

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
BILL NO. 3236

By: Moore of the House

and

Brown of the Senate

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6  
7 An Act relating to insurance \*\*\* as amended by  
8 Section 20, Chapter 254, O.S.L. 2013 and 1250.7 \*\*\*  
9 which relates to the Third-party Administrator Act;  
10 updating citation; amending 36 O.S. 2011, Section  
11 1605, which relates to investments \*\*\* amending 36  
12 O.S. 2011, Section 4424, as amended by Section 1,  
13 Chapter 264, O.S.L. 2016 (36 O.S. Supp. 2017, Section  
14 4424), which relates to the Long-Term Care Insurance  
15 Act; modifying definition \*\*\* to the Oklahoma Captive  
16 Insurance Company Act; modifying requirements for  
17 annual actuarial opinion; and providing an effective  
18 date.

15 AUTHOR: Add the following Senate Coauthor: Pittman

16 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

17  
18 "An Act relating to insurance; defining terms;  
19 prohibiting using certain information for certain  
20 rate calculation; providing exception to prohibition;  
21 providing for codification; and providing an  
22 effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
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1           SECTION 1.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 945 of Title 36, unless there is  
3 created a duplication in numbering, reads as follows:

4           A. As used in this section:

5           1. "Towing service" means any act which consists of towing or  
6 moving a motor vehicle from one place to another under other than  
7 its own power; and

8           2. "Emergency road service" means any act to adjust, repair or  
9 replace the equipment, tires or mechanical parts of a motor vehicle  
10 so it may operate under its own power; or reimbursement of expenses  
11 incurred by an insured when his or her motor vehicle is unable to  
12 operate under its own power.

13           B. No insurer may consider claims for towing services or  
14 emergency road service for purposes of determining whether to  
15 cancel, refuse to renew or increase the premium of a personal auto  
16 insurance policy regardless of whether such coverage is included in  
17 the policy or is an endorsement to the policy.

18           C. Nothing in this section shall prohibit an insurer from  
19 cancelling, refusing to renew or increasing the premium of the  
20 towing services or emergency road service coverage of an insured, if  
21 within a consecutive twelve-month period the insured:

22           1. Files more than three (3) claims for towing services for any  
23 one covered personal motor vehicle or files more than five (5)

24

1 aggregate claims for towing services for all of the insured's  
2 personal motor vehicles which are covered by the insurer; or

3 2. Files more than three (3) claims for emergency road service  
4 for any one covered personal motor vehicle or files more than five  
5 (5) aggregate claims for emergency road service for all of the  
6 insured's personal motor vehicles which are covered by the insurer.

7 SECTION 2. This act shall become effective November 1, 2018."

8 Passed the Senate the 12th day of April, 2018.

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\_\_\_\_\_  
Presiding Officer of the Senate

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12 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
13 2018.

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Presiding Officer of the House  
of Representatives

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1 ENGROSSED HOUSE  
2 BILL NO. 3236

By: Moore of the House

3 and

4 Brown of the Senate  
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7 An Act relating to insurance; amending 36 O.S. 2011,  
8 Section 321, as amended by Section 2, Chapter 275,  
9 O.S.L. 2014 (36 O.S. Supp. 2017, Section 321), which  
10 relates to the Oklahoma Annual Financial Report Act;  
11 modifying entities required to pay certain fee;  
12 modifying type of financial statements paid by  
13 certain fee; amending 36 O.S. 2011, Section 1106, as  
14 last amended by Section 1, Chapter 415, O.S.L. 2014  
15 (36 O.S. Supp. 2017, Section 1106), which relates to  
16 the Unauthorized Insurers and Surplus Lines Insurance  
17 Act; specifying an Oklahoma surplus lines license is  
18 required when Oklahoma is the home state of the  
19 insured; amending 36 O.S. 2011, Sections 1250.4, as  
20 amended by Section 20, Chapter 254, O.S.L. 2013 and  
21 1250.7 (36 O.S. Supp. 2017, Section 1250.4), which  
22 relate to the Unfair Claims Settlement Practices Act;  
23 expanding persons required to respond to certain  
24 Commissioner inquiry; increasing time period for  
insurer to respond to certain claim; amending 36 O.S.  
2011, Section 1441.1, as amended by Section 8,  
Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Section  
1441.1), which relates to the Third-party  
Administrator Act; updating citation; amending 36  
O.S. 2011, Section 1605, which relates to  
investments; specifying type of assets on which  
certain investment limitation is based; amending 36  
O.S. 2011, Section 3102, which relates to motor  
service clubs; requiring electronic submission of  
certain company's name request; amending 36 O.S.  
2011, Section 3629, which relates to offer of  
settlement or rejection of claim; decreasing time  
period for insurer to respond to claim of the  
insured; amending 36 O.S. 2011, Section 4424, as  
amended by Section 1, Chapter 264, O.S.L. 2016 (36  
O.S. Supp. 2017, Section 4424), which relates to the

