



1 Insurance Commissioners (NAIC); declaring  
2 transmission of information sufficient for certain  
3 purpose; requiring risk retention groups to comply  
4 with certain governance standards in certain time  
5 period; requiring Board of Directors of group to be  
6 composed of certain persons; requiring certain  
7 persons to follow certain standards; requiring Board  
8 to disclose certain information; specifying types of  
9 prohibited relationships for Board members;  
10 specifying term of contract between group and certain  
11 persons; authorizing Board to terminate and audit  
12 certain contracts; specifying terms of service  
13 provider contracts; prohibiting service providers  
14 from certain relationships; requiring Board to adopt  
15 certain written policy; specifying required terms of  
16 policy; requiring Board to have audit committee;  
17 requiring Audit committee to have charter; specifying  
18 terms of charter; authorizing certain person to waive  
19 requirement for audit committee; requiring Board to  
20 adopt governance standards; requiring Board to  
21 provide certain information to members and insureds  
22 of group; requiring certain member of group to notify  
23 certain persons in certain circumstance; requiring  
24 group to submit certain required information within  
certain time period; requiring group to pay filing  
fee in certain amount; requiring each risk retention  
group to pay premium taxes and taxes on premiums;  
requiring agents and brokers to report certain monies  
to Commissioner in certain circumstances; removing  
requirement for groups to pay certain task; updating  
statutory language; modifying information required in  
certain records; updating act groups shall comply  
with; requiring all applications for insurance by  
certain persons contain certain information;  
modifying construing provision; modifying list of  
persons prohibited from receiving certain benefit;  
modifying source of benefit; requiring insurance  
guaranty fund to cover certain risks; providing that  
certain insurance policies not require  
countersigning; modifying entities exempt from  
certain laws; modifying exemptions from certain laws  
for risk retention groups; modifying timeline for  
required notice to Commissioner; modifying terms of  
required notice; removing specified type of insurer  
from certain required notice; specifying time frame  
and payment procedures for certain taxes; modifying  
powers of Commissioner; removing requirement certain

1 persons be licensed; modifying prohibitions on  
2 certain persons procuring liability insurance; adding  
3 circumstance in which court order is enforceable;  
4 providing exception to certain fee; specifying fee  
5 amount for special captive insurance company; adding  
6 minimum capital and surplus for certain captive  
7 insurance companies; specifying that certain papers  
8 are confidential and not subject to subpoena or  
9 distribution; providing exception; authorizing  
10 Commissioner to grant access to information in  
11 certain circumstances; specifying requirements for  
12 using accounting principles for certain report;  
13 providing exception to certain tax; specifying tax  
14 minimum and maximum payment for certain insurance  
15 companies; providing for codification; and providing  
16 an effective date.

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

18 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6453, as  
19 amended by Section 10, Chapter 95, O.S.L. 2018 (36 O.S. Supp. 2020,  
20 Section 6453), is amended to read as follows:

21 Section 6453. As used in the Oklahoma Risk Retention Act:

22 1. "Commissioner" means the Insurance Commissioner of this  
23 state or the Commissioner, Director, or Superintendent of insurance  
24 in any other state;

25 2. "Completed operations liability" means liability arising out  
26 of the installation, maintenance, or repair of any product at a site  
27 which is not owned or controlled by:

28 a. any person who performs that work, or

29 b. any person who hires an independent contractor to  
30 perform that work,

1 and shall include liability for activities which are completed or  
2 abandoned before the date of the occurrence giving rise to the  
3 liability;

4 3. "Domicile", for purposes of determining the state in which a  
5 purchasing group is domiciled, means:

- 6 a. for a corporation, the state in which the purchasing  
7 group is incorporated, and
- 8 b. for an unincorporated entity, the state of its  
9 principal place of business;

10 4. "Hazardous financial condition" means that, based on its  
11 present or reasonably anticipated financial condition, a risk  
12 retention group, although not yet financially impaired or insolvent,  
13 is unlikely to be able:

- 14 a. to meet obligations to policyholders with respect to  
15 known claims and reasonably anticipated claims, or
- 16 b. to pay other obligations in the normal course of  
17 business;

18 5. "Insurance" means primary insurance, excess insurance,  
19 reinsurance, surplus lines insurance, and any other arrangement for  
20 shifting and distributing risk which is determined to be insurance  
21 under the laws of this state;

22 6. "Liability":

- 23 a. means legal liability for damages, including but not  
24 limited to, costs of defense, legal costs and fees,

1 and other claims expenses, because of injuries to  
2 other persons, damage to their property, or other  
3 damage or loss to such other persons resulting from or  
4 arising out of:

5 (1) any for-profit or non-profit business, trade,  
6 product, services, premises, or operations, or

7 (2) any activity of any state or local government, or  
8 any agency or political subdivision thereof, and

9 b. does not include personal risk liability and the  
10 liability of an employer to employees, other than  
11 legal liability under the Federal Employers' Liability  
12 Act, 45 U.S.C. 51 et seq.;

13 7. "Personal risk liability" means liability for damages  
14 because of injury to any person, damage to property, or other loss  
15 or damage resulting from any personal, familial, or household  
16 responsibilities or activities rather than from responsibilities or  
17 activities referred to in paragraph 6 of this section;

18 8. "Plan of operation or feasibility study" means an analysis  
19 which presents the expected activities and results of a risk  
20 retention group including, but not limited to:

21 a. for each state in which it intends to operate, the  
22 coverages, deductibles, coverage limits, rates, and  
23 rating classification systems for each line of  
24 insurance the group intends to offer,

- 1           b.   historical and expected loss experience of the  
2                   proposed members and national experience of similar  
3                   exposures to the extent that this experience is  
4                   reasonably available,
- 5           c.   pro forma financial statements and projections,
- 6           d.   appropriate opinions by a qualified independent  
7                   casualty actuary, as defined in paragraph 11 of this  
8                   section, including a determination of minimum premium  
9                   or participation levels required to commence  
10                  operations and to prevent a hazardous financial  
11                  condition,
- 12          e.   identification of management procedures, underwriting  
13                  and claims procedures, marketing methods, managerial  
14                  oversight methods, investment policies, and  
15                  reinsurance agreements,
- 16          f.   information sufficient to verify that its members are  
17                  engaged in businesses or activities similar or related  
18                  with respect to the liability to which such members  
19                  are exposed by virtue of any related, similar, or  
20                  common business, trade, product, services, premises,  
21                  or operations,
- 22          g.   identification of each state in which the risk  
23                  retention group has obtained, or sought to obtain, a  
24

1 charter and license, and a description of its status  
2 in each such state, and

3 h. such other matters as may be prescribed by the  
4 Commissioner, for liability insurance companies  
5 authorized by the insurance laws of the state in which  
6 the risk retention group is chartered;

7 9. "Product liability" means liability for damages because of  
8 any personal injury, death, emotional harm, consequential economic  
9 damage, or property damage, including but not limited to damages  
10 resulting from the loss of use of property, arising out of the  
11 manufacture, design, importation, distribution, packaging, labeling,  
12 lease, or sale of a product, but does not include the liability of  
13 any person for those damages if the product involved was in the  
14 possession of such a person when the incident giving rise to the  
15 claim occurred;

