
22 stockholders other than its participants and sponsors;

23 2. A protected cell captive insurer shall separately account
24 for each protected cell in its books and records to reflect the

1 financial condition and results of operations of each protected
2 cell, net income or loss of each protected cell, dividends or other
3 distributions to participants of each protected cell and any other
4 factors prescribed in the participant contract or required by the
5 Commissioner;

6 3. The assets of a protected cell are not chargeable with
7 liabilities arising out of any other insurance business the
8 protected cell captive insurer may conduct;

9 4. A protected cell captive insurer shall not sell, exchange or
10 transfer assets, issue a dividend or make a distribution between or
11 among any of its protected cells without the written consent of all
12 its protected cells;

13 5. A protected cell captive insurer shall not sell, exchange or
14 transfer assets, issue a dividend or make a distribution to a
15 sponsor or participant unless the Commissioner approves the
16 transaction and determines that the transaction will not cause
17 insolvency or impairment of any protected cell;

18 6. At the time of filing its annual report a protected cell
19 captive insurer shall annually file with the Department:

- 20 a. an accounting statement, in the form the Commissioner
21 requires, detailing the financial experience of each
22 protected cell, and
23 b. any other financial reports prescribed by the
24 Commissioner;

1 7. A protected cell captive insurer shall notify the
2 Commissioner in writing within ten (10) days after learning of any
3 protected cell that is insolvent or otherwise unable to meet its
4 claim or expense obligations;

5 8. A protected cell captive insurer shall obtain the
6 Commissioner's written approval of any participant contract before
7 the contract becomes effective;

8 9. The addition of a new participant or the withdrawal of a
9 participant from an existing protected cell is deemed a change in
10 the captive insurer's business plan and requires the Commissioner's
11 prior approval; and

12 10. With respect to each protected cell, the insurance business
13 written by a protected cell captive insurer shall be any of the
14 following:

- 15 a. assumed from an insurance company licensed under the
16 laws of any state,
- 17 b. reinsured by a reinsurer authorized or accredited by
18 this state, and
- 19 c. secured by a trust fund or an irrevocable letter of
20 credit with an evergreen clause.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 9108 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. A risk retention group shall not be either a sponsor or a
2 participant in a protected cell captive insurer.

3 B. An association, corporation, limited liability company,
4 partnership, trust or any other business entity may be a participant
5 in any protected cell captive insurer formed or licensed under this
6 act.

7 C. A sponsor may be a participant in a protected cell captive
8 insurer.

9 D. A participant need not be a shareholder of a protected cell
10 captive insurer or any affiliate of a protected cell captive
11 insurer.

12 E. Each protected cell shall comply with the restrictions
13 prescribed in subsection A of Section 3 of this act with respect to
14 the risks insured through the protected cell.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 9109 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Not later than ninety (90) days after the end of the captive
19 insurer's fiscal year, the captive insurer shall submit to the
20 Commissioner a report of its financial condition that is verified by
21 oath of two of its executive officers and that is supplemented by
22 additional information as required by the Commissioner. Except as
23 provided in Section 5 of this act, a captive insurer may submit a
24 report that uses generally accepted accounting principles unless the

1 Commissioner requires the captive insurer to use statutory
2 accounting principles with any useful or necessary modifications or
3 adaptations of those principles required by the Commissioner for the
4 type of insurance and kinds of insurers to be reported on.

5 B. The captive insurer's financial statements shall be audited
6 by an independent certified public accountant unless the
7 Commissioner determines that an audit is not necessary. The audit
8 shall include a reconciliation of differences, if any, between the
9 audited financial report and the statement or form filed with the
10 Department. The audit opinion shall be filed with the Commissioner
11 not later than six (6) months after the end of the captive insurer's
12 fiscal year.

13 C. Unless exempted by the Commissioner, the annual report shall
14 include an opinion as to the adequacy of the captive insurer's loss
15 reserves and loss expense reserves. A member in good standing of
16 the Casualty Actuarial Society, a member in good standing of the
17 American Academy of Actuaries or an individual who has demonstrated
18 competence in loss reserve evaluations to the Commissioner shall
19 certify the opinion.

20 SECTION 10. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 9110 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Whenever the Commissioner determines it to be prudent, the
24 Commissioner may examine the business, transactions and affairs of

1 each captive insurer to ascertain the captive insurer's financial
2 condition and ability to fulfill its obligations and whether the
3 captive insurer has complied with this act.

4 B. Section 25 of this act applies to all examination reports,
5 preliminary examination reports or results, working papers, recorded
6 information, documents and copies of any of those reports, results,
7 papers, information or documents produced by, obtained by or
8 disclosed to the Commissioner in the course of an examination made
9 under this section.

10 C. The Commissioner may use independent contractor examiners to
11 conduct examinations pursuant to this section. All examinations and
12 examination related expenses shall be borne by the captive insurer
13 and shall be paid by the Insurance Examiners' Revolving Fund.