1 Long-Term Care Insurance Act; modifying definition;  
2 amending 36 O.S. 2011, Section 6453, which relates to  
3 the Oklahoma Risk Retention Act; adding definition;  
4 amending 36 O.S. 2011, Section 6470.12, as last  
5 amended by Section 18, Chapter 298, O.S.L. 2015 (36  
6 O.S. Supp. 2017, Section 6470.12), which relates to  
7 the Oklahoma Captive Insurance Company Act; modifying  
8 requirements for annual actuarial opinion; and  
9 providing an effective date.

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

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

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

16 1. For filing charter documents:

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

22 2. Certificate of Authority or Certificate of Approval:

23 (a) Issuance:

24 .....\$150.00

(b) Renewal:

.....\$150.00

1       3. For filing appointment of Insurance  
2           Commissioner as agent for service  
3           of process.....\$10.00

4       4. Miscellaneous:

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

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

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

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

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

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

22          (g) For filing an advertisement or  
23                rider application to a Life,  
24                Accident and Health Policy and

1	Health Maintenance	
2	Organization contract.....	\$25.00
3	(h) Pending Company Review.....	\$1,000.00
4	(i) For filing a Viatical	
5	Settlement Contract or Life	
6	Settlement.....	\$50.00
7	(j) For filing an advertisement	
8	for Viatical Settlement or	
9	Life Settlement.....	\$25.00
10	(k) For filing application for	
11	Viatical Settlement or Life	
12	Settlement Contract.....	\$25.00
13	(l) Miscellaneous form filing.....	\$25.00

14 B. There shall be assessed an annual fee of Five Hundred  
15 Dollars (\$500.00) payable by each insurer, health maintenance  
16 organization, fraternal benefit society, hospital service and  
17 medical indemnity corporation, or charitable and benevolent  
18 corporation, licensed to do business in this state or United States  
19 surplus lines insurance companies ~~licensed~~ approved to do business  
20 in this state, to pay for the filing, processing, and reviewing of  
21 ~~annual and quarterly~~ financial statements by personnel of the Office  
22 of the State Insurance Commissioner.

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

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

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

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

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

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

20 b. the requirements of subparagraph a of this paragraph  
21 may be satisfied by an insurer's possessing less than  
22 the minimum capital and surplus upon an affirmative  
23 finding of acceptability by the Insurance  
24 Commissioner. The finding shall be based upon such



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

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

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

17 For the purposes of carrying out the provisions of the  
18 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance  
19 Commissioner is authorized to utilize the national insurance  
20 producer database of the National Association of Insurance  
21 Commissioners, or any other equivalent uniform national database,  
22 for the licensure of an individual or entity as a surplus lines  
23 licensee or broker and for renewal of such license.

1 SECTION 5. 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 to  
5 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~~ person subject to the jurisdiction of the  
15 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 6. AMENDATORY 36 O.S. 2011, Section 1250.7, is  
6 amended to read as follows:

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

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

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

1 may extend this deadline for investigation an additional twenty (20)  
2 days.