16 10. "Purchasing group" means any group which:

17 a. has as one of its purposes the purchase of liability  
18 insurance on a group basis,

19 b. has as one of its purposes the purchase of liability  
20 insurance on a group basis for its members to cover  
21 their similar or related liability exposure,

22 ~~b.~~

23 c. is composed of members whose businesses or activities  
24 are similar or related with respect to the liability

1 to which members are exposed by virtue of any related,  
2 similar, or common business, trade, product, services,  
3 premises, or operations, and

4 ~~e.~~

5 d. is domiciled in any state;

6 11. "Qualified actuary" means an individual who is a member of  
7 the American Academy of Actuaries and who has met the Qualification  
8 Standards for Actuaries Issuing Statements of Actuarial Opinions in  
9 the United States promulgated by the American Academy of Actuaries;

10 12. "Risk retention group" means any corporation or other  
11 limited liability association ~~formed under the laws of any state,~~  
12 ~~Bermuda, or the Cayman Islands, to assume and spread all, or any~~  
13 ~~portion of, the liability exposure of its group members, and which:~~

14 a. ~~(1)~~ whose primary activity consists of assuming and  
15 spreading all or any portion of the liability  
16 exposure of its group members,

17 b. which is organized for the primary purpose of  
18 conducting the activity specified in subparagraph a of  
19 this paragraph,

20 c. which is chartered and licensed as a liability  
21 insurance company and authorized to engage in the  
22 business of insurance under the laws of any state, or,  
23 ~~(2)~~ before January 1, 1985, was chartered or licensed  
24 and authorized to engage in the business of

1 insurance under the laws of Bermuda or the Cayman  
2 Islands and, before such date, had certified to  
3 the Insurance Commissioner of at least one state  
4 that it satisfied the capitalization requirements  
5 of such state, except that any such group shall  
6 be considered to be a risk retention group only  
7 if it has been engaged in business continuously  
8 since such date and only for the purpose of  
9 continuing to provide insurance to cover product  
10 liability or completed operations liability, as  
11 such terms were defined in the federal Product  
12 Liability Risk Retention Act of 1981, before the  
13 date of the enactment of the federal Liability  
14 Risk Retention Act of 1986,

15 ~~b.~~

16 d. which does not exclude any person from membership in  
17 the group solely to provide for members of such group  
18 a competitive advantage over such person,

19 ~~e.~~

20 e. (1) which has as its ~~members~~ owners only persons who  
21 ~~have an ownership interest in the group and who~~  
22 ~~are provided insurance by~~ comprise the membership  
23 of the risk retention group, ~~or~~ and

1           (2) ~~has as its sole member and sole owner an~~  
2           ~~organization which is owned by persons who are~~  
3           ~~provided insurance by~~ owners only persons who  
4           comprise the membership of the risk retention  
5           group and who are provided insurance by the  
6           group,

7       d. ~~has as its~~

8       f. whose members ~~persons or organizations which are~~  
9           engaged in businesses or activities similar or related  
10          with respect to the liability of which such members  
11          are exposed by virtue of any related, similar, or  
12          common business trade, product, services, premises, or  
13          operations,

14       e. ~~does~~

15       g. whose activities do not provide include the provision  
16          of insurance ~~coverage~~ other than:

17           (1) liability insurance for assuming and spreading  
18           all or any portion of the liability of its group  
19           members, and

20           (2) reinsurance with respect to the liability of any  
21           other risk retention group, or any members of  
22           such other group, engaged in businesses or  
23           activities so that the risk retention group or  
24           individual members of the group meet the

1                   requirements described in subparagraph f of this  
2                   paragraph because of membership in the risk  
3                   retention group that provides the reinsurance,  
4                   and

5                   f.

6                   h.     the name of which includes the phrase, "Risk Retention  
7                   Group"; and

8                   13. "State" means any state of the United States or the  
9                   District of Columbia.

10                  SECTION 2.        AMENDATORY        36 O.S. 2011, Section 6454, is  
11                  amended to read as follows:

12                  Section 6454. A. 1. A risk retention group seeking to be  
13                  chartered for domicile in this state shall be chartered and licensed  
14                  as a only to write liability insurance ~~company authorized by~~  
15                  pursuant to the insurance laws of this state and, except as provided  
16                  elsewhere in the Oklahoma Risk Retention Act, shall comply with all  
17                  of the laws, rules, regulations, and requirements applicable to such  
18                  insurers chartered and licensed in this state pursuant to Section  
19                  6455 of this title to the extent such requirements are not a  
20                  limitation on the laws, rules, regulations and requirements in this  
21                  state.

22                  2. Notwithstanding any other provision of law, all risk  
23                  retention groups chartered in this state shall file with the  
24                  Insurance Department and the National Association of Insurance

1 Commissioners an annual statement in a form prescribed by the  
2 Association and in electronic form, if required by the Insurance  
3 Commissioner and completed in accordance with its instructions and  
4 the Practices and Procedures Manual of the Association.

5 B. Before it may offer insurance in any state, each risk  
6 retention group licensed in this state shall submit for approval to  
7 the Insurance Commissioner of this state a plan of operation or a  
8 feasibility study ~~and revisions of such plan or study if the group~~  
9 ~~intends to offer any additional lines of liability insurance.~~

10 ~~Immediately upon receipt of an~~ The risk retention group shall submit  
11 an appropriate revision in the event of any subsequent material  
12 change in any item of the plan of operation or feasibility study  
13 within ten (10) days of the change. The group shall not offer any  
14 additional kinds of liability insurance in this state or in any  
15 other state until a revision of the plan or study is approved by the  
16 Commissioner. At the time of filing its application for charter,  
17 ~~the Insurance Commissioner of this state~~ risk retention group shall  
18 provide to the Commissioner a summary of the following information:  
19 ~~concerning the application to the National Association of Insurance~~  
20 ~~Commissioners, including the name of the risk retention group, the~~  
21 ~~identity of the initial members of the group, the identity of those~~  
22 ~~individuals~~ or who organized the group, the identity of those  
23 individuals who will provide administrative services or otherwise  
24 influence or control the activities of the group, the amount and

1 nature of initial capitalization, the coverages to be afforded, and  
2 the states in which the group intends to operate. Upon receipt of  
3 this information, the Commissioner shall transmit the information to  
4 the National Association of Insurance Commissioners. Transmitting  
5 this information shall be sufficient to satisfy the requirements of  
6 Section 6455 of this section.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 6454.1 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. For the purposes of this section:

11 1. "Board of Directors" or "Board" means the governing body of  
12 the risk retention group elected by the shareholders or members to  
13 establish policy, elect or appoint officers and committees, and make  
14 other governing decisions;

15 2. "Director" means a natural person designated in the articles  
16 of the risk retention group, or designated, elected or appointed by  
17 any other manner, name or title to act as a director;

18 3. "Disclose" means making information available through  
19 electronic or any other means the Board determines is necessary; and

20 4. "Service Providers" means captive managers, auditors,  
21 accountants, actuaries, investment advisors, lawyers, managing  
22 general underwriters or other parties responsible for underwriting,  
23 determination of rates, collection of premiums, adjusting and  
24 settling claims and/or the preparation of financial statements.

