

1 **SENATE FLOOR VERSION**

2 February 12, 2018

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1485

By: Brown

6
7
8 An Act relating to insurance; amending 36 O.S. 2011,
9 Sections 321, as amended by Section 2, Chapter 275,
10 O.S.L. 2014, 1106, as last amended by Section 1,
11 Chapter 415, O.S.L. 2014, 1441.1, as amended by
12 Section 8, Chapter 298, O.S.L. 2015, 1250.4, as
13 amended by Section 20, Chapter 254, O.S.L. 2013,
14 1605, 3102, 1250.7, 3629, 4424, as amended by Section
15 1, Chapter 264, O.S.L. 2016, 6453 and 6470.12, as
16 last amended by Section 18, Chapter 298, O.S.L. 2015
17 (36 O.S. Supp. 2017, Sections 321, 1106, 1441.1,
18 1250.4, 4424 and 6470.12), which relate to fees and
19 licenses, surplus lines, the Third Party
20 Administrator Act, claim files, investments in any
21 one person, issuance of certificates, property and
22 casualty insurers, forms of proof of loss, Long-Term
23 Care Insurance Act, definitions and actuarial
24 opinion; modifying certain fee; modifying
requirements for obtaining surplus lines license;
clarifying list of persons required to submit
response to certain inquiries; modifying certain
exception; modifying actions required for issuance of
certain certificate; modifying timeline for certain
responses by insurer; modifying definitions;
modifying requirements for filing certain actuarial
opinions; updating language; updating statutory
references; and providing an effective date.

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

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

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

6 1. For filing charter documents:
7 Original charter documents,
8 articles of incorporation, bylaws,
9 or record of organization of alien
10 or foreign insurers, or certified
11 copies thereof.....\$50.00

12 2. Certificate of Authority or Certificate of Approval:
13 (a) Issuance:
14 \$150.00

15 (b) Renewal:
16 \$150.00

17 3. For filing appointment of Insurance
18 Commissioner as agent for service
19 of process.....\$10.00

20 4. Miscellaneous:
21 (a) Copies of records, per page.....\$0.40
22 (b) Amended charter documents,
23 articles of incorporation or
24 bylaws of domestic, alien or

1	foreign insurers or health	
2	maintenance organizations.....	\$50.00
3	(c) Certificate of Commissioner,	
4	under seal.....	\$5.00
5	(d) For filing Merger and	
6	Acquisition Forms (Domestic	
7	Insurers).....	\$1,000.00
8	(e) For filing Variable Product	
9	Forms.....	\$200.00
10	(f) For filing a Life, Accident	
11	and Health Policy and Health	
12	Maintenance Organization	
13	contract.....	\$50.00
14	(g) For filing an advertisement or	
15	rider application to a Life,	
16	Accident and Health Policy and	
17	Health Maintenance	
18	Organization contract.....	\$25.00
19	(h) Pending Company Review.....	\$1,000.00
20	(i) For filing a Viatical	
21	Settlement Contract or Life	
22	Settlement.....	\$50.00
23		
24		

- (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 ~~annual and quarterly~~ financial statements by personnel of the Office of the State Insurance Commissioner.

SECTION 2. AMENDATORY 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), is amended to read as follows:

Section 1106. If insurance required to protect the interest of the insured for the amount of insurance, coverage terms and solvency requirements of the insured cannot be procured from admitted insurers after inquiry in the market available to the insurance

1 producer, then insurance may be procured from surplus lines insurers
2 subject to the following conditions:

3 1. The surplus lines insurer shall meet the requirements of the
4 Unauthorized Insurers and Surplus Lines Insurance Act and the
5 following conditions:

6 a. the insurer has capital and surplus or its equivalent
7 under the laws of its domiciliary jurisdiction which
8 equals the greater of:

9 (1) the minimum capital and surplus requirements
10 under the laws of this state for nonadmitted
11 insurers, or

