

1 ENGROSSED SENATE
2 BILL NO. 818

By: Committee on Insurance of
the Senate

3 and

4 Mulready of the House
5
6

7 An Act relating to insurance; amending 36 O.S. 2011,
8 Sections 6470.2, as amended by Section 5, Chapter 41,
9 O.S.L. 2013, 6470.3, as last amended by Section 6,
10 Chapter 41, O.S.L. 2013, 6470.6, 6470.10, 6470.12,
11 6470.15 and 6470.16, as amended by Sections 7, 8, 10,
12 13 and 14, Chapter 41, O.S.L. 2013, 6470.19, as last
13 amended by Section 16, Chapter 41, O.S.L. 2013,
14 6470.20, as amended by Section 17, Chapter 41, O.S.L.
15 2013, 6470.25, 6470.27, 6470.29 and 6470.30, as
16 amended by Sections 19, 21 and 22, Chapter 41, O.S.L.
17 2013 (36 O.S. Supp. 2014, Sections 6470.2, 6470.3,
18 6470.6, 6470.10, 6470.12, 6470.15, 6470.16, 6470.19,
19 6470.20, 6470.27, 6470.29 and 6470.30), which relate
20 to the Oklahoma Captive Insurance Company Act;
21 modifying definitions; allowing captive insurance
22 company to provide certain workers' compensation
23 insurance and reinsurance; modifying form of
24 unimpaired capital; modifying application of certain
provisions of Oklahoma Insurance Code to certain
events; deleting provisions relating to regulations,
notice and hearing; providing procedure for licensed
insurer to become Oklahoma domiciled captive insurer;
modifying entities required to file certain annual
actuarial opinion and comply with certain investment
requirements; modifying exceptions to certain
investment restrictions; providing for ceding or
assuming reinsurance and taking credit for reserves;
specifying tax treatment of protected cells of
sponsored captive insurance company under certain
circumstances; modifying entities subject to certain
sanctions; deleting application of certain provisions
to captive insurance companies; modifying provision
relating to control of risk management of certain
businesses; modifying entities which may sponsor
captive insurance companies; providing procedure for

1 formation of protected cell of sponsored captive
2 insurance company; defining term; repealing 36 O.S.
3 2011, Section 6470.23, which relates to application
4 of certain provisions to captive insurance companies;
5 providing for codification; and providing an
6 effective date.

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

8 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6470.2, as
9 amended by Section 5, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
10 Section 6470.2), is amended to read as follows:

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

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

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

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

24 a. the member organizations of which, or which does
itself or either of them acting in concert directly or

1 indirectly own, control, or hold with power to vote
2 all of the outstanding voting securities or interests
3 of, or have complete voting control over an
4 association captive insurance company, or

5 b. the member organizations of which collectively
6 constitute all of the subscribers of an association
7 captive insurance company formed as a reciprocal
8 insurer;

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

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

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

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

23 8. "Capital and surplus" means the amount by which the value of
24 all of the assets of the captive insurance company exceeds all of

1 the liabilities of the captive insurance company, as determined
2 under the method of accounting utilized by the captive insurance
3 company in accordance with the applicable provisions of this act;

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

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

10 a. that is not in the corporate system of a parent and
11 affiliated companies,

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

14 c. whose risks are managed by a pure captive insurance
15 company in accordance with Section 6470.27 of this
16 title;

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

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

20 13. ~~"Excess workers' compensation insurance" means, in the case~~
21 ~~of an employer that has insured its workers' compensation risks in~~
22 ~~accordance with applicable law, insurance in excess of specified~~
23 ~~limits established by the Commissioner;~~

24 14. "GAAP" means generally accepted accounting principles;

1 ~~15.~~ 14. "Industrial insured" means an insured:

- 2 a. who procures the insurance of any risk or risks by use
- 3 of the services of a full-time employee acting as an
- 4 insurance manager or buyer,
- 5 b. whose aggregate annual premiums for insurance on all
- 6 risks total at least Twenty-five Thousand Dollars
- 7 (\$25,000.00), and
- 8 c. who has at least twenty-five full-time employees;

9 ~~16.~~ 15. "Industrial insured captive insurance company" means a
10 company that insures risks of the industrial insureds that comprise
11 the industrial insured group and their affiliated companies;