1 B. Existing risk retention groups shall comply with the  
2 following governance standards within one year of the effective date  
3 of this act. Risk retention groups licensed on or after the  
4 effective date of this act shall be in compliance with the standards  
5 at the time of licensure.

6 C. The Board of Directors of the risk retention group shall be  
7 composed of a majority of independent directors. No director shall  
8 qualify as independent unless the Board affirmatively determines  
9 that the director has no material relationship with the risk  
10 retention group. Each risk retention group shall disclose these  
11 determinations to its domestic regulator at least annually.  
12 Notwithstanding any other provision of law, a person that is a  
13 direct or indirect owner of or subscriber in the risk retention  
14 group, or is an officer, director or employee of such an owner and  
15 insured, is considered to be independent unless some other position  
16 of such officer, director or employee constitutes a material  
17 relationship. Material relationship of a person with the risk  
18 retention group shall include, but is not limited to:

19 1. The receipt in any one twelve (12) month period of  
20 compensation or payment of any other item of value by such person, a  
21 member of such person's immediate family or any business with which  
22 the person is affiliated from the risk retention group or a  
23 consultant or service provider to the risk retention group is  
24 greater than or equal to five percent (5%) of the risk retention

1 group's gross written premium for the twelve (12) month period or  
2 two percent (2%) of its surplus, whichever is greater, as measured  
3 at the end of any fiscal quarter falling in the twelve (12) month  
4 period. The person or immediate family member of such person is not  
5 independent until one year after his or her compensation from the  
6 risk retention group falls below the threshold provided in this  
7 paragraph.

8       2. A relationship with a director or an immediate family member  
9 of a director who is affiliated with or employed in a professional  
10 capacity by a present or former internal or external auditor of the  
11 risk retention group is not independent until one year after the end  
12 of the affiliation, employment or auditing relationship.

13       3. A relationship with a director or immediate family member of  
14 a director who is employed as an executive officer of another  
15 company where any of the risk retention group's present executives  
16 serve on the other company's Board of Directors is not independent  
17 until one year after the end of such service or the employment  
18 relationship.

19       D. The term of any material service provider contract with the  
20 risk retention group shall not exceed five (5) years. Any such  
21 contract, or its renewal, shall require the approval of the majority  
22 of the risk retention group's independent directors. The risk  
23 retention group's Board shall have the right to terminate any  
24 service provider, audit or actuarial contract at any time for cause

1 after providing adequate notice as defined in the contract. The  
2 service provider contract is deemed material if the amount to be  
3 paid for the contract is greater than or equal to five percent (5%)  
4 of the risk retention group's annual gross written premium or two  
5 percent (2%) of its surplus, whichever is greater. For the purpose  
6 of this section, lawyer shall not include defense counsel retained  
7 by the risk retention group to defend claims, unless the amount of  
8 fees paid to such lawyers are material. No service provider  
9 contract violating the provisions prohibiting material  
10 relationships, as specified in subsection B of this section, shall  
11 be entered into unless the risk retention group has notified the  
12 Commissioner in writing of its intention to enter into such contract  
13 at least thirty (30) days prior and the Commissioner has not  
14 disapproved it within such period. To the extent permissible under  
15 state law, service providers of a reciprocal risk retention group  
16 shall contract with the risk retention group.

17 If the risk retention group is a reciprocal risk retention  
18 group, then the attorney-in-fact would be required to adhere to the  
19 same standards regarding independence of operation and governance as  
20 imposed on the Board's advisory committee created pursuant to this  
21 section.

22 E. The risk retention group's Board shall adopt a written  
23 policy in the plan of operation, as approved by the Board, that  
24 requires the Board to:

- 1           1. Assure that all owners and insureds of the risk retention  
2 group receive evidence of ownership interest;
- 3           2. Develop a set of governance standards applicable to the risk  
4 retention group;
- 5           3. Oversee the evaluation of the risk retention group's  
6 management including but not limited to the performance of the  
7 captive manager, managing general underwriter or other party or  
8 parties responsible for underwriting, determination of rates,  
9 collection of premium, adjusting or settling claims or the  
10 preparation of financial statements;
- 11           4. Review and approve the amount to be paid for all material  
12 service providers; and
- 13           5. Review and approve, at least annually:
- 14           a. the risk retention group's goals and objectives  
15                 relevant to the compensation of officers and service  
16                 providers,
- 17           b. the officers' and service providers' performance  
18                 considering those goals and objectives, and
- 19           c. the continued engagement of the officers and material  
20                 service providers.
- 21           F. 1. The risk retention group shall have an audit committee  
22 composed of at least three independent Board members, as specified  
23 in subsection C of this section. A nonindependent Board member may  
24

1 participate in the activities of the audit committee, if invited by  
2 the members, but shall not be a member of the committee.

3 2. The audit committee shall have a written charter that  
4 defines the purpose of the committee that includes but is not  
5 limited to:

- 6 a. assisting Board oversight of:
  - 7 i. the integrity of the financial
  - 8 statements,
  - 9 ii. the compliance with legal and
  - 10 regulatory requirements, and
  - 11 iii. the qualifications, independence and
  - 12 performance of the independent auditor
  - 13 and actuary,
- 14 b. discussing the annual audited financial statements and
- 15 quarterly financial statements with management,
- 16 c. discussing the annual audited financial statements
- 17 with its independent auditor and, if advisable,
- 18 discuss its quarterly financial statements with its
- 19 independent auditor,
- 20 d. discussing policies with respect to risk assessment
- 21 and risk management,
- 22 e. meeting separately and periodically, either directly
- 23 or through a designated representative of the
- 24 committee, with management and independent auditors,

- 1 f. reviewing with the independent auditor any audit  
2 problems or difficulties and management's response,  
3 g. setting clear hiring policies of the risk retention  
4 group as to the hiring of employees or former  
5 employees of the independent auditor,  
6 h. requiring the external auditor to rotate the head  
7 audit partner having primary responsibility for the  
8 risk retention group's audit, as well as the audit  
9 partner responsible for reviewing that audit so that  
10 neither individual performs audit services for more  
11 than five (5) consecutive fiscal years, and  
12 i. reporting regularly to the Board.

13 3. The domestic regulator may waive the requirement to  
14 establish an audit committee if the risk retention group is able to  
15 demonstrate to the domestic regulator that it is impracticable to do  
16 so and the risk retention group's Board is able to accomplish the  
17 purposes of an audit committee described in this subsection.

