ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 455 By: Brown of the Senate

and

Kirby of the House

An Act relating to insurance; amending 36 O.S. 2011, Section 309.4, which relates to examination reports; eliminating requirement that insurance companies deliver certain reports and orders; amending 36 O.S. 2011, Section 312A, which relates to enforcement and recording of penalties and fees; specifying types of civil penalties and fees that may be enforced in certain manner; amending 36 O.S. 2011, Section 348.1, as amended by Section 3, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2014, Section 348.1), which relates to fees and licenses; updating citation; amending 36 O.S. 2011, Sections 608 and 609, which relate to authorization of insurers; updating and deleting citations; amending 36 O.S. 2011, Section 903.2, as amended by Section 16, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2014, Section 903.2), which relates to the Oklahoma Insurance Rating Act; modifying filing requirements; amending 36 O.S. 2011, Section 1435.2, which relates to the Oklahoma Producer Licensing Act; modifying definition; updating citations; amending 36 O.S. 2011, Section 1441.1, which relates to the Third-Party Administrator Act; updating citations; amending 36 O.S. 2011, Section 1524, as amended by Section 6, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2014, Section 1524), which relates to the Risk-based Capital for Insurers Act; modifying required contents of certain required plan; amending 36 O.S. 2011, Section 1674, which relates to the Business Transacted with Producer Controlled Insurer Act; updating reference; amending 36 O.S. 2011, Section 4502, which relates to group accident and health insurance policies; modifying required policy provisions; making language gender neutral; amending 36 O.S. 2011, Section 6041, which relates to payments for emergency living expenses; expanding authorized

forms of payments; amending 36 O.S. 2011, Section 6103.3, which relates to acts of insurance business; specifying certain persons for which certain remedies will applicable; specifying certain prohibited acts; amending 36 O.S. 2011, Section 6811, which relates to the Medical Professional Liability Insurance Closed Claim Reports Act; authorizing the Insurance Commissioner to require certain filings; requiring certain reports be filed within certain time; eliminating requirement that certain claims be reported; repealing 36 O.S. 2011, Sections 924.4, as amended by Section 1, Chapter 44, O.S.L. 2012 and 924.5, as amended by Section 2, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2014, Sections 924.4 and 924.5), which relate to affidavits of exempt status; and providing an effective date.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to insurance; amending 36 O.S. 2011, Section 309.4, which relates to examination reports; eliminating requirement that insurance companies deliver certain reports and orders; amending 36 O.S. 2011, Section 312A, which relates to enforcement and recording of penalties and fees; specifying types of civil penalties and fees that may be enforced in certain manner; amending 36 O.S. 2011, Section 348.1, as amended by Section 3, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2014, Section 348.1), which relates to fees and licenses; updating citation; amending 36 O.S. 2011, Sections 608 and 609, which relate to authorization of insurers; updating and deleting citations; amending 36 O.S. 2011, Section 903.2, as amended by Section 16, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2014, Section 903.2), which relates to the Oklahoma Insurance Rating Act; modifying filing requirements; amending 36 O.S. 2011, Section 1435.2, which relates to the Oklahoma

Producer Licensing Act; modifying definition; updating citations; amending 36 O.S. 2011, Section 1441.1, which relates to the Third-Party Administrator Act; updating citations; amending 36 O.S. 2011, Section 1524, as amended by Section 6, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2014, Section 1524), which relates to the Risk-based Capital for Insurers Act; modifying required contents of certain required plan; amending 36 O.S. 2011, Section 1674, which relates to the Business Transacted with Producer Controlled Insurer Act; updating reference; amending 36 O.S. 2011, Section 4502, which relates to group accident and health insurance policies; modifying required policy provisions; making language gender neutral; amending 36 O.S. 2011, Section 6041, which relates to payments for emergency living expenses; expanding authorized forms of payments; amending 36 O.S. 2011, Section 6103.3, which relates to acts of insurance business; specifying certain persons for which certain remedies will be applicable; specifying certain prohibited acts; amending 36 O.S. 2011, Sections 6470.2, as amended by Section 5, Chapter 41, O.S.L. 2013, 6470.3, as last amended by Section 6, Chapter 41, O.S.L. 2013, 6470.6, as amended by Section 7, Chapter 41, O.S.L. 2013, 6470.10, as amended by Section 8, Chapter 41, O.S.L. 2013, 6470.12, as amended by Section 10, Chapter 41, O.S.L. 2013, 6470.15, as amended by Section 13, Chapter 41, O.S.L. 2013, 6470.16, as amended by Section 14, Chapter 41, O.S.L. 2013, 6470.19, as last amended by Section 16, Chapter 41, O.S.L. 2013, 6470.20, as amended by Section 17, Chapter 41, O.S.L. 2013, 6470.25, 6470.27, as amended by Section 19, Chapter 41, O.S.L. 2013, 6470.29, as amended by Section 21, Chapter 41, O.S.L. 2013 and 6470.30, as amended by Section 22, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Sections 6470.2, 6470.3, 6470.6, 6470.10, 6470.12, 6470.15, 6470.16, 6470.19, 6470.20, 6470.27, 6470.29 and 6470.30), which relate to the Oklahoma Captive Insurance Company Act; modifying definitions; modifying prohibitions for captive insurance companies; modifying unimpaired paid-in capital and surplus requirements; modifying application of the Oklahoma Insurance Code; modifying requirements for public notice and hearing; authorizing insurers holding insurance

license from another state to become an Oklahoma domiciled captive insurer under certain circumstances; modifying insurers that file annual actuarial opinion; modifying investment requirements; modifying reinsurance authorization; modifying tax application to certain protected cells; clarifying application of sanctions; modifying rules establishing certain standards; expanding types of entities that may be a sponsor of a captive insurance company; providing for the formation of entity-protected cells; defining term; providing powers of entity-protected cells; providing certain requirements for articles of incorporation or articles of organization; providing certain option; amending 36 O.S. 2011, Section 6811, which relates to the Medical Professional Liability Insurance Closed Claim Reports Act; authorizing the Insurance Commissioner to require certain filings; requiring certain reports be filed within certain time; eliminating requirement that certain claims be reported; repealing 36 O.S. 2011, Sections 924.4, as amended by Section 1, Chapter 44, O.S.L. 2012 and 924.5, as amended by Section 2, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2014, Sections 924.4 and 924.5), which relate to affidavits of exempt status; repealing 36 O.S. 2011, Section 6470.23, which relates to laws pertaining to captive insurance companies; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 309.4, is amended to read as follows:

Section 309.4 A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and

recommendations as the examiners find reasonably warranted from such facts.

