

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3236 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Lewis Moore

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3236

By: Moore

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2011, Section 321, as amended by Section 2, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2017, Section 321), which relates to the Oklahoma Annual Financial Report Act; modifying entities required to pay certain fee; modifying type of financial statements paid by certain fee; amending 36 O.S. 2011, Section 1106, as last amended by Section 1, Chapter 415, O.S.L. 2014 (36 O.S. Supp. 2017, Section 1106), which relates to the Unauthorized Insurers and Surplus Lines Insurance Act; specifying an Oklahoma surplus lines license is required when Oklahoma is the home state of the insured; amending 36 O.S. 2011, Sections 1250.4, as amended by Section 20, Chapter 254, O.S.L. 2013 and 1250.7 (36 O.S. Supp. 2017, Section 1250.4), which relate to the Unfair Claims Settlement Practices Act; expanding persons required to respond to certain Commissioner inquiry; increasing time period for insurer to respond to certain claim; amending 36 O.S. 2011, Section 1441.1, as amended by Section 8, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Section 1441.1), which relates to the Third-party Administrator Act; updating citation; amending 36 O.S. 2011, Section 1605, which relates to investments; specifying type of assets on which certain investment limitation is based; amending 36 O.S. 2011, Section 3102, which relates to motor service clubs; requiring electronic submission of certain company's name request; amending 36 O.S. 2011, Section 3629, which relates to offer of settlement or rejection of claim; decreasing time

period for insurer to respond to claim of the insured; amending 36 O.S. 2011, Section 4424, as amended by Section 1, Chapter 264, O.S.L. 2016 (36 O.S. Supp. 2017, Section 4424), which relates to the Long-Term Care Insurance Act; modifying definition; amending 36 O.S. 2011, Section 6453, which relates to the Oklahoma Risk Retention Act; adding definition; amending 36 O.S. 2011, Section 6470.12, as last amended by Section 18, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Section 6470.12), which relates to the Oklahoma Captive Insurance Company Act; modifying requirements for annual actuarial opinion; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 321, as amended by Section 2, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2017, Section 321), is amended to read as follows:

Section 321. A. The Insurance Commissioner shall collect in advance the following fees:

1. For filing charter documents:

Original charter documents,
articles of incorporation, bylaws,
or record of organization of alien
or foreign insurers, or certified
copies thereof.....\$50.00

2. Certificate of Authority or Certificate of Approval:

(a) Issuance:

.....\$150.00

(b) Renewal:
.....\$150.00

3. For filing appointment of Insurance

Commissioner as agent for service
of process.....\$10.00

4. Miscellaneous:

(a) Copies of records, per page.....\$0.40

(b) Amended charter documents,
articles of incorporation or
bylaws of domestic, alien or
foreign insurers or health
maintenance organizations.....\$50.00

(c) Certificate of Commissioner,
under seal.....\$5.00

(d) For filing Merger and
Acquisition Forms (Domestic
Insurers).....\$1,000.00

(e) For filing Variable Product
Forms.....\$200.00

(f) For filing a Life, Accident
and Health Policy and Health
Maintenance Organization
contract.....\$50.00

- (g) For filing an advertisement or rider application to a Life, Accident and Health Policy and Health Maintenance Organization contract.....\$25.00
- (h) Pending Company Review.....\$1,000.00
- (i) For filing a Viatical Settlement Contract or Life Settlement.....\$50.00
- (j) For filing an advertisement for Viatical Settlement or Life Settlement.....\$25.00
- (k) For filing application for Viatical Settlement or Life Settlement Contract.....\$25.00
- (l) Miscellaneous form filing.....\$25.00

B. There shall be assessed an annual fee of Five Hundred Dollars (\$500.00) payable by each insurer, health maintenance organization, fraternal benefit society, hospital service and medical indemnity corporation, or charitable and benevolent corporation, licensed to do business in this state or United States surplus lines insurance companies ~~licensed~~ approved to do business in this state, to pay for the filing, processing, and reviewing of

1 ~~annual and quarterly~~ financial statements by personnel of the Office
2 of the State Insurance Commissioner.

