

1 ENGROSSED SENATE  
2 BILL NO. 1242

By: Quinn of the Senate

3 and

4 Sneed of the House

5  
6 An Act relating to Oklahoma Captive Insurance Company  
7 Act; amending 36 O.S. 2021, Sections 6470.2, 6470.3,  
8 6470.10, and 6470.15, which relate to definitions,  
9 limitations and requirements, company organizations,  
10 and investments and loans; modifying definitions;  
11 prohibiting series captive insurance company from  
12 providing certain insurance; allowing series captive  
13 insurance company to apply for certain certificates  
14 of authority; permitting captive insurance companies  
15 to establish series limited liability company;  
16 prohibiting certain exclusions from applying to  
17 certain captive insurance companies; omitting  
18 application of Oklahoma Insurance Code to certain  
19 procedure; conforming language; updating statutory  
20 language; providing for codification; and providing  
21 an effective date.

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

23 SECTION 1. AMENDATORY 36 O.S. 2021, Section 6470.2, is  
24 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;

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

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

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

14            b. the member organizations of which collectively  
15            constitute all of the subscribers of an association  
16            captive insurance company formed as a reciprocal  
17            insurer;

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

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

23        6. "Branch captive insurance company" means an alien captive  
24 insurance company licensed by the Insurance Commissioner to transact

1 the business of insurance in this state through a business unit with  
2 a principal place of business in this state. A branch captive  
3 insurance company must be a pure captive insurance company with  
4 respect to operations in this state, unless otherwise permitted by  
5 the Insurance Commissioner;

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

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

13 9. "Captive insurance company" means a pure captive insurance  
14 company, association captive insurance company, sponsored captive  
15 insurance company, special purpose captive insurance company, ~~or~~  
16 industrial insured captive insurance company, branch captive  
17 insurance company, or series captive insurance company formed or  
18 licensed under the Oklahoma Captive Insurance Company Act;

19 10. "Controlled unaffiliated business" means a company:

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

22 b. that has an existing contractual relationship with a  
23 parent or affiliated company, and  
24

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

4 11. "Insurance Commissioner" means the Insurance Commissioner  
5 of ~~the State of Oklahoma~~ this state or designee of the Insurance  
6 Commissioner;

7 12. "Department" means the ~~Oklahoma Department of~~ Insurance  
8 Department;

9 13. "GAAP" means generally accepted accounting principles;

10 14. "Industrial insured" means an insured:

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

14 b. whose aggregate annual premiums for insurance on all  
15 risks total at least Twenty-five Thousand Dollars  
16 (\$25,000.00), and

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

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

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

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

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

9 19. "Participant" means an entity as defined in Section 6470.31  
10 of this title, and any affiliates of that entity, that are insured  
11 by a sponsored captive insurance company, where the losses of the  
12 participant are limited through a participant contract to the  
13 participant's pro rata share of the assets of one or more protected  
14 cells identified in the participant contract;

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

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

1 insurance company assumed on behalf of the participants as set forth  
2 in the participant contracts;

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

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

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

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

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

16 24. "Risk retention group" means a risk retention group formed  
17 pursuant to the Liability Risk Retention Act of 1986 under Section  
18 3901 of Title 15 of the United States Code;

19 25. "Series" means a series of members, managers, membership  
20 interests or assets under the Oklahoma Limited Liability Company Act  
21 pursuant to Section 2054.4 of Title 18 of the Oklahoma Statutes, or  
22 the corresponding law of another state;

23 26. "Series captive insurance company" means a series which has  
24 received a certificate of authority pursuant to this act;

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

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

12       29. "Sponsored captive insurance company" means a captive  
13 insurance company:

- 14           a. in which the minimum capital and surplus required by
- 15                 applicable law is provided by one or more sponsors,
- 16           b. that is formed or licensed under the Oklahoma Captive
- 17                 Insurance Company Act,
- 18           c. that insures the risks of its participants only
- 19                 through separate participant contracts, and
- 20           d. that funds its liability to each participant through
- 21                 one or more protected cells and segregates the assets
- 22                 of each protected cell from the assets of other
- 23                 protected cells and from the assets of the sponsored
- 24                 captive insurance company's general account; and

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

5       SECTION 2.       AMENDATORY       36 O.S. 2021, Section 6470.3, is  
6 amended to read as follows:

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

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

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

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

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

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

4 6. Any captive insurance company may provide workers'  
5 compensation insurance, insurance in the nature of workers'  
6 compensation insurance, and reinsurance of such policies, unless  
7 prohibited by federal law or laws of this state or any other state  
8 having jurisdiction over the transaction; and

9 7. A series captive insurance company may not insure any risks  
10 other than those permitted in paragraphs 1 through 6 of this  
11 subsection. A series may elect to apply for a certificate of  
12 authority as an association captive insurance company, industrial  
13 insured captive insurance company, a pure captive insurance company,  
14 series captive insurance company, or a special purpose captive  
15 insurance company.

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

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

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

22 3. Appoint a resident registered agent to accept service of  
23 process and to otherwise act on its behalf in this state. Whenever  
24 the registered agent cannot with reasonable diligence be found at

1 the registered office of the captive insurance company, the  
2 Insurance Commissioner shall be deemed an agent of the captive  
3 insurance company upon whom any process, notice, or demand may be  
4 served.

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

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

- 14 a. the amount and liquidity of its assets relative to the  
15 risks to be assumed,
- 16 b. the adequacy of the expertise, experience, and  
17 character of the person or persons who will manage it,
- 18 c. the overall soundness of its plan of operation,
- 19 d. the adequacy of the loss prevention programs of its  
20 insureds, and
- 21 e. such other factors considered relevant by the  
22 Insurance Commissioner in ascertaining whether the  
23 proposed captive insurance company will be able to  
24 meet its obligations.