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

13 b. the requirements of subparagraph a of this paragraph
14 may be satisfied by an insurer's possessing less than
15 the minimum capital and surplus upon an affirmative
16 finding of acceptability by the Insurance
17 Commissioner. The finding shall be based upon such
18 factors as quality of management, capital and surplus
19 of any parent company, company underwriting profit and
20 investment income trends, market availability and
21 company record and reputation within the industry. In
22 no event shall the Insurance Commissioner make an
23 affirmative finding of acceptability when the
24 nonadmitted insurer's capital and surplus is less than

1 Four Million Five Hundred Thousand Dollars

2 (\$4,500,000.00), and

3 c. the insurer, if an alien insurer, is listed on the
4 National Association of Insurance Commissioners
5 Nonadmitted Insurers Quarterly Listing; and

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

10 For the purposes of carrying out the provisions of the
11 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
12 Commissioner is authorized to utilize the national insurance
13 producer database of the National Association of Insurance
14 Commissioners, or any other equivalent uniform national database,
15 for the licensure of an individual or entity as a surplus lines
16 licensee or broker and for renewal of such license.

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

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

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

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

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

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

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

5 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1605, is
6 amended to read as follows:

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

17 SECTION 6. AMENDATORY 36 O.S. 2011, Section 3102, is
18 amended to read as follows:

19 Section 3102. A. No company shall sell, or offer for sale, any
20 motor club service without first having deposited with the
21 Commissioner the sum of Fifty Thousand Dollars (\$50,000.00), in cash
22 or securities approved by the Commissioner, or, in lieu thereof, a
23 corporate surety bond, approved by the Commissioner, in the form
24 described by the Commissioner, payable to the State of Oklahoma, in

1 the sum of One Hundred Thousand Dollars (\$100,000.00), and
2 conditioned upon the faithful performance in the sale or rendering
3 of motor club service and payment of any fines or penalties levied
4 against it for failure to comply with the provisions of ~~this act~~
5 Section 3101 et seq. of this title. Provided, however, that the
6 aggregate liability of the surety for all breaches of the conditions
7 of the bond and for the payment of all fines and penalties shall, in
8 no event, exceed the amount of ~~said~~ the bond.

9 B. No Certificate of Authority shall be issued by the
10 Commissioner until the company has filed with him the following:

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

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

16 3. A certificate from the Secretary of State, State of
17 Oklahoma, in the event that it is a domestic corporation, signifying
18 that the company is in compliance with the corporation laws of the
19 State of Oklahoma;

20 4. A copy of its latest financial statement, or report of
21 independent audit, as the Commissioner may require; or, in the event
22 that neither is available, its most recent audited and certified
23 operating statement and balance sheet. Any such certified operating
24 statement, audit or audited and certified operating statement and

1 balance sheet shall be verified by the person compiling or making
2 the same and by an executive officer of the applicant;

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

8 6. An explanation of its plan of doing business and copies of
9 the following:

- 10 a. its application for membership,
- 11 b. the proposed membership certificate or identification
12 card and any proposed addendum thereto,
- 13 c. any individual insurance policy and any group master
14 policy and individual certificates thereunder to be
15 offered, and
- 16 d. any service contract to be issued; and

17 7. Such other information as the Commissioner may find
18 necessary in order to determine the applicant's qualifications.

19 C. No Certificate of Authority shall be issued by the
20 Commissioner until the company has:

21 1. Paid an initial filing fee of Two Hundred Fifty Dollars
22 (\$250.00) to the ~~General Fund of the State of Oklahoma~~ State
23 Insurance Commissioner Revolving Fund, pursuant to Section 307.3 of
24 this title;

1 2. Paid an annual license fee of One Hundred Dollars (\$100.00)
2 to the ~~General Fund of the State of Oklahoma~~ State Insurance
3 Commissioner Revolving Fund, pursuant to Section 307.3 of this
4 title;

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

10 4. Proved by affidavits of its officers, directors, managers
11 and individual owners of more than ten percent (10%), on a form
12 prescribed by the Commissioner, that it is not disqualified under
13 any provisions contained in ~~this act~~ Section 3101 et seq. of this
14 title or contained in the Insurance Code; and

15 5. Proved to the Commissioner's satisfaction that it is a
16 separate legal entity capable of being examined by the Commissioner
17 as provided in ~~this act~~ Section 3101 et seq. of this title.