3 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1106, as
4 last amended by Section 1, Chapter 415, O.S.L. 2014 (36 O.S. Supp.
5 2017, Section 1106), is amended to read as follows:

6 Section 1106. If insurance required to protect the interest of
7 the insured for the amount of insurance, coverage terms and solvency
8 requirements of the insured cannot be procured from admitted
9 insurers after inquiry in the market available to the insurance
10 producer, then insurance may be procured from surplus lines insurers
11 subject to the following conditions:

12 1. The surplus lines insurer shall meet the requirements of the
13 Unauthorized Insurers and Surplus Lines Insurance Act and the
14 following conditions:

15 a. the insurer has capital and surplus or its equivalent
16 under the laws of its domiciliary jurisdiction which
17 equals the greater of:

18 (1) the minimum capital and surplus requirements
19 under the laws of this state for nonadmitted
20 insurers, or

21 (2) Fifteen Million Dollars (\$15,000,000.00),

22 b. the requirements of subparagraph a of this paragraph
23 may be satisfied by an insurer's possessing less than
24 the minimum capital and surplus upon an affirmative

1 finding of acceptability by the Insurance
2 Commissioner. The finding shall be based upon such
3 factors as quality of management, capital and surplus
4 of any parent company, company underwriting profit and
5 investment income trends, market availability and
6 company record and reputation within the industry. In
7 no event shall the Insurance Commissioner make an
8 affirmative finding of acceptability when the
9 nonadmitted insurer's capital and surplus is less than
10 Four Million Five Hundred Thousand Dollars
11 (\$4,500,000.00), and

12 c. the insurer, if an alien insurer, is listed on the
13 National Association of Insurance Commissioners
14 Nonadmitted Insurers Quarterly Listing; and

15 2. The insurance shall be procured through a licensed surplus
16 lines licensee or broker licensed in the insurer's home state. An
17 Oklahoma surplus lines license is required only where Oklahoma is
18 the home state of the ~~insurer~~ insured.

19 For the purposes of carrying out the provisions of the
20 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
21 Commissioner is authorized to utilize the national insurance
22 producer database of the National Association of Insurance
23 Commissioners, or any other equivalent uniform national database,

1 for the licensure of an individual or entity as a surplus lines
2 licensee or broker and for renewal of such license.

3 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1250.4, as
4 amended by Section 20, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2017,
5 Section 1250.4), is amended to read as follows:

6 Section 1250.4 A. An insurer's claim files shall be subject to
7 examination by the Insurance Commissioner or by duly appointed
8 designees. Such files shall contain all notes and work papers
9 pertaining to a claim in such detail that pertinent events and the
10 dates of such events can be reconstructed. In addition, the
11 Insurance Commissioner, authorized employees and examiners shall
12 have access to any of an insurer's files that may relate to a
13 particular complaint under investigation or to an inquiry or
14 examination by the Insurance Department.

15 B. Every ~~agent, adjuster, administrator, insurance company~~
16 ~~representative, or insurer~~ person subject to the jurisdiction of the
17 Commissioner upon receipt of any inquiry from the Commissioner
18 shall, within thirty (30) days from the date of the inquiry, furnish
19 the Commissioner with an adequate response to the inquiry.

20 C. Every insurer, upon receipt of any pertinent written
21 communication including but not limited to e-mail or other forms of
22 written electronic communication, or documentation by the insurer of
23 a verbal communication from a claimant which reasonably suggests
24 that a response is expected, shall, within thirty (30) days after

1 receipt thereof, furnish the claimant with an adequate response to
2 the communication.

3 D. Any violation by an insurer of this section shall subject
4 the insurer to discipline including a civil penalty of not less than
5 One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars
6 (\$5,000.00).

7 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1250.7, is
8 amended to read as follows:

9 Section 1250.7 A. Within ~~forty-five (45)~~ sixty (60) days after
10 receipt by a property and casualty insurer of properly executed
11 proofs of loss, the first-party claimant shall be advised of the
12 acceptance or denial of the claim by the insurer, or if further
13 investigation is necessary. No property and casualty insurer shall
14 deny a claim because of a specific policy provision, condition, or
15 exclusion unless reference to such provision, condition, or
16 exclusion is included in the denial. A denial shall be given to any
17 claimant in writing, and the claim file of the property and casualty
18 insurer shall contain a copy of the denial. If there is a
19 reasonable basis supported by specific information available for
20 review by the Commissioner that the first-party claimant has
21 fraudulently caused or contributed to the loss, a property and
22 casualty insurer shall be relieved from the requirements of this
23 subsection. In the event of a weather-related catastrophe or a
24 major natural disaster, as declared by the Governor, the Insurance

1 Commissioner may extend the deadline imposed under this subsection
2 an additional twenty (20) days.

3 B. If a claim is denied for reasons other than those described
4 in subsection A of this section, and is made by any other means than
5 writing, an appropriate notation shall be made in the claim file of
6 the property and casualty insurer until such time as a written
7 confirmation can be made.

