

An Act

ENROLLED SENATE
BILL NO. 606

By: Sparks, Smalley and Pittman
of the Senate

and

Mulready, Moore and Wallace
of the House

An Act relating to insurance; amending 36 O.S. 2011, Sections 606.1, 6470.3, as last amended by Section 13, Chapter 73, O.S.L. 2016 and 6470.10, as last amended by Section 17, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Sections 6570.3 and 6470.10), which relate to foreign insurers becoming domestic insurers, provisional licenses, and captive insurance companies; modifying entities who may become domestic insurers; adding contracts to items remaining in force under certain conditions; removing time period for Insurance Commissioner to issue certain provisional license; and modifying entities who may become certain captive insurer.

SUBJECT: Insurer requirements

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 606.1, is amended to read as follows:

Section 606.1. A. 1. Any foreign or alien insurer which is organized under the laws of any other state and is admitted to do ~~business in this state~~ jurisdiction for the purpose of transacting insurance may become a domestic insurer by complying with all of the

requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a location in this state, provided, the Insurance Commissioner approves the insurer's application for redomestication following a public hearing. Said domestic insurer will be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

2. The Commissioner shall approve an insurer's application to redomesticate unless, after a public hearing thereon, he finds that:

- a. the insurer cannot comply with all the requirements of law relative to the organization and licensing of a domestic insurer,
- b. after redomestication, the insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed,
- c. the effect of the redomestication would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein,
- d. the financial condition of the insurer is such as might jeopardize or prejudice the interest of its policyholders or the state and is not in the public interest, or
- e. the competence, experience and integrity of those persons who control the operation of the insurer are such that it would not be in the interest of the policyholders, the public or the state to permit the redomestication.

3. The insurer's application to redomesticate shall contain information acceptable to the Commissioner concerning its financial condition, its plan of operation for the succeeding three (3) years, and information concerning the competence, experience and integrity of those persons who control the operation of the insurer.

4. The application for redomestication shall be deemed approved unless the Commissioner has, within thirty (30) days after the conclusion of the hearing, entered his order disapproving the redomestication.

B. Any domestic insurer may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon such a transfer, shall cease to be a domestic insurer, and shall be admitted to this state if qualified as a foreign insurer. The Commissioner shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of the policyholders of this state.

C. The certificate of authority, agents appointments and licenses, rates, and other items which the Insurance Commissioner allows, in his discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies and other contracts of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Commissioner. Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner. However, every such transferring insurer shall notify the Commissioner of the details of the proposed transfer, and shall file promptly, any resulting amendments to corporate documents required to be filed with the Commissioner.

D. The Insurance Commissioner may promulgate rules and regulations to carry out the purposes of this section.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 6470.3, as last amended by Section 13, Chapter 73, O.S.L. 2016 (36 O.S. Supp. 2017, Section 6470.3), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. the amount and liquidity of its assets relative to the risks to be assumed,
- b. the adequacy of the expertise, experience, and character of the person or persons who will manage it,
- c. the overall soundness of its plan of operation,
- d. the adequacy of the loss prevention programs of its insureds, and
- e. such other factors considered relevant by the Insurance Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its obligations.

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

- a. information may be discoverable by a party in a civil action or contested case to which the captive

insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

- (1) the information sought is relevant to and necessary for the furtherance of the action or case,
 - (2) the information sought is unavailable from other nonconfidential sources, and
 - (3) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Insurance Commissioner; however, the provisions of this paragraph do not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group, and
- b. the Insurance Commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:
- (1) the public official agrees in writing to maintain the confidentiality of the information, and
 - (2) the laws of the state in which the public official serves require the information to be confidential.

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

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

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

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

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

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

SECTION 3. AMENDATORY 36 O.S. 2011, Section 6470.10, as last amended by Section 17, Chapter 298, O.S.L. 2015 (36 O.S. Supp. 2017, Section 6470.10), is amended to read as follows:

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

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

C. The Commissioner shall not issue the initial license or review the license of any captive insurer unless the Commissioner determines the following matters serve the best interest of the prospective policyholders and promote the general good of the state:

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

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

3. Other aspects as the Insurance Commissioner considers advisable.

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

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

2. A captive insurance company, formed or licensed under the Oklahoma Captive Insurance Company Act, has the privileges and is subject to the provisions of Oklahoma law as well as the applicable provisions contained in the Oklahoma Captive Insurance Company Act. If a conflict occurs between a provision of the general law of Oklahoma and a provision of the Oklahoma Captive Insurance Company Act, the latter controls. No provision of the Insurance Code, other than those contained in this act or otherwise specifically

referencing such companies, shall apply to captive insurance companies.

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

4. The provisions of the Oklahoma Insurance Code pertaining to mergers, consolidations, conversions, mutualizations, and change in control apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions, except the Insurance Commissioner may waive or modify the requirements for public notice and hearing.

5. The terms and conditions set forth in Articles 18 and 19 of the Oklahoma Insurance Code pertaining to insurance supervision, conservatorship, rehabilitation, and receiverships apply in full to captive insurance companies, including for this purpose individual protected cells of sponsored captive insurance companies as provided in Section 6470.29 of this title.

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

Passed the Senate the 1st day of May, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the 3rd day of May, 2018.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____