

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1108

By: Mulready of the House

and

Stanislawski of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; prohibiting captive
12 insurance companies from taking certain actions
13 without Insurance Commissioner approval; requiring
14 captive insurance companies to maintain certain
15 records; providing requirements for captive insurance
16 companies conducting business; allowing captive
17 insurance companies to combine certain assets;
18 amending 36 O.S. 2011, Sections 6470.2, 6470.3, as
19 amended by Section 5, Chapter 365, O.S.L. 2012,
20 6470.6, 6470.10, 6470.11, 6470.12, 6470.13, 6470.14
21 6470.15, 6470.16, 6470.18, 6470.19, as amended by
22 Section 6, Chapter 365, O.S.L. 2012, 6470.20,
23 6470.22, 6470.27, 6470.28, 6470.29, 6470.30 and
24 6470.31 (36 O.S. Supp. 2012, Sections 6470.3 and
6470.19), which relate to the Oklahoma Captive
Insurance Company Act; modifying certain definitions;
adding certain definitions; removing certain
definitions; modifying limitations on risks covered
by captive insurance companies; allowing captive
insurance companies to provide certain workers'
compensation insurance; modifying license application
requirements; allowing issuance of certain
provisional licenses; modifying certain paid-in
capital and security requirements; removing certain
organization requirements; providing formation

1 requirements of captive insurance companies;
2 modifying certain accounting principles permitted to
3 be used in certain reports; authorizing the Insurance
4 Commissioner to permit certain companies to discount
5 loss and loss adjustment expense reserves; modifying
6 certain examination requirements; modifying when a
7 license may be suspended or revoked; modifying
8 certain investment requirements; modifying when a
9 captive insurance company may provide reinsurance on
10 certain risks; modifying certain membership
11 limitations; modifying certain tax rate requirements;
12 removing certain sanctions related to reinsurance
13 companies; modifying certain exemptions for special
14 purpose captive insurance companies; clarifying
15 language; modifying certain acquisition of control
16 and merger regulations; requiring the filing of
17 certain application materials; modifying
18 qualification and participation requirements for
19 sponsored captive insurance companies; repealing 36
20 O.S. 2011, Sections 6470.4, 6470.7, 6470.8, 6470.9,
21 6470.26, 6470.32 and 6470.33, which relate to the
22 Oklahoma Captive Insurance Company Act; providing for
23 codification; and providing an effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6470.24.1 of Title 36, unless
18 there is created a duplication in numbering, reads as follows:

19 No captive insurance company shall voluntarily take any of the
20 following actions without providing the Insurance Commissioner at
21 least thirty (30) days prior written notice and receiving the
22 Commissioner's approval of any such action:

- 23 1. The dissolution of the captive insurance company;

- 1 2. A sale, exchange, lease, mortgage, assignment, pledge or
2 other transfer of or granting of a security interest in, all or
3 substantially all of the assets of the captive insurance company;
4 3. Incurring a material indebtedness by the captive insurance
5 company;
6 4. Any making of a material loan or other material extension of
7 credit by the captive insurance company;
8 5. Any material payment out of capital and surplus;
9 6. Any merger or consolidation to which the captive insurance
10 company is a constituent party;
11 7. Any conversion of the captive insurance company to another
12 business form;
13 8. Any transfer to or domestication in any jurisdiction by the
14 captive insurance company; or
15 9. Any amendment of the organizational documents of the captive
16 insurance company.

17 For purposes of this section, "material", in relation to
18 financial matters, means any transaction or series of related
19 transactions involving more than the lesser of five percent (5%) of
20 the captive insurance company's assets or twenty-five percent (25%)
21 of its capital and surplus. "Assets" and "capital and surplus"
22 shall be measured as of the most recent filed report required by
23 Section 6470.11 of Title 36 of the Oklahoma Statutes.

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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6470.24.2 of Title 36, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Unless otherwise approved by the Commissioner, a captive
5 insurance company formed under the provisions of this act shall
6 maintain its books, records, documents, accounts, vouchers and
7 agreements in this state.

8 A captive insurance company shall make its books, records,
9 documents, accounts, vouchers and agreements available for
10 inspection by the Commissioner at any time. A captive insurance
11 company shall keep its books, records, documents, accounts, vouchers
12 and agreements in such manner that its financial condition, affairs
13 and operations can be readily ascertained and in such manner that
14 the Commissioner may readily verify its financial statements and
15 determine its compliance with this act.

16 B. Unless otherwise approved by the Commissioner, all original
17 books, records, documents, accounts, vouchers and agreements of a
18 captive insurance company formed under the provisions of this act
19 must be preserved and kept available in this state for the purpose
20 of examination and inspection until the Commissioner approves the
21 destruction or other disposition of the books, records, documents,
22 accounts, vouchers and agreements. If the Commissioner approves the
23 preservation and keeping of the foregoing outside this state, the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 captive insurance company shall maintain a complete and true copy of
2 each such original in the state. Books, records, documents,
3 accounts, vouchers and agreements may be photographed, reproduced on
4 film or stored and reproduced electronically.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6470.30.1 of Title 36, unless
7 there is created a duplication in numbering, reads as follows:

8 The business written by a sponsored captive insurance company
9 with respect to each protected cell must be:

10 1. Fronted by an insurance company licensed pursuant to the
11 laws of any state or any jurisdiction if the insurance company is a
12 wholly owned subsidiary of an insurance company licensed pursuant to
13 the laws of any state; or

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

16 3. Secured by a trust fund in the United States for the benefit
17 of policyholders and claimants or funded by an irrevocable letter of
18 credit or other asset acceptable to the Insurance Commissioner. The
19 amount of security provided may not be less than the reserves
20 associated with those liabilities, not fronted or reinsured,
21 including reserves for losses, allocated loss adjustment expenses,
22 incurred but unreported losses, and unearned premiums for business
23 written through the protected cell of the participant. The

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1 Insurance Commissioner may require the sponsored captive to increase
2 the funding of any security arrangement established pursuant to this
3 subsection. If the form of security is a letter of credit, the
4 letter of credit must be established, issued, or confirmed by a
5 financial institution chartered in this state, a member of the
6 federal reserve system, or a bank chartered by another state if that
7 state-chartered bank is acceptable to the Insurance Commissioner. A
8 trust and trust instrument maintained pursuant to this item must be
9 in a form and upon terms approved by the Insurance Commissioner.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6470.31.1 of Title 36, unless
12 there is created a duplication in numbering, reads as follows:

13 Notwithstanding the provisions of paragraph 2 of subsection B of
14 Section 6470.29 of Title 36 of the Oklahoma Statutes, a sponsored
15 captive insurance company may combine the assets of two or more
16 protected cells for purposes of investing those assets. Such a
17 combination of assets may not be construed as defeating the
18 segregation of assets required by this act, or for accounting or
19 other purposes.

