

An Act

ENROLLED SENATE
BILL NO. 1242

By: Quinn of the Senate

and

Sneed of the House

An Act relating to Oklahoma Captive Insurance Company Act; amending 36 O.S. 2021, Sections 6470.2, 6470.3, 6470.10, and 6470.15, which relate to definitions, limitations and requirements, company organizations, and investments and loans; modifying definitions; prohibiting series captive insurance company from providing certain insurance; allowing series captive insurance company to apply for certain certificates of authority; permitting captive insurance companies to establish series limited liability company; prohibiting certain exclusions from applying to certain captive insurance companies; omitting application of Oklahoma Insurance Code to certain procedure; conforming language; updating statutory language; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Captive Insurance Company Act

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

SECTION 1. AMENDATORY 36 O.S. 2021, 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, branch captive insurance company, or series 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~~ this state or designee of the Insurance Commissioner;

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

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;

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;

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

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 2. AMENDATORY 36 O.S. 2021, 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; and

7. A series captive insurance company may not insure any risks other than those permitted in paragraphs 1 through 6 of this subsection. A series may elect to apply for a certificate of authority as an association captive insurance company, industrial insured captive insurance company, a pure captive insurance company, series captive insurance company, or a special purpose captive insurance company.

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. 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 3. AMENDATORY 36 O.S. 2021, 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 Oklahoma 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6470.10a of Title 36, unless there is created a duplication in numbering, reads as follows:

Captive insurance companies formed or licensed under the Oklahoma Captive Insurance Company Act may establish a series limited liability company under the Oklahoma Limited Liability Company Act. Any exclusion of the business of a domestic insurer under Title 18 of the Oklahoma Statutes shall not apply to captive insurance companies formed or licensed under the Oklahoma Captive Insurance Company Act.

SECTION 5. AMENDATORY 36 O.S. 2021, Section 6470.15, is amended to read as follows:

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

B. Except as to unimpaired paid-in capital as provided in paragraph 7 of subsection A of Section 6470.6 of this title, a pure captive insurance company, a special purpose captive insurance company, a branch captive insurance company, a series captive insurance company, and an industrial insured captive insurance company are not subject to any restrictions on allowable investments contained in the Oklahoma Insurance Code; however, the Insurance Commissioner may prohibit or limit an investment that threatens the solvency or liquidity of the company.

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

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

SECTION 6. This act shall become effective November 1, 2022.

Passed the Senate the 22nd day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2022.

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: _____