12 ~~17.~~ 16. "Industrial insured group" means a group of industrial
13 insureds that collectively directly or indirectly owns, controls, or
14 holds with power to vote all of the outstanding voting securities or
15 other voting interests or has complete control over an industrial
16 insured captive insurance company;

17 ~~18.~~ 17. "Member organization" means any individual,
18 corporation, partnership, or association that belongs to an
19 association;

20 ~~19.~~ 18. "Parent" means any corporation, partnership, or
21 individual that directly or indirectly owns, controls, or holds with
22 power to vote more than fifty percent (50%) of the outstanding
23 voting securities of a pure captive insurance company;

1 ~~20.~~ 19. "Participant" means an entity as defined in Section
2 6470.31 of this title, and any affiliates of that entity, that are
3 insured by a sponsored captive insurance company, where the losses
4 of the participant are limited through a participant contract to the
5 participant's pro rata share of the assets of one or more protected
6 cells identified in the participant contract;

7 ~~21.~~ 20. "Participant contract" means a contract by which a
8 sponsored captive insurance company insures the risks of one or more
9 participants and limits the losses of each participant to its pro
10 rata share of the assets of one or more protected cells identified
11 in the participant contract;

12 ~~22.~~ 21. "Protected cell" means a separate and distinct account
13 established and maintained by or on behalf of a sponsored captive
14 insurance company in which assets are accounted for and recorded for
15 one or more participants in accordance with the terms of one or more
16 participant contracts to fund the liability of the sponsored captive
17 insurance company assumed on behalf of the participants as set forth
18 in the participant contracts;

19 ~~23.~~ 22. "Pure captive insurance company" means a company that
20 insures risks of its parent, affiliated companies, of its parent and
21 any controlled unaffiliated business, or a combination thereof. For
22 purposes of this paragraph, "controlled unaffiliated business" means
23 an entity insured by a pure captive insurance company:
24

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

7 ~~24.~~ 23. "Reciprocal insurer" has the meaning given that term in
8 Article 29 of the Oklahoma Insurance Code;

9 ~~25.~~ 24. "Risk retention group" means a risk retention group
10 formed pursuant to the Liability Risk Retention Act of 1986 under
11 Section 3901 of Title 15 of the United States Code;

12 ~~26.~~ 25. "Special purpose captive insurance company" means a
13 captive insurance company that is formed or licensed under the
14 Oklahoma Captive Insurance Company Act that does not meet the
15 definition of any other type of captive insurance company defined in
16 this section and is designated as a special purpose captive
17 insurance company by the Commissioner;

18 ~~27.~~ 26. "Sponsor" means an entity that meets the requirements
19 of Section 6470.30 of this title and is approved by the Insurance
20 Commissioner to provide all or part of the capital and surplus
21 required by applicable law and to organize and operate a sponsored
22 captive insurance company; ~~and~~

23 ~~28.~~ 27. "Sponsored captive insurance company" means a captive
24 insurance company:

- 1 a. in which the minimum capital and surplus required by
2 applicable law is provided by one or more sponsors,
3 b. that is formed or licensed under the Oklahoma Captive
4 Insurance Company Act,
5 c. that insures the risks of its participants only
6 through separate participant contracts, and
7 d. that funds its liability to each participant through
8 one or more protected cells and segregates the assets
9 of each protected cell from the assets of other
10 protected cells and from the assets of the sponsored
11 captive insurance company's general account; and

12 28. Workers' compensation insurance means insurance provided in
13 satisfaction of an employer's responsibility as set forth in the
14 Administrative Workers' Compensation Act and the Oklahoma Employee
15 Injury Benefit Act.