8 C. Every property and casualty insurer shall complete
9 investigation of a claim within sixty (60) days after notification
10 of proof of loss unless such investigation cannot reasonably be
11 completed within such time. If such investigation cannot be
12 completed, or if a property and casualty insurer needs more time to
13 determine whether a claim should be accepted or denied, it shall so
14 notify the claimant within sixty (60) days after receipt of the
15 proofs of loss, giving reasons why more time is needed. If the
16 investigation remains incomplete, a property and casualty insurer
17 shall, within sixty (60) days from the date of the initial
18 notification, send to such claimant a letter setting forth the
19 reasons additional time is needed for investigation. Except for an
20 investigation of possible fraud or arson which is supported by
21 specific information giving a reasonable basis for the
22 investigation, the time for investigation shall not exceed one
23 hundred twenty (120) days after receipt of proof of loss. Provided,
24 in the event of a weather-related catastrophe or a major natural

1 disaster, as declared by the Governor, the Insurance Commissioner
2 may extend this deadline for investigation an additional twenty (20)
3 days.

4 D. Insurers shall not fail to settle first-party claims on the
5 basis that responsibility for payment should be assumed by others
6 except as may otherwise be provided by policy provisions.

7 E. Insurers shall not continue or delay negotiations for
8 settlement of a claim directly with a claimant who is neither an
9 attorney nor represented by an attorney, for a length of time which
10 causes the claimant's rights to be affected by a statute of
11 limitations, or a policy or contract time limit, without giving the
12 claimant written notice that the time limit is expiring and may
13 affect the claimant's rights. Such notice shall be given to first-
14 party claimants thirty (30) days, and to third-party claimants sixty
15 (60) days, before the date on which such time limit may expire.

16 F. No insurer shall make statements which indicate that the
17 rights of a third-party claimant may be impaired if a form or
18 release is not completed within a given period of time unless the
19 statement is given for the purpose of notifying a third-party
20 claimant of the provision of a statute of limitations.

21 G. If a lawsuit on the claim is initiated, the time limits
22 provided for in this section shall not apply.

1 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1441.1, as
2 amended by Section 8, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017,
3 Section 1441.1), is amended to read as follows:

4 Section 1441.1 The provisions of Section 1441 et seq. of this
5 title shall not apply to administrators of group self-insurance
6 associations created pursuant to Section ~~399~~ 103 of Title ~~85~~ 85A of
7 the Oklahoma Statutes.

8 SECTION 6. AMENDATORY 36 O.S. 2011, Section 1605, is
9 amended to read as follows:

10 Section 1605. An insurer shall not, except with the consent of
11 the Insurance Commissioner, have at any one time any combination of
12 checking account ~~moneys~~ monies, investments in or loans upon the
13 security of the obligations, property, or securities of any one
14 person, institution, corporation, or municipal corporation,
15 aggregating an amount exceeding ten percent (10%) of the insurer's
16 admitted assets. This restriction shall not apply to investments in
17 or loans upon the security of general obligations of the United
18 States or any state of the United States or include policy loans
19 made under Section 1619 of this title, or investments made under
20 Section 1616 of this title.

21 SECTION 7. AMENDATORY 36 O.S. 2011, Section 3102, is
22 amended to read as follows:

23 Section 3102. A. No company shall sell, or offer for sale, any
24 motor club service without first having deposited with the

1 Commissioner the sum of Fifty Thousand Dollars (\$50,000.00), in cash
2 or securities approved by the Commissioner, or, in lieu thereof, a
3 corporate surety bond, approved by the Commissioner, in the form
4 described by the Commissioner, payable to the State of Oklahoma, in
5 the sum of One Hundred Thousand Dollars (\$100,000.00), and
6 conditioned upon the faithful performance in the sale or rendering
7 of motor club service and payment of any fines or penalties levied
8 against it for failure to comply with the provisions of this act.
9 Provided, however, that the aggregate liability of the surety for
10 all breaches of the conditions of the bond and for the payment of
11 all fines and penalties shall, in no event, exceed the amount of
12 said bond.

