

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1485

By: Brown

4
5
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2011,
8 Sections 1106, as last amended by Section 1, Chapter
9 415, O.S.L. 2014 (36 O.S. Supp. 2017, Section 1106),
10 1441.1, as amended by Section 8, Chapter 298, O.S.L.
11 2015 (36 O.S. Supp. 2017, Section 1441.1), 1250.4, as
12 amended by Section 20, Chapter 254, O.S.L. 2013 (36
13 O.S. Supp. 2017, Section 1250.4), 3102, 1250.7, 3629,
14 4424, as amended by Section 1, Chapter 264, O.S.L.
15 2016 (36 O.S. Supp. 2017, Section 4424), 6453 and
16 6470.12, as last amended by Section 18, Chapter 298,
17 O.S.L. 2015 (36 O.S. Supp. 2017, Section 6470.12),
18 which relate to surplus lines, the Third Party
19 Administrator Act, claim files, issuance of
20 certificates; property and casualty insurers, forms
of proof of loss, Long-Term Care Insurance Act,
definitions and actuarial opinion; modifying
requirements for obtaining surplus lines license;
updating statutory references; clarifying list of
persons required to submit response to certain
inquiries; modifying actions required for issuance of
certain certificate; modifying timeline for certain
responses by insurer; modifying definitions;
modifying requirements for filing certain actuarial
opinions; updating language; updating statutory
references; and providing an effective date.

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

22 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1106, as
23 last amended by Section 1, Chapter 415, O.S.L. 2014 (36 O.S. Supp.
24 2017, Section 1106), is amended to read as follows:

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

7 1. The surplus lines insurer shall meet the requirements of the
8 Unauthorized Insurers and Surplus Lines Insurance Act and the
9 following conditions:

10 a. the insurer has capital and surplus or its equivalent
11 under the laws of its domiciliary jurisdiction which
12 equals the greater of:

13 (1) the minimum capital and surplus requirements
14 under the laws of this state for nonadmitted
15 insurers, or

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

17 b. the requirements of subparagraph a of this paragraph
18 may be satisfied by an insurer's possessing less than
19 the minimum capital and surplus upon an affirmative
20 finding of acceptability by the Insurance
21 Commissioner. The finding shall be based upon such
22 factors as quality of management, capital and surplus
23 of any parent company, company underwriting profit and
24 investment income trends, market availability and

1 company record and reputation within the industry. In
2 no event shall the Insurance Commissioner make an
3 affirmative finding of acceptability when the
4 nonadmitted insurer's capital and surplus is less than
5 Four Million Five Hundred Thousand Dollars
6 (\$4,500,000.00), and

7 c. the insurer, if an alien insurer, is listed on the
8 National Association of Insurance Commissioners
9 Nonadmitted Insurers Quarterly Listing; and

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

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

21 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1441.1, as
22 amended by Section 8, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017,
23 Section 1441.1), is amended to read as follows:

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

5 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1250.4, as
6 amended by Section 20, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2017,
7 Section 1250.4), is amended to read as follows:

8 Section 1250.4. A. An insurer's claim files shall be subject
9 to examination by the Insurance Commissioner or by duly appointed
10 designees. Such files shall contain all notes and work papers
11 pertaining to a claim in such detail that pertinent events and the
12 dates of such events can be reconstructed. In addition, the
13 Insurance Commissioner, authorized employees and examiners shall
14 have access to any of an insurer's files that may relate to a
15 particular complaint under investigation or to an inquiry or
16 examination by the Insurance Department.

17 B. ~~Every agent, adjuster, administrator, insurance company~~
18 ~~representative, or insurer~~ Any person subject to the jurisdiction of
19 the Commissioner, upon receipt of any inquiry from the Commissioner
20 shall, within thirty (30) days from the date of the inquiry, furnish
21 the Commissioner with an adequate response to the inquiry.