20 SECTION 5. AMENDATORY 36 O.S. 2011, Section 6470.2, is
21 amended to read as follows:

22 Section 6470.2 As used in the Oklahoma Captive Insurance
23 Company Act:

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1 1. "~~Alien captive insurance company~~" means an insurance company
2 formed ~~to write insurance business for its parents and affiliates~~
3 and licensed pursuant to the laws of an ~~alien jurisdiction which~~
4 ~~imposes statutory or regulatory standards in a form acceptable to~~
5 ~~the Insurance Commissioner on companies transacting the business of~~
6 insurance in such a country or jurisdiction other than the United
7 States of America, or any of its states, districts, commonwealths
8 and possessions;

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

12 3. "Association" means a legal association of individuals,
13 corporations, partnerships, or associations that has been in
14 continuous existence for at least one (1) year or such lesser period
15 of time approved by the Commissioner:

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

18 ~~(1)~~ or either of them acting in concert directly or
19 indirectly own, control, or hold with power to
20 vote all of the outstanding voting securities or
21 interests of, or have complete voting control
22 over an association captive insurance company
23 ~~incorporated as a stock insurer, or~~

UNDERLINED language denotes Amendments to present Statutes.
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1 ~~(2) have complete voting control over an association~~
2 ~~captive insurance company incorporated as a~~
3 ~~mutual insurer, or~~

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

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

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

13 6. "Branch captive insurance company" means an alien captive
14 insurance company licensed by the Insurance Commissioner to transact
15 the business of insurance in this state through a business unit with
16 a principal place of business in this state. A branch captive
17 insurance company must be a pure captive insurance company with
18 respect to operations in this state, unless otherwise permitted by
19 the Insurance Commissioner;

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

22 8. "Capital and surplus" means the amount by which the value of
23 all of the assets of the captive insurance company exceeds all of

1 the liabilities of the captive insurance company, as determined
2 under the method of accounting utilized by the captive insurance
3 company in accordance with the applicable provisions of this act;

4 9. "Captive insurance company" means a pure captive insurance
5 company, association captive insurance company, captive reinsurance
6 company, sponsored captive insurance company, special purpose
7 captive insurance company, or industrial insured captive insurance
8 company formed or licensed under the Oklahoma Captive Insurance
9 Company Act. For purposes of the Oklahoma Captive Insurance Company
10 Act, a branch captive insurance company must be a pure captive
11 insurance company with respect to operations in this state, unless
12 otherwise permitted by the Insurance Commissioner;

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

18 ~~10. "Consolidated debt to total capital ratio" means the ratio~~
19 ~~of the sum of all debts and hybrid capital instruments including,~~
20 ~~but not limited to, all borrowings from banks, all senior debt, all~~
21 ~~subordinated debts, all trust preferred shares, and all other hybrid~~
22 ~~capital instruments that are not included in the determination of~~
23 ~~consolidated GAAP net worth issued and outstanding to total capital,~~

1 ~~consisting of all debts and hybrid capital instruments described in~~
2 ~~this paragraph plus equity of the shareholders determined in~~
3 ~~accordance with GAAP for reporting to the United States Securities~~
4 ~~and Exchange Commission;~~

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

8 ~~12.~~ 10. "Controlled unaffiliated business" means a company:

9 a. that is not in the corporate system of a parent and
10 affiliated companies,

11 b. that has an existing contractual relationship with a
12 parent or affiliated company, and

13 c. whose risks are managed by a pure captive insurance
14 company in accordance with Section ~~34~~ 6470.27 of this
15 ~~act~~ title;

16 ~~13.~~ 11. "Insurance Commissioner" means the Insurance
17 Commissioner of the State of Oklahoma or designee of the Insurance
18 Commissioner;

19 ~~14.~~ 12. "Department" means the Oklahoma Department of
20 Insurance;

21 ~~15.~~ 13. "Excess workers' compensation insurance" means, in the
22 case of an employer that has insured its workers' compensation risks

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1 in accordance with applicable law, insurance in excess of specified
2 limits established by the Commissioner;

3 14. "GAAP" means generally accepted accounting principles;

4 ~~16.~~ 15. "Industrial insured" means an insured insured under
5 ~~industrial life insurance as defined in Section 4202 of Title 36 of~~
6 ~~the Oklahoma Statutes:~~

7 a. who procures the insurance of any risk or risks by use
8 of the services of a full-time employee acting as an
9 insurance manager or buyer,

10 b. whose aggregate annual premiums for insurance on all
11 risks total at least Twenty-five Thousand Dollars
12 (\$25,000.00), and

13 c. who has at least twenty-five full-time employees;

14 ~~17.~~ 16. "Industrial insured captive insurance company" means a
15 company that insures risks of the industrial insureds that comprise
16 the industrial insured group and their affiliated companies;

17 ~~18.~~ 17. "Industrial insured group" means a group that meets
18 ~~either of the following criteria:~~

19 ~~a.~~ a group of industrial insureds that collectively:
20 ~~(1)~~ directly or indirectly owns, controls, or holds
21 with power to vote all of the outstanding voting
22 securities ~~of~~ or other voting interests or has
23 complete control over an industrial insured

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1 captive insurance company ~~incorporated as a stock~~
2 ~~insurer, or~~

3 ~~(2) has complete voting control over an industrial~~
4 ~~insured captive insurance company incorporated as~~
5 ~~a mutual insurer, or~~

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

11 ~~19.~~ 18. "Member organization" means any individual,
12 corporation, partnership, or association that belongs to an
13 association;

14 ~~20.~~ 19. "Parent" means any corporation, partnership, or
15 individual that directly or indirectly owns, controls, or holds with
16 power to vote more than fifty percent (50%) of the outstanding
17 voting securities of a pure captive insurance company;

18 ~~21.~~ 20. "Participant" means an entity as defined in Section 38
19 of this act, and any affiliates of that entity, that are insured by
20 a sponsored captive insurance company, where the losses of the
21 participant are limited through a participant contract to the
22 participant's pro rata share of the assets of a protected cell one
23 or more protected cells identified in the participant contract;

1 ~~22.~~ 23. "Participant contract" means a contract by which a
2 sponsored captive insurance company insures the risks of a
3 ~~participant~~ one or more participants and limits the losses of ~~the~~
4 each participant to the assets of a protected cell its pro rata
5 share of the assets of one or more protected cells identified in the
6 participant contract;

7 ~~23.~~ 24. "Protected cell" means a separate ~~account established~~
8 ~~and maintained by a sponsored captive insurance company for one~~
9 ~~participant~~ and distinct account established and maintained by or on
10 behalf of a sponsored captive insurance company in which assets are
11 accounted for and recorded for one or more participants in
12 accordance with the terms of one or more participant contracts to
13 fund the liability of the sponsored captive insurance company
14 assumed on behalf of the participants as set forth in the
15 participant contracts;

16 ~~24.~~ 25. "Pure captive insurance company" means a company that
17 insures risks of its parent, affiliated companies, of its parent and
18 any controlled unaffiliated business, or a combination thereof. For
19 purposes of this paragraph, "controlled unaffiliated business" means
20 an entity insured by a pure captive insurance company:

- 21 a. that is not in the corporate system of a parent and
22 affiliated companies,

1 surplus required by applicable law and to organize and operate a
2 sponsored captive insurance company; and

3 ~~28.~~ 30. "Sponsored captive insurance company" means a captive
4 insurance company:

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

7 b. that is formed or licensed under the Oklahoma Captive
8 Insurance Company Act,

9 c. that insures the risks of ~~separate~~ its participants
10 only through ~~the~~ separate participant contracts
11 contract, and

12 d. that ~~segregates the~~ funds its liability ~~of~~ to each
13 participant through one or more protected cells~~;~~ and
14 segregates the assets of each protected cell from the
15 assets of other protected cells and from the assets of
16 the sponsored captive insurance company's general
17 account.