18 D. Certificates of Authority issued hereunder shall expire
19 annually on July 1, unless sooner revoked or suspended, as
20 hereinafter provided.

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

23 Section 1250.7. A. Within ~~forty five (45)~~ sixty (60) days
24 after receipt by a property and casualty insurer of properly

1 executed proofs of loss, the first party claimant shall be advised
2 of the acceptance or denial of the claim by the insurer, or if
3 further investigation is necessary. No property and casualty
4 insurer shall deny a claim because of a specific policy provision,
5 condition, or exclusion unless reference to such provision,
6 condition, or exclusion is included in the denial. A denial shall
7 be given to any claimant in writing, and the claim file of the
8 property and casualty insurer shall contain a copy of the denial.
9 If there is a reasonable basis supported by specific information
10 available for review by the Commissioner that the first party
11 claimant has fraudulently caused or contributed to the loss, a
12 property and casualty insurer shall be relieved from the
13 requirements of this subsection. In the event of a weather-related
14 catastrophe or a major natural disaster, as declared by the
15 Governor, the Insurance Commissioner may extend the deadline imposed
16 under this subsection an additional twenty (20) days.

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

22 C. Every property and casualty insurer shall complete
23 investigation of a claim within sixty (60) days after notification
24 of proof of loss unless such investigation cannot reasonably be

1 completed within such time. If such investigation cannot be
2 completed, or if a property and casualty insurer needs more time to
3 determine whether a claim should be accepted or denied, it shall so
4 notify the claimant within sixty (60) days after receipt of the
5 proofs of loss, giving reasons why more time is needed. If the
6 investigation remains incomplete, a property and casualty insurer
7 shall, within sixty (60) days from the date of the initial
8 notification, send to such claimant a letter setting forth the
9 reasons additional time is needed for investigation. Except for an
10 investigation of possible fraud or arson which is supported by
11 specific information giving a reasonable basis for the
12 investigation, the time for investigation shall not exceed one
13 hundred twenty (120) days after receipt of proof of loss. Provided,
14 in the event of a weather-related catastrophe or a major natural
15 disaster, as declared by the Governor, the Insurance Commissioner
16 may extend this deadline for investigation an additional twenty (20)
17 days.

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

21 E. Insurers shall not continue or delay negotiations for
22 settlement of a claim directly with a claimant who is neither an
23 attorney nor represented by an attorney, for a length of time which
24 causes the claimant's rights to be affected by a statute of

1 limitations, or a policy or contract time limit, without giving the
2 claimant written notice that the time limit is expiring and may
3 affect the claimant's rights. Such notice shall be given to first
4 party claimants thirty (30) days, and to third party claimants sixty
5 (60) days, before the date on which such time limit may expire.

6 F. No insurer shall make statements which indicate that the
7 rights of a third party claimant may be impaired if a form or
8 release is not completed within a given period of time unless the
9 statement is given for the purpose of notifying a third party
10 claimant of the provision of a statute of limitations.

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

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

15 Section 3629. A. An insurer shall furnish, upon written
16 request of any insured claiming to have a loss under an insurance
17 contract issued by such insurer, forms of proof of loss for
18 completion by such person, but such insurer shall not, by reason of
19 the requirement so to furnish forms, have any responsibility for or
20 with reference to the completion of such proof or the manner of any
21 such completion or attempted completion.

22 B. It shall be the duty of the insurer, receiving a proof of
23 loss, to submit a written offer of settlement or rejection of the
24 claim to the insured within ~~ninety (90)~~ sixty (60) days of receipt

1 of that proof of loss. Upon a judgment rendered to either party,
2 costs and attorney fees shall be allowable to the prevailing party.
3 For purposes of this section, the prevailing party is the insurer in
4 those cases where judgment does not exceed written offer of
5 settlement. In all other judgments the insured shall be the
6 prevailing party. If the insured is the prevailing party, the court
7 in rendering judgment shall add interest on the verdict at the rate
8 of fifteen percent (15%) per year from the date the loss was payable
9 pursuant to the provisions of the contract to the date of the
10 verdict. This provision shall not apply to uninsured motorist
11 coverage.