13 B. No certificate of authority shall be issued by the
14 Commissioner until the company has filed with him the following:

15 1. A formal application for the certificate in such form and
16 detail as the Commissioner requires, executed under oath by its
17 president or another principal officer of the company;

18 2. A certified copy of its charter or articles of incorporation
19 and its bylaws, if any;

20 3. A certificate from the Secretary of State, of the State of
21 Oklahoma, in the event that it is a domestic corporation, signifying
22 that the company is in compliance with the corporation laws of the
23 State of Oklahoma;

1 4. A copy of its latest financial statement, or report of
2 independent audit, as the Commissioner may require; or, in the event
3 that neither is available, its most recent audited and certified
4 operating statement and balance sheet. Any such certified operating
5 statement, audit or audited and certified operating statement and
6 balance sheet shall be verified by the person compiling or making
7 the same and by an executive officer of the applicant;

8 5. A certificate from its domiciliary state regulatory
9 authority, in the event that it is a foreign corporation, to be
10 executed not more than thirty (30) days before the filing of its
11 application, signifying that it is duly authorized to do motor club
12 business in that state;

13 6. An explanation of its plan of doing business and copies of
14 the following:

- 15 a. its application for membership,
- 16 b. the proposed membership certificate or identification
17 card and any proposed addendum thereto,
- 18 c. any individual insurance policy and any group master
19 policy and individual certificates thereunder to be
20 offered, and
- 21 d. any service contract to be issued; and

22 7. Such other information as the Commissioner may find
23 necessary in order to determine the applicant's qualifications.
24

1 C. No certificate of authority shall be issued by the
2 Commissioner until the company has:

3 1. Paid an initial filing fee of Two Hundred Fifty Dollars
4 (\$250.00) ~~to the General Fund of the State of Oklahoma;~~

5 2. Paid an annual license fee of One Hundred Dollars (\$100.00)
6 ~~to the General Fund of the State of Oklahoma;~~

7 3. Had its name approved by the Commissioner under the
8 provisions of ~~Title 36 of the Oklahoma Statutes,~~ Sections 620 and
9 2104 of this title, the provisions of which are hereby made
10 applicable to motor clubs, after electronic submission of their name
11 requests on a form prescribed by the Commissioner;

12 4. Proved by affidavits of its officers, directors, managers
13 and individual owners of more than ten percent (10%), on a form
14 prescribed by the Commissioner, that it is not disqualified under
15 any provisions contained in this act or contained in the Insurance
16 Code; and

17 5. Proved to the Commissioner's satisfaction that it is a
18 separate legal entity capable of being examined by the Commissioner
19 as provided in this act.

20 D. Certificates of authority issued hereunder shall expire
21 annually on July 1, unless sooner revoked or suspended, as
22 hereinafter provided.

23 SECTION 8. AMENDATORY 36 O.S. 2011, Section 3629, is
24 amended to read as follows:

1 Section 3629. A. An insurer shall furnish, upon written
2 request of any insured claiming to have a loss under an insurance
3 contract issued by such insurer, forms of proof of loss for
4 completion by such person, but such insurer shall not, by reason of
5 the requirement so to furnish forms, have any responsibility for or
6 with reference to the completion of such proof or the manner of any
7 such completion or attempted completion.

8 B. It shall be the duty of the insurer, receiving a proof of
9 loss, to submit a written offer of settlement or rejection of the
10 claim to the insured within ~~ninety (90)~~ sixty (60) days of receipt
11 of that proof of loss. Upon a judgment rendered to either party,
12 costs and attorney fees shall be allowable to the prevailing party.
13 For purposes of this section, the prevailing party is the insurer in
14 those cases where judgment does not exceed written offer of
15 settlement. In all other judgments the insured shall be the
16 prevailing party. If the insured is the prevailing party, the court
17 in rendering judgment shall add interest on the verdict at the rate
18 of fifteen percent (15%) per year from the date the loss was payable
19 pursuant to the provisions of the contract to the date of the
20 verdict. This provision shall not apply to uninsured motorist
21 coverage.