18 G. The Board shall adopt and disclose governance standards and  
19 provide the information to members and insureds upon request, which  
20 shall include but not be limited to:

- 21 1. A process by which the directors are elected by the owner  
22 and insureds;  
23 2. Director qualification standards;  
24 3. Director responsibilities;

- 1           4. Director access to management and, as necessary and  
2 appropriate, independent advisors;
- 3           5. Director compensation;
- 4           6. Director orientation and continuing education;
- 5           7. The policies and procedures that are followed for management  
6 succession; and
- 7           8. The policies and procedures that are followed for annual  
8 performance evaluation of the Board.
- 9           H. The Board shall adopt and disclose a code of business  
10 conduct and ethics for directors, officers and employees of the risk  
11 retention group and shall promptly disclose to the Board any waivers  
12 of the code for directors or executive officers, which shall include  
13 the following topics:
- 14           1. Conflicts of interest;
- 15           2. Matters covered under the corporate opportunities doctrine  
16 under the state of domicile;
- 17           3. Confidentiality;
- 18           4. Fair dealing;
- 19           5. Protection and proper use of risk retention group assets;
- 20           6. Compliance with all applicable laws, rules and regulations;
- 21 and
- 22           7. Requiring the reporting of any illegal or unethical behavior  
23 which affects the operation of the risk retention group.
- 24

1 I. The captive manager, president or chief executive officer of  
2 the risk retention group shall promptly notify the domestic  
3 regulator in writing if either becomes aware of any material  
4 noncompliance with the governance standards specified in subsections  
5 G and H of this section.

6 SECTION 4. AMENDATORY 36 O.S. 2011, Section 6455, is  
7 amended to read as follows:

8 Section 6455. Risk retention groups chartered and licensed in  
9 states other than this state and seeking to do business as risk  
10 retention groups in this state shall observe and abide by the laws  
11 of this state as follows:

12 A. Before offering insurance in this state, a risk retention  
13 group shall submit to the Commissioner of this state, on a form  
14 prescribed by the National Association of Insurance Commissioners of  
15 this state:

16 1. A statement identifying the state or states in which the  
17 risk retention group is chartered and licensed as a liability  
18 insurance company, the date of chartering, its principal place of  
19 business, and such other information, including information on its  
20 membership, as the Commissioner of this state may require to verify  
21 that the group is qualified to be licensed as a risk retention  
22 group;

23 2. A copy of its plan of operation or a feasibility study and  
24 revisions of such plan or study submitted to its state of domicile;

1 provided, however, that the provision relating to the submission of  
2 a plan of operation or a feasibility study shall not apply with  
3 respect to any line or classification of liability insurance which:

4 a. was defined in the federal Product Liability Risk  
5 Retention Act of 1981 before October 27, 1986, and

6 b. was offered before such date by a risk retention group  
7 which had been chartered and operating for not less  
8 than three (3) years before such date; ~~and~~

9 3. A copy of any material revision to its plan of operation or  
10 feasibility study required by subsection B of Section 6454 within  
11 thirty (30) days of the date of approval of the revision by the  
12 Insurance Commissioner of its chartering state, or within thirty  
13 (30) days of filing if no such approval is required; and

14 4. A statement of registration which designates the  
15 Commissioner of this state as its agent for the purpose of receiving  
16 service of legal documents or process.

17 The risk retention group shall pay a filing fee, in an amount  
18 determined by the Commissioner.

19 B. Any risk retention group doing business in this state shall  
20 submit to the Commissioner of this state:

21 1. A copy of the group's financial statement submitted to its  
22 state of domicile, which shall be certified by an independent public  
23 accountant or certified public accountant and contain a statement of  
24 opinion on loss and loss adjustment expense reserves made by a

1 member of the American Academy of Actuaries or a loss reserve  
2 specialist qualified pursuant to criteria established by the  
3 National Association of Insurance Commissioners;

4 2. A copy of each examination of the risk retention group as  
5 certified by a Commissioner or public official conducting the  
6 examination;

7 3. Upon request by the Commissioner of this state, a copy of  
8 any audit performed with respect to the risk retention group; and

9 4. Such information as may be required to verify its continuing  
10 qualification as a risk retention group.

11 C. 1. ~~All premiums paid for coverages within this state to~~  
12 ~~risk retention groups~~ Each risk retention group shall be liable for  
13 the payment of premium taxes and taxes on premiums of direct  
14 business for risk, and shall be subject to taxation at the same rate  
15 and subject to the same interest, fines, and penalties for  
16 nonpayment as that applicable to foreign admitted insurers.

17 2. To the extent licensed agents or brokers are utilized  
18 pursuant to Section 6462 of this title, they shall report ~~and pay~~  
19 ~~the taxes for the~~ to the Commissioner premiums for direct business  
20 for risks resident or located within the state which ~~they~~ the  
21 licensees have placed with or on behalf of a risk retention group  
22 not chartered in this state.

23 3. ~~To the extent agents or brokers are not utilized or fail to~~  
24 ~~pay the tax, each risk retention group shall pay the tax for risks~~

1 ~~insured within the state. Further, each risk retention group shall~~  
2 ~~report all premiums paid to it for risks insured within the state.~~

3 4. To the extent that insurance agents or brokers are utilized  
4 pursuant to Section 6462 of this title, ~~such~~ each agent or broker  
5 shall keep a complete and separate record of all policies procured  
6 from each such risk retention group, which record must be open to  
7 examination by the Insurance Commissioner or a designee of the  
8 Insurance Commissioner or a representative of the Insurance  
9 Commissioner on demand. These records shall, for each policy and  
10 each kind of insurance provided thereunder, include the following:

- 11 a. the limit of liability,
- 12 b. the time period covered,
- 13 c. the effective date,
- 14 d. the name of the risk retention group which issued the  
15 policy,
- 16 e. the gross premium charged, and
- 17 f. the amount of return premiums, if any, ~~and~~
- 18 ~~g. such additional information as the Insurance~~  
19 ~~Commissioner or a designee of the Insurance~~  
20 ~~Commissioner may require.~~

21 D. Any risk retention group, its agents and representatives  
22 shall comply with the provisions of the ~~Claims Resolution~~ Unfair  
23 Claims Settlement Practices Act of this state.

1 E. Any risk retention group shall comply with the laws of this  
2 state regarding deceptive, false or fraudulent acts or practices.  
3 However, if the Commissioner of this state seeks an injunction  
4 regarding such conduct, the injunction shall be obtained from a  
5 court of competent jurisdiction.

6 F. Any risk retention group shall submit to an examination by  
7 the Commissioner of this state to determine its financial condition  
8 if the Commissioner of the jurisdiction in which the group is  
9 chartered has not initiated an examination or does not initiate an  
10 examination within sixty (60) days after a request to do so is made  
11 by the Commissioner of this state. Any such examination shall be  
12 coordinated to avoid unjustified repetition of examination by  
13 Commissioners of other states and shall be conducted in an  
14 expeditious manner and in accordance with the National Association  
15 of Insurance Commissioner's Examiner Handbook.

16 G. ~~Any~~ Every application form for insurance from a risk  
17 retention group and every policy issued by a risk retention group  
18 shall contain in ten-point type on the front page and the  
19 declaration page, the following notice:

20 NOTICE

21 This policy is issued by your risk retention group. Your risk  
22 retention group may not be subject to all of the insurance laws and  
23 regulations of your state. State insurance insolvency guaranty  
24 funds are not available for your risk retention group.