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

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

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

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

22 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1441.1, as  
23 amended by Section 8, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017,  
24 Section 1441.1), is amended to read as follows:

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

5 SECTION 8. 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~~ monies, investments in or loans upon the  
10 security of the obligations, property, or securities of any one  
11 person, institution, corporation, or municipal corporation,  
12 aggregating an amount exceeding ten percent (10%) of the insurer's  
13 admitted assets. This restriction shall not apply to investments in  
14 or loans upon the security of general obligations of the United  
15 States or any state of the United States or include policy loans  
16 made under Section 1619 of this title, or investments made under  
17 Section 1616 of this title.

18 SECTION 9. AMENDATORY 36 O.S. 2011, Section 3102, is  
19 amended to read as follows:

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

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

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

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

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

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

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

1 statement, audit or audited and certified operating statement and  
2 balance sheet shall be verified by the person compiling or making  
3 the same and by an executive officer of the applicant;

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

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

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

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

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

- 22 1. Paid an initial filing fee of Two Hundred Fifty Dollars  
23 (\$250.00) ~~to the General Fund of the State of Oklahoma;~~

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

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

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

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

16       D. Certificates of authority issued hereunder shall expire  
17 annually on July 1, unless sooner revoked or suspended, as  
18 hereinafter provided.

19       SECTION 10.        AMENDATORY        36 O.S. 2011, Section 3629, is  
20 amended to read as follows:

21       Section 3629. A. An insurer shall furnish, upon written  
22 request of any insured claiming to have a loss under an insurance  
23 contract issued by such insurer, forms of proof of loss for  
24 completion by such person, but such insurer shall not, by reason of

1 the requirement so to furnish forms, have any responsibility for or  
2 with reference to the completion of such proof or the manner of any  
3 such completion or attempted completion.

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

18 SECTION 11. AMENDATORY 36 O.S. 2011, Section 4424, as  
19 amended by Section 1, Chapter 264, O.S.L. 2016 (36 O.S. Supp. 2017,  
20 Section 4424), is amended to read as follows:

21 Section 4424. Unless the context requires otherwise, the  
22 definitions in this section apply throughout the Long-Term Care  
23 Insurance Act.

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1           upon cognitive impairment or the loss of functional  
2           capacity.

3           d.   Long-term care insurance shall not include any  
4           insurance policy which is offered primarily to provide  
5           basic Medicare supplement coverage, basic hospital  
6           expense coverage, basic medical-surgical expense  
7           coverage, hospital confinement indemnity coverage,  
8           major medical expense coverage, disability income  
9           protection coverage or related asset-protection  
10          coverage, catastrophic coverage, comprehensive  
11          coverage, accident only coverage, specified disease or  
12          specified accident coverage, or limited benefit health  
13          coverage.

14          e.   With regard to life insurance, this term does not  
15          include life insurance policies which accelerate the  
16          death benefit specifically for one or more of the  
17          qualifying events of terminal illness, medical  
18          conditions requiring extraordinary medical  
19          intervention, or permanent institutional confinement,  
20          and which provide the option of a lump-sum payment for  
21          those benefits and in which neither the benefits nor  
22          the eligibility for the benefits is conditioned upon  
23          the receipt of long-term care.

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

5 2. "Applicant" means:

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

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

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

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

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

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

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

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

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

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

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

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

21 5. "~~Not for Profit Life~~ Not-for-profit life care community"  
22 within the meaning of Section 1-853.1 of Title 63 of the Oklahoma  
23 Statutes means any not-for-profit organization that enters into an  
24 arrangement pursuant to which a person contracts for a place of

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

- 21 a. traditional landlord and tenant agreements utilizing
- 22 periodic rental and security deposit payments,
- 23 b. residential care homes licensed pursuant to the
- 24 Oklahoma Residential Care Act,



- 1           c.    assisted living centers and continuum of care  
2                    facilities licensed pursuant to the Oklahoma Continuum  
3                    of Care and Assisted Living Act,  
4           d.    facilities licensed pursuant to the Oklahoma Nursing  
5                    Home Care Act, or  
6           e.    any facility where the endowed prepayment, license or  
7                    entry fee is less than Fifty Thousand Dollars  
8                    (\$50,000.00)~~;~~;