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

21 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6470.3, as
22 amended by Section 5, Chapter 365, O.S.L. 2012 (36 O.S. Supp. 2012,
23 Section 6470.3), is amended to read as follows:

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1 Section 6470.3 A. A captive insurance company, when permitted
2 by its articles of incorporation or charter, may apply to the
3 Insurance Commissioner for a license to do any and all insurance,
4 ~~except workers' compensation insurance,~~ authorized by this title;
5 however:

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

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

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

16 4. A special purpose captive insurance company ~~may only insure~~
17 ~~the risks of its parent. Notwithstanding any other provisions of~~
18 ~~the Oklahoma Captive Insurance Company Act, a special purpose~~
19 ~~captive insurance company~~ may provide insurance or reinsurance, or
20 both, for risks as approved by the Insurance Commissioner;

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

1 6. ~~A captive insurance company may not accept or cede~~
2 ~~reinsurance except as provided in Section 6470.16 of this title~~ Any
3 captive insurance company may provide excess workers' compensation
4 insurance to its parent and affiliated companies, unless prohibited
5 by federal law or laws of this state or any other state having
6 jurisdiction over the transaction, and any captive insurance
7 company, unless prohibited by federal law, may reinsure workers'
8 compensation of a qualified self-insured plan of its parent and
9 affiliated companies.

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

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

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

17 ~~3.~~ 2. Maintain its principal a place of business in this state,
18 ~~or in the case of a branch captive insurance company, maintain the~~
19 ~~principal place of business for its branch operations in this state~~
20 designated as its registered office; and

21 ~~4.~~ 3. Appoint a resident registered agent to accept service of
22 process and to otherwise act on its behalf in this state. ~~In the~~
23 ~~case of a captive insurance company:~~

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1 a. ~~formed as a corporation, whenever~~ Whenever the
2 registered agent cannot with reasonable diligence be
3 found at the registered office of the captive
4 insurance company, the Insurance Commissioner ~~must~~
5 shall be deemed an agent of the captive insurance
6 company upon whom any process, notice, or demand may
7 be served, ~~or~~

8 b. ~~formed as a reciprocal insurer, whenever the~~
9 ~~registered agent cannot with reasonable diligence be~~
10 ~~found at the registered office of the captive~~
11 ~~insurance company, the Insurance Commissioner must be~~
12 ~~an agent of the captive insurance company upon whom~~
13 ~~any process, notice, or demand may be served.~~

14 C. 1. Before receiving a license, a captive insurance company:

15 a. ~~formed as a corporation, shall file with the Insurance~~
16 ~~Commissioner a certified copy of its charter and~~
17 ~~bylaws, a statement under oath of its president and~~
18 ~~secretary showing its financial condition, and any~~
19 ~~other statements or documents required by the~~
20 ~~Insurance Commissioner, or~~

21 b. ~~formed as a reciprocal shall:~~

22 ~~(1) file with the Insurance Commissioner a certified~~
23 ~~copy of the power of attorney of its attorney in-~~

1 ~~fact, a certified copy of its subscribers'~~
2 ~~agreement, a statement under oath of its~~
3 ~~attorney in fact showing its financial condition~~
4 ~~and any other statements or documents required by~~
5 ~~the Insurance Commissioner, and~~

6 ~~(2) submit to the Insurance Commissioner for approval~~
7 ~~a description of the coverages, deductibles,~~
8 ~~coverage limits, and rates and any other~~
9 ~~information the Insurance Commissioner may~~
10 ~~reasonably require. If there is a subsequent~~
11 ~~material change in an item in the description,~~
12 ~~the reciprocal captive insurance company shall~~
13 ~~submit to the Insurance Commissioner for approval~~
14 ~~an appropriate revision and may not offer any~~
15 ~~additional kinds of insurance until a revision of~~
16 ~~the description is approved by the Insurance~~
17 ~~Commissioner. The reciprocal captive insurance~~
18 ~~company shall inform the Insurance Commissioner~~
19 ~~of any material change in rates within thirty~~
20 ~~(30) days of the adoption of the change~~

21 shall file with the Commissioner a certified copy of its
22 organizational documents, a statement under oath of its president or
23 other authorized person showing its financial condition, a

1 feasibility study, a business plan, and any other statements,
2 information or documents required by the Commissioner.

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

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

18 ~~3. In addition to the information required by paragraphs 1 and~~
19 ~~2 of this subsection, an applicant sponsored captive insurance~~
20 ~~company shall file with the Insurance Commissioner:~~

- 21 ~~a. a business plan demonstrating how the applicant will~~
22 ~~account for the loss and expense experience of each~~
23 ~~protected cell at a level of detail found to be~~

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1 ~~sufficient by the Insurance Commissioner, and how it~~
2 ~~will report the experience to the Insurance~~
3 ~~Commissioner,~~

4 ~~b. a statement acknowledging that all financial records~~
5 ~~of the sponsored captive insurance company, including~~
6 ~~records pertaining to any protected cells, must be~~
7 ~~made available for inspection or examination by the~~
8 ~~Insurance Commissioner,~~

9 ~~e. all contracts or sample contracts between the~~
10 ~~sponsored captive insurance company and any~~
11 ~~participants, and~~

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

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

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

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

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

21 D. A captive insurance company shall pay to the Department a
22 nonrefundable application fee of Two Hundred Dollars (\$200.00) for
23 reviewing its application to determine whether it is complete
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1 ~~examining, investigating, and processing its application for~~
2 ~~license,~~ and in addition, the Insurance Commissioner may retain
3 legal, financial, and examination services from outside the
4 Department, the reasonable cost of which may be charged against the
5 applicant. ~~This title applies to examinations, investigations, and~~
6 ~~processing conducted under the authority of this section.~~ In
7 ~~addition~~ Also, a captive insurance company shall pay a license fee
8 for the year of registration and a renewal fee of Three Hundred
9 Dollars (\$300.00).

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

16 F. 1. Notwithstanding any other provision of this act, the
17 Commissioner may issue a provisional license to any applicant
18 captive insurance company for a period not to exceed sixty (60) days
19 if the Insurance Commissioner deems that the public interest will be
20 served by the issuance of such license.

21 2. As a condition precedent to the issuance of a provisional
22 license under this section, the applicant shall have filed a
23 complete application containing all information required by this
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1 section, paid all fees required for licensure and the Commissioner
2 shall have made a preliminary finding that the expertise, experience
3 and character of the person or persons who will control and manage
4 the applicant captive insurer are acceptable.

5 3. The Insurance Commissioner may by order limit the authority
6 of any provisional licensee in any way deemed necessary to protect
7 insureds and the public. The Insurance Commissioner may by order
8 revoke a provisional license if the interests of insureds or the
9 public are endangered. If the applicant fails to complete the
10 regular licensure application process, the provisional license shall
11 terminate automatically.