B. No later than thirty (30) days following completion of the examination, the examiner in charge shall file with the Insurance Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than twenty (20) days to make a written submission or written rebuttal with respect to any matters contained in the examination report.

C. Within twenty (20) days of the end of the period allowed for the receipt of written submissions or written rebuttals, the Insurance Commissioner shall fully consider and review the report, together with any written submissions or written rebuttals and any relevant portions of the examiners' work papers and enter an order:

1. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure such violation;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining

additional data, documentation or information, and refiling pursuant to subsection A of this section; or

3. Calling for an investigatory hearing with notice pursuant to the Administrative Procedures Act to the company for purposes of obtaining additional documentation, data, information and testimony.

D. 1. All orders entered pursuant to paragraph 1 of subsection C of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner work papers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to the Administrative Procedures Act, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders. ~~Upon proper order of the Commissioner, the company shall deliver by mail or otherwise, within thirty (30) days of the date of the order, a copy of the adopted report and related orders to all states and jurisdictions in which the company is licensed to transact the business of insurance.~~

2. Any hearing conducted pursuant to paragraph 3 of subsection C of this section by the Commissioner or authorized representative, shall be conducted as a nonadversarial confidential investigatory

proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within thirty (30) days of the conclusion of any such hearing, the Commissioner shall enter an order pursuant to paragraph 1 of subsection C of this section.

3. The Commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The Commissioner or a representative of the Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Department, the company or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner or representative of the Commissioner shall be under oath and preserved for the record.

4. Nothing contained in this section shall require the Department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

5. The hearing shall proceed with the Commissioner or a representative of the Commissioner posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. The company and the

Department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. 1. Upon the adoption of the examination report under paragraph 1 of subsection C of this section, the Commissioner shall continue to hold the content of the examination report as private and confidential information for a period of two (2) days except to the extent provided in subsection B of this section and subsection F of Section 309.3 of this title. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

2. Nothing contained in Sections 309.1 through 309.7 of this title shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Sections 309.1 through 309.7 of this title.

3. In the event the Commissioner determines that regulatory action is appropriate as a result of any examination, the Commissioner may initiate any proceedings or actions as provided by law.

F. All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under Sections 309.1 through 309.7 of this title, or in the course of analysis by the Commissioner or any other person of the financial condition or market conduct of a company, shall be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in subsection E of this section and subsection F of Section 309.3 of this title. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 312A, is amended to read as follows:

Section 312A. Civil penalties and fees imposed by the Insurance Commissioner pursuant to ~~the provisions of this title~~ Oklahoma law may be enforced in the same manner in which civil judgments may be enforced. All final orders of the Insurance Commissioner imposing administrative charges, fees, civil penalties or fines may be recorded in the office of the Clerk of the District Court of Oklahoma County and, upon such recording, all appropriate writs and

process shall issue and shall be enforced by the judges of said court upon application.

SECTION 3. AMENDATORY 36 O.S. 2011, Section 348.1, as amended by Section 3, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2014, Section 348.1), is amended to read as follows:

Section 348.1 A. The Insurance Commissioner shall collect the following fees and licenses for the Property and Casualty Division:

1. Rating organizations, statistical agents and advisory organizations:

a. Application fee for issuance of license.....$200.00

b. License fee.....$500.00

2. Miscellaneous:

a. Certificate of Insurance Commissioner, under seal.....$ 20.00

b. Upon each transaction of filing of documents required pursuant to Section 3610 of this title and the Service Warranty Act, as contained in Sections 141.1 through 141.32 of Title 15 of the Oklahoma Statutes:

(1) For an individual insurer.....$ 50.00

(2) For an approved joint underwriting association, or rating or advisory organization:

(a) Basic fee.....$ 50.00

(b) Additional fee for each member or subscriber insurer.....$ 10.00, not to exceed.....$500.00.

3. For each rate, loss cost and rule filing request pursuant to the ~~provisions of Sections 6821 and 981 et seq. of this title~~ Property and Casualty Competitive Loss Cost Rating Act:

a. For an individual insurer.....$100.00

b. For an approved joint underwriting association, rating or advisory organization:

(1) Basic fee.....$100.00

(2) Additional fee for each member or subscriber insurer.....$ 10.00, not to exceed.....$500.00.

B. The fees, licenses, and taxes imposed by the Commissioner upon persons, firms, associations, or corporations licensed pursuant to this section shall be payment in full with respect thereto of and in lieu of all demands for any and all state, county, district, and municipal license fees, license taxes, business privilege taxes, business privilege fees, and charges of every kind now or hereafter

imposed upon all such persons, firms, associations, or corporations. This subsection shall not affect other fees, licenses and taxes imposed by the Insurance Code.

C. Any costs incurred by the Commissioner in the process of review and analysis of a filing shall be assessed against the company or organization making the filing.

SECTION 4. AMENDATORY 36 O.S. 2011, Section 608, is amended to read as follows:

Section 608. A. A casualty insurer shall not be authorized to transact workers' compensation insurance in this state without first complying with the applicable provisions of Title ~~85~~ 85A of the Oklahoma Statutes.

B. A claims adjuster for any insurer duly authorized to transact workers' compensation insurance in Oklahoma shall be licensed pursuant to the Insurance Adjusters Licensing Act.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 609, is amended to read as follows:

Section 609. An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in Section 701 et seq. of this title, except:

1. A life insurer shall not be authorized to transact any other kind of insurance except accident and health and workers' compensation and employer liability equivalent insurance if otherwise qualified to do so on or after September 1, 1994, ~~pursuant~~

~~to the provisions of Section 65 of Title 85 of the Oklahoma Statutes~~ or if immediately prior to the effective date of this Code any life insurer lawfully held a subsisting certificate of authority granting it the right to transact in Oklahoma additional kinds of insurance other than accident and health, so long as the insurer is otherwise in compliance with this Code the Insurance Commissioner shall continue to authorize such insurer to transact the same kinds of insurance as those specified in such prior certificate of authority;

2. A reciprocal insurer shall not transact life insurance;

3. A Lloyd's insurer shall not transact life insurance;

4. A title insurer shall be a stock insurer and shall not transact any other kind of insurance; and

5. No insurer shall issue for delivery or deliver in this state any contract of insurance which imposes contingent or assessment liability upon a resident of this state.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 903.2, as amended by Section 16, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2014, Section 903.2) is amended to read as follows:

Section 903.2 No insurance company shall request and the Insurance Commissioner shall not approve an increase for the expense portion of insurance company rate filings based upon the requirements of Section 6701 of this title ~~and Section 355 of Title 85 of the Oklahoma Statutes~~.