1 H. The following acts by a risk retention group are hereby  
2 prohibited:

3 1. The solicitation or sale of insurance by a risk retention  
4 group to any person who is not eligible for membership in such  
5 group; and

6 2. The solicitation or sale of insurance by, or operation of, a  
7 risk retention group that is in a hazardous financial condition or  
8 is financially impaired.

9 I. No risk retention group shall be allowed to do business in  
10 this state if an insurance company is directly or indirectly a  
11 member or owner of such risk retention group, other than in the case  
12 of a risk retention group all of whose members are insurance  
13 companies.

14 J. ~~No~~ The terms of any insurance policy offered by a risk  
15 retention group shall offer insurance policy not provide, or be  
16 construed to provide, coverage prohibited generally by the Insurance  
17 Code or any other law of this state or declared unlawful by the  
18 highest court of this state whose law applies to insurance policy.

19 K. A risk retention group which is not chartered in this state  
20 but is doing business in this state shall comply with a lawful order  
21 issued in a voluntary dissolution proceeding or in a delinquency  
22 proceeding commenced by an Insurance Commissioner of any state if  
23 there has been a finding of financial impairment after an  
24

1 examination by any state Insurance Commissioner under subsection F  
2 of this section.

3 SECTION 5. AMENDATORY 36 O.S. 2011, Section 6456, is  
4 amended to read as follows:

5 Section 6456. A. No risk retention group shall be permitted to  
6 join or contribute financially to any insurance insolvency guaranty  
7 fund, or similar mechanism, in this state, nor shall any risk  
8 retention group, or its insureds or claimants against its insureds,  
9 receive any benefit from any such fund for claims arising ~~out of the~~  
10 ~~operations of such~~ under the insurance policies issued by a risk  
11 retention group.

12 B. When a purchasing group obtains insurance covering its  
13 members' risks from an ~~approved surplus lines~~ insurer not ~~admitted~~  
14 authorized in this state or a risk retention group, no such risks,  
15 wherever resident is located, ~~may~~ shall be covered by any insurance  
16 guaranty fund or similar mechanism in this state.

17 C. When a purchasing group obtains insurance covering its  
18 members' risks from an authorized insurer, only risks resident or  
19 located in this state may be covered by the Oklahoma Property and  
20 Casualty Insurance Guaranty Association.

21 SECTION 6. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 6456.1 of Title 36, unless there  
23 is created a duplication in numbering, reads as follows:

24

1 Notwithstanding any other provision of law, a policy of  
2 insurance issued to a risk retention group or any member of that  
3 group shall not be required to be countersigned.

4 SECTION 7. AMENDATORY 36 O.S. 2011, Section 6457, is  
5 amended to read as follows:

6 Section 6457. ~~Any purchasing group meeting the criteria~~  
7 ~~established pursuant to the provisions of the federal Liability Risk~~  
8 ~~Retention Act of 1986 shall be exempt from any law of this state~~  
9 ~~relating to the creation of groups for the purchase of insurance,~~  
10 ~~prohibition of group purchasing, or any law that would discriminate~~  
11 ~~against a A purchasing group or its members. In addition, an and~~  
12 ~~its insurer or insurers shall be subject to all applicable laws of~~  
13 ~~this state, except that a purchasing group and its insurer or~~  
14 ~~insurers shall be exempt, in regard to liability insurance for the~~  
15 ~~purchasing group, from any law of this state which that would:~~

16 1. ~~Prohibits providing, or offering to provide, to Prohibit the~~  
17 ~~establishment of a purchasing group or its members advantages based~~  
18 ~~on their loss and expense experience not afforded to other persons~~  
19 ~~with respect to rates, policy forms, coverages, or other matters;~~

20 2. ~~Prohibits Make unlawful an insurer providing advantages to a~~  
21 ~~purchasing group or its members based on the loss and expense~~  
22 ~~experience of the group or its members including but not limited to~~  
23 ~~advantages on rates, policy forms and coverage, that is not afford~~  
24 ~~to other persons or entities;~~

1        3. Prohibit a purchasing group or its members from purchasing  
2 insurance on a group basis described in paragraph 1 of this section;

3        ~~3. Prohibits~~ 4. Prohibit a purchasing group from obtaining  
4 insurance on a group basis because the group has not been in  
5 existence for a minimum period of time or because any member has not  
6 belonged to the group for a minimum period of time;

7        ~~4. Requires~~ 5. Require that a purchasing group must have a  
8 minimum number of members, common ownership or affiliation, or  
9 certain legal form;

10       ~~5. Requires~~ 6. Require that a certain percentage of a  
11 purchasing group must obtain insurance on a group basis;

12       ~~6.~~ 7. Otherwise discriminates against a purchasing group or any  
13 of its members; or

14       ~~7. Requires~~ 8. Require that any insurance policy issued to a  
15 purchasing group or any of its members be countersigned by an  
16 insurance agent or broker residing in this state.

17       A purchasing group shall be subject to all other applicable laws  
18 of this state.

19       SECTION 8.        AMENDATORY        36 O.S. 2011, Section 6458, is  
20 amended to read as follows:

21       Section 6458. A. A purchasing group which intends to do  
22 business in this state shall, prior to doing business, furnish to  
23 the ~~Commissioner of this state~~ Insurance Commissioner notice which  
24

1 shall, on forms prescribed by the National Association of Insurance  
2 Commissioners:

3 1. Identify the state in which the group is domiciled;

4 2. Identify all other states in which the group intends to do  
5 business;

6 3. Specify the lines and classifications of liability insurance  
7 which the purchasing group intends to purchase;

8 ~~3.~~ 4. Identify the insurance company or ~~risk retention group,~~  
9 ~~if known, which is licensed in this state,~~ companies from which the  
10 group intends to purchase its insurance and the domicile of the  
11 company or companies;

12 ~~4.~~ 5. Identify the principal place of business of the group;

13 ~~5.~~ 6. Specify the method by which, ~~and the person~~ or persons,  
14 if any, through whom insurance will be offered to its members whose  
15 risks are resident or located in this state; and

16 ~~6.~~ 7. Provide such other information as may be required by the  
17 Commissioner of this state to verify that the purchasing group is  
18 qualified to do business in this state as a purchasing group.

19 B. A purchasing group shall notify the Insurance Commissioner  
20 of any changes in any of the information prescribed in subsection A  
21 of this section within ten (10) days of such change;

22 C. The purchasing group shall register with and designate the  
23 Commissioner of this state as its agent solely for the purpose of  
24 receiving service of legal documents or process, for which a filing

1 fee shall be assessed in an amount determined by the Commissioner,  
2 except that such requirements shall not apply to in the case of a  
3 purchasing group which only purchases insurance that was authorized  
4 under the federal Products Liability Risk Retention Act of 1981 and:

5 1. Which:

6 a. was domiciled before April 1, 1986, and

7 b. is domiciled on and after October 27, 1986, in any  
8 state, ~~which;~~

9 ~~1. 2.~~ Before October 27, 1986, purchased insurance from an  
10 insurance carrier licensed in any state;

11 ~~2. 3.~~ Since October 27, 1986, purchased its insurance from an  
12 insurance carrier licensed in any state; or

13 ~~3.~~

14 4. Was a purchasing group pursuant to the requirements of the  
15 federal Product Liability Risk Retention Act of 1981 before October  
16 27, 1986; ~~and~~

17 ~~4. Does not purchase insurance that was not authorized for~~  
18 ~~purposes of an exemption pursuant to the federal Product Liability~~  
19 ~~Risk Retention Act of 1981, as in effect before October 27, 1986.~~

20 ~~C. D.~~ Each purchasing group that is required to give notice  
21 pursuant to subsection A of this section also shall furnish such  
22 information as may be required by the Insurance Commissioner or  
23 designee to:

24 1. Verify that the entity qualifies as a purchasing group; ~~and~~

1       2. Determine where the purchasing group is located; and

2       3. Determine appropriate tax treatment.

