

# An Act

ENROLLED SENATE  
BILL NO. 1035

By: Quinn of the Senate

and

Sneed of the House

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 period; requiring Board of Directors of group to be composed of certain persons; requiring certain persons to follow certain standards; requiring Board to disclose certain information; specifying types of prohibited relationships for Board members; specifying term of contract between group and certain persons; authorizing Board to terminate and audit certain contracts; specifying terms of service provider contracts; prohibiting service providers from certain relationships; requiring Board to adopt certain written policy; specifying required terms of policy; requiring Board to have audit committee; requiring Audit committee to have charter; specifying terms of charter; authorizing certain person to waive requirement for audit committee; requiring Board to adopt governance standards; requiring Board to provide certain information to members and insureds of group; requiring certain member of group to notify certain persons in certain circumstance; requiring group to submit certain required information within certain time period; requiring group to pay filing fee in certain amount; requiring each risk retention group to pay premium taxes and taxes on premiums; 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 amount for special captive insurance company; adding minimum capital and surplus for certain captive insurance companies; specifying that certain papers are confidential and not subject to subpoena or distribution; providing exception; authorizing Commissioner to grant access to information in certain circumstances; specifying requirements for using accounting principles for certain report; providing exception to certain tax; specifying tax minimum and maximum payment for certain insurance companies; providing for codification; and providing an effective date.

SUBJECT: Insurance Commissioner

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,

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

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

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

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

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

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

6. "Liability":

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

- (1) any for-profit or non-profit business, trade, product, services, premises, or operations, or
  - (2) any activity of any state or local government, or any agency or political subdivision thereof, and
- b. does not include personal risk liability and the liability of an employer to employees, other than legal liability under the Federal Employers' Liability Act, 45 U.S.C. 51 et seq.;

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

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

- a. for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer,
- b. historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available,
- c. pro forma financial statements and projections,
- d. appropriate opinions by a qualified independent casualty actuary, as defined in paragraph 11 of this section, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition,

- e. identification of management procedures, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements,
- f. information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,
- g. identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state, and
- h. such other matters as may be prescribed by the Commissioner, for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered;

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

10. "Purchasing group" means any group which:

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

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

~~e.~~

d. is domiciled in any state;

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

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

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

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

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

~~(2)~~ before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the Insurance Commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously

since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the federal Product Liability Risk Retention Act of 1981, before the date of the enactment of the federal Liability Risk Retention Act of 1986,

~~b.~~

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

~~e.~~

e. (1) which has as its ~~members~~ owners only persons who ~~have an ownership interest in the group and who are provided insurance by~~ comprise the membership of the risk retention group, ~~or~~ and

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

~~d.~~ ~~has as its~~

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

~~e.~~ ~~does~~

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



- (1) liability insurance for assuming and spreading all or any portion of the liability of its group members, and
- (2) reinsurance with respect to the liability of any other risk retention group, or any members of such other group, engaged in businesses or activities so that the risk retention group or individual members of the group meet the requirements described in subparagraph f of this paragraph because of membership in the risk retention group that provides the reinsurance, and

~~f.~~

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

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

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

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

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

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

B. Before it may offer insurance in any state, each risk retention group licensed in this state shall submit for approval to the Insurance Commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. Immediately upon receipt of an The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study within ten (10) days of the change. The group shall not offer any additional kinds of liability insurance in this state or in any other state until a revision of the plan or study is approved by the Commissioner. At the time of filing its application for charter, the Insurance Commissioner of this state risk retention group shall provide to the Commissioner a summary of the following information: concerning the application to the National Association of Insurance Commissioners, including the name of the risk retention group, the identity of the initial members of the group, the identity of those individuals or who organized the group, the identity of those individuals who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the Commissioner shall transmit the information to the National Association of Insurance Commissioners. Transmitting this information shall be sufficient to satisfy the requirements of Section 6455 of this section.

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

A. For the purposes of this section:

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

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

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

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

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

C. The Board of Directors of the risk retention group shall be composed of a majority of independent directors. No director shall qualify as independent unless the Board affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator at least annually. Notwithstanding any other provision of law, a person that is a direct or indirect owner of or subscriber in the risk retention group, or is an officer, director or employee of such an owner and insured, is considered to be independent unless some other position of such officer, director or employee constitutes a material relationship. Material relationship of a person with the risk retention group shall include, but is not limited to:

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

period. The person or immediate family member of such person is not independent until one year after his or her compensation from the risk retention group falls below the threshold provided in this paragraph.