SECTION 7. AMENDATORY 36 O.S. 2011, Section 1435.2, is amended to read as follows:

Section 1435.2 As used in the Oklahoma Producer Licensing Act:

1. "Commissioner" means the Insurance Commissioner;

2. "Business entity" means a corporation, association, partnership, limited liability company, limited partnership, or other legal entity;

3. "Customer service representative" means an individual appointed by an insurance producer, surplus lines insurance broker, managing general agent, or insurance agency to assist the insurance producer, broker, or agency in transacting the business of insurance from the office of the insurance producer, broker, or agency and whose salary may vary based on the production or volume of applications or premiums;

4. "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer;

5. "Insurance" means any of the lines of authority in ~~Title 36 of the Oklahoma Statutes~~ this title, including workers' compensation insurance. Any insurer approved to offer workers' compensation ~~equivalent~~ insurance ~~pursuant to the provisions of Section 65 of Title 85 of the Oklahoma Statutes~~ may appoint ~~property and casualty~~ insurance producers. All producers appointed for workers'

compensation ~~equivalent~~ insurance products must be licensed as ~~property and casualty~~ insurance producers by the Oklahoma Insurance Department;

6. "Insurance consultant" means an individual or legal entity who, for a fee, is held out to the public as engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued or delivered in this state;

7. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Any person not duly licensed as an insurance producer, surplus lines insurance broker, or limited lines producer who solicits a policy of insurance on behalf of an insurer shall be deemed to be acting as an insurance agent within the meaning of the Oklahoma Producer Licensing Act, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance producer of the company is subject, and the company by issuing the policy of insurance shall thereby accept and acknowledge the person as its agent in the transaction. For purposes of the laws of this state and the Oklahoma Insurance Code, the term "insurance agent" shall have the same meaning as the term "insurance producer";

8. "Insurer" has the meaning set out in Section 103 of this title;

9. "License" means a document issued by the Insurance Commissioner of this state authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier;

10. "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, known as "gap" insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the Insurance Commissioner determines should be designated a form of limited line credit insurance;

11. "Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy;

12. "Limited lines insurance" means limited line credit and those lines of insurance defined in Section ~~20~~ 1435.20 of this ~~act~~ title or any other line of insurance the Insurance Commissioner deems necessary to recognize for the purposes of complying with subsection E of Section ~~9~~ 1435.9 of this ~~act~~ title;

13. "Limited lines producer" means a person who is authorized by the Commissioner to sell, solicit or negotiate limited lines insurance. For purposes of the laws of this state and the Oklahoma Insurance Code, the term "limited insurance representative" shall have the same meaning as the term "limited lines producer";

14. "Managing general agent" means an individual or legal entity appointed, as an independent contractor, by one or more insurers to exercise general supervision over the business of the insurer in this state, with authority to appoint insurance producers for the insurer, and to terminate appointments for the insurer;

15. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchaser;

16. "Person" means an individual or a business entity;

17. "Sell" means to exchange a contract of insurance, by any means, for money or its equivalent, on behalf of an insurance company;

18. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

19. "Surplus lines insurance broker" means an individual or legal entity who solicits, negotiates, or procures a policy of insurance in an insurance company not licensed to transact business in this state which cannot be procured from insurers licensed to do business in this state. All transactions under such license shall be subject to Article 11 of the Oklahoma Insurance Code;

20. "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance;

21. "Uniform Business Entity Application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities; and

22. "Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

SECTION 8. AMENDATORY 36 O.S. 2011, Section 1441.1, is amended to read as follows:

Section 1441.1 The provisions of Section 1441 et seq. of ~~Title 36 of the Oklahoma Statutes~~ this title shall not apply to administrators of group self-insurance associations created pursuant to Section ~~149.2~~ 399 of Title 85 of the Oklahoma Statutes.

SECTION 9. AMENDATORY 36 O.S. 2011, Section 1524, as amended by Section 6, Chapter 269, O.S.L. 2013 (36 O.S. Supp. 2014, Section 1524), is amended to read as follows:

Section 1524. A. "Company Action Level Event" means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

a. the insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC,

b. if a life or health insurer, the insurer or fraternal benefit society has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and has a negative trend, or

c. if a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions;

2. The notification by the Insurance Commissioner to the insurer of an Adjusted RBC Report that indicates an event described in paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted RBC Report under Section 1528 of this title; or

3. If, pursuant to Section 1528 of this title, an insurer challenges an Adjusted RBC Report that indicates the event described in paragraph 1 of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

B. In the event of a Company Action Level Event, the insurer shall, unless otherwise directed by the Commissioner, prepare and submit to the Commissioner an RBC Plan which shall include the following five elements:

1. Conditions which contribute to the Company Action Level Event;

2. Proposals of corrective actions which the insurer intends to take and which would be expected to result in the elimination of the Company Action Level Event;

3. Projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, ~~or~~ and capital and surplus. Unless the Commissioner otherwise directs, the projections for both new and renewal business shall include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

4. The key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

5. The quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

C. The RBC Plan shall be submitted:

1. Within forty-five (45) days of the Company Action Level Event; or

2. If the insurer challenges an Adjusted RBC Report pursuant to Section 1528 of this title, within forty-five (45) days after notification to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

D. Within sixty (60) days after the submission by an insurer of an RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions

proposed by the Commissioner, and shall submit the Revised RBC Plan to the Commissioner:

1. Within forty-five (45) days after the notification from the Commissioner; or

2. If the insurer challenges the notification from the Commissioner under Section 1528 of this title, within forty-five (45) days after a notification to the insurer that the Commissioner has, after opportunity for a hearing, rejected the insurer's challenge.