22 C. Every insurer, upon receipt of any pertinent written
23 communication including but not limited to e-mail or other forms of
24 written electronic communication, or documentation by the insurer of

1 a verbal communication from a claimant which reasonably suggests
2 that a response is expected, shall, within thirty (30) days after
3 receipt thereof, furnish the claimant with an adequate response to
4 the communication.

5 D. Any violation by an insurer of this section shall subject
6 the insurer to discipline including a civil penalty of not less than
7 One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars
8 (\$5,000.00).

9 SECTION 4. AMENDATORY 36 O.S. 2011, Section 3102, is
10 amended to read as follows:

11 Section 3102. A. No company shall sell, or offer for sale, any
12 motor club service without first having deposited with the
13 Commissioner the sum of Fifty Thousand Dollars (\$50,000.00), in cash
14 or securities approved by the Commissioner, or, in lieu thereof, a
15 corporate surety bond, approved by the Commissioner, in the form
16 described by the Commissioner, payable to the State of Oklahoma, in
17 the sum of One Hundred Thousand Dollars (\$100,000.00), and
18 conditioned upon the faithful performance in the sale or rendering
19 of motor club service and payment of any fines or penalties levied
20 against it for failure to comply with the provisions of ~~this act~~
21 Section 3101 et seq. of this title. Provided, however, that the
22 aggregate liability of the surety for all breaches of the conditions
23 of the bond and for the payment of all fines and penalties shall, in
24 no event, exceed the amount of ~~said~~ the bond.

1 B. No Certificate of Authority shall be issued by the
2 Commissioner until the company has filed with him the following:

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

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

8 3. A certificate from the Secretary of State, State of
9 Oklahoma, in the event that it is a domestic corporation, signifying
10 that the company is in compliance with the corporation laws of the
11 State of Oklahoma;

12 4. A copy of its latest financial statement, or report of
13 independent audit, as the Commissioner may require; or, in the event
14 that neither is available, its most recent audited and certified
15 operating statement and balance sheet. Any such certified operating
16 statement, audit or audited and certified operating statement and
17 balance sheet shall be verified by the person compiling or making
18 the same and by an executive officer of the applicant;

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

24

1 6. An explanation of its plan of doing business and copies of
2 the following:

- 3 a. its application for membership,
- 4 b. the proposed membership certificate or identification
5 card and any proposed addendum thereto,
- 6 c. any individual insurance policy and any group master
7 policy and individual certificates thereunder to be
8 offered, and
- 9 d. any service contract to be issued; and

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

12 C. No Certificate of Authority shall be issued by the
13 Commissioner until the company has:

- 14 1. Paid an initial filing fee of Two Hundred Fifty Dollars
15 (\$250.00) ~~to the General Fund of the State of Oklahoma;~~
- 16 2. Paid an annual license fee of One Hundred Dollars (\$100.00)
17 ~~to the General Fund of the State of Oklahoma;~~
- 18 3. Had its name approved by the Commissioner under the
19 provisions of ~~Title 36 of the Oklahoma Statutes,~~ Sections 620 and
20 2104 of this title, the provisions of which are hereby made
21 applicable to motor clubs, after electronic submission of its name
22 request on a form prescribed by the Commissioner;
- 23 4. Proved by affidavits of its officers, directors, managers
24 and individual owners of more than ten percent (10%), on a form

1 prescribed by the Commissioner, that it is not disqualified under
2 any provisions contained in ~~this act~~ Section 3101 et seq. of this
3 title or contained in the Insurance Code; and

4 5. Proved to the Commissioner's satisfaction that it is a
5 separate legal entity capable of being examined by the Commissioner
6 as provided in ~~this act~~ Section 3101 et seq. of this title.

7 D. Certificates of Authority issued hereunder shall expire
8 annually on July 1, unless sooner revoked or suspended, as
9 hereinafter provided.