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

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

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

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

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

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

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

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

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

5. Review and approve, at least annually:

- a. the risk retention group's goals and objectives relevant to the compensation of officers and service providers,
- b. the officers' and service providers' performance considering those goals and objectives, and
- c. the continued engagement of the officers and material service providers.

F. 1. The risk retention group shall have an audit committee composed of at least three independent Board members, as specified in subsection C of this section. A nonindependent Board member may

participate in the activities of the audit committee, if invited by the members, but shall not be a member of the committee.

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

- a. assisting Board oversight of:
  - i. the integrity of the financial statements,
  - ii. the compliance with legal and regulatory requirements, and
  - iii. the qualifications, independence and performance of the independent auditor and actuary,
- b. discussing the annual audited financial statements and quarterly financial statements with management,
- c. discussing the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor,
- d. discussing policies with respect to risk assessment and risk management,
- 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. A process by which the directors are elected by the owner and insureds;

2. Director qualification standards;

3. Director responsibilities;

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

5. Director compensation;

6. Director orientation and continuing education;

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

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

H. The Board shall adopt and disclose a code of business conduct and ethics for directors, officers and employees of the risk retention group and shall promptly disclose to the Board any waivers

of the code for directors or executive officers, which shall include the following topics:

1. Conflicts of interest;
2. Matters covered under the corporate opportunities doctrine under the state of domicile;
3. Confidentiality;
4. Fair dealing;
5. Protection and proper use of risk retention group assets;
6. Compliance with all applicable laws, rules and regulations;  
and
7. Requiring the reporting of any illegal or unethical behavior which affects the operation of the risk retention group.

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

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

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

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

1. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering, its principal place of



business, and such other information, including information on its membership, as the Commissioner of this state may require to verify that the group is qualified to be licensed as a risk retention group;

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

- a. was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, and
- b. was offered before such date by a risk retention group which had been chartered and operating for not less than three (3) years before such date; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

- a. the limit of liability,
- b. the time period covered,

- c. the effective date,
- d. the name of the risk retention group which issued the policy,
- e. the gross premium charged, and
- f. the amount of return premiums, if any, ~~and~~
- ~~g. such additional information as the Insurance Commissioner or a designee of the Insurance Commissioner may require.~~

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

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

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

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

NOTICE

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

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

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

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

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

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

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

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

Section 6456. A. No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk

retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising out of the operations of such under the insurance policies issued by a risk retention group.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Which:

a. was domiciled before April 1, 1986, and

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

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

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

~~3.~~

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

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

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

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

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

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

B. A purchasing group which obtains liability insurance from an ~~approved surplus lines~~ insurer not admitted in this state or a risk retention group shall inform each of the members of the group which has a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and



that the risk retention group or the insurer may not be subject to all insurance laws and regulations of this state.

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

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

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

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

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

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

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

Section 6460. The Insurance Commissioner of this state is authorized to make use of any of the powers established pursuant to the Insurance Code of this state to enforce the laws of this state so long as those powers are not specifically preempted by ~~federal law~~ the Risk Retention Act of 1986, as amended, including the administrative authority of the Commissioner to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. Regarding any investigation, administrative proceedings or litigation, the Commissioner may rely on the procedural laws of this state. The injunctive authority of

the Commissioner for risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

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

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

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

~~2. B. 1. No person may, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for ~~any member of a purchasing group under a purchasing group's policy~~ from an authorized insurer or a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent ~~for the insurer or is licensed as a broker~~ pursuant to the Oklahoma Insurance Code.~~

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

3. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability

insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person, firm, association or corporation is licensed as a surplus lines agent or excess line broker pursuant to the Oklahoma Insurance Code.

C. For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to subsections A and B of this section, the requirement of residence in this state ~~does~~ shall not apply.