E. In the event of a notification by the Commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the Commissioner may at the Commissioner's discretion, subject to the insurer's right to a hearing under Section 1528 of this title, specify in the notification that the notification constitutes a Regulatory Action Level Event.

F. Every domestic insurer that files an RBC Plan or Revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

1. The state has an RBC provision substantially similar to subsection A of Section 1531 of this title; and

2. The insurance commissioner of that state has notified the insurer of its request for the filing in writing. If such a request

is made, the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

a. fifteen (15) days after the receipt of the request to file a copy of its RBC Plan or Revised RBC Plan with the state, or

b. the date on which the RBC Plan or Revised RBC Plan is filed under subsections C and D of this section.

SECTION 10. AMENDATORY 36 O.S. 2011, Section 1674, is amended to read as follows:

Section 1674. A. Applicability of section.

1. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

2. Notwithstanding paragraph 1 of this subsection, the provisions of this section shall not apply if:

a. the controlling producer:

(1) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and

receives no compensation based upon the amount of premiums written in connection with such insurance, and

(2) accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds, and

b. the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

B. Required contract provisions. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

1. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

2. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

3. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;

4. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

5. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

6. The contract shall not be assigned in whole or in part by the controlling producer;

7. The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures,

manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

8. The rate and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph 7 of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

9. If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims

has been independently verified pursuant to subsection ~~C~~ D of this section;

10. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

11. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured and commission schedules.

C. Audit Committee. Every controlled insurer shall have an Audit Committee of the Board of Directors composed of independent directors. The Audit Committee shall annually meet with management,

the insurer's licensed public accountant or a certified public accountant holding a permit to practice in this state and an independent casualty actuary or other independent loss reserve specialist acceptable to the Commissioner to review the adequacy of the insurer's loss reserves.

D. Reporting requirements.

1. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the Commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the producer; and

2. The controlled insurer shall annually report to the Commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

SECTION 11. AMENDATORY 36 O.S. 2011, Section 4502, is amended to read as follows:

Section 4502. A. Each group accident and health policy shall contain in substance the following provisions:

1. A provision that, in the absence of fraud, all statements made by the policyholder or by any insured person shall be deemed representations and not warranties, and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his or her beneficiary~~.~~;

2. A provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents or family members are included in the coverage additional certificates need not be issued for delivery to such dependents or family members~~.~~; and

3. A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

B. Each group health policy certificate subject to the provisions of the Federal Health Insurance Portability and Accountability Act, Public Law 104-191, (HIPAA) laws shall contain

in substance the following provisions, which shall be in addition to the provisions required by subsection A of this section.

1. A provision that a health benefit plan shall not deny, exclude or limit benefits for a covered individual for losses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition;

2. A provision that a health benefit plan shall not define a preexisting condition more restrictively than:

a. a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage,

b. pregnancy and genetic information shall not be considered preexisting conditions,

c. a health benefit plan may exclude a preexisting condition for late enrollees for a period not to exceed eighteen (18) months from the date the individual enrolls for coverage,

d. the period of any such preexisting condition exclusion shall be reduced by the aggregate of the periods of creditable coverage as defined in the Federal HIPAA laws,

e. a period of creditable coverage shall not be counted if after such period and before the enrollment date,

there was a sixty-three-day period during all of which the individual was not covered under any creditable coverage,

f. "enrollment date" means the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment, and

g. "late enrollee" means a participant or beneficiary who enrolls under the plan other than during the first period in which the individual is eligible to enroll under the plan or a special enrollment period;

3. A provision that individuals losing other coverage shall be permitted to enroll for coverage under the terms of the plan if each of the following conditions is met:

a. the employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent,

b. the employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer required such a statement at such time and provided the employee with

notice of such requirement, and the consequences of such requirement, at such time,

c. the employee's or dependent's coverage was under a COBRA continuation provision and the coverage under such provision was exhausted; or was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment, or employer contributions toward such coverage were terminated, and

d. under the terms of the plan, the employee requests such enrollment not later than thirty (30) days after the date of exhaustion of coverage;

4. A provision that for any period that an individual is in a waiting period for any coverage under a group health plan or for group health insurance coverage or is in an affiliation period, that period shall not be taken into account in determining the continuous period of creditable coverage. "Affiliation period" means a period which, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during such

period and no premium shall be charged to the participant or beneficiary for any coverage during the period;

5. A provision that preexisting condition exclusions will not apply to newborns, who, as the last day of the thirty-day period beginning with the date of birth, are covered under creditable coverage;

6. A provision that preexisting condition exclusions will not apply to a child who is adopted or placed for adoption before attaining eighteen (18) years of age;

7. A provision that dependents are eligible for a special enrollment period if the group health plan makes coverage available with respect to a dependent of an individual, and the individual is a participant under the plan, or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period, and a person becomes such a dependent of the individual through marriage, birth or adoption or placement for adoption. The special enrollment period shall apply to that person or, if not otherwise enrolled, the individual, the dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

a. The dependent special enrollment period shall be a period of not less than thirty (30) days and shall

begin on the later of the date dependent coverage is made available, or the date of the marriage, birth, or adoption or placement for adoption.

b. There is no waiting period if an individual seeks to enroll a dependent during the first thirty (30) days of such a dependent special enrollment period.

c. The coverage for the dependent shall become effective in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received, in the case of a dependent's birth, as of the date of such birth, in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption;

8. A provision that eligibility or continued eligibility of any individual will not be based on any of the following health-status-related factors in relation to the individual or a dependent of the individual: health status, medical condition, including both physical and mental illnesses, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, including conditions arising out of acts of domestic violence or disability.

a. Carriers are not required to provide particular benefits other than those provided under the terms of the plan or coverage.

b. Carriers may establish limitations or restrictions on the amount, level, extent, and nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage; and

9. A provision that the group health plan is guaranteed renewable, except as provided pursuant to the federal provisions found in HIPAA, which are as follows:

a. nonpayment of premium,

b. fraud,

c. violation of participation and/or contribution rules,

d. termination of coverage:

(1) in any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the large or small group market, coverage of such type may be discontinued by the issuer only if: the issuer provides notice to each plan sponsor provided coverage of this type in such market, and participants and beneficiaries covered under such coverage, of such discontinuation at least ninety (90) days prior to the date of the

discontinuation of such coverage and makes available the option to purchase all or, in the case of the large group market, any other health insurance coverage currently being offered by the issuer to a group health plan in such market and in exercising the option to discontinue coverage of this type and in offering the option of coverage pursuant to this provision, the issuer acts uniformly without regard to the claims experience of those sponsors or any health-status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage,