3       SECTION 9.       AMENDATORY       36 O.S. 2011, Section 6459, is  
4 amended to read as follows:

5       Section 6459. A. A purchasing group shall not purchase  
6 insurance from a risk retention group that is not chartered in a  
7 state or from an insurer not licensed to transact insurance in this  
8 state, unless the purchase is effected through a licensed agent or  
9 broker acting pursuant to the surplus lines laws and regulations of  
10 this state.

11       B. A purchasing group which obtains liability insurance from an  
12 ~~approved surplus lines~~ insurer not admitted in this state or a risk  
13 retention group shall inform each of the members of the group which  
14 has a risk resident or located in this state that the risk is not  
15 protected by an insurance insolvency guaranty fund in this state and  
16 that the risk retention group or the insurer may not be subject to  
17 all insurance laws and regulations of this state.

18       C. No purchasing group may purchase insurance providing for a  
19 deductible or self-insured retention applicable to the group as a  
20 whole. However, coverage may provide for a deductible or self-  
21 insured retention applicable to individual members.

22       D. Purchases of insurance by purchasing groups are subject to  
23 the same standards regarding aggregate limits which are applicable  
24 to all purchases of group insurance.

1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6459.1 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4 Premium taxes and taxes on premiums paid for coverage of risks  
5 resident or located in this state by a purchasing group or any  
6 members of the purchasing group shall be:

7 1. Imposed at the same rate and subject to the same interest,  
8 fines and penalties as applicable to premium taxes and taxes on  
9 premiums paid for similar coverage from a similar insurance source;  
10 and

11 2. Paid by the insurance source, the agent or broker for the  
12 purchasing group, the purchasing group or any members of the  
13 purchasing group.

14 SECTION 11. AMENDATORY 36 O.S. 2011, Section 6460, is  
15 amended to read as follows:

16 Section 6460. The Insurance Commissioner of this state is  
17 authorized to make use of any of the powers established pursuant to  
18 the Insurance Code of this state to enforce the laws of this state  
19 so long as those powers are not specifically preempted by ~~federal~~  
20 law the Risk Retention Act of 1986, as amended, including the  
21 administrative authority of the Commissioner to investigate, issue  
22 subpoenas, conduct depositions and hearings, issue orders, impose  
23 penalties and seek injunctive relief. Regarding any investigation,  
24 administrative proceedings or litigation, the Commissioner may rely

1 on the procedural laws of this state. The injunctive authority of  
2 the Commissioner for risk retention groups is restricted by the  
3 requirement that any injunction be issued by a court of competent  
4 jurisdiction.

5 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6462, is  
6 amended to read as follows:

7 Section 6462. A. ~~Any person acting, or offering to act, as an~~  
8 ~~agent or broker for a risk retention group which solicits members,~~  
9 ~~sells insurance coverage, purchases coverage for its members located~~  
10 ~~within the state, or otherwise does business in this state, before~~  
11 ~~commencing any such activity, shall obtain a license from the~~  
12 ~~Commissioner of this state.~~

13 ~~B. 1.~~ No person may, firm, association or corporation shall  
14 act or aid in any manner in soliciting, negotiating, or procuring  
15 liability insurance in this state for a purchasing group from an  
16 authorized insurer or a risk retention group chartered in a state  
17 unless such person, firm, association or corporation is licensed as  
18 an insurance agent for the insurer or risk retention group or is  
19 licensed as or a broker, pursuant to the Oklahoma Insurance Code.

20 ~~2. B. 1.~~ No person may, firm, association or corporation shall  
21 act or aid in any manner in soliciting, negotiating, or procuring  
22 liability insurance coverage in this state for any member of a  
23 purchasing group under a purchasing group's policy from an  
24 authorized insurer or a risk retention group unless such person,

1 firm, association or corporation is licensed as an insurance agent  
2 ~~for the insurer or is licensed as a broker pursuant to the Oklahoma~~  
3 Insurance Code.

4 ~~3.~~ 2. No person ~~may,~~ firm, association or corporation shall act  
5 or aid in any manner in soliciting, negotiating, or procuring  
6 liability insurance coverage in this state from an ~~approved~~  
7 ~~nonadmitted surplus lines insurer on behalf of~~ any member of a  
8 purchasing group located in this state under a policy of a  
9 purchasing group unless such person, firm, association or  
10 corporation is licensed as an insurance agent or a broker pursuant  
11 to the Oklahoma Insurance Code.

12 3. No person, firm, association or corporation shall act or aid  
13 in any manner in soliciting, negotiating or procuring liability  
14 insurance from an insurer not authorized to do business in this  
15 state on behalf of a purchasing group located in this state unless  
16 the person, firm, association or corporation is licensed as a  
17 surplus lines agent or excess line broker pursuant to the Oklahoma  
18 Insurance Code.

19 C. For purposes of acting as an agent or broker for a risk  
20 retention group or purchasing group pursuant to subsections A and B  
21 of this section, the requirement of residence in this state ~~does~~  
22 shall not apply.

23 D. Every person licensed as an agent or broker as required in  
24 this section, on business placed with risk retention groups or

1 written through a purchasing group, shall inform each prospective  
2 insured of the provisions of the notice required by the Oklahoma  
3 Risk Retention Act.

4 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6464, is  
5 amended to read as follows:

6 Section 6464. An order issued by any District Court of the  
7 United States enjoining a risk retention group from soliciting or  
8 selling insurance, or operating in any state, or in any territory or  
9 possession of the United States, upon a finding that such a group is  
10 in a hazardous financial condition or financially impaired shall be  
11 enforceable in the courts of this state.