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

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

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

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

15           (3) a subpoena issued by a judicial or administrative  
16 officer of competent jurisdiction has been  
17 submitted to the Insurance Commissioner; however,  
18 the provisions of this paragraph do not apply to  
19 an industrial insured captive insurance company  
20 insuring the risks of an industrial insured  
21 group, and

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

- 1 (1) the public official agrees in writing to maintain
- 2 the confidentiality of the information, and
- 3 (2) the laws of the state in which the public
- 4 official serves require the information to be
- 5 confidential.

6 D. Except for a special purpose captive insurance company, a  
7 captive insurance company shall pay to the Department a  
8 nonrefundable application fee of Two Hundred Dollars (\$200.00) for  
9 reviewing its application to determine whether it is complete and in  
10 addition, the Insurance Commissioner may retain legal, financial,  
11 and examination services from outside the Department, the reasonable  
12 cost of which may be charged against the applicant. A special  
13 purpose captive insurance company shall pay to the Department a  
14 nonrefundable fee of Three Hundred Dollars (\$300.00). Also, a  
15 captive insurance company shall pay a license fee for the year of  
16 registration and a renewal fee of Three Hundred Dollars (\$300.00).

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

23 F. 1. Notwithstanding any other provision of this act, the  
24 Insurance Commissioner may issue a provisional license to any

1 applicant captive insurance company if the Insurance Commissioner  
2 deems that the public interest will be served by the issuance of  
3 such license.

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

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

19 SECTION 3. AMENDATORY 36 O.S. 2021, Section 6470.10, is  
20 amended to read as follows:

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

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

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

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

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

16 3. Other aspects as the Insurance Commissioner considers  
17 advisable.

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

22 E. 1. A captive insurance company formed under the laws of  
23 this state or under the laws of another jurisdiction that is  
24 licensed under the provisions of this title shall have the

1 privileges and be subject to the provisions of the laws of this  
2 state or the laws of such other jurisdiction, as applicable, under  
3 which such captive insurance company is organized as well as the  
4 applicable provisions contained in this title. In the event of  
5 conflict between the provisions of the laws of this state or the  
6 laws of such other jurisdiction, as applicable, under which such  
7 captive insurance company is organized, and the provisions of this  
8 title, the latter shall control.

9 2. A captive insurance company, formed or licensed under the  
10 Oklahoma Captive Insurance Company Act, has the privileges and is  
11 subject to the provisions of Oklahoma law as well as the applicable  
12 provisions contained in the Oklahoma Captive Insurance Company Act.  
13 If a conflict occurs between a provision of the general law of  
14 Oklahoma and a provision of the Oklahoma Captive Insurance Company  
15 Act, the latter controls. No provision of the Oklahoma Insurance  
16 Code, other than those contained in this act or otherwise  
17 specifically referencing such companies, shall apply to captive  
18 insurance companies.

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

23 4. ~~The provisions of the Oklahoma Insurance Code pertaining to~~  
24 ~~mergers, consolidations, conversions, mutualizations, and change in~~

1 ~~control apply in determining the procedures to be followed by a~~  
2 ~~captive insurance company in carrying out any of the transactions~~  
3 ~~described in those provisions, except the Insurance Commissioner may~~  
4 ~~waive or modify the requirements for public notice and hearing. All~~  
5 preliminary reports or results, working papers, recorded  
6 information, orders, documents and copies of documents produced by,  
7 obtained by or disclosed to the Commissioner or any other person in  
8 the course of any merger, consolidation, conversion, mutualization  
9 and change of control made under this section are confidential and  
10 are not subject to subpoena and may not be made public by the  
11 Commissioner or any employee or agent of the Commissioner without  
12 the written consent of the company, except to the extent provided in  
13 this subsection. Nothing in this subsection prevents the  
14 Commissioner from using this information in furtherance of the  
15 regulatory authority of the Commissioner under the Oklahoma Captive  
16 Insurance Company Act. The Commissioner may grant access to this  
17 information to public officers having jurisdiction over the  
18 regulation of insurance in any other state or country, or to law  
19 enforcement officers of this state or any other state or agency of  
20 the federal government at any time, so long as the officers  
21 receiving the information agree in writing to use and retain it in  
22 any manner consistent with this section.

23 5. The terms and conditions set forth in Articles 18 and 19 of  
24 the Oklahoma Insurance Code pertaining to insurance supervision,



1 conservatorship, rehabilitation, and receiverships apply in full to  
2 captive insurance companies, including for this purpose individual  
3 protected cells of sponsored captive insurance companies as provided  
4 in Section 6470.29 of this title.

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

12 SECTION 4. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 6470.10a of Title 36, unless  
14 there is created a duplication in numbering, reads as follows:

15 Captive insurance companies formed or licensed under the  
16 Oklahoma Captive Insurance Company Act may establish a series  
17 limited liability company under the Oklahoma Limited Liability  
18 Company Act. Any exclusion of the business of a domestic insurer  
19 under Title 18 of the Oklahoma Statutes shall not apply to captive  
20 insurance companies formed or licensed under the Oklahoma Captive  
21 Insurance Company Act.

22 SECTION 5. AMENDATORY 36 O.S. 2021, Section 6470.15, is  
23 amended to read as follows:

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

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

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

18 D. Subject to subsections A and B of this section and Section  
19 6470.31 of this title, as applicable, a captive insurance company  
20 may own securities of or other interests in another captive  
21 insurance company, whether voting or nonvoting.

22 SECTION 6. This act shall become effective November 1, 2022.  
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1 Passed the Senate the 22nd day of March, 2022.

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\_\_\_\_\_  
Presiding Officer of the Senate

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5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

6 2022.

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Presiding Officer of the House  
of Representatives

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