(2) in any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the large or small group market, coverage of such type may be discontinued by the issuer only if: the issuer provides notice to the Oklahoma Insurance Department and to each plan sponsor and participants and beneficiaries covered under such coverage of such discontinuation at least one hundred eighty (180) days prior to the date of

the discontinuation of such coverage; and all health insurance issued or delivered for issuance in the state in such market or markets are discontinued and coverage under such health insurance coverage in such market or markets is not renewed, and

(3) in the case of a discontinuation under division (2) of this subparagraph in a market, the issuer shall not provide for the issuance of any health insurance coverage in the market and in this state during the five-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed,

e. movement outside the service area, and

f. association membership ceases~~; and~~

~~10. A provision that certification of creditable coverage will be issued individuals covered:~~

~~a. at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision,~~

~~b. in the case of an individual becoming covered under such a provision, at the time the individual ceases to be covered under such provision, and~~

~~c. on the request on behalf of an individual made not later than twenty-four (24) months after the date of cessation of the coverage described in subparagraph a or b of this paragraph, whichever is later.~~

~~The certification described in this paragraph is a written certification of the period of creditable coverage of the individual under such plan and the coverage, if any, under such COBRA continuation provision, and the waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under such plan~~.

SECTION 12. AMENDATORY 36 O.S. 2011, Section 6041, is amended to read as follows:

Section 6041. ~~A.~~ Payment or each periodic payment not exceeding One Thousand Dollars ($1,000.00) for emergency living expenses made to any policyholder or his or her dependents or beneficiaries under an insurance policy for:

1. Fire insurance;

2. Casualty insurance;

3. Property insurance, including what may be termed a homeowner's policy; or

4. Any other type of policy that insures against personal loss as a consequence of loss of or damage to real or personal property; which provides for payment or periodic payments for emergency living expenses; and payments made under workers' compensation or

employers' liability insurance as defined in Section 707 of ~~Title 36 of the Oklahoma Statutes~~ this title, shall be made through the use of United States legal tender, or through a means acceptable to the recipient of the payment including, but not limited to, electronic funds transfer, prepaid cards, negotiable instruments payable on demand or negotiable drafts.

SECTION 13. AMENDATORY 36 O.S. 2011, Section 6103.3, is amended to read as follows:

Section 6103.3 A. For the purposes of Sections 6103.1 through 6103.11 of this title, "person" shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, an unincorporated organization, any similar group, entity or any combination of the foregoing acting in concert.

B. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in Sections 6103.1 through 6103.11 of this title, except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state, this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

C. Any person which the Insurance Commissioner has reason to believe is doing any of the acts specified in Section 6103.2 of this title, upon written request by the Commissioner, shall immediately provide to the Commissioner such information as requested in relation to such acts.

D. A person or entity who violates any provision of Sections 6103.1 through 6103.11 of this title is subject to a civil penalty of not more than Ten Thousand Dollars ($10,000.00) for each act of violation and for each day of violation to be recovered as provided in this section.

E. Whenever the Commissioner has reason to believe or it appears that any person or insurer has violated or is threatening to violate any provision of Sections 6103.1 through 6103.11 of this title or any rule promulgated pursuant thereto, or that any person or insurer acting in violation of Sections 6103.1 through 6103.11 of this title has engaged in or is threatening to engage in any unfair method of competition or any unfair or deceptive act or practice as defined by Section 1201 et seq. of this title or any rule promulgated pursuant thereto, the Commissioner may:

1. Issue an ex parte cease and desist order under the procedures provided by Sections 6103.5 and 6103.6 of this title;

2. Institute in the district court of Oklahoma County a civil suit for injunctive relief to restrain the person from continuing the violation or threat of violation;

3. Institute in the district court of Oklahoma County a civil suit to recover a civil penalty as provided for in this section; or

4. Exercise any combination of the acts provided for in this subsection.

F. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of Sections 6103.1 through 6103.11 of this title, the district court shall grant the injunctive relief and the injunction shall be issued without bond.

G. The remedies provided in Sections 6103.1 through 6103.11 of this title for administrative action against unauthorized insurers shall also apply to unauthorized individuals or persons engaged in the business of bail bonds <u>or any other business which is subject to the jurisdiction of the Insurance Commissioner</u>.

H. This section shall not be construed to limit the Insurance Commissioner to the remedies specified herein. It is the intent of the Legislature that persons engaging in the business of insurance<u>, or any other business for which authorization from the Insurance Commissioner is required,</u> without statutory authorization constitute an imminent peril to the public welfare and should immediately be stopped and enjoined from doing so, provided, the Insurance Commissioner and the State of Oklahoma should be able to choose at any time any available remedy or action to bring about such a result without regard to prior proceedings under this section.

SECTION 14. AMENDATORY 36 O.S. 2011, Section 6470.2, as amended by Section 5, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.2), is amended to read as follows:

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

1. "Alien company" means an insurance company formed and licensed pursuant to the laws of a country or jurisdiction other than the United States of America, or any of its states, districts, commonwealths and possessions;

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

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

a. the member organizations of which, or which does itself or either of them acting in concert directly or indirectly own, control, or hold with power to vote all of the outstanding voting securities or interests of, or have complete voting control over an association captive insurance company, or

b. the member organizations of which collectively constitute all of the subscribers of an association

captive insurance company formed as a reciprocal insurer;

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

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

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

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

8. "Capital and surplus" means the amount by which the value of all of the assets of the captive insurance company exceeds all of the liabilities of the captive insurance company, as determined under the method of accounting utilized by the captive insurance company in accordance with the applicable provisions of this act;

9. "Captive insurance company" means a pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or

industrial insured captive insurance company formed or licensed under the Oklahoma Captive Insurance Company Act;

10. "Controlled unaffiliated business" means a company:

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

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

c. whose risks are managed by a pure captive insurance company in accordance with Section 6470.27 of this title;

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

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

13. ~~"Excess workers' compensation insurance" means, in the case of an employer that has insured its workers' compensation risks in accordance with applicable law, insurance in excess of specified limits established by the Commissioner;~~

