

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 1035

By: Quinn

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2011, Sections 6453, as amended by Section 10, Chapter 95, O.S.L. 2018, 6454, 6455, 6456, 6457, 6458, 6459, 6460, 6462, 6464, 6470.2, as last amended by Section 12, Chapter 73, O.S.L. 2016, 6470.3, as last amended by Section 2, Chapter 306, O.S.L. 2018, 6470.6, as last amended by Section 16, Chapter 298, O.S.L. 2015, 6470.10, as last amended by Section 3, Chapter 306, O.S.L. 2018, 6470.11, as amended by Section 9, Chapter 41, O.S.L. 2013, and 6470.19, as last amended by Section 1, Chapter 55, O.S.L. 2020 (36 O.S. Supp. 2020, Sections 6453, 6470.2, 6470.3, 6470.6, 6470.10, 6470.11 and 6470.19), which relate to definitions, chartering and licensing of risk retention groups, conditions for doing business in state, membership in insurance insolvency guaranty fund, exemptions, notice to Insurance Commissioner, notice of risks not covered, enforcement of powers of Commissioner, 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

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

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

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6453, as amended by Section 10, Chapter 95, O.S.L. 2018 (36 O.S. Supp. 2020, 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

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

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

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

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

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

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

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

22 6. "Liability":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~b.~~

23 c. is composed of members whose businesses or activities
24 are similar or related with respect to the liability
25

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

4 ~~e.~~

5 d. is domiciled in any state;

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

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

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

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

20 c. which is chartered and licensed as a liability
21 insurance company and authorized to engage in the
22 business of insurance under the laws of any
23 state, or,

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

17 ~~b.~~

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

21 ~~e.~~

22 e. (1) which has as its ~~members~~ owners only persons who
23 ~~have an ownership interest in the group and who~~

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

9 ~~d. has as its~~

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

16 ~~e. does~~

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

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

22 (2) reinsurance with respect to the liability of any
23 other risk retention group, or any members of
24 such other group, engaged in businesses or

1 activities so that the risk retention group or
2 individual members of the group meet the
3 requirements described in subparagraph f of this
4 paragraph because of membership in the risk
5 retention group that provides the reinsurance and
6 f.

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

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

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

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

23 2. Notwithstanding any other provision of law, all risk
24 retention groups chartered in this state shall file with the

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

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

11 ~~Immediately upon receipt of an.~~ The risk retention group shall
12 submit an appropriate revision in the event of any subsequent
13 material change in any item of the plan of operation or feasibility
14 study within ten (10) days of the change. The group shall not offer
15 any additional kinds of liability insurance in this state or in any
16 other state until a revision of the plan or study is approved by the

17 Commissioner. At the time of filing its application for charter,
18 ~~the Insurance Commissioner of this state~~ risk retention group shall
19 provide to the Commissioner a summary of the following information:
20 ~~concerning the application to the National Association of Insurance~~
21 ~~Commissioners, including the name of the risk retention group, the~~
22 ~~identity of the initial members of the group, the identity of those~~
23 ~~individuals or~~ who organized the group, the identity of those
24 individuals who will provide administrative services or otherwise

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

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

11 A. For the purposes of this section:

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

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

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

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

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

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

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

21 1. The receipt in any one twelve (12) month period of
22 compensation or payment of any other item of value by such person, a
23 member of such person's immediate family or any business with which
24 the person is affiliated from the risk retention group or a

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

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

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

21 D. The term of any material service provider contract with the
22 risk retention group shall not exceed five (5) years. Any such
23 contract, or its renewal, shall require the approval of the majority
24 of the risk retention group's independent directors. The risk

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

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

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

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

6 2. Develop a set of governance standards applicable to the risk
7 retention group;

8 3. Oversee the evaluation of the risk retention group's
9 management including but not limited to the performance of the
10 captive manager, managing general underwriter or other party or
11 parties responsible for underwriting, determination of rates,
12 collection of premium, adjusting or settling claims or the
13 preparation of financial statements;

14 4. Review and approve the amount to be paid for all material
15 service providers; and

16 5. Review and approve, at least annually:

17 a. the risk retention group's goals and objectives
18 relevant to the compensation of officers and service
19 providers,

20 b. the officers' and service providers' performance
21 considering those goals and objectives, and

22 c. the continued engagement of the officers and material
23 service providers.
24
25

1 F. 1. The risk retention group shall have an audit committee
2 composed of at least three independent Board members, as specified
3 in subsection C of this section. A nonindependent Board member may
4 participate in the activities of the audit committee, if invited by
5 the members, but shall not be a member of the committee.