12 SECTION 7. AMENDATORY 36 O.S. 2011, Section 6470.6, is
13 amended to read as follows:

14 Section 6470.6 A. The Insurance Commissioner may not issue a
15 or renew the license to of a captive insurance company unless the
16 company possesses and thereafter maintains unimpaired aggregate
17 paid-in capital and surplus of:

18 1. In the case of a pure captive insurance company, not less
19 than One Hundred Thousand Dollars (\$100,000.00) Two Hundred Fifty
20 Thousand Dollars (\$250,000.00), One Hundred Fifty Thousand Dollars
21 (\$150,000.00) of which must be paid-in prior to the issuance of a
22 license, and an additional One Hundred Thousand Dollars

1 (\$100,000.00) of which must be paid-in on or before the first
2 anniversary of the issuance of the initial license;

3 2. In the case of an association captive insurance company
4 incorporated as a stock insurer, not less than ~~Four Hundred Thousand~~
5 ~~Dollars (\$400,000.00)~~ Seven Hundred Fifty Thousand Dollars
6 (\$750,000.00);

7 3. In the case of an industrial insured captive insurance
8 company incorporated as a stock insurer, not less than ~~Two Hundred~~
9 ~~Thousand Dollars (\$200,000.00)~~ Five Hundred Thousand Dollars
10 (\$500,000.00);

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

13 5. In the case of any captive insurance company doing business
14 as a risk retention group, not less than One Million Dollars
15 (\$1,000,000.00); and

16 6. In the case of a special purpose or branch captive insurance
17 company, not less than Two Hundred Fifty Thousand Dollars
18 (\$250,000.00) or an amount determined by the Insurance Commissioner
19 after giving due consideration to the business plan of the company,
20 feasibility study, and pro formas, including the nature of the risks
21 to be insured. The capital may be in the form of cash, cash
22 equivalent, or an irrevocable letter of credit issued by a bank
23
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1 chartered by this state or a member bank of the Federal Reserve
2 System and approved by the Insurance Commissioner.

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

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

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1 ~~reserves on branch business by its reinsurer to reduce the funds in~~
2 ~~the trust account required by this section by the same amount so~~
3 ~~long as the security remains posted with the reinsurer. If the form~~
4 ~~of security selected is a letter of credit, the letter of credit~~
5 ~~must be established by, or issued or confirmed by, a bank chartered~~
6 ~~in this state or a member bank of the Federal Reserve System.~~

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

16 SECTION 8. AMENDATORY 36 O.S. 2011, Section 6470.10, is
17 amended to read as follows:

18 Section 6470.10 A. A ~~pure~~ captive insurance company ~~or a~~
19 ~~sponsored captive insurance company must~~ may be incorporated as a
20 stock insurer with its capital divided into shares and held by the
21 ~~stockholders~~ corporation or as a nonstock corporation, or may be
22 formed as a limited liability company, partnership, limited

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1 partnership, statutory trust or any lawful form approved by the
2 Commissioner.

3 B. An association captive insurance company ~~or an~~, industrial
4 insured captive insurance company or special purpose captive
5 insurance company may be:

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

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

11 3. ~~Organized~~ organized as a reciprocal insurer.

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

15 D. ~~In the case of a captive insurance company formed as a~~
16 ~~corporation, before the articles of incorporation are transmitted to~~
17 ~~the Secretary of State, the incorporators shall petition the~~
18 ~~Insurance Commissioner to issue a certificate setting forth a~~
19 ~~finding that the establishment and maintenance of the proposed~~
20 ~~corporation will~~ The Commissioner shall not issue the initial
21 license or review the license of any captive insurer unless the
22 Commissioner determines the following matters serve the best
23 interest of the prospective policyholders and promote the general

24

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

3 1. The character, reputation, financial standing, and purposes
4 of the ~~incorporators~~ principals, owners or other persons who will
5 direct or control the affairs of the captive insurer;

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

9 3. Other aspects as the Insurance Commissioner considers
10 advisable.

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

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

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

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

4 ~~3. Other aspects the Insurance Commissioner considers~~
5 ~~advisable.~~

6 ~~G. D. In the case of a captive insurance company licensed as a~~
7 ~~branch captive insurance company, the findings required in~~
8 ~~subsection C above shall be in respect to the alien captive~~
9 ~~insurance company shall petition the Insurance Commissioner to issue~~
10 ~~a certificate setting forth the finding of the Insurance~~
11 ~~Commissioner that, after considering the character, reputation,~~
12 ~~financial responsibility, insurance experience, and business~~
13 ~~qualifications of the officers and directors of the alien captive~~
14 ~~insurance company, the licensing and maintenance of the branch~~
15 ~~operations will promote the general good of the state. The alien~~
16 ~~captive insurance company may register to do business in this state~~
17 ~~after a certificate of the Insurance Commissioner has been issued.~~

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

21 ~~I. In the case of a captive insurance company formed as a~~
22 ~~corporation, at least one of the members of the board of directors~~

1 ~~of a captive insurance company incorporated in this state must be a~~
2 ~~resident of this state.~~

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

6 ~~K. E. 1. A captive insurance company formed as a corporation~~
7 ~~under the Oklahoma Captive Insurance Company Act has laws of this~~
8 ~~state or under the laws of another jurisdiction that is licensed~~
9 ~~under the provisions of this title shall have the privileges and is~~
10 ~~be subject to the provisions of the general corporation law laws of~~
11 ~~this state or the laws of such other jurisdiction, as applicable,~~
12 ~~under which such captive insurance company is organized as well as~~
13 ~~the applicable provisions contained in the Oklahoma Captive~~
14 ~~Insurance Company Act this title. If a conflict occurs between a~~
15 ~~provision of the general corporation law and a provision of the~~
16 ~~Oklahoma Captive Insurance Company Act In the event of conflict~~
17 ~~between the provisions of the laws of this state or the laws of such~~
18 ~~other jurisdiction, as applicable, under which such captive~~
19 ~~insurance company is organized, and the provisions of this title,~~
20 ~~the latter ~~controls~~ shall control.~~

21 ~~2. A captive insurance company, formed or licensed under the~~
22 ~~Oklahoma Captive Insurance Company Act, has the privileges and is~~
23 ~~subject to the provisions of Oklahoma law as well as the applicable~~

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1 provisions contained in the Oklahoma Captive Insurance Company Act.
2 If a conflict occurs between a provision of the general law of
3 Oklahoma and a provision of the Oklahoma Captive Insurance Company
4 Act, the latter controls. No provision of the Insurance Code, other
5 than those contained in this act or otherwise specifically
6 referencing such companies, shall apply to captive insurance
7 companies.

8 3. In addition to the applicability of law provided in this
9 section, a captive insurance company operating as a risk retention
10 group shall be subject to the provisions of the Oklahoma Risk
11 Retention Act under Sections 6451 through 6468 of this title.

12 4. The provisions of the Oklahoma Insurance Code pertaining to
13 mergers, consolidations, conversions, mutualizations, and
14 redomestications apply in determining the procedures to be followed
15 by a captive insurance company in carrying out any of the
16 transactions described in those provisions, except the Insurance
17 Commissioner may waive or modify the requirements for public notice
18 and hearing in accordance with regulations which the Insurance
19 Commissioner may promulgate addressing categories of transactions.
20 If a notice of public hearing is required, but no one requests a
21 hearing, the Insurance Commissioner may cancel the hearing.