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

~~15.~~ 14. "Industrial insured" means an insured:

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

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

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

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

~~17.~~ 16. "Industrial insured group" means a group of industrial insureds that collectively directly or indirectly owns, controls, or holds with power to vote all of the outstanding voting securities or other voting interests or has complete control over an industrial insured captive insurance company;

~~18.~~ 17. "Member organization" means any individual, corporation, partnership, or association that belongs to an association;

~~19.~~ 18. "Parent" means any corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;

~~20.~~ 19. "Participant" means an entity as defined in Section 6470.31 of this title, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the

participant's pro rata share of the assets of one or more protected cells identified in the participant contract;

~~21.~~ 20. "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of one or more participants and limits the losses of each participant to its pro rata share of the assets of one or more protected cells identified in the participant contract;

~~22.~~ 21. "Protected cell" means a separate and distinct account established and maintained by or on behalf of a sponsored captive insurance company in which assets are accounted for and recorded for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts;

~~23.~~ 22. "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, of its parent and any controlled unaffiliated business, or a combination thereof. For purposes of this paragraph, "controlled unaffiliated business" means an entity insured by a pure captive insurance company:

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

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

c. whose risks are managed by a pure captive insurance company;

~~24.~~ 23. "Reciprocal insurer" has the meaning given that term in Article 29 of the Oklahoma Insurance Code;

~~25.~~ 24. "Risk retention group" means a risk retention group formed pursuant to the Liability Risk Retention Act of 1986 under Section 3901 of Title 15 of the United States Code;

~~26.~~ 25. "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under the Oklahoma Captive Insurance Company Act that does not meet the definition of any other type of captive insurance company defined in this section and is designated as a special purpose captive insurance company by the Commissioner;

~~27.~~ 26. "Sponsor" means an entity that meets the requirements of Section 6470.30 of this title and is approved by the Insurance Commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company; ~~and~~

~~28.~~ 27. "Sponsored captive insurance company" means a captive insurance company:

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

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

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

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

28. "Workers' compensation insurance" means insurance provided in satisfaction of an employer's responsibility as set forth in the Administrative Workers' Compensation Act and the Oklahoma Employee Injury Benefit Act.

SECTION 15. AMENDATORY 36 O.S. 2011, Section 6470.3, as last amended by Section 6, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.3), is amended to read as follows:

Section 6470.3 A. A captive insurance company, when permitted by its articles of incorporation or charter, may apply to the Insurance Commissioner for a license to do any and all insurance authorized by this title; however:

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

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

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

4. A special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the Insurance Commissioner;

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

6. Any captive insurance company may provide ~~excess~~ workers' compensation insurance ~~to its parent and affiliated companies~~, <u>insurance in the nature of workers' compensation insurance, and reinsurance of such policies,</u> unless prohibited by federal law or laws of this state or any other state having jurisdiction over the transaction~~, and any captive insurance company, unless prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies~~.

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

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

2. Maintain a place of business in this state designated as its registered office; and

3. Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. Whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Insurance Commissioner shall be deemed an agent of the captive insurance company upon whom any process, notice, or demand may be served.

C. 1. Before receiving a license, a captive insurance company shall file with the Commissioner a certified copy of its organizational documents, a statement under oath of its president or other authorized person showing its financial condition, a feasibility study, a business plan, and any other statements, information or documents required by the Commissioner.

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

a. the amount and liquidity of its assets relative to the risks to be assumed,

b. the adequacy of the expertise, experience, and character of the person or persons who will manage it,

c. the overall soundness of its plan of operation,

d. the adequacy of the loss prevention programs of its insureds, and

e. such other factors considered relevant by the Insurance Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its obligations.

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

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

(1) the information sought is relevant to and necessary for the furtherance of the action or case,

(2) the information sought is unavailable from other nonconfidential sources, and

(3) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Insurance Commissioner; however, the provisions of this paragraph do not apply to an industrial insured captive insurance company

insuring the risks of an industrial insured group, and

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

(1) the public official agrees in writing to maintain the confidentiality of the information, and

(2) the laws of the state in which the public official serves require the information to be confidential.

D. A captive insurance company shall pay to the Department a nonrefundable application fee of Two Hundred Dollars ($200.00) for reviewing its application to determine whether it is complete and in addition, the Insurance Commissioner may retain legal, financial, and examination services from outside the Department, the reasonable cost of which may be charged against the applicant. Also, a captive insurance company shall pay a license fee for the year of registration and a renewal fee of Three Hundred Dollars ($300.00).

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

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

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

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

SECTION 16. AMENDATORY 36 O.S. 2011, Section 6470.6, as amended by Section 7, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.6), is amended to read as follows:

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

1. In the case of a pure captive insurance company, not less than Two Hundred Fifty Thousand Dollars ($250,000.00), One Hundred Fifty Thousand Dollars ($150,000.00) of which must be paid-in prior to the issuance of a license, and an additional One Hundred Thousand Dollars ($100,000.00) of which must be paid-in on or before the first anniversary of the issuance of the initial license;

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

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

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

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

6. In the case of a special purpose or branch captive insurance company, not less than Two Hundred Fifty Thousand Dollars ($250,000.00) or an amount determined by the Insurance Commissioner

after giving due consideration to the business plan of the company, feasibility study, and pro formas, including the nature of the risks to be insured~~.~~; and

7. The unimpaired paid-in capital may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System ~~and~~. The issuing bank shall be approved by the Insurance Commissioner.

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

C. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the Insurance Commissioner may require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers. The amount of the security may be no less than the capital and surplus required by the Oklahoma Captive Insurance Company Act and the reserves on these insurance policies or reinsurance contracts.

D. A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, without the prior approval of the Insurance Commissioner. Approval of an

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

SECTION 17. AMENDATORY 36 O.S. 2011, Section 6470.10, as amended by Section 8, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.10), is amended to read as follows:

Section 6470.10 A. A captive insurance company may be incorporated as a stock corporation or as a nonstock corporation, or may be formed as a limited liability company, partnership, limited partnership, statutory trust or any lawful form approved by the Insurance Commissioner.

B. An association captive insurance company, industrial insured captive insurance company or special purpose captive insurance company may be organized as a reciprocal insurer.