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

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

- 16           a.    individual or group insurance contract if the contract  
17                    meets the requirements of Section 7702(B) of the  
18                    Internal Revenue Code, as amended, and if:  
19                    (1)   the only insurance protection provided under the  
20                    contract is coverage of qualified long-term care  
21                    services,  
22                    (2)   the contract does not pay or reimburse expenses  
23                    incurred for services or items to the extent that  
24                    such expenses are reimbursable under Title XVIII

1 of the Social Security Act as amended, or would  
2 be so reimbursable but for the application of a  
3 deductible or coinsurance amount. The  
4 requirements of this subparagraph do not apply to  
5 contracts where Medicare is a secondary payor, or  
6 where the contract makes per diem or other  
7 periodic payments without regard to expenses,

8 (3) the contract is guaranteed renewable,

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

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

23 b. life insurance contract which provides long-term care  
24 coverage by rider or as part of the contract if the

1 contract complies with the applicable provisions of  
2 Section 7702(B) of the Internal Revenue Code, as  
3 amended~~;~~; and

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

10 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6453, is  
11 amended to read as follows:

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

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

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

19 a. any person who performs that work, or

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

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

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

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

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

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

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

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

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

19 6. "Liability":

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

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

3 (1) any business, trade, product, services, premises,  
4 or operations, or

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

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

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

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

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

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

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

3 c. pro forma financial statements and projections,

4 d. appropriate opinions by a qualified, ~~independent~~  
5 ~~casualty~~ actuary, including a determination of minimum  
6 premium or participation levels required to commence  
7 operations and to prevent a hazardous financial  
8 condition,

9 e. identification of management procedures, underwriting  
10 procedures, managerial oversight methods, investment  
11 policies, and reinsurance agreements,

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

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

22 h. such other matters as may be prescribed by the  
23 Commissioner, for liability insurance companies  
24

1 authorized by the insurance laws of the state in which  
2 the risk retention group is chartered;

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

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

- 13 a. has as one of its purposes the purchase of liability  
14 insurance on a group basis for its members to cover  
15 their similar or related liability exposure,  
16 b. is composed of members whose businesses or activities  
17 are similar or related with respect to the liability  
18 to which members are exposed by virtue of any related,  
19 similar, or common business, trade, product, services,  
20 premises, or operations, and  
21 c. is domiciled in any state;

22 11. "Qualified actuary" means an individual who is a member of  
23 the American Academy of Actuaries and who has met the Qualification  
24

1 Standards for Actuaries Issuing Statements of Actuarial Opinions in  
2 the United States promulgated by the American Academy of Actuaries;

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

7 a. (1) is chartered and licensed as a liability  
8 insurance company and authorized to engage in the  
9 business of insurance under the laws of any  
10 state, or

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



1                   date of the enactment of the federal Liability  
2                   Risk Retention Act of 1986,

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

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

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

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

19           e.   does not provide insurance coverage other than:

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

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

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

6 ~~12.~~ 13. "State" means any state of the United States or the  
7 District of Columbia.

8 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6470.12, as  
9 last amended by Section 18, Chapter 298, O.S.L. 2015 (36 O.S. Supp.  
10 2017, Section 6470.12), is amended to read as follows:

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

18 B. A sponsored captive insurance company and a special purpose  
19 captive insurance company, and any captive insurer, at the  
20 Commissioner's discretion, shall file annually an actuarial opinion  
21 on the company's loss and loss adjustment expense reserves ~~provided~~  
22 ~~by an independent actuary~~ or life and health policy and claim  
23 reserves, as applicable. ~~The actuary may not be an employee~~  
24

1 individual who prepares the Statement of Actuarial Opinion shall be  
2 independent of the captive company ~~or~~ and its affiliates.

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

6 SECTION 14. This act shall become effective November 1, 2018.

7 Passed the House of Representatives the 12th day of March, 2018.

8  
9  
10 Presiding Officer of the House  
of Representatives

11 Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2018.

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14 Presiding Officer of the Senate

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