

1 **SENATE FLOOR VERSION**

2 February 22, 2021

3 SENATE BILL NO. 1035

By: Quinn

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5
6 An Act relating to insurance; amending 36 O.S. 2011,
7 Sections 6453, as amended by Section 10, Chapter 95,
8 O.S.L. 2018, 6454, 6455, 6456, 6457, 6458, 6459,
9 6460, 6462, 6464, 6470.2, as last amended by Section
10 12, Chapter 73, O.S.L. 2016, 6470.3, as last amended
11 by Section 2, Chapter 306, O.S.L. 2018, 6470.6, as
12 last amended by Section 16, Chapter 298, O.S.L. 2015,
13 6470.10, as last amended by Section 3, Chapter 306,
14 O.S.L. 2018, 6470.11, as amended by Section 9,
15 Chapter 41, O.S.L. 2013, and 6470.19, as last amended
16 by Section 1, Chapter 55, O.S.L. 2020 (36 O.S. Supp.
17 2020, Sections 6453, 6470.2, 6470.3, 6470.6, 6470.10,
18 6470.11 and 6470.19), which relate to definitions,
19 chartering and licensing of risk retention groups,
20 conditions for doing business in state, membership in
21 insurance insolvency guaranty fund, exemptions,
22 notice to Insurance Commissioner, notice of risks not
23 covered, enforcement of powers of Commissioner,
24 license required before commencing business activity,
enforcement of court orders; definitions, licensure
and limitations on risks covered for captive
insurance companies; unimpaired paid-in capital
requirements; formation of captive or sponsored
captive reinsure company, and reports; modifying
definitions; modifying authorized duties of licensed
risk retention groups; requiring risk retention
groups to file certain statement annually; modifying
procedures of revising plans of operation; requiring
group to provide certain information to Insurance
Commissioner; requiring Commissioner to transmit
certain information to National Association of
Insurance Commissioners (NAIC); declaring
transmission of information sufficient for certain
purpose; requiring risk retention groups to comply
with certain governance standards in certain time
period; requiring Board of Directors of group to be
composed of certain persons; requiring certain

1 persons to follow certain standards; requiring Board
2 to disclose certain information; specifying types of
3 prohibited relationships for Board members;
4 specifying term of contract between group and certain
5 persons; authorizing Board to terminate and audit
6 certain contracts; specifying terms of service
7 provider contracts; prohibiting service providers
8 from certain relationships; requiring Board to adopt
9 certain written policy; specifying required terms of
10 policy; requiring Board to have audit committee;
11 requiring Audit committee to have charter; specifying
12 terms of charter; authorizing certain person to waive
13 requirement for audit committee; requiring Board to
14 adopt governance standards; requiring Board to
15 provide certain information to members and insureds
16 of group; requiring certain member of group to notify
17 certain persons in certain circumstance; requiring
18 group to submit certain required information within
19 certain time period; requiring group to pay filing
20 fee in certain amount; requiring each risk retention
21 group to pay premium taxes and taxes on premiums;
22 requiring agents and brokers to report certain monies
23 to Commissioner in certain circumstances; removing
24 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
persons be licensed; modifying prohibitions on
certain persons procuring liability insurance; adding
circumstance in which court order is enforceable;
providing exception to certain fee; specifying fee
amount for special captive insurance company; adding
minimum capital and surplus for certain captive

1 insurance companies; specifying that certain papers
2 are confidential and not subject to subpoena or
3 distribution; providing exception; authorizing
4 Commissioner to grant access to information in
5 certain circumstances; specifying requirements for
6 using accounting principles for certain report;
7 providing exception to certain tax; specifying tax
8 minimum and maximum payment for certain insurance
9 companies; providing for codification; and providing
10 an effective date.