C. The Commissioner shall not issue the initial license or review the license of any captive insurer unless the Commissioner determines the following matters serve the best interest of the prospective policyholders and promote the general good of the state:

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

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

3. Other aspects as the Insurance Commissioner considers advisable.

D. In the case of a captive insurance company licensed as a branch captive insurance company, the findings required in subsection C above shall be in respect to the alien captive insurance company.

E. 1. A captive insurance company formed under the laws of this state or under the laws of another jurisdiction that is licensed under the provisions of this title shall have the privileges and be subject to the provisions of the laws of this state or the laws of such other jurisdiction, as applicable, under which such captive insurance company is organized as well as the applicable provisions contained in this title. In the event of conflict between the provisions of the laws of this state or the laws of such other jurisdiction, as applicable, under which such captive insurance company is organized, and the provisions of this title, the latter shall control.

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

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

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

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

5. The terms and conditions set forth in Articles 18 and 19 of the Oklahoma Insurance Code pertaining to insurance supervision, conservatorship, rehabilitation, and receiverships apply in full to

captive insurance companies ~~formed under the Oklahoma Captive Insurance Company Act~~, including for this purpose individual protected cells of sponsored captive insurance companies as provided in Section 6470.29 of this title.

6. Any insurer which holds a current license to transact the business of insurance under the laws of any other state may become an Oklahoma domiciled captive insurer by complying with all of the requirements of Oklahoma law relative to the organization and licensing of a captive insurer and obtaining the approval of the insurer's application for redomestication by the chief insurance regulatory official of the company's current and proposed domiciles.

SECTION 18. AMENDATORY 36 O.S. 2011, Section 6470.12, as amended by Section 10, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.12), is amended to read as follows:

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

B. A sponsored captive insurance company and a special purpose captive insurance company, and any captive insurer, at the Commissioner's discretion, shall file annually an actuarial opinion

on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

C. The Insurance Commissioner may disallow the discounting of reserves if a captive insurance company violates a provision of this title.

SECTION 19. AMENDATORY 36 O.S. 2011, Section 6470.15, as amended by Section 13, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.15), is amended to read as follows:

Section 6470.15 A. An association captive insurance company, a sponsored captive insurance company, and a risk retention group shall comply with the investment requirements contained in the Oklahoma Insurance Code. The Insurance Commissioner may approve the use of alternative investment requirements upon application by such captive insurance company.

B. ~~A~~ Except as to unimpaired paid-in capital as provided in paragraph 7 of subsection A of Section 6470.6 of this title, a pure captive insurance company, a special purpose captive insurance company, a branch captive insurance company, and an industrial insured captive insurance company~~, and a sponsored captive insurance company~~ are not subject to any restrictions on allowable investments contained in the Oklahoma Insurance Code; however, the Insurance Commissioner may prohibit or limit an investment that threatens the solvency or liquidity of the company.

C. Loans of minimum capital and surplus funds required by Section 6470.6 of this title are prohibited.

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

SECTION 20. AMENDATORY 36 O.S. 2011, Section 6470.16, as amended by Section 14, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.16), is amended to read as follows:

Section 6470.16 ~~A.~~ A captive insurance company may ~~provide~~ cede or assume reinsurance and take credit for reserves, as authorized ~~in the Oklahoma Insurance Code,~~ for domestic insurers ~~on risks ceded by any other insurer~~ by the Oklahoma Insurance Code.

~~B. A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers only in accordance with the Oklahoma Insurance Code.~~

SECTION 21. AMENDATORY 36 O.S. 2011, Section 6470.19, as last amended by Section 16, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.19), is amended to read as follows:

Section 6470.19 A. Each captive insurance company, other than a sponsored captive insurance company, and each protected cell of a sponsored captive insurance company, shall pay to the Department, by March 1 of each year, a tax at the rate of two-tenths of one percent (0.2%) on the direct premiums collected or contracted for on

policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders up to a maximum tax for such year of One Hundred Thousand Dollars ($100,000.00); provided however, that no tax shall be due or payable as to consideration received for annuity contracts.

B. A captive insurance company, other than a sponsored captive insurance company, and each protected cell of a sponsored captive insurance company, shall pay to the Department, by March 1 of each year, a tax at the rate of one-tenth of one percent (0.1%) of assumed reinsurance premium. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection A of this section. A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

C. A sponsored captive insurance company shall pay to the Department, by March 1 of each year, a tax on direct and assumed premiums equal, in the aggregate, to the minimum tax provided in subsection D of this section.

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

or protected cell shall pay the prorated minimum tax for that calendar year.

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

F. Two or more captive insurance companies ~~or a protected cell of a sponsored captive insurance company~~ under common ownership and control must be taxed as though they were a single captive insurance company. Two or more protected cells of a sponsored captive insurance company that are related by common ownership and control must be taxed as though they were a single protected cell.

G. As used in this section, "common ownership and control" means the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock or other voting interests of two or more captive insurance companies or protected cells of a sponsored captive insurance company by the same person or persons.

H. A captive insurance company that has employed twenty-five or more separate qualified individuals throughout a given tax year and that otherwise would be liable under this section for tax for such

year in an amount exceeding Fifty Thousand Dollars ($50,000.00) shall pay to the Commissioner under this section a tax for such year in the amount of Fifty Thousand Dollars ($50,000.00). For purposes of this subsection, "qualified individual" means a natural person employed in this state on a regular basis of thirty-five (35) or more hours per week either by such captive insurance company, or by a wholly-owned subsidiary of such captive insurance company that provides captive insurance company management, operating, investment or related services exclusively to such captive insurance company.

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

SECTION 22. AMENDATORY 36 O.S. 2011, Section 6470.20, as amended by Section 17, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.20), is amended to read as follows:

Section 6470.20 A captive ~~reinsurance~~ <u>insurance</u> company failing to make returns or to pay all taxes required by this section is subject to sanctions provided in the Oklahoma Insurance Code.