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

9 a. assisting Board oversight of:

10 i. the integrity of the financial
11 statements,

12 ii. the compliance with legal and
13 regulatory requirements, and

14 iii. the qualifications, independence and
15 performance of the independent auditor
16 and actuary,

17 b. discussing the annual audited financial statements and
18 quarterly financial statements with management,

19 c. discussing the annual audited financial statements
20 with its independent auditor and, if advisable,
21 discuss its quarterly financial statements with its
22 independent auditor,

23 d. discussing policies with respect to risk assessment
24 and risk management,
25

- e. meeting separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors,
- f. reviewing with the independent auditor any audit problems or difficulties and management's response,
- g. setting clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor,
- h. requiring the external auditor to rotate the head audit partner having primary responsibility for the risk retention group's audit, as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five (5) consecutive fiscal years, and
- i. reporting regularly to the Board.

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

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

1 1. A process by which the directors are elected by the owner
2 and insureds;

3 2. Director qualification standards;

4 3. Director responsibilities;

5 4. Director access to management and, as necessary and
6 appropriate, independent advisors;

7 5. Director compensation;

8 6. Director orientation and continuing education;

9 7. The policies and procedures that are followed for management
10 succession; and

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

13 H. The Board shall adopt and disclose a code of business
14 conduct and ethics for directors, officers and employees of the risk
15 retention group and shall promptly disclose to the Board any waivers
16 of the code for directors or executive officers, which shall include
17 the following topics:

18 1. Conflicts of interest;

19 2. Matters covered under the corporate opportunities doctrine
20 under the state of domicile;

21 3. Confidentiality;

22 4. Fair dealing;

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

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

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

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

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

12 Section 6455. Risk retention groups chartered and licensed in
13 states other than this state and seeking to do business as risk
14 retention groups in this state shall observe and abide by the laws
15 of this state as follows:

16 A. Before offering insurance in this state, a risk retention
17 group shall submit to the Commissioner of this state, on a form
18 prescribed by the National Association of Insurance Commissioners of
19 this state:

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

1 that the group is qualified to be licensed as a risk retention
2 group;

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

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

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

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

18 4. A statement of registration which designates the
19 Commissioner of this state as its agent for the purpose of receiving
20 service of legal documents or process.

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

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

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

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

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

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

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

21 2. To the extent licensed agents or brokers are utilized
22 pursuant to Section 6462 of this title, they shall report ~~and pay~~
23 ~~the taxes for the~~ to the Commissioner premiums for direct business
24 for risks resident or located within the state which ~~they~~ the

1 licensees have placed with or on behalf of a risk retention group
2 not chartered in this state.

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

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

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

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

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

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

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

23 NOTICE
24
25

1 This policy is issued by your risk retention group. Your risk
2 retention group may not be subject to all of the insurance laws and
3 regulations of your state. State insurance insolvency guaranty
4 funds are not available for your risk retention group.

5 H. The following acts by a risk retention group are hereby
6 prohibited:

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

10 2. The solicitation or sale of insurance by, or operation of, a
11 risk retention group that is in a hazardous financial condition or
12 is financially impaired.

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

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

23 K. A risk retention group which is not chartered in this state
24 but is doing business in this state shall comply with a lawful order

1 issued in a voluntary dissolution proceeding or in a delinquency
2 proceeding commenced by an Insurance Commissioner of any state if
3 there has been a finding of financial impairment after an
4 examination by any state Insurance Commissioner under subsection F
5 of this section.