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

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

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

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

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

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

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

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

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

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

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

6. "Branch captive insurance company" means an alien captive insurance company licensed by the Insurance Commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state. A branch captive insurance company must be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the Insurance Commissioner;

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

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

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

10. "Controlled unaffiliated business" means a company:

- a. that is not in the corporate system of a parent and affiliated companies,
- b. that has an existing contractual relationship with a parent or affiliated company, and
- c. whose risks are managed by a pure captive insurance company in accordance with Section 6470.27 of this title;

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

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

13. "GAAP" means generally accepted accounting principles;

14. "Industrial insured" means an insured:

- a. who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer,
- b. whose aggregate annual premiums for insurance on all risks total at least Twenty-five Thousand Dollars (\$25,000.00), and
- c. who has at least twenty-five full-time employees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. in which the minimum capital and surplus required by applicable law is provided by one or more sponsors,

- b. that is formed or licensed under the Oklahoma Captive Insurance Company Act,
- c. that insures the risks of its participants only through separate participant contracts, and
- d. that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account; and

~~28.~~ 30. "Workers' compensation insurance" means insurance provided in satisfaction of an employer's responsibility as set forth in the Administrative Workers' Compensation Act and the Oklahoma Employee Injury Benefit Act.

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

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

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

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

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



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

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

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

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

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

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

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

C. 1. Before receiving a license, a captive insurance company shall file with the Commissioner a certified copy of its organizational documents, a statement under oath of its president or other authorized person showing its financial condition, a feasibility study, a business plan, and any other statements, information or documents required by the Commissioner.

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

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

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

- a. information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:
  - (1) the information sought is relevant to and necessary for the furtherance of the action or case,
  - (2) the information sought is unavailable from other nonconfidential sources, and
  - (3) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Insurance Commissioner; however, the provisions of this paragraph do not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group, and

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

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

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

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

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

2. As a condition precedent to the issuance of a provisional license under this section, the applicant shall have filed a complete application containing all information required by this section, paid all fees required for licensure and the Insurance Commissioner shall have made a preliminary finding that the expertise, experience and character of the person or persons who

will control and manage the applicant captive insurer are acceptable.

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

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

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

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

2. In the case of an association captive insurance company incorporated as a stock insurer, not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00);

3. In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than Five Hundred Thousand Dollars (\$500,000.00);

4. In the case of a sponsored captive insurance company, not less than Five Hundred Thousand Dollars (\$500,000.00);

5. In the case of any captive insurance company doing business as a risk retention group, not less than One Million Dollars (\$1,000,000.00); and

6. In the case of a special purpose or branch captive insurance company, not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) or an amount determined by the Insurance Commissioner after giving due consideration to the business plan of the company, feasibility study, and pro formas, including the nature of the risks to be insured; ~~and~~

7. In the case of a series captive insurance company, the minimum capital and surplus shall be in an amount specified by the Insurance Commissioner; and

8. The unimpaired paid-in capital may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System. The issuing bank shall be approved by the Insurance Commissioner.

B. The Insurance Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

C. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the Insurance Commissioner may require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers. The amount of the security may be no less than the capital and surplus required by the Oklahoma Captive Insurance Company Act and the reserves on these insurance policies or reinsurance contracts.

D. A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, without the prior approval of the Insurance Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Insurance Commissioner.

SECTION 17. AMENDATORY 36 O.S. 2011, Section 6470.10, as last amended by Section 3, Chapter 306, O.S.L. 2018 (36 O.S. Supp. 2020, Section 6470.10), is amended to read as follows:

Section 6470.10. A. A captive insurance company may be incorporated as a stock corporation or as a nonstock corporation, or may be formed as a limited liability company, partnership, limited partnership, statutory trust or any lawful form approved by the Insurance Commissioner.

B. An association captive insurance company, industrial insured captive insurance company or special purpose captive insurance company may be organized as a reciprocal insurer.

C. The Commissioner shall not issue the initial license or review the license of any captive insurer unless the Commissioner determines the following matters serve the best interest of the prospective policyholders and promote the general good of the state:

1. The character, reputation, financial standing, and purposes of the principals, owners or other persons who will direct or control the affairs of the captive insurer;

2. The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

3. Other aspects as the Insurance Commissioner considers advisable.

D. In the case of a captive insurance company licensed as a branch captive insurance company, the findings required in subsection C above shall be in respect to the alien captive insurance company.

E. 1. A captive insurance company formed under the laws of this state or under the laws of another jurisdiction that is licensed under the provisions of this title shall have the privileges and be subject to the provisions of the laws of this state or the laws of such other jurisdiction, as applicable, under which such captive insurance company is organized as well as the applicable provisions contained in this title. In the event of

conflict between the provisions of the laws of this state or the laws of such other jurisdiction, as applicable, under which such captive insurance company is organized, and the provisions of this title, the latter shall control.