10 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1250.7, is
11 amended to read as follows:

12 Section 1250.7. A. Within ~~forty-five (45)~~ sixty (60) days
13 after receipt by a property and casualty insurer of properly
14 executed proofs of loss, the first party claimant shall be advised
15 of the acceptance or denial of the claim by the insurer, or if
16 further investigation is necessary. No property and casualty
17 insurer shall deny a claim because of a specific policy provision,
18 condition, or exclusion unless reference to such provision,
19 condition, or exclusion is included in the denial. A denial shall
20 be given to any claimant in writing, and the claim file of the
21 property and casualty insurer shall contain a copy of the denial.
22 If there is a reasonable basis supported by specific information
23 available for review by the Commissioner that the first party
24 claimant has fraudulently caused or contributed to the loss, a

1 property and casualty insurer shall be relieved from the
2 requirements of this subsection. In the event of a weather-related
3 catastrophe or a major natural disaster, as declared by the
4 Governor, the Insurance Commissioner may extend the deadline imposed
5 under this subsection an additional twenty (20) days.

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

11 C. Every property and casualty insurer shall complete
12 investigation of a claim within sixty (60) days after notification
13 of proof of loss unless such investigation cannot reasonably be
14 completed within such time. If such investigation cannot be
15 completed, or if a property and casualty insurer needs more time to
16 determine whether a claim should be accepted or denied, it shall so
17 notify the claimant within sixty (60) days after receipt of the
18 proofs of loss, giving reasons why more time is needed. If the
19 investigation remains incomplete, a property and casualty insurer
20 shall, within sixty (60) days from the date of the initial
21 notification, send to such claimant a letter setting forth the
22 reasons additional time is needed for investigation. Except for an
23 investigation of possible fraud or arson which is supported by
24 specific information giving a reasonable basis for the

1 investigation, the time for investigation shall not exceed one
2 hundred twenty (120) days after receipt of proof of loss. Provided,
3 in the event of a weather-related catastrophe or a major natural
4 disaster, as declared by the Governor, the Insurance Commissioner
5 may extend this deadline for investigation an additional twenty (20)
6 days.

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

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

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

24

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

3 SECTION 6. AMENDATORY 36 O.S. 2011, Section 3629, is
4 amended to read as follows:

5 Section 3629. A. An insurer shall furnish, upon written
6 request of any insured claiming to have a loss under an insurance
7 contract issued by such insurer, forms of proof of loss for
8 completion by such person, but such insurer shall not, by reason of
9 the requirement so to furnish forms, have any responsibility for or
10 with reference to the completion of such proof or the manner of any
11 such completion or attempted completion.

12 B. It shall be the duty of the insurer, receiving a proof of
13 loss, to submit a written offer of settlement or rejection of the
14 claim to the insured within ~~ninety (90)~~ sixty (60) days of receipt
15 of that proof of loss. Upon a judgment rendered to either party,
16 costs and attorney fees shall be allowable to the prevailing party.
17 For purposes of this section, the prevailing party is the insurer in
18 those cases where judgment does not exceed written offer of
19 settlement. In all other judgments the insured shall be the
20 prevailing party. If the insured is the prevailing party, the court
21 in rendering judgment shall add interest on the verdict at the rate
22 of fifteen percent (15%) per year from the date the loss was payable
23 pursuant to the provisions of the contract to the date of the
24

1 verdict. This provision shall not apply to uninsured motorist
2 coverage.

3 SECTION 7. AMENDATORY 36 O.S. 2011, Section 4424, as
4 amended by Section 1, Chapter 264, O.S.L. 2016 (36 O.S. Supp. 2017,
5 Section 4424), is amended to read as follows:

6 Section 4424. Unless the context requires otherwise, the
7 definitions in this section apply throughout the Long-Term Care
8 Insurance Act.

9 1. a. "Long-term care insurance" means any insurance policy,
10 certificate or rider, including qualified long-term
11 care insurance contracts and long-term care
12 partnership program contracts, which are advertised,
13 marketed, offered or designed primarily to provide
14 coverage for not less than twelve (12) consecutive
15 months for each covered person on an expense incurred,
16 indemnity, prepaid, or other basis, for one or more
17 necessary or medically necessary diagnostic,
18 preventive, therapeutic, rehabilitative, maintenance,
19 or personal care services, provided in a setting other
20 than an acute care unit of a hospital.