16 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6470.3, as
17 last amended by Section 6, Chapter 41, O.S.L. 2013 (36 O.S. Supp.
18 2014, Section 6470.3), is amended to read as follows:

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

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

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

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

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

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

17 6. Any captive insurance company may provide ~~excess~~ workers'
18 compensation insurance ~~to its parent and affiliated companies,~~
19 insurance in the nature of workers' compensation insurance, and
20 reinsurance of such policies, unless prohibited by federal law or
21 laws of this state or any other state having jurisdiction over the
22 transaction, ~~and any captive insurance company, unless prohibited by~~
23 ~~federal law, may reinsure workers' compensation of a qualified self-~~
24 ~~insured plan of its parent and affiliated companies.~~

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

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

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

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

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

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

23 a. the amount and liquidity of its assets relative to the
24 risks to be assumed,

- 1 b. the adequacy of the expertise, experience, and
2 character of the person or persons who will manage it,
3 c. the overall soundness of its plan of operation,
4 d. the adequacy of the loss prevention programs of its
5 insureds, and
6 e. such other factors considered relevant by the
7 Insurance Commissioner in ascertaining whether the
8 proposed captive insurance company will be able to
9 meet its obligations.

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

- 14 a. information may be discoverable by a party in a civil
15 action or contested case to which the captive
16 insurance company that submitted the information is a
17 party, upon a showing by the party seeking to discover
18 the information that:
19 (1) the information sought is relevant to and
20 necessary for the furtherance of the action or
21 case,
22 (2) the information sought is unavailable from other
23 nonconfidential sources, and
24

1 (3) a subpoena issued by a judicial or administrative
2 officer of competent jurisdiction has been
3 submitted to the Insurance Commissioner; however,
4 the provisions of this paragraph do not apply to
5 an industrial insured captive insurance company
6 insuring the risks of an industrial insured
7 group, and

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

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

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

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

7 F. 1. Notwithstanding any other provision of this act, the
8 Insurance Commissioner may issue a provisional license to any
9 applicant captive insurance company for a period not to exceed sixty
10 (60) days if the Insurance Commissioner deems that the public
11 interest will be served by the issuance of such license.

12 2. As a condition precedent to the issuance of a provisional
13 license under this section, the applicant shall have filed a
14 complete application containing all information required by this
15 section, paid all fees required for licensure and the Insurance
16 Commissioner shall have made a preliminary finding that the
17 expertise, experience and character of the person or persons who
18 will control and manage the applicant captive insurer are
19 acceptable.

20 3. The Insurance Commissioner may by order limit the authority
21 of any provisional licensee in any way deemed necessary to protect
22 insureds and the public. The Insurance Commissioner may by order
23 revoke a provisional license if the interests of insureds or the
24 public are endangered. If the applicant fails to complete the

1 regular licensure application process, the provisional license shall
2 terminate automatically.

3 SECTION 3. AMENDATORY 36 O.S. 2011, Section 6470.6, as
4 amended by Section 7, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
5 Section 6470.6), is amended to read as follows:

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

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

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

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

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

24

1 5. In the case of any captive insurance company doing business
2 as a risk retention group, not less than One Million Dollars
3 (\$1,000,000.00); ~~and~~

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

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

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

18 C. In the case of a branch captive insurance company, as
19 security for the payment of liabilities attributable to branch
20 operations, the Insurance Commissioner may require that a trust
21 fund, funded by an irrevocable letter of credit or other acceptable
22 asset, be established and maintained in the United States for the
23 benefit of United States policyholders and United States ceding
24 insurers. The amount of the security may be no less than the

1 capital and surplus required by the Oklahoma Captive Insurance
2 Company Act and the reserves on these insurance policies or
3 reinsurance contracts.

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

12 SECTION 4. AMENDATORY 36 O.S. 2011, Section 6470.10, as
13 amended by Section 8, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
14 Section 6470.10), is amended to read as follows:

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

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

23 C. The Commissioner shall not issue the initial license or
24 review the license of any captive insurer unless the Commissioner

1 determines the following matters serve the best interest of the
2 prospective policyholders and promote the general good of the state:

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

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

9 3. Other aspects as the Insurance Commissioner considers
10 advisable.

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

15 E. 1. A captive insurance company formed under the laws of
16 this state or under the laws of another jurisdiction that is
17 licensed under the provisions of this title shall have the
18 privileges and be subject to the provisions of the laws of this
19 state or the laws of such other jurisdiction, as applicable, under
20 which such captive insurance company is organized as well as the
21 applicable provisions contained in this title. In the event of
22 conflict between the provisions of the laws of this state or the
23 laws of such other jurisdiction, as applicable, under which such

24

1 captive insurance company is organized, and the provisions of this
2 title, the latter shall control.

