

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN,**  
**COMPANIES, PREPAID FUNERAL BENEFITS, CEMETERY MERCHANDISE**  
**TRUSTS, AND VIATICAL SETTLEMENTS PROVIDERS AND BROKERS**

**SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION**

**365:25-15-1. Purpose and authority**

This subchapter provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This subchapter sets forth the financial, reporting, and other requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this subchapter shall mean captive insurance company or companies, unless otherwise specified.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14]

**365:25-15-2. Annual reporting requirements**

(a) A pure, association, sponsored, or industrial captive insurance company doing business in this State shall annually, prior to March 1, submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the Insurance Commissioner as "Oklahoma Captive Insurance Company Annual Report."

(b) A risk retention group doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Section 311 of Title 36 of the Oklahoma Statutes.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14]

**365:25-15-3. Annual Audit**

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) A pure captive insurance company may make written application to file its annual report on a fiscal year basis and shall file such report no later than sixty (60) days following the close of the fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required, a schedule detailing the net direct written premium and assumed premium for the fiscal year in question.

(d) The annual audited financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Insurance Commissioner.

(e) The annual audited financial report shall consist of the following:

(1) **Opinion of Independent Certified Public Accountant**

(A) Financial statements furnished pursuant to this section shall be examined

by independent certified public accountants in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner and the National Association of Insurance Commissioners.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) **Report of Evaluation of Internal Controls**

(A) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval and the separation of duties.

(B) The review shall be conducted in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and the report shall be filed with the Insurance Commissioner.

(3) **Accountant's Letter.** The accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That (s)he is independent with respect to the company and conforms to the standards of his/her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that (s)he is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and shall include:

- (i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Insurance Commissioner.
  - (ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.
  - (iii) A narrative explanation of all material transactions and balances with the company.
- (5) **Certification of Loss Reserves and Loss Expense Reserves**
- (A) The annual audit shall include an opinion as to the adequacy of the company's life, health, or annuity reserves, or its loss reserves and loss expense reserves.
  - (B) The individual who certifies as to the adequacy of reserves shall be approved by the Insurance Commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the satisfaction of the Insurance Commissioner.
  - (C) Certification shall be in such form as the Insurance Commissioner deems appropriate.
- (f) Any company having direct written premiums of Two Million Dollars (\$2,000,000) or less in the preceding year may request exemption from the annual audit requirement.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14]

#### **365:25-15-4. Independent Certified Public Accountant**

- (a) **Designation of Independent Certified Public Accountant.** Companies subject to an annual audit shall, within ninety days, report to the Insurance Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this subchapter. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the Insurance Commissioner.
- (b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 or 6470.11 of Title 36 of the Oklahoma Statutes. The company, or its designated captive insurance manager, shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.
- (c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**
- (1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.
  - (2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential. The company shall require that the independent certified public accountant provide copies of any of the working

papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Work Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05, Amended at 31 Ok Reg 1903, eff 9-15-14]

#### **365:25-15-5. Deposit Requirement**

Whenever the Insurance Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Department cash, securities approved by the Insurance Commissioner, or a clean irrevocable letter of credit issued by a bank chartered by the State of Oklahoma or a member bank of the Federal Reserve System and approved by the Insurance Commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1903, eff 9-15-14]

#### **365:25-15-6. Organizational examination**

In addition to the processing of the application, an organizational investigation or examination may be performed before or after an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; biographical affidavits; and a review of such other factors as the Insurance Commissioner deems necessary.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14]

#### **365:25-15-7. Reinsurance**

(a) Any captive insurance company authorized to do business in this State may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(1) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(2) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(b) Reinsurance under this section shall be effectuated through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(c) The Insurance Commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

**365:25-15-8. Insurance managers and intermediaries**

No person shall, in or from within this State, act as an insurance manager, broker, producer, salesman, or reinsurance intermediary for captive business without the authorization of the Insurance Commissioner. Application for such authorization must be on a form prescribed by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

**365:25-15-9. Executive officers and directors**

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14]

**365:25-15-10. Conflict of interest**

(a) Each company chartered in this State is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from the individual's duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one insurance company.

(b) Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

**365:25-15-11. Rescission of captive license**

(a) The Insurance Commissioner may, subject to the provisions of this section, by order rescind the license of the company:

(1) if the company has not commenced business according to its plan of operation within two years of being licensed; or

(2) if the company ceases to carry on insurance business in or from within Oklahoma; or

(3) at the request of the company; or

(4) for any reason provided in Section 6470.14 of Title 36 of the Oklahoma Statutes.

(b) Before the Insurance Commissioner rescinds the license of a company under paragraphs (a)(1) or (2) of this section, the Insurance Commissioner shall give the company notice in writing

of the grounds on which he proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty days after receipt of notice. The Insurance Commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of cancellation to be served on the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

**365:25-15-12. Acquisition of control of or merger with domestic company**

(a) Companies shall comply with Section 1653 of Title 36 when seeking to acquire control of or merge with a domestic company, notwithstanding the Insurance Commissioner may waive or modify the requirements for public notice and hearing when the Insurance Commissioner concludes the public hearing is not necessary due to the limited public interest in the change of control.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14]

**365:25-15-13. Change of business**

Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner. Any change in any other information filed with the application must be filed with the Insurance Commissioner within sixty (60) days of the change, but does not require prior approval.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14]

**365:25-15-14. Prior approval**

Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14]

**365:25-15-15. Severability Provision**

If any provisions of this subchapter or its applicability to any person or circumstance are held invalid, the remainder of the subchapter, and the application of such provisions to other persons or circumstances shall not be affected. To this end, the provisions of this subchapter are declared severable.

[Source: Added at 31 Ok Reg 1904, eff 9-15-14]