2. A captive insurance company, formed or licensed under the Oklahoma Captive Insurance Company Act, has the privileges and is subject to the provisions of Oklahoma law as well as the applicable provisions contained in the Oklahoma Captive Insurance Company Act. If a conflict occurs between a provision of the general law of Oklahoma and a provision of the Oklahoma Captive Insurance Company Act, the latter controls. No provision of the Insurance Code, other than those contained in this act or otherwise specifically referencing such companies, shall apply to captive insurance companies.

3. In addition to the applicability of law provided in this section, a captive insurance company operating as a risk retention group shall be subject to the provisions of the Oklahoma Risk Retention Act under Sections 6451 through 6468 of this title.

4. The provisions of the Oklahoma Insurance Code pertaining to mergers, consolidations, conversions, mutualizations, and change in control apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions, except the Insurance Commissioner may waive or modify the requirements for public notice and hearing. All preliminary reports or results, working papers, recorded information, orders, documents and copies of documents produced by, obtained by or disclosed to the Commissioner or any other person in the course of any merger, consolidation, conversion, mutualization and change of control made under this section are confidential and are not subject to subpoena and may not be made public by the Commissioner or any employee or agent of the Commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection prevents the Commissioner from using this information in furtherance of the regulatory authority of the Commissioner under the Oklahoma Captive 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:

Section 6470.11. A. A captive insurance company may not be required to make an annual report except as provided in the Oklahoma Captive Insurance Company Act.

B. Before March 1 of each year, a captive insurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Section 6470.6 of this title, a captive insurance company shall report using generally accepted accounting principles, unless the Insurance Commissioner approves the use of statutory accounting principles or international accounting standards, with useful or necessary modifications or adaptations required or approved or accepted by the Insurance Commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Insurance Commissioner.



1. The use of generally accepted accounting principles and the Insurance Department requires modifications, assets and liabilities to be reported as follows:

- a. letters of credit provided as capital funds pursuant to Section 6470 of this title are an asset for purposes of annual financial statement filings and shall be reported at their face value, and
- b. surplus notes issued pursuant to Section 2125 of this title shall be reported as surplus items in the capital section rather than as a liability.

2. Any captive insurance company whose use of statutory accounting principles is approved by the Commissioner may make such modifications and adaptations thereof as are necessary:

~~1. To~~

- a. to record, as "admitted", the full value of all investments by such captive insurance company permitted under this chapter, and

~~2. Subject~~

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

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

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

2. In order to provide sufficient detail to support the premium tax return, the pure captive insurance company shall file before March 1 of each year for each calendar year-end, pages 1 through 7 of the "Captive Annual Statement: Pure or Industrial Insured", verified by oath of two of its executive officers.

D. Sixty (60) days after the fiscal year-end, a branch captive insurance company shall file with the Insurance Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the Insurance Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the Insurance Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction. Such waiver must be in writing and subject to public inspection.

SECTION 19. AMENDATORY 36 O.S. 2011, Section 6470.19, as last amended by Section 1, Chapter 55, O.S.L. 2020 (36 O.S. Supp. 2020, Section 6470.19), is amended to read as follows:

Section 6470.19. A. Each captive insurance company, other than a sponsored captive insurance company, and each protected cell of a sponsored captive insurance company, shall pay to the Insurance Department, by March 1 of each year, a tax at the rate of two-tenths of one percent (0.2%) on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders up to a maximum tax for such year of One Hundred Thousand Dollars (\$100,000.00); provided however, that no tax shall be due or payable as to consideration received for annuity contracts.

B. A captive insurance company, other than a sponsored captive insurance company, and each protected cell of a sponsored captive insurance company, shall pay to the Department, by March 1 of each year, a tax at the rate of one-tenth of one percent (0.1%) of assumed reinsurance premium. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection A of this section. A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other

liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

C. A sponsored captive insurance company shall pay to the Department, by March 1 of each year, a tax on direct and assumed premiums equal, in the aggregate, to the minimum tax provided in subsection D of this section.