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

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

17 4. The provisions of the Oklahoma Insurance Code pertaining to
18 mergers, consolidations, conversions, mutualizations, and
19 ~~redemestications~~ change in control apply in determining the
20 procedures to be followed by a captive insurance company in carrying
21 out any of the transactions described in those provisions, except
22 the Insurance Commissioner may waive or modify the requirements for
23 public notice and hearing ~~in accordance with regulations which the~~
24 ~~Insurance Commissioner may promulgate addressing categories of~~

1 ~~transactions. If a notice of public hearing is required, but no one~~
2 ~~requests a hearing, the Insurance Commissioner may cancel the~~
3 ~~hearing.~~

4 5. The terms and conditions set forth in Articles 18 and 19 of
5 the Oklahoma Insurance Code pertaining to insurance supervision,
6 conservatorship, rehabilitation, and receiverships apply in full to
7 captive insurance companies ~~formed under the Oklahoma Captive~~
8 ~~Insurance Company Act~~, including for this purpose, individual
9 protected cells of sponsored captive insurance companies as provided
10 in Section 6470.29 of this title.

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

18 SECTION 5. AMENDATORY 36 O.S. 2011, Section 6470.12, as
19 amended by Section 10, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
20 Section 6470.12), is amended to read as follows:

21 Section 6470.12. A. Upon written application, accompanied by
22 such information as the Insurance Commissioner requires, the
23 Commissioner may grant permission to a sponsored captive insurance
24 company or a special purpose captive insurance company to discount

1 loss and loss adjustment expense reserves at treasury rates applied
2 to the applicable payments projected through the use of the expected
3 payment pattern associated with the reserves.

4 B. A sponsored captive insurance company ~~and~~, a special purpose
5 captive insurance company, and any captive insurer, at the
6 Commissioner's discretion, shall file annually an actuarial opinion
7 on loss and loss adjustment expense reserves provided by an
8 independent actuary. The actuary may not be an employee of the
9 captive company or its affiliates.

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

13 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6470.15, as
14 amended by Section 13, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
15 Section 6470.15), is amended to read as follows:

16 Section 6470.15. A. An association captive insurance company,
17 a sponsored captive insurance company, and a risk retention group
18 shall comply with the investment requirements contained in the
19 Oklahoma Insurance Code. The Insurance Commissioner may approve the
20 use of alternative investment requirements upon application by such
21 captive insurance company.

22 B. A Except as to unimpaired paid-in capital as provided in
23 paragraph 7 of subsection A of Section 6470.6 of this title, a pure
24 captive insurance company, a special purpose captive insurance

1 company, a branch captive insurance company, and an industrial
2 insured captive insurance company, ~~and a sponsored captive insurance~~
3 ~~company~~ are not subject to any restrictions on allowable investments
4 contained in the Oklahoma Insurance Code; however, the Insurance
5 Commissioner may prohibit or limit an investment that threatens the
6 solvency or liquidity of the company.

7 C. Loans of minimum capital and surplus funds required by
8 Section 6470.6 of this title are prohibited.

9 D. Subject to subsections A and B of this section and Section
10 6470.31 of this title, as applicable, a captive insurance company
11 may own securities of or other interests in another captive
12 insurance company, whether voting or nonvoting.

13 SECTION 7. AMENDATORY 36 O.S. 2011, Section 6470.16, as
14 amended by Section 14, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
15 Section 6470.16), is amended to read as follows:

16 Section 6470.16. ~~A.~~ A captive insurance company may ~~provide~~
17 cede or assume reinsurance and take credit for reserves, as
18 authorized ~~in the Oklahoma Insurance Code~~, for domestic insurers ~~on~~
19 ~~risks ceded by any other insurer~~ by the Oklahoma Insurance Code.