12 SECTION 14. AMENDATORY 36 O.S. 2011, Section 6470.2, as  
13 last amended by Section 12, Chapter 73, O.S.L. 2016 (36 O.S. Supp.  
14 2020, Section 6470.2), is amended to read as follows:

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

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

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

24

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

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

11 b. the member organizations of which collectively  
12 constitute all of the subscribers of an association  
13 captive insurance company formed as a reciprocal  
14 insurer;

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

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

20 6. "Branch captive insurance company" means an alien captive  
21 insurance company licensed by the Insurance Commissioner to transact  
22 the business of insurance in this state through a business unit with  
23 a principal place of business in this state. A branch captive  
24 insurance company must be a pure captive insurance company with

1 respect to operations in this state, unless otherwise permitted by  
2 the Insurance Commissioner;

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

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

10 9. "Captive insurance company" means a pure captive insurance  
11 company, association captive insurance company, sponsored captive  
12 insurance company, special purpose captive insurance company, or  
13 industrial insured captive insurance company formed or licensed  
14 under the Oklahoma Captive Insurance Company Act;

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

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

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

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

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

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

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

3 14. "Industrial insured" means an insured:

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

7 b. whose aggregate annual premiums for insurance on all  
8 risks total at least Twenty-five Thousand Dollars  
9 (\$25,000.00), and

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

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

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

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

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

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

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

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

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

- 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;

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

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;

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

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

27. "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;

1       ~~26.~~ 28. "Sponsor" means an entity that meets the requirements  
2 of Section 6470.30 of this title and is approved by the Insurance  
3 Commissioner to provide all or part of the capital and surplus  
4 required by applicable law and to organize and operate a sponsored  
5 captive insurance company;

6       ~~27.~~ 29. "Sponsored captive insurance company" means a captive  
7 insurance company:

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

19       ~~28.~~ 30. "Workers' compensation insurance" means insurance  
20 provided in satisfaction of an employer's responsibility as set  
21 forth in the Administrative Workers' Compensation Act and the  
22 Oklahoma Employee Injury Benefit Act.

1 SECTION 15. AMENDATORY 36 O.S. 2011, Section 6470.3, as  
2 last amended by Section 2, Chapter 306, O.S.L. 2018 (36 O.S. Supp.  
3 2020, Section 6470.3), is amended to read as follows:

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

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

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

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

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

21 5. A captive insurance company may not provide personal motor  
22 vehicle or homeowner's insurance coverage or any component of these  
23 coverages; and  
24

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

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

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

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

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

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

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

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

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

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

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

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

21 D. A Except for a special purpose captive insurance company, a  
22 captive insurance company shall pay to the Department a  
23 nonrefundable application fee of Two Hundred Dollars (\$200.00) for  
24 reviewing its application to determine whether it is complete and in

1 addition, the Insurance Commissioner may retain legal, financial,  
2 and examination services from outside the Department, the reasonable  
3 cost of which may be charged against the applicant. A special  
4 purpose captive insurance company shall pay to the Department a  
5 nonrefundable fee of Three Hundred Dollars (\$300.00). Also, a  
6 captive insurance company shall pay a license fee for the year of  
7 registration and a renewal fee of Three Hundred Dollars (\$300.00).

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

14 F. 1. Notwithstanding any other provision of this act, the  
15 Insurance Commissioner may issue a provisional license to any  
16 applicant captive insurance company if the Insurance Commissioner  
17 deems that the public interest will be served by the issuance of  
18 such license.

19 2. As a condition precedent to the issuance of a provisional  
20 license under this section, the applicant shall have filed a  
21 complete application containing all information required by this  
22 section, paid all fees required for licensure and the Insurance  
23 Commissioner shall have made a preliminary finding that the  
24 expertise, experience and character of the person or persons who

1 will control and manage the applicant captive insurer are  
2 acceptable.

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

10 SECTION 16. AMENDATORY 36 O.S. 2011, Section 6470.6, as  
11 last amended by Section 16, Chapter 298, O.S.L. 2015 (36 O.S. Supp.  
12 2020, Section 6470.6), is amended to read as follows:

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

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

23

24

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

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

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

9           5. In the case of any captive insurance company doing business  
10 as a risk retention group, not less than One Million Dollars  
11 (\$1,000,000.00); and

12           6. In the case of a special purpose or branch captive insurance  
13 company, not less than Two Hundred Fifty Thousand Dollars  
14 (\$250,000.00) or an amount determined by the Insurance Commissioner  
15 after giving due consideration to the business plan of the company,  
16 feasibility study, and pro formas, including the nature of the risks  
17 to be insured; ~~and~~

18           7. In the case of a series captive insurance company, the  
19 minimum capital and surplus shall be in an amount specified by the  
20 Insurance Commissioner; and

21           8. The unimpaired paid-in capital may be in the form of cash,  
22 cash equivalent, or an irrevocable letter of credit issued by a bank  
23 chartered by this state or a member bank of the Federal Reserve  
24

1 System. The issuing bank shall be approved by the Insurance  
2 Commissioner.

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

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

16 D. A captive insurance company may not pay a dividend out of,  
17 or other distribution with respect to, capital or surplus, without  
18 the prior approval of the Insurance Commissioner. Approval of an  
19 ongoing plan for the payment of dividends or other distributions  
20 must be conditioned upon the retention, at the time of each payment,  
21 of capital or surplus in excess of amounts specified by, or  
22 determined in accordance with formulas approved by, the Insurance  
23 Commissioner.

24

1 SECTION 17. AMENDATORY 36 O.S. 2011, Section 6470.10, as  
2 last amended by Section 3, Chapter 306, O.S.L. 2018 (36 O.S. Supp.  
3 2020, Section 6470.10), is amended to read as follows:

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

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

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

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

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

22 3. Other aspects as the Insurance Commissioner considers  
23 advisable.

24

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

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

16 2. A captive insurance company, formed or licensed under the  
17 Oklahoma Captive Insurance Company Act, has the privileges and is  
18 subject to the provisions of Oklahoma law as well as the applicable  
19 provisions contained in the Oklahoma Captive Insurance Company Act.  
20 If a conflict occurs between a provision of the general law of  
21 Oklahoma and a provision of the Oklahoma Captive Insurance Company  
22 Act, the latter controls. No provision of the Insurance Code, other  
23 than those contained in this act or otherwise specifically  
24

1 referencing such companies, shall apply to captive insurance  
2 companies.

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

7 4. The provisions of the Oklahoma Insurance Code pertaining to  
8 mergers, consolidations, conversions, mutualizations, and change in  
9 control apply in determining the procedures to be followed by a  
10 captive insurance company in carrying out any of the transactions  
11 described in those provisions, except the Insurance Commissioner may  
12 waive or modify the requirements for public notice and hearing. All  
13 preliminary reports or results, working papers, recorded  
14 information, orders, documents and copies of documents produced by,  
15 obtained by or disclosed to the Commissioner or any other person in  
16 the course of any merger, consolidation, conversion, mutualization  
17 and change of control made under this section are confidential and  
18 are not subject to subpoena and may not be made public by the  
19 Commissioner or any employee or agent of the Commissioner without  
20 the written consent of the company, except to the extent provided in  
21 this subsection. Nothing in this subsection prevents the  
22 Commissioner from using this information in furtherance of the  
23 regulatory authority of the Commissioner under the Oklahoma Captive  
24 Insurance Company Act. The Commissioner may grant access to this

1 information to public officers having jurisdiction over the  
2 regulation of insurance in any other state or country, or to law  
3 enforcement officers of this state or any other state or agency of  
4 the federal government at any time, so long as the officers  
5 receiving the information agree in writing to use and retain it in  
6 any manner consistent with this section.