22 ~~L. 1. A captive insurance company formed as a reciprocal~~
23 ~~insurer under the Oklahoma Captive Insurance Company Act has the~~

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1 ~~privileges and is subject to the provisions of the Oklahoma~~
2 ~~Insurance Code in addition to the applicable provisions of the~~
3 ~~Oklahoma Captive Insurance Company Act. If a conflict occurs, the~~
4 ~~provisions of the Oklahoma Captive Insurance Company Act control.~~
5 ~~To the extent a reciprocal insurer is made subject to other~~
6 ~~provisions of the Oklahoma Insurance Code, the provisions are not~~
7 ~~applicable to a reciprocal insurer formed under the Oklahoma Captive~~
8 ~~Insurance Company Act unless the provisions are expressly made~~
9 ~~applicable to a captive insurance company under the Oklahoma Captive~~
10 ~~Insurance Company Act.~~

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

15 ~~M. The articles of incorporation or bylaws of a captive~~
16 ~~insurance company may authorize a quorum of a board of directors to~~
17 ~~consist of no fewer than one-third (1/3) of the fixed or prescribed~~
18 ~~number of directors.~~

19 ~~5. The terms and conditions set forth in Articles 18 and 19 of~~
20 ~~the Oklahoma Insurance Code pertaining to insurance supervision,~~
21 ~~conservatorship, rehabilitation, and receiverships apply in full to~~
22 ~~captive insurance companies formed under the Oklahoma Captive~~
23 ~~Insurance Company Act.~~

24

1 SECTION 9. AMENDATORY 36 O.S. 2011, Section 6470.11, is
2 amended to read as follows:

3 Section 6470.11 A. A captive insurance company may not be
4 required to make an annual report except as provided in the Oklahoma
5 Captive Insurance Company Act.

6 B. Before March 1 of each year, a captive insurance company ~~or~~
7 ~~a captive reinsurance company~~ shall submit to the Insurance
8 Commissioner a report of its financial condition, verified by oath
9 of two of its executive officers. Except as provided in ~~Sections~~
10 Section 6470.6 and 6470.8 of this title, a captive insurance company
11 ~~or a captive reinsurance company~~ shall report using statutory
12 generally accepted accounting principles, unless the Insurance
13 Commissioner approves the use of ~~generally accepted~~ statutory
14 accounting principles or international accounting standards, with
15 useful or necessary modifications or adaptations required or
16 approved or accepted by the Insurance Commissioner for the type of
17 insurance and kinds of insurers to be reported upon, and as
18 supplemented by additional information required by the Insurance
19 Commissioner. ~~Except as otherwise provided, an association captive~~
20 ~~insurance company and an industrial insured group shall file their~~
21 ~~report in the form required by the Insurance Commissioner, and each~~
22 ~~industrial insured group shall comply with the requirements set~~
23 ~~forth in the Oklahoma Insurance Code. The Insurance Commissioner by~~

1 ~~regulation shall prescribe the forms in which pure captive insurance~~
2 ~~companies and industrial insured captive insurance companies shall~~
3 ~~report.~~ Any captive insurance company whose use of statutory
4 accounting principles is approved by the Commissioner may make such
5 modifications and adaptations thereof as are necessary:

6 1. To record, as "admitted", the full value of all investments
7 by such captive insurance company permitted under this chapter; and

8 2. Subject to the Commissioner's approval, to make its reports
9 under this section consistent with the purposes of this chapter.

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

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

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

21 D. Sixty (60) days after the fiscal year-end, a branch captive
22 insurance company shall file with the Insurance Commissioner a copy
23 of all reports and statements required to be filed under the laws of
24

1 the jurisdiction in which the alien captive insurance company is
2 formed, verified by oath of two of its executive officers. If the
3 Insurance Commissioner is satisfied that the annual report filed by
4 the alien captive insurance company in its domiciliary jurisdiction
5 provides adequate information concerning the financial condition of
6 the alien captive insurance company, the Insurance Commissioner may
7 waive the requirement for completion of the captive annual statement
8 for business written in the alien jurisdiction. Such waiver must be
9 in writing and subject to public inspection.

10 SECTION 10. AMENDATORY 36 O.S. 2011, Section 6470.12, is
11 amended to read as follows:

12 Section 6470.12 A. Upon written application, accompanied by
13 such information as the Commissioner requires, the Commissioner may
14 grant permission to a sponsored captive insurance company and a or a
15 special purpose captive reinsurance insurance company may to
16 discount ~~their~~ loss and loss adjustment expense reserves at treasury
17 rates applied to the applicable payments projected through the use
18 of the expected payment pattern associated with the reserves.

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

24

1 C. The Insurance Commissioner may disallow the discounting of
2 reserves if a ~~sponsored~~ captive insurance company ~~or a captive~~
3 ~~reinsurance company~~ violates a provision of this title.

4 SECTION 11. AMENDATORY 36 O.S. 2011, Section 6470.13, is
5 amended to read as follows:

6 Section 6470.13 A. At least once in ~~three (3)~~ five (5) years,
7 and whenever the Insurance Commissioner determines it to be prudent,
8 the Commissioner personally, or a competent person appointed by the
9 Commissioner, shall conduct an examination under Sections 309.1
10 through 309.7 of this title, as well as determine whether the
11 captive insurer has complied with the Oklahoma Captive Insurance
12 Company Act. The Commissioner upon application, in his or her
13 discretion, may enlarge the ~~three-year~~ five-year period to ~~five (5)~~
14 seven (7) years, ~~if a captive insurance company is subject to a~~
15 ~~comprehensive annual audit during that period of a scope~~
16 ~~satisfactory to the Commissioner by independent auditors approved by~~
17 ~~the Commissioner.~~ The expenses and charges of the examination must
18 be paid in accordance with the payment provisions of Sections 309.1
19 through 309.7 of this title.

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

14 C. 1. This section applies to all business written by a
15 captive insurance company; however, the examination for a branch
16 captive insurance company must be of branch business and branch
17 operations only, as long as the branch captive insurance company
18 provides annually to the Commissioner a certificate of compliance,
19 or its equivalent, issued by or filed with the licensing authority
20 of the jurisdiction in which the branch captive insurance company is
21 formed and demonstrates to the satisfaction of the Commissioner that
22 it is operating in sound financial condition in accordance with all
23 applicable laws and regulations of that jurisdiction.

24

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

5 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6470.14, is
6 amended to read as follows:

7 Section 6470.14 A. The license of a captive insurance company
8 to conduct an insurance business in this state may be suspended or
9 revoked by the Insurance Commissioner for:

10 1. Insolvency or impairment of capital ~~or~~ and surplus;

11 2. Failure to meet the requirements of ~~Sections~~ Section 6470.6
12 ~~and 6470.8~~ of this title;

13 3. Refusal or failure to submit an annual report, as required
14 by Section 6470.11 of this title, or any other report or statement
15 required by law or by lawful order of the Commissioner;

16 4. Failure to comply with its own charter, bylaws, or other
17 organizational document;

18 5. Failure to pay any tax or fee, or submit to examination or
19 any legal obligation relative to an examination, as required by this
20 section;

21 6. Refusal or failure to pay the cost of examination;

22 7. Use of methods that, although not otherwise specifically
23 prohibited by law, nevertheless render its operation detrimental or
24

1 its condition unsound with respect to the public or to its
2 policyholders; or

3 8. Failure otherwise to comply with laws of this state.

4 B. If the Commissioner finds, upon examination, hearing, or
5 other evidence, that a captive insurance company has committed any
6 of the acts specified in subsection A of this section, the
7 Commissioner may suspend or revoke such license if the Commissioner
8 considers it in the best interest of the public and the
9 policyholders of the captive insurance company.