14 D. As a condition of licensure, an alien captive insurer shall
15 consent to the examination by the Commissioner of the affairs of the
16 alien captive insurer in the jurisdiction in which the alien captive
17 insurer is formed. The examination of a branch captive insurer
18 shall be of branch business and branch operations only, during the
19 period the branch captive insurer is formed, and must demonstrate to
20 the Commissioner's satisfaction that the alien captive insurer is
21 operating in a sound financial condition pursuant to all the
22 applicable laws and regulations of the jurisdiction.

23

24

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 9111 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 The Commissioner may suspend, revoke or refuse to renew the
5 license of a captive insurer to transact insurance business in this
6 state for any of the following reasons:

- 7 1. Insolvency or impairment of capital and surplus;
- 8 2. Refusal or failure to submit an annual report as prescribed
9 in Section 9 of this act or any other report or statement required
10 by law or by lawful order of the Commissioner;
- 11 3. Failure to comply with the provisions of its own articles of
12 incorporation, bylaws or other organizational document;
- 13 4. Failure to submit to an examination or any legal obligation
14 related to the examination as prescribed in Section 10 of this act;
- 15 5. Refusal or failure to pay the cost of an examination as
16 prescribed in Section 10 of this act;
- 17 6. Use of methods that, although not otherwise specifically
18 prohibited by law, render its operation hazardous or its condition
19 unsound with respect to the public or to its policyholders; or
- 20 7. Failure to otherwise comply with this act.

21 SECTION 12. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 9112 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. A group captive insurer, an agency captive insurer and a
2 protected cell captive insurer shall comply with applicable
3 investment requirements. Notwithstanding any other provision of
4 Title 36 of the Oklahoma Statutes, the Commissioner may approve the
5 use of alternative reliable methods of valuation and rating.

6 B. A pure captive insurer is not subject to restrictions on
7 allowable investments, except that the Commissioner may prohibit or
8 limit any investment that threatens the solvency or liquidity of the
9 pure captive insurer.

10 C. Only a pure captive insurer may make loans to its
11 affiliates. A note shall evidence the loan. Before making any such
12 loan, the pure captive insurer shall obtain the Commissioner's
13 written approval to make the loan and approval for the form of the
14 note.

15 SECTION 13. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 9113 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Except as provided in subsection C of this section or
19 otherwise with the approval of the Commissioner, a captive insurer
20 may reinsure risks only pursuant to the limitations prescribed in
21 subsection A of Section 3 of this act.

22 B. A captive insurer may take credit for reserves on risks or
23 portions of risks ceded to a reinsurer that is in compliance with
24 applicable law. Prior approval of the Commissioner shall be

1 required for ceding or taking credit for the reserves on risks or
2 portions of risks ceded to a reinsurer if the reinsurer is not in
3 compliance with applicable law.

4 C. A captive insurer may cede to and assume risks that are not
5 within the limitations prescribed in subsection A of Section 3 of
6 this act, subject to the approval of the Commissioner.

7 SECTION 14. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 9114 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 A captive insurer is not required to join a rating organization.

11 SECTION 15. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 9115 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 Except as otherwise provided in subsection B of Section 3 of
15 this act, for a self-insurance program, a captive insurer shall not
16 join or contribute financially to any plan, pool, association or
17 guaranty or insolvency fund in this state. A captive insurer or its
18 insured, a parent, an affiliate, group members, a member
19 organization of an association or a claimant under any captive
20 insurance shall not receive any benefit from the plan, pool,
21 association or guaranty or insolvency fund for claims arising out of
22 the operations of the captive insurer.

23

24

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 9116 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 The Commissioner may adopt rules to carry out this act.

5 SECTION 17. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 9117 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Laws governing unfair trade practices and frauds apply to
9 captive insurers, except to the extent the Commissioner determines
10 otherwise.

11 B. All other provisions of Title 36 of the Oklahoma Statutes
12 that are not inconsistent with this act apply to captive insurers,
13 except to the extent the Commissioner determines the nature of
14 captive insurance renders particular provisions of Title 36 of the
15 Oklahoma Statutes inappropriate.

16 C. A captive insurer that is formed as a corporation is subject
17 to the applicable provisions of Title 18 of the Oklahoma Statutes,
18 except as otherwise prescribed in this act.

19 D. A captive insurer that is formed as a limited liability
20 company is subject to the applicable provisions of Title 18 of the
21 Oklahoma Statutes, except as otherwise prescribed in this act.

22 SECTION 18. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 9118 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A captive insurer shall engage a manager who shall maintain the
2 books and records of the captive insurer's business, transactions
3 and affairs at a location that is in this state and that is
4 accessible to the Commissioner. The captive manager shall promptly
5 notify the Commissioner of any failure of the captive insurer to
6 comply with this act. The Commissioner may require a captive
7 insurer to discharge a captive manager for failure to substantially
8 fulfill the captive manager's duties under this act.

9 SECTION 19. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 9119 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 The fees paid by a captive insurer are payment in full and in
13 lieu of all other demands for all state, county, district, municipal
14 and school taxes, licenses and excises of whatever kind or
15 character, except for a tax on real and tangible personal property
16 that is located within this state.

