CS for HB 1958

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for

House Bill No. 1958

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1958 - By: PETERSON (RON) of the House and LASTER of the Senate.

An Act relating to insurance; enacting the Oklahoma Captive Insurer Implementation Act of 2008; defining terms; authorizing applications to Insurance Commissioner for captive insurance license; providing exceptions; imposing limitations with respect to captive insurers; prescribing requirements for transaction of captive insurance business; prohibiting certain reinsurance transactions; imposing requirements with respect to certain captive insurers engaged in life or disability insurance business; prescribing procedural requirements; requiring filing of certain organizational documents; requiring disclosure of certain financial information; imposing requirements with respect to 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; authorizing methods of formation for pure captive insurers; authorizing no par stock; imposing requirements with respect to corporate organizations; authorizing procedures related to corporate governance; authorizing domestication of foreign entities; prescribing procedures for formation of protected cell captive insurers; imposing limitations; imposing certain duties; imposing filing requirements; requiring approval by Commissioner for certain transactions; imposing limitations with respect to risk retention groups; authorizing certain entities to be participants in protected cell captive insurer; imposing restrictions; requiring report of financial conditions; authorizing certain accounting methodology; requiring

audit; prescribing audit requirements; requiring opinion regarding reserve levels; authorizing examination of business and transactions of captive insurer by Insurance Commissioner; providing for applicability of certain statutory provisions; authorizing independent contractors; providing for payment of certain expenses; providing for alien captive insurer consent to examination; providing for license suspension, 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 certain written approval; providing for confidential treatment of information; providing exceptions; providing for codification; and providing an effective date.

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

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

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

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

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

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

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

3. "Agency captive insurer" means a captive insurer that is owned by one or more business entities that are licensed in any state as insurance producers or managing general agents and that only insure risks on policies placed through their owners;

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

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

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

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

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

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

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

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

12. “Commissioner” means the Oklahoma Insurance Commissioner;

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

14. "Control" and "controlling" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to

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exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of any other person;

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

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

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

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

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

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

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

19. “Department” means the Oklahoma Insurance Department;

20. "Direct” or “directly”, when used in this act to describe the transaction of insurance business by a captive insurer, means a transaction in which the captive

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insurer issues an insurance policy that provides primary coverage to the insured under the policy and that does not provide reinsurance coverage to another insurer;

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

a. a risk retention group,

b. an industry group captive insurer, and

c. an association captive insurer;

22. "Industry group" means two or more business entities that are engaged in businesses or activities similar or related with respect to the liability that they are exposed to by virtue of any related, similar or common business, trade, product, services, premises or operations;

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

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

25. “Insurer” means every person engaged in the business of making contracts of insurance except:

a. agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state,

b. fraternal benefit societies,

c. nonprofit medical and hospital service associations, and

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d. credit life and disability reinsurers that are not affiliated with another insurer;

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

a. risk retention group as defined in the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C., Section 9601), and the Risk Liability Retention Act (15 U.S.C., Sections 3901, 3902, 3903, 3905 and 3906),

b. residual market pool and joint underwriting authority or association, and

c. captive insurer. As used in this subparagraph, "captive insurer" means an insurance company that is owned by another organization and whose exclusive purpose is to insure risks to member organizations or group members and their affiliates;

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

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

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

30. "Participant contract" means a contract by which a protected cell captive insurer insures risks of one or more participants and limits losses under the contract to the assets of a protected cell;

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

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

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

34. "Protected cell captive insurer" means a captive insurer:

a. in which the minimum capital and surplus required by applicable law is provided by one or more sponsors,

b. that is formed and licensed under this act,

c. that insures the risks of participants through participant contracts, and

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

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

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

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

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

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

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

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

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

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

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

3. An agency captive insurer shall not:

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

b. directly insure life or disability insurance risks; and

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

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

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

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,

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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

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

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

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

E. A captive insurer shall:

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

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

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

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

1. If formed as a corporation, a certified copy of its articles of incorporation, articles of organization or other organizational document, a copy of its duly adopted bylaws or other governance rules, a statement under oath of its president and secretary showing its financial condition and any other statement or document required by the Commissioner; and

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

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

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 directors and officers of the captive insurer;

3. The overall soundness of its plan of operation;

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

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

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

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

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

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

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

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

3. Its form for all participant contracts; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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E. A captive insurer that is established solely for the purpose of reinsuring risks as part of a program filed and approved by the Commissioner to facilitate the securitization of risks ceded to the captive insurer may be a party to contracts that provide that subsequent purchasers of interests in the program assume the interests on a nonrecourse basis, both as to the captive insurer and any affiliate.

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

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

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

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;

3. Organized as a reciprocal insurer; and

4. Incorporated as a nonprofit corporation.

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

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

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2. Incorporated as a nonprofit corporation; and

3. Incorporated as a limited liability company.

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

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

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

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

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

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advisory committee to consist of at least one-third (1/3) of the number of its members, but at least two members.