21 b. This term includes group and individual health
22 policies or riders or group and individual life
23 policies or annuities or riders which provide,
24 directly or as a supplement, coverage for long-term

1 care, whether issued by insurers, fraternal benefit
2 societies, nonprofit health, hospital, and medical
3 service corporations, prepaid health plans, health
4 maintenance organizations, life care communities, or
5 any similar organization.

6 c. This term also includes a policy or rider which
7 provides for payment of long-term care benefits based
8 upon cognitive impairment or the loss of functional
9 capacity.

10 d. Long-term care insurance shall not include any
11 insurance policy which is offered primarily to provide
12 basic Medicare supplement coverage, basic hospital
13 expense coverage, basic medical-surgical expense
14 coverage, hospital confinement indemnity coverage,
15 major medical expense coverage, disability income
16 protection coverage or related asset-protection
17 coverage, catastrophic coverage, comprehensive
18 coverage, accident only coverage, specified disease or
19 specified accident coverage, or limited benefit health
20 coverage.

21 e. With regard to life insurance, this term does not
22 include life insurance policies which accelerate the
23 death benefit specifically for one or more of the
24 qualifying events of terminal illness, medical

1 conditions requiring extraordinary medical
2 intervention, or permanent institutional confinement,
3 and which provide the option of a lump-sum payment for
4 those benefits and in which neither the benefits nor
5 the eligibility for the benefits is conditioned upon
6 the receipt of long-term care.

7 f. Notwithstanding any other provision contained herein,
8 any product advertised, marketed or offered as long-
9 term care insurance shall be subject to the provisions
10 of ~~this act~~ Long-Term Care Insurance Act.

11 2. "Applicant" means:

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

15 b. in the case of a group long-term care insurance
16 policy, the proposed certificate holder.

17 3. "Certificate" means any certificate issued under a group
18 long-term care insurance policy, which certificate has been
19 delivered, or issued for delivery, in this state.

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

23 a. one or more employers or labor organizations, or to a
24 trust or to the trustees of a fund established by one

1 or more employers or labor organizations, or a
2 combination thereof, for employees or former
3 employees, or a combination thereof or for members or
4 former members, or a combination thereof, of the labor
5 organizations, or

6 b. any professional, trade or occupational association
7 for its members or former or retired members, or
8 combination thereof, if such association:

9 (1) is composed of individuals, all of whom are or
10 were actively engaged in the same profession,
11 trade or occupation, and

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

14 c. an association, a trust, or the trustee or trustees of
15 a fund established, created, or maintained for the
16 benefit of members of one or more associations. Prior
17 to advertising, marketing or offering such policy
18 within this state, the association or associations, or
19 the insurer of the association or associations, shall
20 file evidence with the Insurance Commissioner that the
21 association or associations shall have at the outset
22 of transacting long-term care insurance in this state
23 a minimum of one hundred (100) persons in the
24 association or associations and shall have been

1 organized and maintained in good faith for purposes
2 other than that of obtaining insurance; shall have
3 been in active existence for at least one (1) year;
4 and shall have a constitution and bylaws which provide
5 that (i) the association or associations hold regular
6 meetings not less than annually to further purposes of
7 the members, (ii) except for credit unions, the
8 association or associations collect dues or solicit
9 contributions from members, and (iii) the members have
10 voting privileges and representation on the governing
11 board and committees. Thirty (30) days after such
12 filing the association or associations shall be deemed
13 to satisfy such organizational requirements, unless
14 the Commissioner makes a finding that the association
15 or associations do not satisfy those organizational
16 requirements, or

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

- 20 (1) the issuance of the group policy is not contrary
21 to the best interest of the public,
22 (2) the issuance of the group policy would result in
23 economies of acquisition or administration, and
24

1 (3) the benefits are reasonable in relation to the
2 premiums charged.