22 SECTION 9. AMENDATORY 36 O.S. 2011, Section 4424, as
23 amended by Section 1, Chapter 264, O.S.L. 2016 (36 O.S. Supp. 2017,
24 Section 4424), is amended to read as follows:

1 Section 4424. Unless the context requires otherwise, the
2 definitions in this section apply throughout the Long-Term Care
3 Insurance Act.

4 1. a. "Long-term care insurance" means any insurance policy,
5 certificate or rider, including qualified long-term
6 care insurance contracts and long-term care
7 partnership program contracts, which are advertised,
8 marketed, offered or designed primarily to provide
9 coverage for not less than twelve (12) consecutive
10 months for each covered person on an expense incurred,
11 indemnity, prepaid, or other basis, for one or more
12 necessary or medically necessary diagnostic,
13 preventive, therapeutic, rehabilitative, maintenance,
14 or personal care services, provided in a setting other
15 than an acute care unit of a hospital.

16 b. This term includes group and individual health
17 policies or riders or group and individual life
18 policies or annuities or riders which provide,
19 directly or as a supplement, coverage for long-term
20 care, whether issued by insurers, fraternal benefit
21 societies, nonprofit health, hospital, and medical
22 service corporations, prepaid health plans, health
23 maintenance organizations, life care communities, or
24 any similar organization.

- 1 c. This term also includes a policy or rider which
2 provides for payment of long-term care benefits based
3 upon cognitive impairment or the loss of functional
4 capacity.
- 5 d. Long-term care insurance shall not include any
6 insurance policy which is offered primarily to provide
7 basic Medicare supplement coverage, basic hospital
8 expense coverage, basic medical-surgical expense
9 coverage, hospital confinement indemnity coverage,
10 major medical expense coverage, disability income
11 protection coverage or related asset-protection
12 coverage, catastrophic coverage, comprehensive
13 coverage, accident only coverage, specified disease or
14 specified accident coverage, or limited benefit health
15 coverage.
- 16 e. With regard to life insurance, this term does not
17 include life insurance policies which accelerate the
18 death benefit specifically for one or more of the
19 qualifying events of terminal illness, medical
20 conditions requiring extraordinary medical
21 intervention, or permanent institutional confinement,
22 and which provide the option of a lump-sum payment for
23 those benefits and in which neither the benefits nor
24

1 the eligibility for the benefits is conditioned upon
2 the receipt of long-term care.

3 f. Notwithstanding any other provision contained herein,
4 any product advertised, marketed or offered as long-
5 term care insurance shall be subject to the provisions
6 of this act-; i

7 2. "Applicant" means:

8 a. in the case of an individual long-term care insurance
9 policy, the person who seeks to contract for such
10 benefits, and

11 b. in the case of a group long-term care insurance
12 policy, the proposed certificate holder-; i

13 3. "Certificate" means any certificate issued under a group
14 long-term care insurance policy, which certificate has been
15 delivered, or issued for delivery, in this state-; i

16 4. "Group long-term care insurance" means a long-term care
17 insurance policy which is delivered, or issued for delivery, in this
18 state and issued to:

19 a. one or more employers or labor organizations, or to a
20 trust or to the trustees of a fund established by one
21 or more employers or labor organizations, or a
22 combination thereof, for employees or former
23 employees, or a combination thereof or for members or
24

1 former members, or a combination thereof, of the labor
2 organizations, or

3 b. any professional, trade or occupational association
4 for its members or former or retired members, or
5 combination thereof, if such association:

6 (1) is composed of individuals, all of whom are or
7 were actively engaged in the same profession,
8 trade or occupation, and

9 (2) has been maintained in good faith for purposes
10 other than insurance, or

11 c. an association, a trust, or the trustee or trustees of
12 a fund established, created, or maintained for the
13 benefit of members of one or more associations. Prior
14 to advertising, marketing or offering such policy
15 within this state, the association or associations, or
16 the insurer of the association or associations, shall
17 file evidence with the Insurance Commissioner that the
18 association or associations shall have at the outset
19 of transacting long-term care insurance in this state
20 a minimum of one hundred (100) persons in the
21 association or associations and shall have been
22 organized and maintained in good faith for purposes
23 other than that of obtaining insurance; shall have
24 been in active existence for at least one (1) year;