10 C. In addition to or in lieu of any applicable revocation or
11 suspension of the license of a captive insurer, the Commissioner may
12 fine any captive insurer who violates any provision of the Oklahoma
13 Insurance Code a civil penalty of not more than Five Thousand
14 Dollars (\$5,000.00) for each occurrence.

15 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6470.15, is
16 amended to read as follows:

17 Section 6470.15 A. An association captive insurance company
18 ~~and an industrial insured captive insurance company insuring the~~
19 ~~risks of an industrial insured group~~ shall comply with the
20 investment requirements contained in the Oklahoma Insurance Code.
21 The Insurance Commissioner may approve the use of alternative
22 ~~reliable methods of valuation and rating~~ investment requirements
23 upon application by such captive insurance company.

24

1 B. A pure captive insurance company, special purpose captive
2 insurance company, branch captive insurance company, an industrial
3 insured captive insurance company, and a sponsored captive insurance
4 company are not subject to any restrictions on allowable investments
5 contained in the Oklahoma Insurance Code; however, the Insurance
6 Commissioner may prohibit or limit an investment that threatens the
7 solvency or liquidity of the company.

8 ~~C. Only a pure captive insurance company may make loans to its~~
9 ~~parent company or affiliates and only upon the prior written~~
10 ~~approval of the Insurance Commissioner and must be evidenced by a~~
11 ~~note in a form approved by the Insurance Commissioner. Loans of~~
12 ~~minimum capital and surplus funds required by Sections 13 and 15~~
13 ~~Section 6470.6 of this act title are prohibited.~~

14 D. Subject to subsections A and B of this section and Section
15 6470.31 of this title, as applicable, a captive insurance company
16 may own securities of or other interests in another captive
17 insurance company, whether voting or nonvoting.

18 SECTION 14. AMENDATORY 36 O.S. 2011, Section 6470.16, is
19 amended to read as follows:

20 Section 6470.16 A. A captive insurance company may provide
21 reinsurance, as authorized in the Oklahoma Insurance Code, for
22 domestic insurers on risks ceded by any other insurer.

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1 B. A captive insurance company may take credit for reserves on
2 risks or portions of risks ceded to reinsurers ~~complying~~ only in
3 accordance with the Oklahoma Insurance Code. ~~A captive insurer may~~
4 ~~not take credit for reserves on risks or portions of risks ceded to~~
5 ~~a reinsurer if the reinsurer is not in compliance with the Oklahoma~~
6 ~~Insurance Code.~~

7 SECTION 15. AMENDATORY 36 O.S. 2011, Section 6470.18, is
8 amended to read as follows:

9 Section 6470.18 A captive insurance company, ~~including a~~
10 ~~captive insurance company organized as a reciprocal insurer under~~
11 ~~the Oklahoma Captive Insurance Company Act,~~ may not join or
12 contribute financially to a plan, pool, association, or guaranty or
13 insolvency fund in this state, and a captive insurance company, or
14 its insured or its parent or any affiliated company or any member
15 organization of its association, or in the case of a captive
16 insurance company organized as a reciprocal insurer, a subscriber of
17 the company, or in the case of a sponsored captive insurance
18 company, a protected cell or participant in a protected cell may not
19 receive a benefit from a plan, pool, association, or guaranty or
20 insolvency fund for claims arising out of the operations of such
21 captive insurance company.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 16. AMENDATORY 36 O.S. 2011, Section 6470.19, as
2 amended by Section 6, Chapter 365, O.S.L. 2012 (36 O.S. Supp. 2012,
3 Section 6470.19), is amended to read as follows:

4 Section 6470.19 A. A Each captive insurance company, other
5 than a sponsored captive insurance company, and each protected cell
6 of a sponsored captive insurance company, shall pay to the
7 Department, by March 1 of each year, a tax at the rate of ~~four-~~
8 ~~tenths of one percent (0.4%) on the first Twenty Million Dollars~~
9 ~~(\$20,000,000.00) and three tenths of one percent (0.3%) on the next~~
10 ~~Twenty Million Dollars (\$20,000,000.00) and two tenths of one~~
11 ~~percent (0.2%) on the next Twenty Million Dollars (\$20,000,000.00)~~
12 ~~and seventy-five thousandths of one percent (0.075%) on each dollar~~
13 ~~thereafter~~ two-tenths of one percent (0.2%) on the direct premiums
14 collected or contracted for on policies or contracts of insurance
15 written by the captive insurance company during the year ending
16 December 31 next preceding, after deducting from the direct premiums
17 subject to the tax the amounts paid to policyholders as return
18 premiums which shall include dividends on unabsorbed premiums or
19 premium deposits returned or credited to policyholders up to a
20 maximum tax for such year of One Hundred Thousand Dollars
21 (\$100,000.00); provided however, that no tax shall be due or payable
22 as to consideration received for annuity contracts.

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1 B. A captive insurance company, other than a sponsored captive
2 insurance company, and each protected cell of a sponsored captive
3 insurance company, shall pay to the Department, by March 1 of each
4 year, a tax at the rate of ~~two hundred twenty-five thousandths of~~
5 ~~one percent (0.225%) on the first Twenty Million Dollars~~
6 ~~(\$20,000,000.00)~~ one-tenth of one percent (0.1%) of assumed
7 reinsurance premium, ~~and one hundred fifty thousandths of one~~
8 ~~percent (0.150%) on the next Twenty Million Dollars (\$20,000,000.00)~~
9 ~~and fifty thousandths of one percent (0.050%) on the next Twenty~~
10 ~~Million Dollars (\$20,000,000.00) and twenty-five thousandths of one~~
11 ~~percent (0.025%) of each dollar thereafter.~~ However, no reinsurance
12 tax applies to premiums for risks or portions of risks which are
13 subject to taxation on a direct basis pursuant to subsection A of
14 this section. A premium tax is not payable in connection with the
15 receipt of assets in exchange for the assumption of loss reserves
16 and other liabilities of another insurer under common ownership and
17 control if the transaction is part of a plan to discontinue the
18 operations of the other insurer and if the intent of the parties to
19 the transaction is to renew or maintain business with the captive
20 insurance company.

21 C. A sponsored captive insurance company shall pay to the
22 Department, by March 1 of each year, a tax on direct and assumed
23
24

1 premiums equal, in the aggregate, to the minimum tax provided in
2 subsection D of this section.

3 D. If the aggregate taxes to be paid by a captive insurance
4 company or a protected cell of a sponsored captive insurance company
5 calculated under subsections A and B of this section amount to less
6 than Five Thousand Dollars (\$5,000.00) in any year, the captive
7 insurance company or protected cell shall pay a minimum tax of Five
8 Thousand Dollars (\$5,000.00) for that year. However, in the
9 calendar year in which a captive is first licensed, or the protected
10 cell is approved by the Commissioner, the minimum tax will be
11 prorated on a quarterly basis. For ~~captives~~ those licensed in the
12 first quarter, the prorated minimum tax is Five Thousand Dollars
13 (\$5,000.00). For ~~captives~~ those licensed in the second quarter, the
14 prorated minimum tax is Three Thousand Seven Hundred Fifty Dollars
15 (\$3,750.00). For ~~captives~~ those licensed in the third quarter, the
16 prorated minimum tax is Two Thousand Five Hundred Dollars
17 (\$2,500.00). For ~~captives~~ those licensed in the fourth quarter, the
18 prorated minimum tax is One Thousand Two Hundred Fifty Dollars
19 (\$1,250.00). In the calendar year in which a captive is first
20 licensed or the protected cell is first approved by the
21 Commissioner, if the aggregate taxes to be paid ~~by a captive~~
22 ~~insurance company~~ calculated under subsections A and B of this
23 section amount to less than the minimum tax prorated on a quarterly
24

1 basis, the captive ~~insurance company~~ or protected cell shall pay the
2 prorated minimum tax for that calendar year.