3 5. "Not-for-Profit Life care community" within the meaning of
4 Section 1-853.1 of Title 63 of the Oklahoma Statutes means any not-
5 for-profit organization that enters into an arrangement pursuant to
6 which a person contracts for a place of residence and personal care
7 services, including but not limited to services which progress from
8 independent living to semi-dependent nursing care to acute nursing
9 care, in consideration of an endowed prepayment, license or entry
10 fee which has been actuarially established to meet the cost of the
11 promised services and accommodations. For communities commencing
12 operations after January 1, 2016, the amount of the endowed
13 prepayment must be independently, actuarially determined, in
14 compliance with the Actuarial ~~Board~~ Standards of Practice
15 promulgated by the Actuarial Standards Board of the American Academy
16 of Actuaries, prior to opening the community and annually thereafter
17 to ensure that sufficient payments are collected to meet the future
18 services of the residents. The actuarial study shall take into
19 consideration projected or actual project costs, resident fees and
20 charges, resident contract provisions and any other factors
21 affecting the operation of the facility. It shall contain mortality
22 and morbidity data and an actuary's signed opinion that the proposed
23 is feasible and that the study has been prepared in accordance with
24

1 standards adopted by the American Academy of Actuaries. A not-for-
2 profit life care community shall not include the following:

- 3 a. traditional landlord and tenant agreements utilizing
4 periodic rental and security deposit payments,
- 5 b. residential care homes licensed pursuant to the
6 Oklahoma Residential Care Act,
- 7 c. assisted living centers and continuum of care
8 facilities licensed pursuant to the Oklahoma Continuum
9 of Care and Assisted Living Act,
- 10 d. facilities licensed pursuant to the Oklahoma Nursing
11 Home Care Act, or
- 12 e. any facility where the endowed prepayment, license or
13 entry fee is less than Fifty Thousand Dollars
14 (\$50,000.00).

15 6. "Policy" means any policy, contract, certificate, subscriber
16 agreement, rider or endorsement delivered, or issued for delivery,
17 in this state by an insurer, fraternal benefit society, nonprofit
18 health, hospital, or medical service corporation, prepaid health
19 plan, health maintenance organization, life care community, or any
20 similar organization.

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

- 22 a. individual or group insurance contract if the contract
23 meets the requirements of Section 7702(B) of the
24 Internal Revenue Code, as amended, and if:

- 1 (1) the only insurance protection provided under the
2 contract is coverage of qualified long-term care
3 services,
- 4 (2) the contract does not pay or reimburse expenses
5 incurred for services or items to the extent that
6 such expenses are reimbursable under Title XVIII
7 of the Social Security Act as amended, or would
8 be so reimbursable but for the application of a
9 deductible or coinsurance amount. The
10 requirements of this subparagraph do not apply to
11 contracts where Medicare is a secondary payor, or
12 where the contract makes per diem or other
13 periodic payments without regard to expenses,
- 14 (3) the contract is guaranteed renewable,
- 15 (4) the contract does not provide for a cash
16 surrender value or other money that can be paid,
17 assigned, pledged as collateral for a loan, or
18 borrowed. All refunds of premiums and all
19 policyholder dividends or similar amounts, under
20 such contract are to be applied as a reduction in
21 future premiums or to increase future benefits,
22 except that a refund of the aggregate premium
23 paid under the contract may be allowed in the
24

1 event of death of the insured or a complete
2 surrender or cancellation of the contract, and
3 (5) the contract contains the consumer protection
4 provisions set forth in Section 7702(B)(g) of the
5 Internal Revenue Code, or

6 b. life insurance contract which provides long-term care
7 coverage by rider or as part of the contract if the
8 contract complies with the applicable provisions of
9 Section 7702(B) of the Internal Revenue Code, as
10 amended.