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

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

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

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

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

2. A protected cell captive insurer shall separately account for each protected cell in its books and records to reflect the financial condition and results of operations of each protected cell, net income or loss of each protected cell, dividends or other distributions to

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participants of each protected cell and any other factors prescribed in the participant contract or required by the Commissioner;

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

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

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

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

a. an accounting statement, in the form the Commissioner requires, detailing the financial experience of each protected cell, and

b. any other financial reports prescribed by the Commissioner;

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

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

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

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

a. assumed from an insurance company licensed under the laws of any state,

b. reinsured by a reinsurer authorized or accredited by this state, and

c. secured by a trust fund or an irrevocable letter of credit with an evergreen clause.

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

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

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

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

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

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

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

A. Not later than ninety (90) days after the end of the captive insurer's fiscal year, the captive insurer shall submit to the Commissioner a report of its financial condition that is verified by oath of two of its executive officers and that is supplemented by additional information as required by the Commissioner. Except as provided in Section 5 of this act, a captive insurer may submit a report that uses generally accepted accounting principles unless the Commissioner requires the captive insurer to use statutory accounting principles with any useful or necessary modifications or adaptations of those principles required by the Commissioner for the type of insurance and kinds of insurers to be reported on.

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

C. Unless exempted by the Commissioner, the annual report shall include an opinion as to the adequacy of the captive insurer's loss reserves and loss expense

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reserves. A member in good standing of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries or an individual who has demonstrated competence in loss reserve evaluations to the Commissioner shall certify the opinion.

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

A. Whenever the Commissioner determines it to be prudent, the Commissioner may examine the business, transactions and affairs of each captive insurer to ascertain the captive insurer's financial condition and ability to fulfill its obligations and whether the captive insurer has complied with this act.

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

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

D. As a condition of licensure, an alien captive insurer shall consent to the examination by the Commissioner of the affairs of the alien captive insurer in the

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jurisdiction in which the alien captive insurer is formed. The examination of a branch captive insurer shall be of branch business and branch operations only, during the period the branch captive insurer is formed, and must demonstrate to the Commissioner's satisfaction that the alien captive insurer is operating in a sound financial condition pursuant to all the applicable laws and regulations of the jurisdiction.

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

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

1. Insolvency or impairment of capital and surplus;

2. Refusal or failure to submit an annual report as prescribed in Section 9 of this act or any other report or statement required by law or by lawful order of the Commissioner;

3. Failure to comply with the provisions of its own articles of incorporation, bylaws or other organizational document;

4. Failure to submit to an examination or any legal obligation related to the examination as prescribed in Section 10 of this act;

5. Refusal or failure to pay the cost of an examination as prescribed in Section 10 of this act;

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6. Use of methods that, although not otherwise specifically prohibited by law, render its operation hazardous or its condition unsound with respect to the public or to its policyholders; or

7. Failure to otherwise comply with this act.

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

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

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

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

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

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

B. A captive insurer may take credit for reserves on risks or portions of risks ceded to a reinsurer that is in compliance with applicable law. Prior approval of the Commissioner shall be required for ceding or taking credit for the reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with applicable law.

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

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

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

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

Except as otherwise provided in subsection B of Section 3 of this act, for a self-insurance program, a captive insurer shall not join or contribute financially to any plan, pool, association or guaranty or insolvency fund in this state. A captive insurer or its insured, a parent, an affiliate, group members, a member organization of an association

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or a claimant under any captive insurance shall not receive any benefit from the plan, pool, association or guaranty or insolvency fund for claims arising out of the operations of the captive insurer.

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

The Commissioner may adopt rules to carry out this act.

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

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

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

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

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

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

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

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

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

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

A. The Captive Insurance Regulatory and Supervision Fund is established within the Department consisting of monies deposited pursuant to subsection J of Section 3 of

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this act. The Commissioner shall administer the fund as prescribed in subsection B of this section.

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

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

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

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

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

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

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

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

B. The amount of each security shall be at least the amount prescribed in Section 5 of this act and the reserves on such insurance policies or such reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations. Notwithstanding this section the Commissioner may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the monies in the trust account or the amount payable under the irrevocable letter of credit required by this section by the same amount if the security remains posted with the reinsurer.

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C. 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 qualified United States financial institution.

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

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

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

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

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

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

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

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

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

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 officer of competent jurisdiction has been submitted to the Commissioner;

4. The Commissioner may disclose the information to a public official that has jurisdiction over the regulation of insurance in another state if the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves allow or require the information to be and remain confidential; and

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

a. name of the captive insurer,

b. date licensed,

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c. type of captive insurer,

d. business or industry of the owners or members, and

e. license status.

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

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

COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL SERVICES, dated 03-05-08 - DO PASS, As Amended.

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