3 ~~D. If~~ E. Subject to subsections F, G and H of this section, if
4 the aggregate taxes on direct and assumed premiums to be paid by a
5 captive insurance company or a protected cell of a sponsored captive
6 insurance company calculated under subsections A and B of this
7 section amount to more than One Hundred Thousand Dollars
8 (\$100,000.00) in any year, the captive insurance company shall pay a
9 maximum tax of One Hundred Thousand Dollars (\$100,000.00) for that
10 year.

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

14 F. Two or more captive insurance companies or a protected cell
15 of a sponsored captive insurance company under common ownership and
16 control must be taxed as though they were a single captive insurance
17 company.

18 G. As used in this section, "common ownership and control"
19 means:

20 ~~1. In the case of stock corporations,~~ the direct or indirect
21 ownership of eighty percent (80%) or more of the outstanding voting
22 stock or other voting interests of two or more ~~corporations~~ captive
23
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1 insurance companies or protected cells of a sponsored captive
2 insurance company by the same ~~shareholder or shareholders~~; and

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

7 H. ~~In the case of a branch captive insurance company, the tax~~
8 ~~provided for in this section applies only to the branch business of~~
9 ~~the company~~ A captive insurance company that has employed twenty-
10 five or more separate qualified individuals throughout a given tax
11 year and that otherwise would be liable under this section for tax
12 for such year in an amount exceeding Fifty Thousand Dollars
13 (\$50,000.00) shall pay to the Commissioner under this section a tax
14 for such year in the amount of Fifty Thousand Dollars (\$50,000.00).
15 For purposes of this subsection, "qualified individual" means a
16 natural person employed in this state on a regular basis of thirty-
17 five (35) or more hours per week either by such captive insurance
18 company, or by a wholly-owned subsidiary of such captive insurance
19 company that provides captive insurance company management,
20 operating, investment or related services exclusively to such
21 captive insurance company.

22 I. The tax provided for in this section constitutes all taxes
23 collectible under the laws of this state from a captive insurance
24

1 company or a protected cell of a sponsored captive insurance
2 company, and no other occupation tax or other taxes may be levied or
3 collected from a captive insurance company by the state or a county,
4 city, or municipality within this state, except ad valorem taxes on
5 real and personal property used in the production of income.

6 SECTION 17. AMENDATORY 36 O.S. 2011, Section 6470.20, is
7 amended to read as follows:

8 Section 6470.20 A. ~~A captive reinsurance company shall pay to~~
9 ~~the Department, by March 1 of each year, a captive reinsurance tax~~
10 ~~of Five Thousand Dollars (\$5,000.00).~~

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

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

21 SECTION 18. AMENDATORY 36 O.S. 2011, Section 6470.22, is
22 amended to read as follows:

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1 Section 6470.22 The Insurance Commissioner may, by rule,
2 regulation, or order, exempt special purpose captive insurance
3 companies, on a case-by-case basis, from provisions of the Oklahoma
4 Insurance Code, Oklahoma Captive Insurance Company Act and any rule
5 or regulation established under either that he or she determines to
6 be inappropriate to apply to such companies given the nature of the
7 risks to be insured.

8 SECTION 19. AMENDATORY 36 O.S. 2011, Section 6470.27, is
9 amended to read as follows:

10 Section 6470.27 The Insurance Commissioner shall promulgate
11 regulations establishing standards to ensure that a parent or
12 affiliated company is able to exercise control of the risk
13 management function of any controlled unaffiliated business to be
14 insured by ~~the~~ a pure captive insurance company; however, until such
15 time as these regulations are promulgated, the Insurance
16 Commissioner may by temporary order grant authority to a pure
17 captive insurance company to insure risks.

18 SECTION 20. AMENDATORY 36 O.S. 2011, Section 6470.28, is
19 amended to read as follows:

20 Section 6470.28 ~~A. An association captive insurance company or~~
21 ~~industrial insured group formed as a stock or mutual corporation may~~
22 ~~be converted to or merged with and into a reciprocal insurer in~~
23 ~~accordance with a plan and the provisions of this section.~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~B. A plan for this conversion or merger:~~

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

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

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

13 ~~1. The conversion must be accomplished under a reasonable plan~~
14 ~~and procedure as may be approved by the Insurance Commissioner;~~
15 ~~however, the Insurance Commissioner may not approve the plan of~~
16 ~~conversion unless the plan:~~

17 ~~a. satisfies the provisions of subsection B of this~~
18 ~~section,~~

19 ~~b. provides for a hearing, of which notice has been given~~
20 ~~to the insurer, its directors, officers and~~
21 ~~stockholders, in the case of a stock insurer, or~~
22 ~~policyholders, in the case of a mutual insurer, all of~~
23 ~~whom have the right to appear at the hearing, except~~

1 ~~that the Insurance Commissioner may waive or modify~~
2 ~~the requirements for the hearing; however, if a notice~~
3 ~~of hearing is required, but no hearing is requested,~~
4 ~~the Insurance Commissioner may cancel the hearing,~~
5 e. ~~provides for the conversion of existing stockholder or~~
6 ~~policyholder interests into subscriber interests in~~
7 ~~the resulting reciprocal insurer, proportionate to~~
8 ~~stockholder or policyholder interests in the stock or~~
9 ~~mutual insurer, and~~

10 d. ~~is approved:~~

11 ~~(1) in the case of a stock insurer, by a majority of~~
12 ~~the shares entitled to vote represented in person~~
13 ~~or by proxy at a duly called regular or special~~
14 ~~meeting at which a quorum is present, or~~

15 ~~(2) in the case of a mutual insurer, by a majority of~~
16 ~~the voting interests of policyholders represented~~
17 ~~in person or by proxy at a duly called regular or~~
18 ~~special meeting at which a quorum is present;~~

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

1 ~~3. If the Insurance Commissioner approves the plan the~~
2 ~~Insurance Commissioner shall amend the certificate of authority of~~
3 ~~the converting insurer to reflect conversion to a reciprocal insurer~~
4 ~~and issue the amended certificate of authority to the attorney-in-~~
5 ~~fact of the company;~~

6 ~~4. Upon issuance of an amended certificate of authority of a~~
7 ~~reciprocal insurer by the Insurance Commissioner, the conversion is~~
8 ~~effective; and~~

9 ~~5. Upon the effectiveness of the conversion the corporate~~
10 ~~existence of the converting insurer shall cease and the resulting~~
11 ~~reciprocal insurer shall notify the Secretary of State of the~~
12 ~~conversion.~~

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

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

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

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

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

5 ~~5. The Insurance Commissioner shall approve the articles of~~
6 ~~merger if the Insurance Commissioner finds that the merger will~~
7 ~~promote the general good of the state in conformity with those~~
8 ~~standards set forth in Section 17 of this act. If the Insurance~~
9 ~~Commissioner approves the articles of merger, the Insurance~~
10 ~~Commissioner shall endorse his or her approval on the articles and~~
11 ~~the surviving insurer shall present the name to the Secretary of~~
12 ~~State at the office of the Secretary of State;~~

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

20 ~~7. An alien insurer may be a party to a merger authorized under~~
21 ~~subsection A of this section if the requirements for the merger~~
22 ~~between a domestic and a foreign insurer apply to a merger between a~~
23 ~~domestic and an alien insurer under this subsection. The alien~~

1 ~~insurer must be treated as a foreign insurer and other jurisdictions~~
2 ~~must be the equivalent of a state~~ The provisions of Article 16A of
3 the Insurance Code applicable to acquisition of control or merger
4 with a domestic insurer shall apply to acquisition of control of an
5 association captive insurance company, sponsored captive insurance
6 company, special purpose captive insurance company, or industrial
7 insured captive insurance company formed or licensed under the
8 Oklahoma Captive Insurance Company Act.