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

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

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

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

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

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

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

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

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

23 2. ~~Prohibits~~ Make unlawful an insurer providing advantages to a
24 purchasing group or its members based on the loss and expense

1 experience of the group or its members including but not limited to
2 advantages on rates, policy forms and coverage, that is not afford
3 to other persons or entities;

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

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

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

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

15 ~~6. 7.~~ Otherwise discriminates against a purchasing group or any
16 of its members; or

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

20 A purchasing group shall be subject to all other applicable laws
21 of this state.

22 SECTION 8. AMENDATORY 36 O.S. 2011, Section 6458, is
23 amended to read as follows:
24
25

1 Section 6458. A. A purchasing group which intends to do
2 business in this state shall, prior to doing business, furnish to
3 the ~~Commissioner of this state~~ Insurance Commissioner notice which
4 shall, on forms prescribed by the National Association of Insurance
5 Commissioners:

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

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

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

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

15 ~~4.~~ 5. Identify the principal place of business of the group;

16 ~~5.~~ 6. Specify the method by which, ~~and~~ the person or persons,
17 if any, through whom insurance will be offered to its members whose
18 risks are resident or located in this state; and

19 ~~6.~~ 7. Provide such other information as may be required by the
20 Commissioner of this state to verify that the purchasing group is
21 qualified to do business in this state as a purchasing group.

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

1 C. The purchasing group shall register with and designate the
2 Commissioner of this state as its agent solely for the purpose of
3 receiving service of legal documents or process, for which a filing
4 fee shall be assessed in an amount determined by the Commissioner,
5 except that such requirements shall not apply ~~to~~ in the case of a
6 purchasing group which only purchases insurance that was authorized
7 under the federal Products Liability Risk Retention Act of 1981 and:

8 1. Which:

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

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

12 ~~1.~~ 2. Before October 27, 1986, purchased insurance from an
13 insurance carrier licensed in any state;

14 ~~2.~~ 3. Since October 27, 1986, purchased its insurance from an
15 insurance carrier licensed in any state; or

16 ~~3.~~

17 4. Was a purchasing group pursuant to the requirements of the
18 federal Product Liability Risk Retention Act of 1981 before October
19 27, 1986, ~~and~~

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

23 ~~C.~~ D. Each purchasing group that is required to give notice
24 pursuant to subsection A of this section also shall furnish such

1 information as may be required by the Insurance Commissioner or
2 designee to:

- 3 1. Verify that the entity qualifies as a purchasing group; ~~and~~
- 4 2. Determine where the purchasing group is located; and
- 5 3. Determine appropriate tax treatment.

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

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

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

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

1 D. Purchases of insurance by purchasing groups are subject to
2 the same standards regarding aggregate limits which are applicable
3 to all purchases of group insurance.

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

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

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

14 2. Paid by the insurance source, the agent or broker for the
15 purchasing group, the purchasing group or any members of the
16 purchasing group.

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

19 Section 6460. The Insurance Commissioner of this state is
20 authorized to make use of any of the powers established pursuant to
21 the Insurance Code of this state to enforce the laws of this state
22 so long as those powers are not specifically preempted by ~~federal~~
23 ~~law~~ the Risk Retention Act of 1986, as amended, including the
24 administrative authority of the Commissioner to investigate, issue

1 subpoenas, conduct depositions and hearings, issue orders, impose
2 penalties and seek injunctive relief. Regarding any investigation,
3 administrative proceedings or litigation, the Commissioner may rely
4 on the procedural laws of this state. The injunctive authority of
5 the Commissioner for risk retention groups is restricted by the
6 requirement that any injunction be issued by a court of competent
7 jurisdiction.

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

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

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

23 ~~2. B. 1.~~ No person may, firm, association or corporation shall
24 act or aid in any manner in soliciting, negotiating, or procuring

1 liability insurance coverage in this state for ~~any member of a~~
2 ~~purchasing group under a purchasing group's policy~~ from an
3 authorized insurer or a risk retention group unless such person,
4 firm, association or corporation is licensed as an insurance agent
5 ~~for the insurer or is licensed as a broker~~ pursuant to the Oklahoma
6 Insurance Code.

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

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

22 C. For purposes of acting as an agent or broker for a risk
23 retention group or purchasing group pursuant to subsections A and B
24
25

1 of this section, the requirement of residence in this state ~~does~~
2 shall not apply.

3 D. Every person licensed as an agent or broker as required in
4 this section, on business placed with risk retention groups or
5 written through a purchasing group, shall inform each prospective
6 insured of the provisions of the notice required by the Oklahoma
7 Risk Retention Act.