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

17 SECTION 8. AMENDATORY 36 O.S. 2011, Section 6453, is
18 amended to read as follows:

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

20 1. "Commissioner" means the Insurance Commissioner of this
21 state or the Commissioner, Director, or Superintendent of insurance
22 in any other state;

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

- 4 a. any person who performs that work, or
- 5 b. any person who hires an independent contractor to
6 perform that work,
- 7 and shall include liability for activities which are
8 completed or abandoned before the date of the
9 occurrence giving rise to the liability;

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

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

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

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

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

5 6. "Liability":

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

12 (1) any business, trade, product, services, premises,
13 or operations, or

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

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

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

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

4 a. the coverages, deductibles, coverage limits, rates,
5 and rating classification systems for each line of
6 insurance the group intends to offer,

7 b. historical and expected loss experience of the
8 proposed members and national experience of similar
9 exposures to the extent that this experience is
10 reasonably available,

11 c. pro forma financial statements and projections,

12 d. appropriate opinions by a qualified, ~~independent~~
13 ~~casualty~~ actuary, as defined in paragraph 11 of this
14 section, including a determination of minimum premium
15 or participation levels required to commence
16 operations and to prevent a hazardous financial
17 condition,

18 e. identification of management procedures, underwriting
19 procedures, managerial oversight methods, investment
20 policies, and reinsurance agreements,

21 f. information sufficient to verify that its members are
22 engaged in businesses or activities similar or related
23 with respect to the liability to which such members
24 are exposed by virtue of any related, similar, or

1 common business, trade, product, services, premises,
2 or operations,

3 g. identification of each state in which the risk
4 retention group has obtained, or sought to obtain, a
5 charter and license, and a description of its status
6 in each such state, and

7 h. such other matters as may be prescribed by the
8 Commissioner, for liability insurance companies
9 authorized by the insurance laws of the state in which
10 the risk retention group is chartered;

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

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

21 a. has as one of its purposes the purchase of liability
22 insurance on a group basis for its members to cover
23 their similar or related liability exposure,
24

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

6 c. is domiciled in any state;

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

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

15 a. (1) is chartered and licensed as a liability
16 insurance company and authorized to engage in the
17 business of insurance under the laws of any
18 state, or

19 (2) before January 1, 1985, was chartered or licensed
20 and authorized to engage in the business of
21 insurance under the laws of Bermuda or the Cayman
22 Islands and, before such date, had certified to
23 the Insurance Commissioner of at least one state
24 that it satisfied the capitalization requirements

1 of such state, except that any such group shall
2 be considered to be a risk retention group only
3 if it has been engaged in business continuously
4 since such date and only for the purpose of
5 continuing to provide insurance to cover product
6 liability or completed operations liability, as
7 such terms were defined in the federal Product
8 Liability Risk Retention Act of 1981, before the
9 date of the enactment of the federal Liability
10 Risk Retention Act of 1986,

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

14 c. (1) has as its members only persons who have an
15 ownership interest in the group and who are
16 provided insurance by the risk retention group,
17 or

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

21 d. has as its members persons or organizations which are
22 engaged in businesses or activities similar or related
23 with respect to the liability of which such members
24 are exposed by virtue of any related, similar, or

1 common business trade, product, services, premises, or
2 operations,

3 e. does not provide insurance coverage other than:

4 (1) liability insurance for assuming and spreading
5 all or any portion of the liability of its group
6 members, and

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

10 f. the name of which includes the phrase, "Risk Retention
11 Group"; and

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

14 SECTION 9. AMENDATORY 36 O.S. 2011, Section 6470.12, as
15 last amended by Section 18, Chapter 298, O.S.L. 2015 (36 O.S. Supp.
16 2017, Section 6470.12), is amended to read as follows:

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

1 B. A sponsored captive insurance company and a special purpose
2 captive insurance company, and any captive insurer, at the
3 Commissioner's discretion, shall file annually an actuarial opinion
4 on the company's loss and loss adjustment expense reserves ~~provided~~
5 ~~by an independent actuary~~ or life and health policy and claim
6 reserves, as applicable. The ~~actuary may not be an employee~~
7 individual who prepares the Statement of Actuarial Opinion must be
8 independent of the captive company ~~or~~ and its affiliates.

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

12 SECTION 10. This act shall become effective November 1, 2018.

13
14 56-2-3128 CB 1/18/2018 7:19:46 PM
15
16
17
18
19
20
21
22
23
24