20 ~~B.~~ A captive insurance company may ~~take credit for reserves on~~
21 ~~risks or portions of risks ceded to reinsurers only in accordance~~
22 ~~with the Oklahoma Insurance Code.~~

23

24

1 SECTION 8. AMENDATORY 36 O.S. 2011, Section 6470.19, as
2 last amended by Section 16, Chapter 41, O.S.L. 2013 (36 O.S. Supp.
3 2014, Section 6470.19), is amended to read as follows:

4 Section 6470.19. A. Each captive insurance company, other than
5 a sponsored captive insurance company, and each protected cell of a
6 sponsored captive insurance company, shall pay to the Department, by
7 March 1 of each year, a tax at the rate of two-tenths of one percent
8 (0.2%) on the direct premiums collected or contracted for on
9 policies or contracts of insurance written by the captive insurance
10 company during the year ending December 31 next preceding, after
11 deducting from the direct premiums subject to the tax the amounts
12 paid to policyholders as return premiums which shall include
13 dividends on unabsorbed premiums or premium deposits returned or
14 credited to policyholders up to a maximum tax for such year of One
15 Hundred Thousand Dollars (\$100,000.00); provided however, that no
16 tax shall be due or payable as to consideration received for annuity
17 contracts.

18 B. A captive insurance company, other than a sponsored captive
19 insurance company, and each protected cell of a sponsored captive
20 insurance company, shall pay to the Department, by March 1 of each
21 year, a tax at the rate of one-tenth of one percent (0.1%) of
22 assumed reinsurance premium. However, no reinsurance tax applies to
23 premiums for risks or portions of risks which are subject to
24 taxation on a direct basis pursuant to subsection A of this section.

1 A premium tax is not payable in connection with the receipt of
2 assets in exchange for the assumption of loss reserves and other
3 liabilities of another insurer under common ownership and control if
4 the transaction is part of a plan to discontinue the operations of
5 the other insurer and if the intent of the parties to the
6 transaction is to renew or maintain business with the captive
7 insurance company.

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

12 D. If the aggregate taxes to be paid by a captive insurance
13 company or a protected cell of a sponsored captive insurance company
14 calculated under subsections A and B of this section amount to less
15 than Five Thousand Dollars (\$5,000.00) in any year, the captive
16 insurance company or protected cell shall pay a minimum tax of Five
17 Thousand Dollars (\$5,000.00) for that year. However, in the
18 calendar year in which a captive is first licensed, or the protected
19 cell is approved by the Commissioner, the minimum tax will be
20 prorated on a quarterly basis. For those licensed in the first
21 quarter, the prorated minimum tax is Five Thousand Dollars
22 (\$5,000.00). For those licensed in the second quarter, the prorated
23 minimum tax is Three Thousand Seven Hundred Fifty Dollars
24 (\$3,750.00). For those licensed in the third quarter, the prorated

1 minimum tax is Two Thousand Five Hundred Dollars (\$2,500.00). For
2 those licensed in the fourth quarter, the prorated minimum tax is
3 One Thousand Two Hundred Fifty Dollars (\$1,250.00). In the calendar
4 year in which a captive is first licensed or the protected cell is
5 first approved by the Commissioner, if the aggregate taxes to be
6 paid calculated under subsections A and B of this section amount to
7 less than the minimum tax prorated on a quarterly basis, the captive
8 or protected cell shall pay the prorated minimum tax for that
9 calendar year.

10 E. Subject to subsections F, G and H of this section, if the
11 aggregate taxes on direct and assumed premiums to be paid by a
12 captive insurance company or a protected cell of a sponsored captive
13 insurance company calculated under subsections A and B of this
14 section amount to more than One Hundred Thousand Dollars
15 (\$100,000.00) in any year, the captive insurance company shall pay a
16 maximum tax of One Hundred Thousand Dollars (\$100,000.00) for that
17 year.

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

24

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

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

19 I. The tax provided for in this section constitutes all taxes
20 collectible under the laws of this state from a captive insurance
21 company or a protected cell of a sponsored captive insurance
22 company, and no other occupation tax or other taxes may be levied or
23 collected from a captive insurance company by the state or a county,
24

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

3 SECTION 9. AMENDATORY 36 O.S. 2011, Section 6470.20, as
4 amended by Section 17, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
5 Section 6470.20), is amended to read as follows:

6 Section 6470.20. A captive ~~reinsurance~~ insurance company
7 failing to make returns or to pay all taxes required by this section
8 is subject to sanctions provided in the Oklahoma Insurance Code.