7       5. The terms and conditions set forth in Articles 18 and 19 of  
8 the Oklahoma Insurance Code pertaining to insurance supervision,  
9 conservatorship, rehabilitation, and receiverships apply in full to  
10 captive insurance companies, including for this purpose individual  
11 protected cells of sponsored captive insurance companies as provided  
12 in Section 6470.29 of this title.

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

20       SECTION 18.       AMENDATORY       36 O.S. 2011, Section 6470.11, as  
21 amended by Section 9, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2020,  
22 Section 6470.11), is amended to read as follows:

23  
24

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

4 B. Before March 1 of each year, a captive insurance company  
5 shall submit to the Insurance Commissioner a report of its financial  
6 condition, verified by oath of two of its executive officers.  
7 Except as provided in Section 6470.6 of this title, a captive  
8 insurance company shall report using generally accepted accounting  
9 principles, unless the Insurance Commissioner approves the use of  
10 statutory accounting principles or international accounting  
11 standards, with useful or necessary modifications or adaptations  
12 required or approved or accepted by the Insurance Commissioner for  
13 the type of insurance and kinds of insurers to be reported upon, and  
14 as supplemented by additional information required by the Insurance  
15 Commissioner.

16 1. The use of generally accepted accounting principles and the  
17 Insurance Department requires modifications, assets and liabilities  
18 to be reported as follows:

19 a. letters of credit provided as capital funds pursuant  
20 to Section 6470 of this title are an asset for  
21 purposes of annual financial statement filings and  
22 shall be reported at their face value, and  
23  
24

1           **b.**    surplus notes issued pursuant to Section 2125 of this  
2                                   title shall be reported as surplus items in the  
3                                   capital section rather than as a liability.

4           **2.** Any captive insurance company whose use of statutory  
5 accounting principles is approved by the Commissioner may make such  
6 modifications and adaptations thereof as are necessary:

7           **1.** ~~To~~

8                           **a.**    to record, as "admitted", the full value of all  
9                                    investments by such captive insurance company  
10                                   permitted under this chapter~~;~~ and

11           **2.** ~~Subject~~

12                           **b.**    subject to the Commissioner's approval, to make its  
13                                    reports under this section consistent with the  
14                                    purposes of this chapter.

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

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

21           2. In order to provide sufficient detail to support the premium  
22 tax return, the pure captive insurance company shall file before  
23 March 1 of each year for each calendar year-end, pages 1 through 7  
24

1 of the "Captive Annual Statement: Pure or Industrial Insured",  
2 verified by oath of two of its executive officers.

3 D. Sixty (60) days after the fiscal year-end, a branch captive  
4 insurance company shall file with the Insurance Commissioner a copy  
5 of all reports and statements required to be filed under the laws of  
6 the jurisdiction in which the alien captive insurance company is  
7 formed, verified by oath of two of its executive officers. If the  
8 Insurance Commissioner is satisfied that the annual report filed by  
9 the alien captive insurance company in its domiciliary jurisdiction  
10 provides adequate information concerning the financial condition of  
11 the alien captive insurance company, the Insurance Commissioner may  
12 waive the requirement for completion of the captive annual statement  
13 for business written in the alien jurisdiction. Such waiver must be  
14 in writing and subject to public inspection.

15 SECTION 19. AMENDATORY 36 O.S. 2011, Section 6470.19, as  
16 last amended by Section 1, Chapter 55, O.S.L. 2020 (36 O.S. Supp.  
17 2020, Section 6470.19), is amended to read as follows:

18 Section 6470.19. A. Each captive insurance company, other than  
19 a sponsored captive insurance company, and each protected cell of a  
20 sponsored captive insurance company, shall pay to the Insurance  
21 Department, by March 1 of each year, a tax at the rate of two-tenths  
22 of one percent (0.2%) on the direct premiums collected or contracted  
23 for on policies or contracts of insurance written by the captive  
24 insurance company during the year ending December 31 next preceding,

1 after deducting from the direct premiums subject to the tax the  
2 amounts paid to policyholders as return premiums which shall include  
3 dividends on unabsorbed premiums or premium deposits returned or  
4 credited to policyholders up to a maximum tax for such year of One  
5 Hundred Thousand Dollars (\$100,000.00); provided however, that no  
6 tax shall be due or payable as to consideration received for annuity  
7 contracts.

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

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

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

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

1 shall pay the prorated minimum tax for that calendar year. Each  
2 series captive insurance company shall pay an annual minimum  
3 aggregate tax of Three Thousand Five Hundred Dollars (\$3,500.00).  
4 The aggregation of the tax paid by more than one series captive  
5 insurance company formed within a limited liability company or  
6 statutory trust or the corresponding law of another state shall not  
7 be restricted by the annual maximum premium tax limitations  
8 specified in subsections A and B of this section.

9 E. Subject to subsections F, G and H of this section, if the  
10 aggregate taxes on direct and assumed premiums to be paid by a  
11 captive insurance company or a protected cell of a sponsored captive  
12 insurance company calculated under subsections A and B of this  
13 section amount to more than One Hundred Thousand Dollars  
14 (\$100,000.00) in any year, the captive insurance company, protected  
15 cell of a sponsored captive insurance company or a series captive  
16 insurance company shall pay a maximum tax of One Hundred Thousand  
17 Dollars (\$100,000.00) for that year.

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

24

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

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

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

1 J. For the fiscal year beginning July 1, 2020, and for each  
2 fiscal year thereafter, the Insurance Commissioner shall report and  
3 disburse all fees and taxes collected pursuant to this section as  
4 follows:

5 1. Of the first Five Hundred Thousand Dollars (\$500,000.00):

6 a. thirty-six percent (36%) to the Oklahoma Firefighters  
7 Pension and Retirement Fund,

8 b. fourteen percent (14%) to the Oklahoma Police Pension  
9 and Retirement System,

10 c. five percent (5%) to the Law Enforcement Retirement  
11 Fund, and

12 d. forty-five percent (45%) to the State Treasury to the  
13 credit of the General Revenue Fund of the state;

14 2. Of the next Two Hundred Fifty Thousand Dollars  
15 (\$250,000.00), one hundred percent (100%) to the State Insurance  
16 Commissioner Revolving Fund to be used by the Department for the  
17 purposes of implementing and administering the Oklahoma Captive  
18 Insurance Company Act and any accompanying regulations; and

19 3. Of all amounts in excess of Seven Hundred Fifty Thousand  
20 Dollars (\$750,000.00):

21 a. thirty-six percent (36%) to the Oklahoma Firefighters  
22 Pension and Retirement Fund,

23 b. fourteen percent (14%) to the Oklahoma Police Pension  
24 and Retirement System,

- 1 c. five percent (5%) to the Law Enforcement Retirement  
2 Fund,  
3 d. fifteen percent (15%) to the State Treasury to the  
4 credit of the General Revenue Fund of the state, and  
5 e. thirty percent (30%) to the State Insurance  
6 Commissioner Revolving Fund to be used by the  
7 Department for the purposes of implementing and  
8 administering the Oklahoma Captive Insurance Company  
9 Act and any accompanying regulations.

10 SECTION 20. This act shall become effective November 1, 2021.

11  
12 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/07/2021 - DO  
13 PASS.  
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