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

15 Section 4424. Unless the context requires otherwise, the
16 definitions in this section apply throughout the Long-Term Care
17 Insurance Act.

18 1. a. "Long-term care insurance" means any insurance policy,
19 certificate or rider, including qualified long-term
20 care insurance contracts and long-term care
21 partnership program contracts, which are advertised,
22 marketed, offered or designed primarily to provide
23 coverage for not less than twelve (12) consecutive
24 months for each covered person on an expense incurred,

1 indemnity, prepaid, or other basis, for one or more
2 necessary or medically necessary diagnostic,
3 preventive, therapeutic, rehabilitative, maintenance,
4 or personal care services, provided in a setting other
5 than an acute care unit of a hospital.

6 b. This term includes group and individual health
7 policies or riders or group and individual life
8 policies or annuities or riders which provide,
9 directly or as a supplement, coverage for long-term
10 care, whether issued by insurers, fraternal benefit
11 societies, nonprofit health, hospital, and medical
12 service corporations, prepaid health plans, health
13 maintenance organizations, life care communities, or
14 any similar organization.

15 c. This term also includes a policy or rider which
16 provides for payment of long-term care benefits based
17 upon cognitive impairment or the loss of functional
18 capacity.

19 d. Long-term care insurance shall not include any
20 insurance policy which is offered primarily to provide
21 basic Medicare supplement coverage, basic hospital
22 expense coverage, basic medical-surgical expense
23 coverage, hospital confinement indemnity coverage,
24 major medical expense coverage, disability income

1 protection coverage or related asset-protection
2 coverage, catastrophic coverage, comprehensive
3 coverage, accident only coverage, specified disease or
4 specified accident coverage, or limited benefit health
5 coverage.

6 e. With regard to life insurance, this term does not
7 include life insurance policies which accelerate the
8 death benefit specifically for one or more of the
9 qualifying events of terminal illness, medical
10 conditions requiring extraordinary medical
11 intervention, or permanent institutional confinement,
12 and which provide the option of a lump-sum payment for
13 those benefits and in which neither the benefits nor
14 the eligibility for the benefits is conditioned upon
15 the receipt of long-term care.

16 f. Notwithstanding any other provision contained herein,
17 any product advertised, marketed or offered as long-
18 term care insurance shall be subject to the provisions
19 of ~~this act~~ the Long-Term Care Act.

20 2. "Applicant" means:

21 a. in the case of an individual long-term care insurance
22 policy, the person who seeks to contract for such
23 benefits, and
24

1 b. in the case of a group long-term care insurance
2 policy, the proposed certificate holder.

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

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

9 a. one or more employers or labor organizations, or to a
10 trust or to the trustees of a fund established by one
11 or more employers or labor organizations, or a
12 combination thereof, for employees or former
13 employees, or a combination thereof or for members or
14 former members, or a combination thereof, of the labor
15 organizations, or

16 b. any professional, trade or occupational association
17 for its members or former or retired members, or
18 combination thereof, if such association:

19 (1) is composed of individuals, all of whom are or
20 were actively engaged in the same profession,
21 trade or occupation, and

22 (2) has been maintained in good faith for purposes
23 other than insurance, or
24

1 c. an association, a trust, or the trustee or trustees of
2 a fund established, created, or maintained for the
3 benefit of members of one or more associations. Prior
4 to advertising, marketing or offering such policy
5 within this state, the association or associations, or
6 the insurer of the association or associations, shall
7 file evidence with the Insurance Commissioner that the
8 association or associations shall have at the outset
9 of transacting long-term care insurance in this state
10 a minimum of one hundred (100) persons in the
11 association or associations and shall have been
12 organized and maintained in good faith for purposes
13 other than that of obtaining insurance; shall have
14 been in active existence for at least one (1) year;
15 and shall have a constitution and bylaws which provide
16 that (i) the association or associations hold regular
17 meetings not less than annually to further purposes of
18 the members, (ii) except for credit unions, the
19 association or associations collect dues or solicit
20 contributions from members, and (iii) the members have
21 voting privileges and representation on the governing
22 board and committees. Thirty (30) days after such
23 filing the association or associations shall be deemed
24 to satisfy such organizational requirements, unless