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

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

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

16 1. "Commissioner" means the Insurance Commissioner of this
17 state or the Commissioner, Director, or Superintendent of insurance
18 in any other state;

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

22 a. any person who performs that work, or

23 b. any person who hires an independent contractor to
24 perform that work,

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

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

3 a. for a corporation, the state in which the purchasing
4 group is incorporated, and

5 b. for an unincorporated entity, the state of its
6 principal place of business;

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

11 a. to meet obligations to policyholders with respect to
12 known claims and reasonably anticipated claims, or

13 b. to pay other obligations in the normal course of
14 business;

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

19 6. "Liability":

20 a. means legal liability for damages, including but not
21 limited to, costs of defense, legal costs and fees,
22 and other claims expenses, because of injuries to
23 other persons, damage to their property, or other
24

1 damage or loss to such other persons resulting from or
2 arising out of:

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

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

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

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

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

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

23 b. historical and expected loss experience of the
24 proposed members and national experience of similar

1 exposures to the extent that this experience is
2 reasonably available,

3 c. pro forma financial statements and projections,

4 d. appropriate opinions by a qualified independent
5 casualty actuary, as defined in paragraph 11 of this
6 section, including a determination of minimum premium
7 or participation levels required to commence
8 operations and to prevent a hazardous financial
9 condition,

10 e. identification of management procedures, underwriting
11 and claims procedures, marketing methods, managerial
12 oversight methods, investment policies, and
13 reinsurance agreements,

14 f. information sufficient to verify that its members are
15 engaged in businesses or activities similar or related
16 with respect to the liability to which such members
17 are exposed by virtue of any related, similar, or
18 common business, trade, product, services, premises,
19 or operations,

20 g. identification of each state in which the risk
21 retention group has obtained, or sought to obtain, a
22 charter and license, and a description of its status
23 in each such state, and
24

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

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

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

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

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

20 ~~b.~~

21 c. is composed of members whose businesses or activities
22 are similar or related with respect to the liability
23 to which members are exposed by virtue of any related,
24

1 similar, or common business, trade, product, services,
2 premises, or operations, and

3 ~~e.~~

4 d. is domiciled in any state;

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

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

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

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

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

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

14 ~~b.~~

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

18 ~~e.~~

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

1 ~~provided insurance by~~ owners only persons who
2 comprise the membership of the risk retention
3 group and who are provided insurance by the
4 group,

5 d. ~~has as its~~

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

12 e. ~~does~~

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

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

18 (2) reinsurance with respect to the liability of any
19 other risk retention group, or any members of
20 such other group, engaged in businesses or
21 activities so that the risk retention group or
22 individual members of the group meet the
23 requirements described in subparagraph f of this
24 paragraph because of membership in the risk

1 retention group that provides the reinsurance,
2 and

3 f.

4 h. the name of which includes the phrase, "Risk Retention
5 Group"; and

6 13. "State" means any state of the United States or the
7 District of Columbia.

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

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

20 2. Notwithstanding any other provision of law, all risk
21 retention groups chartered in this state shall file with the
22 Insurance Department and the National Association of Insurance
23 Commissioners an annual statement in a form prescribed by the
24 Association and in electronic form, if required by the Insurance

1 Commissioner and completed in accordance with its instructions and
2 the Practices and Procedures Manual of the Association.

3 B. Before it may offer insurance in any state, each risk
4 retention group licensed in this state shall submit for approval to
5 the Insurance Commissioner of this state a plan of operation or a
6 feasibility study ~~and revisions of such plan or study if the group~~
7 ~~intends to offer any additional lines of liability insurance.~~
8 ~~Immediately upon receipt of an~~ The risk retention group shall submit
9 an appropriate revision in the event of any subsequent material
10 change in any item of the plan of operation or feasibility study
11 within ten (10) days of the change. The group shall not offer any
12 additional kinds of liability insurance in this state or in any
13 other state until a revision of the plan or study is approved by the
14 Commissioner. At the time of filing its application for charter,
15 ~~the Insurance Commissioner of this state~~ risk retention group shall
16 provide to the Commissioner a summary of the following information:
17 ~~concerning the application to the National Association of Insurance~~
18 ~~Commissioners, including the name of the risk retention group, the~~
19 identity of the initial members of the group, ~~the identity of those~~
20 ~~individuals~~ or who organized the group, the identity of those
21 individuals who will provide administrative services or otherwise
22 influence or control the activities of the group, the amount and
23 nature of initial capitalization, the coverages to be afforded, and
24 the states in which the group intends to operate. Upon receipt of

1 this information, the Commissioner shall transmit the information to
2 the National Association of Insurance Commissioners. Transmitting
3 this information shall be sufficient to satisfy the requirements of
4 Section 6455 of this section.