9 SECTION 10. AMENDATORY 36 O.S. 2011, Section 6470.25, is
10 amended to read as follows:

11 Section 6470.25. ~~A. Except as otherwise provided in this~~
12 ~~section, the terms and conditions set forth in Articles 18 and 19 of~~
13 ~~the Oklahoma Insurance Code pertaining to insurance supervisions,~~
14 ~~conservatorship, rehabilitation, and receiverships apply in full to~~
15 ~~captive insurance companies formed or licensed under the Oklahoma~~
16 ~~Captive Insurance Company Act.~~

17 ~~B.~~ In the case of a sponsored captive insurance company:

18 1. The assets of the protected cell may not be used to pay
19 expenses or claims other than those attributable to the protected
20 cell; and

21 2. Its capital and surplus at all times must be available to
22 pay expenses of or claims against the sponsored captive insurance
23 company and may not be used to pay expenses or claims attributable
24 to a protected cell.

1 SECTION 11. AMENDATORY 36 O.S. 2011, Section 6470.27, as
2 amended by Section 19, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
3 Section 6470.27), is amended to read as follows:

4 Section 6470.27. The Insurance Commissioner shall promulgate
5 regulations establishing standards to ensure that a parent or
6 affiliated company is able to exercise control of the risk
7 management ~~function of~~ for any controlled unaffiliated business to
8 be insured by a pure captive insurance company; however, until such
9 time as these regulations are promulgated, the Insurance
10 Commissioner may by temporary order grant authority to a pure
11 captive insurance company to insure risks.

12 SECTION 12. AMENDATORY 36 O.S. 2011, Section 6470.29, as
13 amended by Section 21, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
14 Section 6470.29), is amended to read as follows:

15 Section 6470.29. A. In addition to the provisions of Sections
16 6470.1 through 6470.28 of this title, and the provisions of Sections
17 6470.29 through 6470.31 ~~and Sections 3 and 4 of this act~~ of this
18 title shall apply to sponsored captive insurance companies, and the
19 provisions of Section ~~1 of this act~~ 6470.24.1 of this title shall
20 apply to each protected cell of a sponsored captive insurance
21 company.

22 B. Supplemental license application materials.
23
24

1 In addition to the information required by subsection C of
2 Section 6470.3 of this title, each applicant sponsored captive
3 insurance company shall file with the Commissioner the following:

4 1. Materials demonstrating to the satisfaction of the
5 Commissioner how the applicant will report to the Commissioner on,
6 and account for, the loss and expense experience of each protected
7 cell;

8 2. A statement acknowledging that all financial records of the
9 sponsored captive insurance company, including records pertaining to
10 any protected cells, shall be made available for inspection or
11 examination by the Commissioner or the Commissioner's designated
12 agent;

13 3. All contracts or sample contracts between the sponsored
14 captive insurance company and any participants; and

15 4. Evidence that expenses shall be allocated to each protected
16 cell in a fair and equitable manner.

17 C. One or more sponsors may form a sponsored captive insurance
18 company under the Oklahoma Captive Insurance Company Act.

19 D. A sponsored captive insurance company formed or licensed
20 under the Oklahoma Captive Insurance Company Act may establish and
21 maintain one or more protected cells to insure risks of one or more
22 participants, subject to the following conditions:

23 1. The persons holding the voting interests of a sponsored
24 captive insurance company must be limited to its participants and

1 sponsors; provided, that a sponsored captive insurance company may
2 issue nonvoting securities or interests to other persons on terms
3 approved by the Commissioner;

4 2. Each protected cell must be accounted for separately on the
5 books and records of the sponsored captive insurance company to
6 reflect the financial condition and results of operations of the
7 protected cell, net income or loss, dividends or other distributions
8 to participants, and other factors may be provided in the
9 participant contract or required by the Insurance Commissioner;

10 3. The assets of a protected cell must not be chargeable with
11 liabilities of any other protected cell or, unless otherwise agreed
12 in the applicable participant contract, of the sponsored captive
13 insurance company;

14 4. No sale, exchange, or other transfer of assets, or dividend
15 or other distribution, may be made with respect to a protected cell
16 by the sponsored captive insurance company without the consent of
17 the participants of each affected protected cell;