1 the Commissioner makes a finding that the association
2 or associations do not satisfy those organizational
3 requirements, or

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

7 (1) the issuance of the group policy is not contrary
8 to the best interest of the public,

9 (2) the issuance of the group policy would result in
10 economies of acquisition or administration, and

11 (3) the benefits are reasonable in relation to the
12 premiums charged.

13 5. "Not-for-Profit Life care community" within the meaning of
14 Section 1-853.1 of Title 63 of the Oklahoma Statutes means any not-
15 for-profit organization that enters into an arrangement pursuant to
16 which a person contracts for a place of residence and personal care
17 services, including but not limited to services which progress from
18 independent living to semi-dependent nursing care to acute nursing
19 care, in consideration of an endowed prepayment, license or entry
20 fee which has been actuarially established to meet the cost of the
21 promised services and accommodations. For communities commencing
22 operations after January 1, 2016, the amount of the endowed
23 prepayment must be independently, actuarially determined, in
24 compliance with the Actuarial ~~Board~~ Standards of Practice

1 promulgated by the Actuarial Standards Board of the American Academy
2 of Actuaries, prior to opening the community and annually thereafter
3 to ensure that sufficient payments are collected to meet the future
4 services of the residents. The actuarial study shall take into
5 consideration projected or actual project costs, resident fees and
6 charges, resident contract provisions and any other factors
7 affecting the operation of the facility. It shall contain mortality
8 and morbidity data and an actuary's signed opinion that the proposed
9 is feasible and that the study has been prepared in accordance with
10 standards adopted by the American Academy of Actuaries. A not-for-
11 profit life care community shall not include the following:

- 12 a. traditional landlord and tenant agreements utilizing
- 13 periodic rental and security deposit payments,
- 14 b. residential care homes licensed pursuant to the
- 15 Oklahoma Residential Care Act,
- 16 c. assisted living centers and continuum of care
- 17 facilities licensed pursuant to the Oklahoma Continuum
- 18 of Care and Assisted Living Act,
- 19 d. facilities licensed pursuant to the Oklahoma Nursing
- 20 Home Care Act, or
- 21 e. any facility where the endowed prepayment, license or
- 22 entry fee is less than Fifty Thousand Dollars
- 23 (\$50,000.00).

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

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

8 a. individual or group insurance contract if the contract
9 meets the requirements of Section 7702(B) of the
10 Internal Revenue Code, as amended, and if:

11 (1) the only insurance protection provided under the
12 contract is coverage of qualified long-term care
13 services,

14 (2) the contract does not pay or reimburse expenses
15 incurred for services or items to the extent that
16 such expenses are reimbursable under Title XVIII
17 of the Social Security Act as amended, or would
18 be so reimbursable but for the application of a
19 deductible or coinsurance amount. The
20 requirements of this subparagraph do not apply to
21 contracts where Medicare is a secondary payor, or
22 where the contract makes per diem or other
23 periodic payments without regard to expenses,

24 (3) the contract is guaranteed renewable,

1 (4) the contract does not provide for a cash
2 surrender value or other money that can be paid,
3 assigned, pledged as collateral for a loan, or
4 borrowed. All refunds of premiums and all
5 policyholder dividends or similar amounts, under
6 such contract are to be applied as a reduction in
7 future premiums or to increase future benefits,
8 except that a refund of the aggregate premium
9 paid under the contract may be allowed in the
10 event of death of the insured or a complete
11 surrender or cancellation of the contract, and

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

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

20 8. "Qualified long-term care services" means necessary
21 diagnostic, preventive, therapeutic, curing, treating, mitigating,
22 and rehabilitative services, and maintenance for personal care
23 services for which an insured is eligible under a qualified long-
24

1 term care insurance contract, and which are provided pursuant to a
2 plan of care prescribed by a licensed health care practitioner.