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

8 A. For the purposes of this section:

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

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

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

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

23 B. Existing risk retention groups shall comply with the
24 following governance standards within one year of the effective date

1 of this act. Risk retention groups licensed on or after the
2 effective date of this act shall be in compliance with the standards
3 at the time of licensure.

4 C. The Board of Directors of the risk retention group shall be
5 composed of a majority of independent directors. No director shall
6 qualify as independent unless the Board affirmatively determines
7 that the director has no material relationship with the risk
8 retention group. Each risk retention group shall disclose these
9 determinations to its domestic regulator at least annually.

10 Notwithstanding any other provision of law, a person that is a
11 direct or indirect owner of or subscriber in the risk retention
12 group, or is an officer, director or employee of such an owner and
13 insured, is considered to be independent unless some other position
14 of such officer, director or employee constitutes a material
15 relationship. Material relationship of a person with the risk
16 retention group shall include, but is not limited to:

17 1. The receipt in any one twelve (12) month period of
18 compensation or payment of any other item of value by such person, a
19 member of such person's immediate family or any business with which
20 the person is affiliated from the risk retention group or a
21 consultant or service provider to the risk retention group is
22 greater than or equal to five percent (5%) of the risk retention
23 group's gross written premium for the twelve (12) month period or
24 two percent (2%) of its surplus, whichever is greater, as measured

1 at the end of any fiscal quarter falling in the twelve (12) month
2 period. The person or immediate family member of such person is not
3 independent until one year after his or her compensation from the
4 risk retention group falls below the threshold provided in this
5 paragraph.

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

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

17 D. The term of any material service provider contract with the
18 risk retention group shall not exceed five (5) years. Any such
19 contract, or its renewal, shall require the approval of the majority
20 of the risk retention group's independent directors. The risk
21 retention group's Board shall have the right to terminate any
22 service provider, audit or actuarial contract at any time for cause
23 after providing adequate notice as defined in the contract. The
24 service provider contract is deemed material if the amount to be

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

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

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

23 1. Assure that all owners and insureds of the risk retention
24 group receive evidence of ownership interest;

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

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

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

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

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

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

- 19 1. A process by which the directors are elected by the owner
20 and insureds;
21 2. Director qualification standards;
22 3. Director responsibilities;
23 4. Director access to management and, as necessary and
24 appropriate, independent advisors;

1 5. Director compensation;

2 6. Director orientation and continuing education;

3 7. The policies and procedures that are followed for management
4 succession; and

5 8. The policies and procedures that are followed for annual
6 performance evaluation of the Board.

7 H. The Board shall adopt and disclose a code of business
8 conduct and ethics for directors, officers and employees of the risk
9 retention group and shall promptly disclose to the Board any waivers
10 of the code for directors or executive officers, which shall include
11 the following topics:

12 1. Conflicts of interest;

13 2. Matters covered under the corporate opportunities doctrine
14 under the state of domicile;

15 3. Confidentiality;

16 4. Fair dealing;

17 5. Protection and proper use of risk retention group assets;

18 6. Compliance with all applicable laws, rules and regulations;

19 and

20 7. Requiring the reporting of any illegal or unethical behavior
21 which affects the operation of the risk retention group.

22 I. The captive manager, president or chief executive officer of
23 the risk retention group shall promptly notify the domestic
24 regulator in writing if either becomes aware of any material

1 noncompliance with the governance standards specified in subsections
2 G and H of this section.