SECTION 23. AMENDATORY 36 O.S. 2011, Section 6470.25, is amended to read as follows:

Section 6470.25 ~~A. Except as otherwise provided in this section, the terms and conditions set forth in Articles 18 and 19 of the Oklahoma Insurance Code pertaining to insurance supervisions, conservatorship, rehabilitation, and receiverships apply in full to captive insurance companies formed or licensed under the Oklahoma Captive Insurance Company Act.~~

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

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

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

SECTION 24. AMENDATORY 36 O.S. 2011, Section 6470.27, as amended by Section 19, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.27), is amended to read as follows:

Section 6470.27 The Insurance Commissioner shall promulgate regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management ~~function of~~ <u>for</u> any controlled unaffiliated business to be insured by a pure captive insurance company; however, until such time as these regulations are promulgated, the Insurance

Commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

SECTION 25. AMENDATORY 36 O.S. 2011, Section 6470.29, as amended by Section 21, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.29), is amended to read as follows:

Section 6470.29 A. In addition to the provisions of Sections 6470.1 through 6470.28 of this title~~,~~ and the provisions of Sections 6470.29 through 6470.31 ~~and Sections 3 and 4 of this act~~ of this title shall apply to sponsored captive insurance companies, and the provisions of Section ~~1 of this act~~ 6470.24.1 of this title shall apply to each protected cell of a sponsored captive insurance company.

B. Supplemental license application materials.

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

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

2. A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or

examination by the Commissioner or the Commissioner's designated agent;

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

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

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

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

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

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

3. The assets of a protected cell must not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurance company;

4. No sale, exchange, or other transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by the sponsored captive insurance company without the consent of the participants of each affected protected cell;

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

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

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

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

SECTION 26. AMENDATORY 36 O.S. 2011, Section 6470.30, as amended by Section 22, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014, Section 6470.30), is amended to read as follows:

Section 6470.30 A sponsor of a sponsored captive insurance company must be an insurer licensed pursuant to the laws of a state, an insurance holding company that controls an insurer licensed pursuant to the laws of any state and subject to registration pursuant to the insurance holding company system laws of the state of domicile of the insurer, a reinsurer authorized or approved pursuant to the laws of a state, or a captive insurance company formed or licensed pursuant to the Oklahoma Captive Insurance Company Act<u>, a holding company, a trust, an individual or other organization as permitted by the Insurance Commissioner</u>. A risk retention group may be a participant of a sponsored captive insurance company only to the extent that it is the sole participant of one or more protected cells.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.34 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A protected cell of a sponsored captive insurance company may be formed as an entity-protected cell. "Entity-protected cell" means a protected cell that is established as any type of legal entity separate from the sponsored captive insurance company of which it is a part.

B. Subject to the prior written approval of the sponsored captive insurance company and of the Insurance Commissioner, an entity-protected cell shall be entitled to enter into contracts and undertake obligations in its own name and for its own account. In the case of a contract or obligation to which the sponsored captive insurance company is not a party, either in its own name and for its own account or on behalf of a protected cell, the counterparty to the contract or obligation shall have no right or recourse against the sponsored captive insurance company and its assets other than against assets properly attributable to the entity-protected cell that is a party to the contract or obligation.

C. The articles of incorporation or articles of organization of an entity-protected cell shall refer to the sponsored captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the sponsored captive insurance company's

license. A copy of the prior written approval of the Commissioner to add the entity-protected cell, required by Section 6470.29 of Title 36 of the Oklahoma Statutes, shall be attached to and filed with the articles of incorporation or the articles of organization.

D. Sponsored captive insurance companies, including those licensed as special purpose captive insurance companies, shall have the option to establish one or more protected cells as a separate corporation, mutual corporation, nonprofit corporation, limited liability company, or reciprocal insurer. This section shall not be construed to limit any rights or protections applicable to protected cells not established as corporations, mutual corporations, nonprofit corporations, limited liability companies, or reciprocal insurers.

SECTION 28. AMENDATORY 36 O.S. 2011, Section 6811, is amended to read as follows:

Section 6811. A. ~~An~~ The Insurance Commissioner may require that an insuring entity or self-insured entity shall file~~, between January 1 and March 15 of each year,~~ a closed claim report. These reports shall be filed within thirty (30) days after the Commissioner's request and shall include data for all claims closed in the preceding calendar year and ~~any adjustments to data reported in prior years~~ other information required by the Commissioner.

B. Any violation by an insurer of the Medical Professional Liability Insurance Closed Claim Reports Act shall subject the

insurer to discipline including a civil penalty of not less than Five Thousand Dollars ($5,000.00).

C. ~~Every insuring entity or self-insurer that provides medical professional liability insurance to any facility or provider in this state shall report each medical professional liability closed claim to the Insurance Commissioner.~~

~~D.~~ A closed claim that is covered under a primary policy and one or more excess policies shall be reported only by the insuring entity that issued the primary policy. The insuring entity that issued the primary policy shall report the total amount, if any, paid with respect to the closed claim, including any amount paid under an excess policy, any amount paid by the facility or provider, and any amount paid by any other person on behalf of the facility or provider.

~~E.~~ D. If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim shall report it to the Commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties. Instances in which a claim may not be covered by an insuring entity or self-insurer include situations in which:

1. The facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;

2. The claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or

3. The annual aggregate coverage limits had been exhausted by other claim payments.

~~F.~~ E. If a claim is covered by an insuring entity or self-insurer that fails to report the claim to the Commissioner, the facility or provider named in the claim shall report it to the Commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties.

1. If a facility or provider is insured by a risk retention group and the risk retention group refuses to report closed claims and asserts that the federal Liability Risk Retention Act (95 Stat. 949; 15 U.S.C. Sec. 3901 et seq.) preempts state law, the facility or provider shall report all data required by the Medical Professional Liability Insurance Closed Claim Reports Act on behalf of the risk retention group.

2. If a facility or provider is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider shall report all data required by the Medical Professional Liability Insurance Closed Claim Reports Act on behalf of the unauthorized insurer.

3. If a facility or provider is insured by a captive insurer and the captive insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider shall report all data required by the Medical Professional Liability Insurance Closed Claim Reports Act on behalf of the captive insurer.

SECTION 29. REPEALER 36 O.S. 2011, Sections 924.4, as amended by Section 1, Chapter 44, O.S.L. 2012 and 924.5, as amended by Section 2, Chapter 44, O.S.L. 2012 (36 O.S. Supp. 2014, Sections 924.4 and 924.5), are hereby repealed.

SECTION 30. REPEALER 36 O.S. 2011, Section 6470.23, is hereby repealed.

SECTION 31. This act shall become effective November 1, 2015."

Passed the House of Representatives the 8th day of April, 2015.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2015.

_____
Presiding Officer of the Senate