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

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

16 SECTION 14. AMENDATORY 36 O.S. 2011, Section 6470.2, as
17 last amended by Section 12, Chapter 73, O.S.L. 2016 (36 O.S. Supp.
18 2020, Section 6470.2), is amended to read as follows:

19 Section 6470.2. As used in the Oklahoma Captive Insurance
20 Company Act:

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

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

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

- 8 a. the member organizations of which, or which does
9 itself or either of them acting in concert directly or
10 indirectly own, control, or hold with power to vote
11 all of the outstanding voting securities or interests
12 of, or have complete voting control over an
13 association captive insurance company, or
14 b. the member organizations of which collectively
15 constitute all of the subscribers of an association
16 captive insurance company formed as a reciprocal
17 insurer;

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

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

23 6. "Branch captive insurance company" means an alien captive
24 insurance company licensed by the Insurance Commissioner to transact
25

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

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

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

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

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

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

21 b. that has an existing contractual relationship with a
22 parent or affiliated company, and
23
24
25

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

4 11. "Insurance Commissioner" means the Insurance Commissioner
5 of the State of Oklahoma or designee of the Insurance Commissioner;

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

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

8 14. "Industrial insured" means an insured:

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

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

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

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

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

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

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

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

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

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

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

6 a. that is not in the corporate system of a parent and
7 affiliated companies,

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

10 c. whose risks are managed by a pure captive insurance
11 company;

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

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

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

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

23 27. "Special purpose captive insurance company" means a captive
24 insurance company that is formed or licensed under the Oklahoma

1 Captive Insurance Company Act that does not meet the definition of
2 any other type of captive insurance company defined in this section
3 and is designated as a special purpose captive insurance company by
4 the Commissioner;

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

10 ~~27.~~ 29. "Sponsored captive insurance company" means a captive
11 insurance company:

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

23 ~~28.~~ 30. "Workers' compensation insurance" means insurance
24 provided in satisfaction of an employer's responsibility as set
25

1 forth in the Administrative Workers' Compensation Act and the
2 Oklahoma Employee Injury Benefit Act.

3 SECTION 15. AMENDATORY 36 O.S. 2011, Section 6470.3, as
4 last amended by Section 2, Chapter 306, O.S.L. 2018 (36 O.S. Supp.
5 2020, Section 6470.3), is amended to read as follows:

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

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

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

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

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

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

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

9 B. To conduct insurance business in this state a captive
10 insurance company shall:

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

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

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

22 C. 1. Before receiving a license, a captive insurance company
23 shall file with the Commissioner a certified copy of its
24 organizational documents, a statement under oath of its president or
25

1 other authorized person showing its financial condition, a
2 feasibility study, a business plan, and any other statements,
3 information or documents required by the Commissioner.

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

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

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

- 22 a. information may be discoverable by a party in a civil
23 action or contested case to which the captive
24 insurance company that submitted the information is a

1 party, upon a showing by the party seeking to discover
2 the information that:

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

15 b. the Insurance Commissioner may disclose the
16 information to a public officer having jurisdiction
17 over the regulation of insurance in another state if:

- 18 (1) the public official agrees in writing to maintain
19 the confidentiality of the information, and
20 (2) the laws of the state in which the public
21 official serves require the information to be
22 confidential.

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

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

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

21 2. As a condition precedent to the issuance of a provisional
22 license under this section, the applicant shall have filed a
23 complete application containing all information required by this
24 section, paid all fees required for licensure and the Insurance

1 Commissioner shall have made a preliminary finding that the
2 expertise, experience and character of the person or persons who
3 will control and manage the applicant captive insurer are
4 acceptable.

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

12 SECTION 16. AMENDATORY 36 O.S. 2011, Section 6470.6, as
13 last amended by Section 16, Chapter 298, O.S.L. 2015 (36 O.S. Supp.
14 2020, Section 6470.6), is amended to read as follows:

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

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

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
25

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.

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.
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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
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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

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

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

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

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

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
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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~~7~~, and

11 ~~2. Subject~~

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

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

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

21 2. In order to provide sufficient detail to support the premium
22 tax return, the pure captive insurance company shall file before
23 March 1 of each year for each calendar year-end, pages 1 through 7
24
25

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
25

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.

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.
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