18 5. No sale, exchange, transfer of assets, dividend, or
19 distribution, other than a payment to a sponsor in accordance with
20 the applicable participant contract, may be made from a protected
21 cell to a sponsor or participant without the approval of the
22 Insurance Commissioner and in no event may the approval be given if
23 the sale, exchange, transfer, dividend, or distribution would result
24 in insolvency or impairment with respect to a protected cell;

1 6. A sponsored captive insurance company annually shall file
2 with the Insurance Commissioner financial reports the Insurance
3 Commissioner requires, which shall include, but are not limited to,
4 accounting statements detailing the financial experience of each
5 protected cell;

6 7. A sponsored captive insurance company shall notify the
7 Insurance Commissioner in writing within ten (10) business days of a
8 protected cell that is insolvent or otherwise unable to meet its
9 claim or expense obligations; and

10 8. No participant contract shall take effect without the prior
11 written approval of the Insurance Commissioner, and the addition of
12 each new protected cell and withdrawal of any participant or
13 termination of any existing protected cell constitutes a change in
14 the business plan of the sponsored captive insurance company
15 requiring the prior written approval of the Insurance Commissioner.

16 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6470.30, as
17 amended by Section 22, Chapter 41, O.S.L. 2013 (36 O.S. Supp. 2014,
18 Section 6470.30), is amended to read as follows:

19 Section 6470.30. A sponsor of a sponsored captive insurance
20 company must be an insurer licensed pursuant to the laws of a state,
21 an insurance holding company that controls an insurer licensed
22 pursuant to the laws of any state and subject to registration
23 pursuant to the insurance holding company system laws of the state
24 of domicile of the insurer, a reinsurer authorized or approved

1 pursuant to the laws of a state, ~~or~~ a captive insurance company
2 formed or licensed pursuant to the Oklahoma Captive Insurance
3 Company Act, a holding company, a trust, an individual or other
4 organization as permitted by the Insurance Commissioner. A risk
5 retention group may be a participant of a sponsored captive
6 insurance company only to the extent that it is the sole participant
7 of one or more protected cells.

8 SECTION 14. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 6470.34 of Title 36, unless
10 there is created a duplication in numbering, reads as follows:

11 A. A protected cell of a sponsored captive insurance company
12 may be formed as an entity protected cell. "Entity protected cell"
13 means a protected cell that is established as any type of legal
14 entity separate from the sponsored captive insurance company of
15 which it is a part.

16 B. Subject to the prior written approval of the sponsored
17 captive insurance company and of the Insurance Commissioner, an
18 entity protected cell shall be entitled to enter into contracts and
19 undertake obligations in its own name and for its own account. In
20 the case of a contract or obligation to which the sponsored captive
21 insurance company is not a party, either in its own name and for its
22 own account or on behalf of a protected cell, the counterparty to
23 the contract or obligation shall have no right or recourse against
24 the sponsored captive insurance company and its assets other than

1 against assets properly attributable to the entity protected cell
2 that is a party to the contract or obligation.

3 C. The articles of incorporation or articles of organization of
4 an entity protected cell shall refer to the sponsored captive
5 insurance company for which it is a protected cell and shall state
6 that the protected cell is incorporated or organized for the limited
7 purposes authorized by the sponsored captive insurance company's
8 license. A copy of the prior written approval of the Commissioner
9 to add the entity protected cell, required by Section 6470.29 of
10 Title 36 of the Oklahoma Statutes, shall be attached to and filed
11 with the articles of incorporation or the articles of organization.

12 D. Sponsored captive insurance companies, including those
13 licensed as special purpose captive insurance companies, shall have
14 the option to establish one or more protected cells as a separate
15 corporation, mutual corporation, nonprofit corporation, limited
16 liability company, or reciprocal insurer. This section shall not be
17 construed to limit any rights or protections applicable to protected
18 cells not established as corporations, mutual corporations,
19 nonprofit corporations, limited liability companies, or reciprocal
20 insurers.

21 SECTION 15. REPEALER 36 O.S. 2011, Section 6470.23, is
22 hereby repealed.

23 SECTION 16. This act shall become effective November 1, 2015.
24