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

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

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

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

20 2. A copy of its plan of operation or a feasibility study and
21 revisions of such plan or study submitted to its state of domicile;
22 provided, however, that the provision relating to the submission of
23 a plan of operation or a feasibility study shall not apply with
24 respect to any line or classification of liability insurance which:

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

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

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

11 4. A statement of registration which designates the
12 Commissioner of this state as its agent for the purpose of receiving
13 service of legal documents or process.

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

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

18 1. A copy of the group's financial statement submitted to its
19 state of domicile, which shall be certified by an independent public
20 accountant or certified public accountant and contain a statement of
21 opinion on loss and loss adjustment expense reserves made by a
22 member of the American Academy of Actuaries or a loss reserve
23 specialist qualified pursuant to criteria established by the
24 National Association of Insurance Commissioners;

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

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

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

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

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

20 3. ~~To the extent agents or brokers are not utilized or fail to~~
21 ~~pay the tax, each risk retention group shall pay the tax for risks~~
22 ~~insured within the state. Further, each risk retention group shall~~
23 ~~report all premiums paid to it for risks insured within the state.~~

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

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

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

22 E. Any risk retention group shall comply with the laws of this
23 state regarding deceptive, false or fraudulent acts or practices.
24 However, if the Commissioner of this state seeks an injunction

1 regarding such conduct, the injunction shall be obtained from a
2 court of competent jurisdiction.

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

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

17 NOTICE

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

22 H. The following acts by a risk retention group are hereby
23 prohibited:

24

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

10 ~~6. 7.~~ 7. Otherwise discriminates against a purchasing group or any
11 of its members; or

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

15 A purchasing group shall be subject to all other applicable laws
16 of this state.

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

19 Section 6458. A. A purchasing group which intends to do
20 business in this state shall, prior to doing business, furnish to
21 the ~~Commissioner of this state~~ Insurance Commissioner notice which
22 shall, on forms prescribed by the National Association of Insurance
23 Commissioners:

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

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

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

5 ~~3.~~ 4. Identify the insurance company or ~~risk retention group,~~
6 ~~if known, which is licensed in this state,~~ companies from which the
7 group intends to purchase its insurance and the domicile of the
8 company or companies;

9 ~~4.~~ 5. Identify the principal place of business of the group;

10 ~~5.~~ 6. Specify the method by which, ~~and~~ the person or persons,
11 if any, through whom insurance will be offered to its members whose
12 risks are resident or located in this state; and

13 ~~6.~~ 7. Provide such other information as may be required by the
14 Commissioner of this state to verify that the purchasing group is
15 qualified to do business in this state as a purchasing group.

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

19 C. The purchasing group shall register with and designate the
20 Commissioner of this state as its agent solely for the purpose of
21 receiving service of legal documents or process, for which a filing
22 fee shall be assessed in an amount determined by the Commissioner,
23 except that such requirements shall not apply ~~to~~ in the case of a
24

1 purchasing group which only purchases insurance that was authorized
2 under the federal Products Liability Risk Retention Act of 1981 and:

3 1. Which:

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

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

7 ~~1.~~ 2. Before October 27, 1986, purchased insurance from an
8 insurance carrier licensed in any state;

9 ~~2.~~ 3. Since October 27, 1986, purchased its insurance from an
10 insurance carrier licensed in any state; or

11 ~~3.~~

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

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

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

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

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

24 3. Determine appropriate tax treatment.

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

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

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

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

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

23

24

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

- 1 a. that is not in the corporate system of a parent and
2 affiliated companies,
3 b. that has an existing contractual relationship with a
4 parent or affiliated company, and
5 c. whose risks are managed by a pure captive insurance
6 company;

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

9 24. "Risk retention group" means a risk retention group formed
10 pursuant to the Liability Risk Retention Act of 1986 under Section
11 3901 of Title 15 of the United States Code;

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

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

18 27. "Special purpose captive insurance company" means a captive
19 insurance company that is formed or licensed under the Oklahoma
20 Captive Insurance Company Act that does not meet the definition of
21 any other type of captive insurance company defined in this section
22 and is designated as a special purpose captive insurance company by
23 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.

23
24

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

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

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 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
12 February 22, 2021 - DO PASS
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