

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3236

By: Moore

4
5 AS INTRODUCED

6 An Act relating to insurance; amending 36 O.S. 2011,
7 Section 1106, as last amended by Section 1, Chapter
8 415, O.S.L. 2014 (36 O.S. Supp. 2017, Section 1106),
9 which relates to the Unauthorized Insurers and
10 Surplus Lines Insurance Act; specifying an Oklahoma
11 surplus lines license is required when Oklahoma is
12 the home state of the insured; amending 36 O.S. 2011,
13 Sections 1250.4, as amended by Section 20, Chapter
14 254, O.S.L. 2013 and 1250.7 (36 O.S. Supp. 2017,
15 Section 1250.4), which relate to the Unfair Claims
16 Settlement Practices Act; expanding persons required
17 to respond to certain Commissioner inquiry;
18 increasing time period for insurer to respond to
19 certain claim; amending 36 O.S. 2011, Section 1441.1,
20 as amended by Section 8, Chapter 298, O.S.L. 2015 (36
21 O.S. Supp. 2017, Section 1441.1), which relates to
22 the Third-party Administrator Act; updating citation;
23 amending 36 O.S. 2011, Section 3102, which relates to
24 motor service clubs; requiring electronic submission
of certain company's name request; amending 36 O.S.
2011, Section 3629, which relates to offer of
settlement or rejection of claim; decreasing time
period for insurer to respond to claim of the
insurer; amending 36 O.S. 2011, Section 4424, as
amended by Section 1, Chapter 264, O.S.L. 2016 (36
O.S. Supp. 2017, Section 4424), which relates to the
Long-Term Care Insurance Act; modifying definition;
amending 36 O.S. 2011, Section 6453, which relates to
the Oklahoma Risk Retention Act; adding definition;
amending 36 O.S. 2011, Section 6470.12, as last
amended by Section 18, Chapter 298, O.S.L. 2015 (36
O.S. Supp. 2017, Section 6470.12), which relates to
the Oklahoma Captive Insurance Company Act; modifying
requirements for annual actuarial opinion; and
providing an effective date.

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

2 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1106, as
3 last amended by Section 1, Chapter 415, O.S.L. 2014 (36 O.S. Supp.
4 2017, Section 1106), is amended to read as follows:

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

11 1. The surplus lines insurer shall meet the requirements of the
12 Unauthorized Insurers and Surplus Lines Insurance Act and the
13 following conditions:

14 a. the insurer has capital and surplus or its equivalent
15 under the laws of its domiciliary jurisdiction which
16 equals the greater of:

17 (1) the minimum capital and surplus requirements
18 under the laws of this state for nonadmitted
19 insurers, or

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

21 b. the requirements of subparagraph a of this paragraph
22 may be satisfied by an insurer's possessing less than
23 the minimum capital and surplus upon an affirmative
24 finding of acceptability by the Insurance

1 Commissioner. The finding shall be based upon such
2 factors as quality of management, capital and surplus
3 of any parent company, company underwriting profit and
4 investment income trends, market availability and
5 company record and reputation within the industry. In
6 no event shall the Insurance Commissioner make an
7 affirmative finding of acceptability when the
8 nonadmitted insurer's capital and surplus is less than
9 Four Million Five Hundred Thousand Dollars
10 (\$4,500,000.00), and

11 c. the insurer, if an alien insurer, is listed on the
12 National Association of Insurance Commissioners
13 Nonadmitted Insurers Quarterly Listing; and

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

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

1 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1250.4, as
2 amended by Section 20, Chapter 254, O.S.L. 2013 (36 O.S. Supp. 2017,
3 Section 1250.4), is amended to read as follows:

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

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

18 C. Every insurer, upon receipt of any pertinent written
19 communication including but not limited to e-mail or other forms of
20 written electronic communication, or documentation by the insurer of
21 a verbal communication from a claimant which reasonably suggests
22 that a response is expected, shall, within thirty (30) days after
23 receipt thereof, furnish the claimant with an adequate response to
24 the communication.

1 D. Any violation by an insurer of this section shall subject
2 the insurer to discipline including a civil penalty of not less than
3 One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars
4 (\$5,000.00).