17 SECTION 20. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 9120 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Captive Insurance Regulatory and Supervision Fund is
21 established within the Department consisting of monies deposited
22 pursuant to subsection J of Section 3 of this act. The Commissioner
23 shall administer the fund as prescribed in subsection B of this
24 section.

1 B. The Commissioner shall use monies in the Captive Insurance
2 Regulatory and Supervision Fund to pay the costs of administering
3 this act and for reasonable expenses incurred in promoting this
4 state's captive insurance industry, pursuant to written guidelines
5 adopted by the Commissioner.

6 C. The Department shall not receive a general fund
7 appropriation for operation of the captive insurance program and
8 promotion of this state's captive insurance industry for any fiscal
9 year in which the Department had at least twenty-five captive
10 insurers holding an active certificate of authority as of the
11 immediately preceding calendar year end.

12 SECTION 21. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 9121 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A branch captive insurer may be established in this state
16 pursuant to this act to write in this state only insurance or
17 reinsurance of the employee benefit business, other than workers'
18 compensation or employers' liability insurance, of its parent and
19 affiliated companies that are subject to the provisions of the
20 Employee Retirement Income Security Act of 1974 (29 U.S.C., Sections
21 1001 through 1461).

22 B. A branch captive insurer shall not conduct any insurance
23 business in this state unless it maintains the principal place of
24 business for its branch operations in this state.

1 C. A branch captive insurer shall be a pure captive insurer
2 with respect to operations and minimum capitalization in this state
3 unless otherwise permitted by the Commissioner.

4 SECTION 22. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 9122 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. In the case of a branch captive insurer, as security for the
8 payment of liabilities attributable to the branch operations, the
9 Commissioner shall require that either a trust fund that is funded
10 by assets acceptable to the Commissioner or an irrevocable letter of
11 credit be established and maintained in the United States for the
12 benefit of United States policyholders and United States ceding
13 insurers under insurance policies issued for reinsurance contracts
14 issued or assumed by the branch captive insurer through its branch
15 operations.

16 B. The amount of each security shall be at least the amount
17 prescribed in Section 5 of this act and the reserves on such
18 insurance policies or such reinsurance contracts, including reserves
19 for losses, allocated loss adjustment expenses, incurred but not
20 reported losses and unearned premiums with regard to business
21 written through the branch operations. Notwithstanding this section
22 the Commissioner may permit a branch captive insurer that is
23 required to post security for loss reserves on branch business by
24 its reinsurer to reduce the monies in the trust account or the

1 amount payable under the irrevocable letter of credit required by
2 this section by the same amount if the security remains posted with
3 the reinsurer.

4 C. If the form of security selected is a letter of credit, the
5 letter of credit must be established by, or issued or confirmed by,
6 a qualified United States financial institution.

7 SECTION 23. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 9123 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 Within sixty (60) days after its fiscal year end, a branch
11 captive insurer shall file with the Commissioner a copy of all
12 reports and statements that are required to be filed under the laws
13 of the jurisdiction in which the alien captive insurer is formed and
14 that are verified by oath of two of its executive officers.

15 SECTION 24. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 9124 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A captive insurer shall obtain the written approval of the
19 Commissioner before implementing any material change in its plan of
20 operations.

21 SECTION 25. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 9125 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Information submitted pursuant to this act is confidential
2 and the Commissioner and the Commissioner's employees and agents
3 shall not provide the information to any other person without the
4 permission of the captive insurer, except that:

5 1. This section does not apply to the Department's use of
6 information submitted by a captive insurer for any regulatory
7 purpose, disciplinary action or hearing;

8 2. The Commissioner shall provide information submitted by a
9 captive insurer that is required by subpoena issued in connection
10 with an administrative, civil or criminal investigation by a
11 government agency;

12 3. The information may be discoverable by a party in a civil
13 action or contested case to which the captive insurer that submitted
14 the information is a party, if the party seeking to discover the
15 information demonstrates all of the following:

16 a. the information sought is relevant to and necessary
17 for the furtherance of the action or case,

18 b. the information sought is unavailable from other
19 nonconfidential sources, and

20 c. a subpoena issued by a judicial or administrative
21 officer of competent jurisdiction has been submitted
22 to the Commissioner;

23 4. The Commissioner may disclose the information to a public
24 official that has jurisdiction over the regulation of insurance in

1 another state if the public official agrees in writing to maintain
2 the confidentiality of the information and the laws of the state in
3 which the public official serves allow or require the information to
4 be and remain confidential; and

5 5. For the purpose of administering this act and promoting this
6 state's captive insurance industry, the Commissioner may disclose
7 only the following information about licensed captive insurers:

- 8 a. name of the captive insurer,
- 9 b. date licensed,
- 10 c. type of captive insurer,
- 11 d. business or industry of the owners or members, and
- 12 e. license status.

13 B. This section does not apply to risk retention groups.

14 SECTION 26. This act shall become effective November 1, 2008.

15

16 51-2-10498 MAH 03/04/08

17

18

19

20

21

22

23

24