

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1242

By: Quinn

AS INTRODUCED

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.

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

1 than the United States of America, or any of its states, districts,
2 commonwealths and possessions;

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

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

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

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

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

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

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

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

15 9. "Captive insurance company" means a pure captive insurance
16 company, association captive insurance company, sponsored captive
17 insurance company, special purpose captive insurance company, ~~or~~
18 industrial insured captive insurance company, branch captive
19 insurance company, or series captive insurance company formed or
20 licensed under the Oklahoma Captive Insurance Company Act;

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

- 22 a. that is not in the corporate system of a parent and
23 affiliated companies,

- 1 b. that has an existing contractual relationship with a
2 parent or affiliated company, and
3 c. whose risks are managed by a pure captive insurance
4 company in accordance with Section 6470.27 of this
5 title;

6 11. "Insurance Commissioner" means the Insurance Commissioner
7 of ~~the State of Oklahoma~~ this state or designee of the Insurance
8 Commissioner;

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

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

12 14. "Industrial insured" means an insured:

- 13 a. who procures the insurance of any risk or risks by use
14 of the services of a full-time employee acting as an
15 insurance manager or buyer,
16 b. whose aggregate annual premiums for insurance on all
17 risks total at least Twenty-five Thousand Dollars
18 (\$25,000.00), and
19 c. who has at least twenty-five full-time employees;

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

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

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

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

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

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

21 21. "Protected cell" means a separate and distinct account
22 established and maintained by or on behalf of a sponsored captive
23 insurance company in which assets are accounted for and recorded for
24 one or more participants in accordance with the terms of one or more

1 participant contracts to fund the liability of the sponsored captive
2 insurance company assumed on behalf of the participants as set forth
3 in the participant contracts;

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

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

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

13 c. whose risks are managed by a pure captive insurance
14 company;

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

17 24. "Risk retention group" means a risk retention group formed
18 pursuant to the Liability Risk Retention Act of 1986 under Section
19 3901 of Title 15 of the United States Code;

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

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

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

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

14 29. "Sponsored captive insurance company" means a captive
15 insurance company:

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

1 protected cells and from the assets of the sponsored
2 captive insurance company's general account; and

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

7 SECTION 2. AMENDATORY 36 O.S. 2021, Section 6470.3, is
8 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

23 2. Maintain a place of business in this state designated as its
24 registered office; and
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1 3. Appoint a resident registered agent to accept service of
2 process and to otherwise act on its behalf in this state. Whenever
3 the registered agent cannot with reasonable diligence be found at
4 the registered office of the captive insurance company, the
5 Insurance Commissioner shall be deemed an agent of the captive
6 insurance company upon whom any process, notice, or demand may be
7 served.

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

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

- 17 a. the amount and liquidity of its assets relative to the
18 risks to be assumed,
- 19 b. the adequacy of the expertise, experience, and
20 character of the person or persons who will manage it,
- 21 c. the overall soundness of its plan of operation,
- 22 d. the adequacy of the loss prevention programs of its
23 insureds, and

1 e. such other factors considered relevant by the
2 Insurance Commissioner in ascertaining whether the
3 proposed captive insurance company will be able to
4 meet its obligations.

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

9 a. information may be discoverable by a party in a civil
10 action or contested case to which the captive
11 insurance company that submitted the information is a
12 party, upon a showing by the party seeking to discover
13 the information that:

14 (1) the information sought is relevant to and
15 necessary for the furtherance of the action or
16 case,

17 (2) the information sought is unavailable from other
18 nonconfidential sources, and

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

- 3 b. the Insurance Commissioner may disclose the
4 information to a public officer having jurisdiction
5 over the regulation of insurance in another state if:
6 (1) the public official agrees in writing to maintain
7 the confidentiality of the information, and
8 (2) the laws of the state in which the public
9 official serves require the information to be
10 confidential.

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

22 E. If the Insurance Commissioner is satisfied that the
23 documents and statements filed by the captive insurance company
24 comply with the provisions of the Oklahoma Captive Insurance Company

1 Act, the Insurance Commissioner may grant a license authorizing the
2 company to do insurance business in this state until the succeeding
3 March 1 at which time the license may be renewed.

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

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

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

1 subsection C above shall be in respect to the alien captive
2 insurance company.

3 E. 1. A captive insurance company formed under the laws of
4 this state or under the laws of another jurisdiction that is
5 licensed under the provisions of this title shall have the
6 privileges and be subject to the provisions of the laws of this
7 state or the laws of such other jurisdiction, as applicable, under
8 which such captive insurance company is organized as well as the
9 applicable provisions contained in this title. In the event of
10 conflict between the provisions of the laws of this state or the
11 laws of such other jurisdiction, as applicable, under which such
12 captive insurance company is organized, and the provisions of this
13 title, the latter shall control.

14 2. A captive insurance company, formed or licensed under the
15 Oklahoma Captive Insurance Company Act, has the privileges and is
16 subject to the provisions of Oklahoma law as well as the applicable
17 provisions contained in the Oklahoma Captive Insurance Company Act.
18 If a conflict occurs between a provision of the general law of
19 Oklahoma and a provision of the Oklahoma Captive Insurance Company
20 Act, the latter controls. No provision of the Oklahoma Insurance
21 Code, other than those contained in this act or otherwise
22 specifically referencing such companies, shall apply to captive
23 insurance companies.
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1 3. In addition to the applicability of law provided in this
2 section, a captive insurance company operating as a risk retention
3 group shall be subject to the provisions of the Oklahoma Risk
4 Retention Act under Sections 6451 through 6468 of this title.

5 4. ~~The provisions of the Oklahoma Insurance Code pertaining to~~
6 ~~mergers, consolidations, conversions, mutualizations, and change in~~
7 ~~control apply in determining the procedures to be followed by a~~
8 ~~captive insurance company in carrying out any of the transactions~~
9 ~~described in those provisions, except the Insurance Commissioner may~~
10 ~~waive or modify the requirements for public notice and hearing. All~~
11 preliminary reports or results, working papers, recorded
12 information, orders, documents and copies of documents produced by,
13 obtained by or disclosed to the Commissioner or any other person in
14 the course of any merger, consolidation, conversion, mutualization
15 and change of control made under this section are confidential and
16 are not subject to subpoena and may not be made public by the
17 Commissioner or any employee or agent of the Commissioner without
18 the written consent of the company, except to the extent provided in
19 this subsection. Nothing in this subsection prevents the
20 Commissioner from using this information in furtherance of the
21 regulatory authority of the Commissioner under the Oklahoma Captive
22 Insurance Company Act. The Commissioner may grant access to this
23 information to public officers having jurisdiction over the
24 regulation of insurance in any other state or country, or to law

1 enforcement officers of this state or any other state or agency of
2 the federal government at any time, so long as the officers
3 receiving the information agree in writing to use and retain it in
4 any manner consistent with this section.

5 5. The terms and conditions set forth in Articles 18 and 19 of
6 the Oklahoma Insurance Code pertaining to insurance supervision,
7 conservatorship, rehabilitation, and receiverships apply in full to
8 captive insurance companies, 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 jurisdiction may
13 become an Oklahoma domiciled captive insurer by complying with all
14 of the 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 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6470.10a of Title 36, unless
20 there is created a duplication in numbering, reads as follows:

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

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

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

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

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

22 D. Subject to subsections A and B of this section and Section
23 6470.31 of this title, as applicable, a captive insurance company
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1 may own securities of or other interests in another captive
2 insurance company, whether voting or nonvoting.

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