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

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

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

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

12 a. any person who performs that work, or

13 b. any person who hires an independent contractor to
14 perform that work,

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

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

20 a. for a corporation, the state in which the purchasing
21 group is incorporated, and

22 b. for an unincorporated entity, the state of its
23 principal place of business;

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

5 a. to meet obligations to policyholders with respect to
6 known claims and reasonably anticipated claims, or

7 b. to pay other obligations in the normal course of
8 business;

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

13 6. "Liability":

14 a. means legal liability for damages, including but not
15 limited to, costs of defense, legal costs and fees,
16 and other claims expenses, because of injuries to
17 other persons, damage to their property, or other
18 damage or loss to such other persons resulting from or
19 arising out of:

20 (1) any business, trade, product, services, premises,
21 or operations, or

22 (2) any activity of any state or local government, or
23 any agency or political subdivision thereof, and
24

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

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

8. "Plan of operation or feasibility study" means an analysis which presents the expected activities and results of a risk 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, as defined in paragraph 11 of this section, including a determination of minimum premium or participation levels required to commence

1 operations and to prevent a hazardous financial
2 condition,

3 e. identification of management procedures, underwriting
4 procedures, managerial oversight methods, investment
5 policies, and reinsurance agreements,

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

12 g. identification of each state in which the risk
13 retention group has obtained, or sought to obtain, a
14 charter and license, and a description of its status
15 in each such state, and

16 h. such other matters as may be prescribed by the
17 Commissioner, for liability insurance companies
18 authorized by the insurance laws of the state in which
19 the risk retention group is chartered;

20 9. "Product liability" means liability for damages because of
21 any personal injury, death, emotional harm, consequential economic
22 damage, or property damage, including but not limited to damages
23 resulting from the loss of use of property, arising out of the
24 manufacture, design, importation, distribution, packaging, labeling,

1 lease, or sale of a product, but does not include the liability of
2 any person for those damages if the product involved was in the
3 possession of such a person when the incident giving rise to the
4 claim occurred;

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

6 a. has as one of its purposes the purchase of liability
7 insurance on a group basis for its members to cover
8 their similar or related liability exposure,

9 b. is composed of members whose businesses or activities
10 are similar or related with respect to the liability
11 to which members are exposed by virtue of any related,
12 similar, or common business, trade, product, services,
13 premises, or operations, and

14 c. is domiciled in any state;

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

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

23 a. (1) is chartered and licensed as a liability
24 insurance company and authorized to engage in the

1 business of insurance under the laws of any
2 state, or

3 (2) before January 1, 1985, was chartered or licensed
4 and authorized to engage in the business of
5 insurance under the laws of Bermuda or the Cayman
6 Islands and, before such date, had certified to
7 the Insurance Commissioner of at least one state
8 that it satisfied the capitalization requirements
9 of such state, except that any such group shall
10 be considered to be a risk retention group only
11 if it has been engaged in business continuously
12 since such date and only for the purpose of
13 continuing to provide insurance to cover product
14 liability or completed operations liability, as
15 such terms were defined in the federal Product
16 Liability Risk Retention Act of 1981, before the
17 date of the enactment of the federal Liability
18 Risk Retention Act of 1986,

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

22 c. (1) has as its members only persons who have an
23 ownership interest in the group and who are
24

1 provided insurance by the risk retention group,
2 or

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

6 d. has as its 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 not provide insurance coverage other than:

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

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

19 f. the name of which includes the phrase, "Risk Retention
20 Group"; and

21 ~~12.~~ 13. "State" means any state of the United States or the
22 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 by an independent actuary~~ or life and health policy and claim reserves, as applicable. ~~The actuary may not be an employee individual who prepares the Statement of Actuarial Opinion must be independent~~ of the captive company ~~or~~ and its affiliates.

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

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

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
February 12, 2018 - DO PASS AS AMENDED