1 and shall have a constitution and bylaws which provide
2 that (i) the association or associations hold regular
3 meetings not less than annually to further purposes of
4 the members, (ii) except for credit unions, the
5 association or associations collect dues or solicit
6 contributions from members, and (iii) the members have
7 voting privileges and representation on the governing
8 board and committees. Thirty (30) days after such
9 filing the association or associations shall be deemed
10 to satisfy such organizational requirements, unless
11 the Commissioner makes a finding that the association
12 or associations do not satisfy those organizational
13 requirements, or

14 d. a group other than as described in subparagraphs a, b
15 and c of this paragraph, subject to a finding by the
16 Commissioner that:

- 17 (1) the issuance of the group policy is not contrary
18 to the best interest of the public,
19 (2) the issuance of the group policy would result in
20 economies of acquisition or administration, and
21 (3) the benefits are reasonable in relation to the
22 premiums charged;i

23 5. ~~"Not-for-Profit Life~~ Not-for-profit life care community"

24 within the meaning of Section 1-853.1 of Title 63 of the Oklahoma

1 Statutes means any not-for-profit organization that enters into an
2 arrangement pursuant to which a person contracts for a place of
3 residence and personal care services, including but not limited to
4 services which progress from independent living to semi-dependent
5 nursing care to acute nursing care, in consideration of an endowed
6 prepayment, license or entry fee which has been actuarially
7 established to meet the cost of the promised services and
8 accommodations. For communities commencing operations after January
9 1, 2016, the amount of the endowed prepayment must be independently,
10 actuarially determined, in compliance with the Actuarial ~~Board~~
11 Standards of Practice promulgated by the Actuarial Standards Board
12 of the American Academy of Actuaries, prior to opening the community
13 and annually thereafter to ensure that sufficient payments are
14 collected to meet the future services of the residents. The
15 actuarial study shall take into consideration projected or actual
16 project costs, resident fees and charges, resident contract
17 provisions and any other factors affecting the operation of the
18 facility. It shall contain mortality and morbidity data and an
19 actuary's signed opinion that the proposed is feasible and that the
20 study has been prepared in accordance with standards adopted by the
21 American Academy of Actuaries. A not-for-profit life care community
22 shall not include the following:

- 23 a. traditional landlord and tenant agreements utilizing
- 24 periodic rental and security deposit payments,

- b. residential care homes licensed pursuant to the Oklahoma Residential Care Act,
- c. assisted living centers and continuum of care facilities licensed pursuant to the Oklahoma Continuum of Care and Assisted Living Act,
- d. facilities licensed pursuant to the Oklahoma Nursing Home Care Act, or
- e. any facility where the endowed prepayment, license or entry fee is less than Fifty Thousand Dollars (\$50,000.00) ~~;~~ ;

6. "Policy" means any policy, contract, certificate, subscriber agreement, rider or endorsement delivered, or issued for delivery, in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, life care community, or any similar organization ~~;~~ ;

7. "Qualified long-term care insurance contract" means any:

- a. individual or group insurance contract if the contract meets the requirements of Section 7702(B) of the Internal Revenue Code, as amended, and if:
 - (1) the only insurance protection provided under the contract is coverage of qualified long-term care services,

- 1 (2) the contract does not pay or reimburse expenses
2 incurred for services or items to the extent that
3 such expenses are reimbursable under Title XVIII
4 of the Social Security Act as amended, or would
5 be so reimbursable but for the application of a
6 deductible or coinsurance amount. The
7 requirements of this subparagraph do not apply to
8 contracts where Medicare is a secondary payor, or
9 where the contract makes per diem or other
10 periodic payments without regard to expenses,
- 11 (3) the contract is guaranteed renewable,
- 12 (4) the contract does not provide for a cash
13 surrender value or other money that can be paid,
14 assigned, pledged as collateral for a loan, or
15 borrowed. All refunds of premiums and all
16 policyholder dividends or similar amounts, under
17 such contract are to be applied as a reduction in
18 future premiums or to increase future benefits,
19 except that a refund of the aggregate premium
20 paid under the contract may be allowed in the
21 event of death of the insured or a complete
22 surrender or cancellation of the contract, and
23
24

