STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 818 By: Brown

AS INTRODUCED

An Act relating to insurance; 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, 6470.10, 6470.12, 6470.15 and 6470.16, as amended by Sections 7, 8, 10, 13 and 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, 6470.29 and 6470.30, as amended by Sections 19, 21 and 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; allowing captive insurance company to provide certain workers' compensation insurance and reinsurance; modifying form of unimpaired capital; modifying application of certain provisions of Oklahoma Insurance Code to certain events; deleting provisions relating to regulations, notice and hearing; providing procedure for licensed insurer to become Oklahoma domiciled captive insurer; modifying entities required to file certain annual actuarial opinion and comply with certain investment requirements; modifying exceptions to certain investment restrictions; providing for ceding or assuming reinsurance and taking credit for reserves; specifying tax treatment of protected cells of sponsored captive insurance company under certain circumstances; modifying entities subject to certain sanctions; deleting application of certain provisions to captive insurance companies; modifying provision relating to control of risk management of certain businesses; modifying entities which may sponsor captive insurance companies; providing procedure for

formation of protected cell of sponsored captive insurance company; defining term; repealing 36 O.S. 2011, Section 6470.23, which relates to application of certain provisions 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 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 2. 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~~, insurance in the nature of workers' compensation insurance, and reinsurance of such policies, 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 3. 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 4. 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 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 5. 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 Insurance Commissioner requires, the 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 6. 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 7. 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 8. 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 two or more 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 9. 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~~ insurance 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 10. 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 11. 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~~ for 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 12. 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 13. 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, a holding company, a trust, an individual or other organization as permitted by the Insurance Commissioner. 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 14. 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 15. REPEALER 36 O.S. 2011, Section 6470.23, is hereby repealed.

SECTION 16. This act shall become effective November 1, 2015.

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