9 SECTION 21. AMENDATORY 36 O.S. 2011, Section 6470.29, is
10 amended to read as follows:

11 Section 6470.29 A. In addition to the provisions of Sections
12 6470.1 through 6470.28 of this title, the provisions of Sections
13 6470.29 through 6470.31 and Sections 3 and 4 of this act shall apply
14 to sponsored captive insurance companies, and Section 1 of this act
15 shall apply to each protected cell of a sponsored captive insurance
16 company.

17 B. Supplemental license application materials.

18 In addition to the information required by subsection C of
19 Section 6470.3 of this title, each applicant sponsored captive
20 insurance company shall file with the Commissioner the following:

21 1. Materials demonstrating to the satisfaction of the
22 Commissioner how the applicant will report to the Commissioner on,
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1 and account for, the loss and expense experience of each protected
2 cell;

3 2. A statement acknowledging that all financial records of the
4 sponsored captive insurance company, including records pertaining to
5 any protected cells, shall be made available for inspection or
6 examination by the Commissioner or the Commissioner's designated
7 agent;

8 3. All contracts or sample contracts between the sponsored
9 captive insurance company and any participants; and

10 4. Evidence that expenses shall be allocated to each protected
11 cell in a fair and equitable manner.

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

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

18 1. ~~The shareholders~~ persons holding the voting interests of a
19 sponsored captive insurance company must be limited to its
20 participants and sponsors; provided, that a sponsored captive
21 insurance company may issue nonvoting securities or interests to
22 other persons on terms approved by the Commissioner;

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

7 3. The assets of a protected cell must not be chargeable with
8 liabilities ~~arising out of any other insurance business~~ protected
9 cell or, unless otherwise agreed in the applicable participant
10 contract, of the sponsored captive insurance company ~~may conduct~~;

11 4. No sale, exchange, or other transfer of assets, or dividend
12 or other distribution, may be made with respect to a protected cell
13 by the sponsored captive insurance company ~~between or among any of~~
14 ~~its protected cells~~ without the consent of the participants of each
15 affected protected cells cell;

16 5. No sale, exchange, transfer of assets, dividend, or
17 distribution, other than a payment to a sponsor in accordance with
18 the applicable participant contract, may be made from a protected
19 cell to a sponsor or participant without the approval of the
20 Insurance Commissioner and in no event may the approval be given if
21 the sale, exchange, transfer, dividend, or distribution would result
22 in insolvency or impairment with respect to a protected cell;

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

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

10 8. No participant contract shall take effect without the prior
11 written approval of the Insurance Commissioner, and the addition of
12 each new protected cell and withdrawal of any participant or
13 termination of any existing protected cell constitutes a change in
14 the business plan of the sponsored captive insurance company
15 requiring the prior written approval of the Insurance Commissioner.

16 SECTION 22. AMENDATORY 36 O.S. 2011, Section 6470.30, is
17 amended to read as follows:

18 Section 6470.30 A sponsor of a sponsored captive insurance
19 company must be an insurer licensed pursuant to the laws of a state,
20 an insurance holding company that controls an insurer licensed
21 pursuant to the laws of any state and subject to registration
22 pursuant to the insurance holding company system laws of the state
23 of domicile of the insurer, a reinsurer authorized or approved
24

1 pursuant to the laws of a state, or a captive insurance company
2 formed or licensed pursuant to the Oklahoma Captive Insurance
3 Company Act. A risk retention group may ~~not~~ be ~~either a sponsor or~~
4 a participant of a sponsored captive insurance company only to the
5 extent that it is the sole participant of one or more protected
6 cells. ~~The business written by a sponsored captive insurance~~
7 ~~company with respect to each protected cell must be:~~

- 8 1. ~~Fronted by an insurance company licensed pursuant to the~~
9 ~~laws of:~~
 - 10 a. ~~any state, or~~
 - 11 b. ~~any jurisdiction if the insurance company is a wholly~~
12 ~~owned subsidiary of an insurance company licensed~~
13 ~~pursuant to the laws of any state;~~
- 14 2. ~~Reinsured by a reinsurer authorized or approved by this~~
15 ~~state; or~~
- 16 3. ~~Secured by a trust fund in the United States for the benefit~~
17 ~~of policyholders and claimants funded by an irrevocable letter of~~
18 ~~credit or other asset acceptable to the Insurance Commissioner. The~~
19 ~~amount of security provided by the trust fund may not be less than~~
20 ~~the reserves associated with those liabilities, including reserves~~
21 ~~for losses, allocated loss adjustment expenses, incurred but~~
22 ~~unreported losses, and unearned premiums for business written~~
23 ~~through the protected cell of the participant. The Insurance~~

1 ~~Commissioner may require the sponsored captive to increase the~~
2 ~~funding of a trust established pursuant to this item. If the form~~
3 ~~of security in the trust is a letter of credit, the letter of credit~~
4 ~~must be established, issued, or confirmed by a bank chartered in~~
5 ~~this state, a member of the federal reserve system, or a bank~~
6 ~~chartered by another state if that state-chartered bank is~~
7 ~~acceptable to the Insurance Commissioner. A trust and trust~~
8 ~~instrument maintained pursuant to this item must be in a form and~~
9 ~~upon terms approved by the Insurance Commissioner.~~

10 SECTION 23. AMENDATORY 36 O.S. 2011, Section 6470.31, is
11 amended to read as follows:

12 Section 6470.31 A. An association, a corporation, a limited
13 liability company, a partnership, a trust, or other business entity
14 may be a participant in a sponsored captive insurance company formed
15 or licensed pursuant to the Oklahoma Captive Insurance Company Act.

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

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

20 D. A Unless otherwise approved by the Insurance Commissioner, a
21 participant shall may ~~insure only its own risks~~ through a sponsored
22 captive insurance company, ~~unless otherwise approved by the~~
23
24

1 ~~Insurance Commissioner~~ only its own risks or the risks of its
2 affiliates who are participants.

3 SECTION 24. REPEALER 36 O.S. 2011, Sections 6470.4,
4 6470.7, 6470.8, 6470.9, 6470.26, 6470.32 and 6470.33, are hereby
5 repealed.

6 SECTION 25. This act shall become effective November 1, 2013.

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8 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/04/2013 - DO
9 PASS, As Amended and Coauthored.

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