(5) the contract contains the consumer protection provisions set forth in Section 7702(B)(g) of the Internal Revenue Code, or

b. life insurance contract which provides long-term care coverage by rider or as part of the contract if the contract complies with the applicable provisions of Section 7702(B) of the Internal Revenue Code, as amended-; and

8. "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

SECTION 10. AMENDATORY 36 O.S. 2011, Section 6453, is amended to read as follows:

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

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

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

a. any person who performs that work, or

1 b. any person who hires an independent contractor to
2 perform that work,
3 and shall include liability for activities which are completed or
4 abandoned before the date of the occurrence giving rise to the
5 liability;

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

8 a. for a corporation, the state in which the purchasing
9 group is incorporated, and

10 b. for an unincorporated entity, the state of its
11 principal place of business;

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

16 a. to meet obligations to policyholders with respect to
17 known claims and reasonably anticipated claims, or

18 b. to pay other obligations in the normal course of
19 business;

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

24 6. "Liability":

1 a. means legal liability for damages, including but not
2 limited to, costs of defense, legal costs and fees,
3 and other claims expenses, because of injuries to
4 other persons, damage to their property, or other
5 damage or loss to such other persons resulting from or
6 arising out of:

7 (1) any business, trade, product, services, premises,
8 or operations, or

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

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

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

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

- a. the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer,
- b. historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available,
- c. pro forma financial statements and projections,
- d. appropriate opinions by a qualified, ~~independent~~ ~~casualty~~ ~~actuary~~ actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition,
- e. identification of management procedures, underwriting procedures, managerial oversight methods, investment policies, and reinsurance agreements,
- f. information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,
- g. identification of each state in which the risk retention group has obtained, or sought to obtain, a

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 for its members to cover
19 their similar or related liability exposure,

20 b. is composed of members whose businesses or activities
21 are similar or related with respect to the liability
22 to which members are exposed by virtue of any related,
23 similar, or common business, trade, product, services,
24 premises, or operations, and

1 c. is domiciled in any state;

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

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

- 10 a. (1) is chartered and licensed as a liability
11 insurance company and authorized to engage in the
12 business of insurance under the laws of any
13 state, or
14 (2) before January 1, 1985, was chartered or licensed
15 and authorized to engage in the business of
16 insurance under the laws of Bermuda or the Cayman
17 Islands and, before such date, had certified to
18 the Insurance Commissioner of at least one state
19 that it satisfied the capitalization requirements
20 of such state, except that any such group shall
21 be considered to be a risk retention group only
22 if it has been engaged in business continuously
23 since such date and only for the purpose of
24 continuing to provide insurance to cover product

1 liability or completed operations liability, as
2 such terms were defined in the federal Product
3 Liability Risk Retention Act of 1981, before the
4 date of the enactment of the federal Liability
5 Risk Retention Act of 1986,

6 b. does not exclude any person from membership in the
7 group solely to provide for members of such group a
8 competitive advantage over such person,

9 c. (1) has as its members only persons who have an
10 ownership interest in the group and who are
11 provided insurance by the risk retention group,
12 or

13 (2) has as its sole member and sole owner an
14 organization which is owned by persons who are
15 provided insurance by the risk retention group,

16 d. has as its members persons or organizations which are
17 engaged in businesses or activities similar or related
18 with respect to the liability of which such members
19 are exposed by virtue of any related, similar, or
20 common business trade, product, services, premises, or
21 operations,

22 e. does not provide insurance coverage other than:
23
24

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

(2) reinsurance with respect to the liability of any other risk retention group, or any members of such other group, and

f. the name of which includes the phrase~~7~~ "Risk Retention Group"; and

~~12.~~ 13. "State" means any state of the United States or the District of Columbia.

SECTION 11. AMENDATORY 36 O.S. 2011, Section 6470.12, as last amended by Section 18, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Section 6470.12), is amended to read as follows:

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

B. A sponsored captive insurance company and a special purpose captive insurance company, and any captive insurer, at the Commissioner's discretion, shall file annually an actuarial opinion on the company's loss and loss adjustment expense reserves ~~provided~~

1 ~~by an independent actuary~~ or life and health policy and claim
2 reserves, as applicable. The ~~actuary may not be an employee~~
3 individual who prepares the Statement of Actuarial Opinion shall be
4 independent of the captive company ~~or~~ and its affiliates.

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

8 SECTION 12. This act shall become effective November 1, 2018.

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