5 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1250.7, is
6 amended to read as follows:

7 Section 1250.7 A. Within ~~forty-five (45)~~ sixty (60) days after
8 receipt by a property and casualty insurer of properly executed
9 proofs of loss, the first-party claimant shall be advised of the
10 acceptance or denial of the claim by the insurer, or if further
11 investigation is necessary. No property and casualty insurer shall
12 deny a claim because of a specific policy provision, condition, or
13 exclusion unless reference to such provision, condition, or
14 exclusion is included in the denial. A denial shall be given to any
15 claimant in writing, and the claim file of the property and casualty
16 insurer shall contain a copy of the denial. If there is a
17 reasonable basis supported by specific information available for
18 review by the Commissioner that the first-party claimant has
19 fraudulently caused or contributed to the loss, a property and
20 casualty insurer shall be relieved from the requirements of this
21 subsection. In the event of a weather-related catastrophe or a
22 major natural disaster, as declared by the Governor, the Insurance
23 Commissioner may extend the deadline imposed under this subsection
24 an additional twenty (20) days.

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

6 C. Every property and casualty insurer shall complete
7 investigation of a claim within sixty (60) days after notification
8 of proof of loss unless such investigation cannot reasonably be
9 completed within such time. If such investigation cannot be
10 completed, or if a property and casualty insurer needs more time to
11 determine whether a claim should be accepted or denied, it shall so
12 notify the claimant within sixty (60) days after receipt of the
13 proofs of loss, giving reasons why more time is needed. If the
14 investigation remains incomplete, a property and casualty insurer
15 shall, within sixty (60) days from the date of the initial
16 notification, send to such claimant a letter setting forth the
17 reasons additional time is needed for investigation. Except for an
18 investigation of possible fraud or arson which is supported by
19 specific information giving a reasonable basis for the
20 investigation, the time for investigation shall not exceed one
21 hundred twenty (120) days after receipt of proof of loss. Provided,
22 in the event of a weather-related catastrophe or a major natural
23 disaster, as declared by the Governor, the Insurance Commissioner
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1 may extend this deadline for investigation an additional twenty (20)
2 days.

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

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

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

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

22 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1441.1, as
23 amended by Section 8, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017,
24 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 5. AMENDATORY 36 O.S. 2011, Section 3102, is
6 amended to read as follows:

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

21 B. No certificate of authority shall be issued by the
22 Commissioner until the company has filed with him the following:
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1 1. A formal application for the certificate in such form and
2 detail as the Commissioner requires, executed under oath by its
3 president or another principal officer of the company;

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

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

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

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

22 6. An explanation of its plan of doing business and copies of
23 the following:

24 a. its application for membership,

- 1 b. the proposed membership certificate or identification
2 card and any proposed addendum thereto,
3 c. any individual insurance policy and any group master
4 policy and individual certificates thereunder to be
5 offered, and
6 d. any service contract to be issued; and

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

9 C. No certificate of authority shall be issued by the
10 Commissioner until the company has:

11 1. Paid an initial filing fee of Two Hundred Fifty Dollars
12 (\$250.00) ~~to the General Fund of the State of Oklahoma;~~

13 2. Paid an annual license fee of One Hundred Dollars (\$100.00)
14 ~~to the General Fund of the State of Oklahoma;~~

15 3. Had its name approved by the Commissioner under the
16 provisions of ~~Title 36 of the Oklahoma Statutes,~~ Sections 620 and
17 2104 of this title, the provisions of which are hereby made
18 applicable to motor clubs, after electronic submission of its name
19 request on a form prescribed by the Commissioner;

20 4. Proved by affidavits of its officers, directors, managers
21 and individual owners of more than ten percent (10%), on a form
22 prescribed by the Commissioner, that it is not disqualified under
23 any provisions contained in this act or contained in the Insurance
24 Code; and

1 5. Proved to the Commissioner's satisfaction that it is a
2 separate legal entity capable of being examined by the Commissioner
3 as provided in this act.

4 D. Certificates of authority issued hereunder shall expire
5 annually on July 1, unless sooner revoked or suspended, as
6 hereinafter provided.