D. ~~If~~ Except as provided in this section for a series captive insurance company, if the aggregate taxes to be paid by a captive insurance company or a protected cell of a sponsored captive insurance company calculated under subsections A and B of this section amount to less than Five Thousand Dollars (\$5,000.00) in any year, the captive insurance company or protected cell shall pay a minimum tax of Five Thousand Dollars (\$5,000.00) for that year. However, in the calendar year in which a captive insurance company is first licensed, or the protected cell is approved by the Commissioner, the minimum tax will be prorated on a quarterly basis. For those licensed in the first quarter, the prorated minimum tax is Five Thousand Dollars (\$5,000.00). For those licensed in the second quarter, the prorated minimum tax is Three Thousand Seven Hundred Fifty Dollars (\$3,750.00). For those licensed in the third quarter, the prorated minimum tax is Two Thousand Five Hundred Dollars (\$2,500.00). For those licensed in the fourth quarter, the prorated minimum tax is One Thousand Two Hundred Fifty Dollars (\$1,250.00). In the calendar year in which a captive insurance company is first licensed or the protected cell is first approved by the Commissioner, if the aggregate taxes to be paid calculated under subsections A and B of this section amount to less than the minimum tax prorated on a quarterly basis, the captive or protected cell shall pay the prorated minimum tax for that calendar year. Each series captive insurance company shall pay an annual minimum aggregate tax of Three Thousand Five Hundred Dollars (\$3,500.00). The aggregation of the tax paid by more than one series captive insurance company formed within a limited liability company or statutory trust or the corresponding law of another state shall not be restricted by the annual maximum premium tax limitations specified in subsections A and B of this section.

E. Subject to subsections F, G and H of this section, if the aggregate taxes on direct and assumed premiums to be paid by a captive insurance company or a protected cell of a sponsored captive insurance company calculated under subsections A and B of this section amount to more than One Hundred Thousand Dollars (\$100,000.00) in any year, the captive insurance company, protected cell of a sponsored captive insurance company or a series captive insurance company shall pay a maximum tax of One Hundred Thousand Dollars (\$100,000.00) for that year.

F. Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company. Two or more protected cells of a sponsored captive insurance company that are related by common ownership and control must be taxed as though they were a single protected cell.

G. As used in this section, "common ownership and control" means the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock or other voting interests of two or more captive insurance companies or protected cells of a sponsored captive insurance company by the same person or persons.

H. A captive insurance company that has employed twenty-five or more separate qualified individuals throughout a given tax year and that otherwise would be liable under this section for tax for such year in an amount exceeding Fifty Thousand Dollars (\$50,000.00) shall pay to the Insurance Commissioner under this section a tax for such year in the amount of Fifty Thousand Dollars (\$50,000.00). For purposes of this subsection, "qualified individual" means a natural person employed in this state on a regular basis of thirty-five (35) or more hours per week either by such captive insurance company, or by a wholly-owned subsidiary of such captive insurance company that provides captive insurance company management, operating, investment or related services exclusively to such captive insurance company.

I. The tax provided for in this section constitutes all taxes collectible under the laws of this state from a captive insurance company or a protected cell of a sponsored captive insurance company, and no other occupation tax or other taxes may be levied or collected from a captive insurance company by the state or a county,

city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

J. For the fiscal year beginning July 1, 2020, and for each fiscal year thereafter, the Insurance Commissioner shall report and disburse all fees and taxes collected pursuant to this section as follows:

1. Of the first Five Hundred Thousand Dollars (\$500,000.00):

- a. thirty-six percent (36%) to the Oklahoma Firefighters Pension and Retirement Fund,
- b. fourteen percent (14%) to the Oklahoma Police Pension and Retirement System,
- c. five percent (5%) to the Law Enforcement Retirement Fund, and
- d. forty-five percent (45%) to the State Treasury to the credit of the General Revenue Fund of the state;

2. Of the next Two Hundred Fifty Thousand Dollars (\$250,000.00), one hundred percent (100%) to the State Insurance Commissioner Revolving Fund to be used by the Department for the purposes of implementing and administering the Oklahoma Captive Insurance Company Act and any accompanying regulations; and

3. Of all amounts in excess of Seven Hundred Fifty Thousand Dollars (\$750,000.00):

- a. thirty-six percent (36%) to the Oklahoma Firefighters Pension and Retirement Fund,
- b. fourteen percent (14%) to the Oklahoma Police Pension and Retirement System,
- c. five percent (5%) to the Law Enforcement Retirement Fund,
- d. fifteen percent (15%) to the State Treasury to the credit of the General Revenue Fund of the state, and

- e. thirty percent (30%) to the State Insurance Commissioner Revolving Fund to be used by the Department for the purposes of implementing and administering the Oklahoma Captive Insurance Company Act and any accompanying regulations.

SECTION 20. This act shall become effective November 1, 2021.

Passed the Senate the 10th day of March, 2021.

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

Passed the House of Representatives the 21st day of April, 2021.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_