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

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

16 B. It shall be the duty of the insurer, receiving a proof of
17 loss, to submit a written offer of settlement or rejection of the
18 claim to the insured within ~~ninety (90)~~ sixty (60) days of receipt
19 of that proof of loss. Upon a judgment rendered to either party,
20 costs and attorney fees shall be allowable to the prevailing party.
21 For purposes of this section, the prevailing party is the insurer in
22 those cases where judgment does not exceed written offer of
23 settlement. In all other judgments the insured shall be the
24 prevailing party. If the insured is the prevailing party, the court

1 in rendering judgment shall add interest on the verdict at the rate
2 of fifteen percent (15%) per year from the date the loss was payable
3 pursuant to the provisions of the contract to the date of the
4 verdict. This provision shall not apply to uninsured motorist
5 coverage.

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

9 Section 4424. Unless the context requires otherwise, the
10 definitions in this section apply throughout the Long-Term Care
11 Insurance Act.

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

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1 b. This term includes group and individual health
2 policies or riders or group and individual life
3 policies or annuities or riders which provide,
4 directly or as a supplement, coverage for long-term
5 care, whether issued by insurers, fraternal benefit
6 societies, nonprofit health, hospital, and medical
7 service corporations, prepaid health plans, health
8 maintenance organizations, life care communities, or
9 any similar organization.

10 c. This term also includes a policy or rider which
11 provides for payment of long-term care benefits based
12 upon cognitive impairment or the loss of functional
13 capacity.

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

1 e. With regard to life insurance, this term does not
2 include life insurance policies which accelerate the
3 death benefit specifically for one or more of the
4 qualifying events of terminal illness, medical
5 conditions requiring extraordinary medical
6 intervention, or permanent institutional confinement,
7 and which provide the option of a lump-sum payment for
8 those benefits and in which neither the benefits nor
9 the eligibility for the benefits is conditioned upon
10 the receipt of long-term care.

11 f. Notwithstanding any other provision contained herein,
12 any product advertised, marketed or offered as long-
13 term care insurance shall be subject to the provisions
14 of this act-; i

15 2. "Applicant" means:

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

19 b. in the case of a group long-term care insurance
20 policy, the proposed certificate holder-; i

21 3. "Certificate" means any certificate issued under a group
22 long-term care insurance policy, which certificate has been
23 delivered, or issued for delivery, in this state-; i

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

4 a. one or more employers or labor organizations, or to a
5 trust or to the trustees of a fund established by one
6 or more employers or labor organizations, or a
7 combination thereof, for employees or former
8 employees, or a combination thereof or for members or
9 former members, or a combination thereof, of the labor
10 organizations, or

11 b. any professional, trade or occupational association
12 for its members or former or retired members, or
13 combination thereof, if such association:

14 (1) is composed of individuals, all of whom are or
15 were actively engaged in the same profession,
16 trade or occupation, and

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

19 c. an association, a trust, or the trustee or trustees of
20 a fund established, created, or maintained for the
21 benefit of members of one or more associations. Prior
22 to advertising, marketing or offering such policy
23 within this state, the association or associations, or
24 the insurer of the association or associations, shall

1 file evidence with the Insurance Commissioner that the
2 association or associations shall have at the outset
3 of transacting long-term care insurance in this state
4 a minimum of one hundred (100) persons in the
5 association or associations and shall have been
6 organized and maintained in good faith for purposes
7 other than that of obtaining insurance; shall have
8 been in active existence for at least one (1) year;
9 and shall have a constitution and bylaws which provide
10 that (i) the association or associations hold regular
11 meetings not less than annually to further purposes of
12 the members, (ii) except for credit unions, the
13 association or associations collect dues or solicit
14 contributions from members, and (iii) the members have
15 voting privileges and representation on the governing
16 board and committees. Thirty (30) days after such
17 filing the association or associations shall be deemed
18 to satisfy such organizational requirements, unless
19 the Commissioner makes a finding that the association
20 or associations do not satisfy those organizational
21 requirements, or

- 22 d. a group other than as described in subparagraphs a, b
23 and c of this paragraph, subject to a finding by the
24 Commissioner that:

- 1 (1) the issuance of the group policy is not contrary
- 2 to the best interest of the public,
- 3 (2) the issuance of the group policy would result in
- 4 economies of acquisition or administration, and
- 5 (3) the benefits are reasonable in relation to the
- 6 premiums charged.;

7 5. "~~Not-for-Profit Life~~ Not-for-profit life care community"

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

1 provisions and any other factors affecting the operation of the
2 facility. It shall contain mortality and morbidity data and an
3 actuary's signed opinion that the proposed is feasible and that the
4 study has been prepared in accordance with standards adopted by the
5 American Academy of Actuaries. A not-for-profit life care community
6 shall not include the following:

- 7 a. traditional landlord and tenant agreements utilizing
8 periodic rental and security deposit payments,
- 9 b. residential care homes licensed pursuant to the
10 Oklahoma Residential Care Act,
- 11 c. assisted living centers and continuum of care
12 facilities licensed pursuant to the Oklahoma Continuum
13 of Care and Assisted Living Act,
- 14 d. facilities licensed pursuant to the Oklahoma Nursing
15 Home Care Act, or
- 16 e. any facility where the endowed prepayment, license or
17 entry fee is less than Fifty Thousand Dollars
18 (\$50,000.00) ~~;~~ ;

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

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

2 a. individual or group insurance contract if the contract
3 meets the requirements of Section 7702(B) of the
4 Internal Revenue Code, as amended, and if:

5 (1) the only insurance protection provided under the
6 contract is coverage of qualified long-term care
7 services,

8 (2) the contract does not pay or reimburse expenses
9 incurred for services or items to the extent that
10 such expenses are reimbursable under Title XVIII
11 of the Social Security Act as amended, or would
12 be so reimbursable but for the application of a
13 deductible or coinsurance amount. The
14 requirements of this subparagraph do not apply to
15 contracts where Medicare is a secondary payor, or
16 where the contract makes per diem or other
17 periodic payments without regard to expenses,

18 (3) the contract is guaranteed renewable,

19 (4) the contract does not provide for a cash
20 surrender value or other money that can be paid,
21 assigned, pledged as collateral for a loan, or
22 borrowed. All refunds of premiums and all
23 policyholder dividends or similar amounts, under
24 such contract are to be applied as a reduction in

1 future premiums or to increase future benefits,
2 except that a refund of the aggregate premium
3 paid under the contract may be allowed in the
4 event of death of the insured or a complete
5 surrender or cancellation of the contract, and

6 (5) the contract contains the consumer protection
7 provisions set forth in Section 7702(B)(g) of the
8 Internal Revenue Code, or

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

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

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

22 Section 6453. As used in the Oklahoma Risk Retention Act:
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1 1. "Commissioner" means the Insurance Commissioner of this
2 state or the Commissioner, Director, or Superintendent of insurance
3 in any other state;

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

- 7 a. any person who performs that work, or
- 8 b. any person who hires an independent contractor to
9 perform that work,

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

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

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

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

- 23 a. to meet obligations to policyholders with respect to
24 known claims and reasonably anticipated claims, or

1 b. to pay other obligations in the normal course of
2 business;

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

7 6. "Liability":

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

14 (1) any business, trade, product, services, premises,
15 or operations, or

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

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

22 7. "Personal risk liability" means liability for damages
23 because of injury to any person, damage to property, or other loss
24 or damage resulting from any personal, familial, or household

1 responsibilities or activities rather than from responsibilities or
2 activities referred to in paragraph 6 of this section;

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

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

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

13 c. pro forma financial statements and projections,

14 d. appropriate opinions by a qualified, ~~independent~~
15 ~~casualty~~ actuary, including a determination of minimum
16 premium or participation levels required to commence
17 operations and to prevent a hazardous financial
18 condition,

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

22 f. information sufficient to verify that its members are
23 engaged in businesses or activities similar or related
24 with respect to the liability to which such members

1 are exposed by virtue of any related, similar, or
2 common business, trade, product, services, premises,
3 or operations,

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

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

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

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

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

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 a
13 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 shall 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.

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