

BILL ANALYSIS

C.S.S.B. 734
By: Carona
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A captive insurance company is formed for the purpose of providing insurance for the parent company and related entities. A “pure” captive insurance company exclusively insures the risks of its affiliates. More than 30 states have statutes that specifically authorize captive insurance companies to be organized under those laws. These statutes generally subject captive insurance companies to different regulations than traditional insurance carriers. Industry experts note that an insurance commissioner typically has significant discretion to regulate and set a captive's minimum financial requirements based on the financial strength of the captive's owner.

Texas does not currently have a captive insurance statute. Interested parties observe that a number of large companies domiciled in Texas currently have captives that have been formed in other states with captive-enabling legislation. There is concern that this situation creates additional expenses and administrative burdens for Texas companies because other states typically impose a number of obligations on out-of-state companies. C.S.S.B. 734 seeks to address this situation by authorizing the formation of pure captive insurance companies in Texas and setting out provisions relating to the operation and tax liability of such companies.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 and to the commissioner of insurance in SECTIONS 2 and 6 of this bill.

ANALYSIS

C.S.S.B. 734 amends the Insurance Code to set out provisions governing captive insurance companies. The bill authorizes a captive insurance company to write any type of insurance, except as otherwise provided by the bill's provisions, but limits such authority to insuring the operational risks of the company's affiliates and risks of a controlled unaffiliated business. The bill prohibits a captive insurance company from issuing the following: life insurance; annuities; accident and health insurance for the company's parent and affiliates, except to insure employee benefits that are subject to the federal Employee Retirement Income Security Act of 1974; title insurance; mortgage guaranty insurance; financial guaranty insurance; residential property insurance; personal automobile insurance; or workers' compensation insurance. The bill prohibits a captive insurance company from issuing a type of insurance, including automobile liability insurance, that is required, under the laws of this state or a political subdivision of this state, as a prerequisite for obtaining a license or permit if the law requires that the liability insurance be issued by an insurer authorized to engage in the business of insurance in Texas. The bill authorizes a captive insurance company to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under the Texas Workers' Compensation Act or a similar affiliated entity expressly authorized by analogous laws of another state or to an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

C.S.S.B. 734 authorizes a captive insurance company to provide reinsurance to an insurer covering the operational risks of the captive insurance company's affiliates or risks of a controlled unaffiliated business that the captive insurance company may insure directly and certain employee benefits plans, certain liability insurance, and certain workers' compensation insurance and employer liability policies. The bill requires a captive insurance company to provide notice to the commissioner of insurance of a reinsurance agreement that the company becomes a party to not later than the 30th day after the date of the execution of the agreement and to provide notice of a termination of a previously filed reinsurance agreement to the commissioner not later than the 30th day after the date of termination. The bill authorizes a captive insurance company to take credit for reserves on risks or portions of risks ceded to reinsurers under specified statutory provisions.

C.S.S.B. 734 requires a captive insurance company to be formed for the purpose of engaging in the business of insurance under the bill's provisions. The bill authorizes a captive insurance company to be formed and operated in any form of business organization authorized under the Business Organizations Code except a risk retention group or general partnership. The bill establishes that a captive insurance company may only be formed as a nonprofit corporation if it is controlled by a nonprofit corporation. The bill sets out the required content of a certificate of formation of a captive insurance company. The bill requires the board of directors or governing body of a captive insurance company formed in Texas to have at least three members and requires at least one of the members to be a Texas resident. The bill requires the certificate of formation or bylaws of a captive insurance company to authorize a quorum of the board of directors or governing body to consist of not fewer than one-third of the fixed number of directors or members of the governing body.

C.S.S.B. 734 requires a captive insurance company to maintain reserves in an amount stated in the aggregate to provide for the payment of all losses or claims for which the captive insurance company may be liable and that are incurred on or before the date of the company's required annual report, whether reported or unreported, and unpaid as of the date of the annual report. The bill requires a captive insurance company to maintain additional reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims. The bill requires a captive insurance company to use generally accepted accounting principles as an accounting basis except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws must use statutory accounting principles.

C.S.S.B. 734 requires an entity to hold a certificate of authority to act as a captive insurance company issued by the Texas Department of Insurance (TDI) before engaging in business as a captive insurance company domiciled in Texas. The bill authorizes a captive insurance company to apply for such a certificate of authority if the company is permitted to do so by its certificate of formation and establishes criteria that an entity must meet in order to qualify for a certificate of authority. The bill makes TDI's authority to issue a certificate of authority to a captive insurance company contingent on the company possessing and maintaining unencumbered capital and surplus in an amount determined by the commissioner after considering certain criteria that has an impact on the operations of the captive insurance company. The bill prohibits the amount of required capital and surplus determined by the commissioner from being less than \$250,000. The bill sets out the acceptable forms of the required capital and surplus.

C.S.S.B. 734 requires incorporators or organizers, to obtain a certificate of authority for a captive insurance company, to pay to the commissioner an application fee and file with the commissioner an application for the certificate of authority. The bill sets out the required contents of the application, which includes, among other information, an affidavit by the incorporators, organizers, or officers of the captive insurance company stating that the capital and surplus are the bona fide property of the company and that the captive insurance company's certificate of formation is true and correct. The bill authorizes the commissioner, if the commissioner is not satisfied with the affidavit filed with the application, to require that the incorporators, organizers, or officers provide at their expense additional evidence as described by

the bill for inclusion in the contents of the application before the commissioner takes action on the application. The bill sets the application fee at \$1,500 or a greater amount set by the commissioner by rule as necessary to recover the cost of administering the bill's provisions relating to certificate of authority applications. The bill adds a temporary provision, set to expire January 1, 2019, capping the application fee at \$1,500 for a complete application filed on or before December 30, 2018. The bill requires application fees to be deposited to the credit of the TDI operating account.

C.S.S.B 734 requires the commissioner, after the application and application fee for a certificate of authority are filed with TDI and the applicant has complied with all legal requirements, to conduct an examination of the applicant to determine whether the minimum capital and surplus requirements are satisfied, whether the capital and surplus are the bona fide property of the applicant, and whether the applicant has fully complied with applicable insurance laws. The bill authorizes the commissioner to appoint a competent and disinterested person to conduct the examination, requires the examiner to file an affidavit of the examiner's findings with the commissioner, and requires the commissioner to record the affidavit.

C.S.S.B 734 requires the commissioner to determine whether the capital structure of the applicant meets the bill's requirements; whether the officers or directors of the applicant have sufficient insurance experience, ability, standing, and good record to make success of the captive insurance company probable; whether the applicant is acting in good faith; and whether the applicant otherwise satisfies the bill's requirements. The bill requires the commissioner, in evaluating the application, to consider certain factors relating to the proposed captive insurance company's ability to meet its policy obligations.

C.S.S.B 734 requires the commissioner to deny an application in writing and give a reason for the denial if the commissioner determines that the applicant has not met the required standards. The bill requires the commissioner, on the applicant's request, to hold a hearing on a denial and requires the commissioner, not later than the 30th day after the date the commissioner receives the request, to set a hearing date. The bill requires the commissioner, if the commissioner does not deny the application, to approve the application and issue to the applicant a certificate of authority to engage in business as provided for in the applicant's certificate of formation, to certify and file the approved document with TDI, and to issue a certified copy of the certificate of authority to the applicant's incorporators or officers. The bill prohibits the sale of a certificate of authority issued to a captive insurance company.

C.S.S.B 734 establishes that a captive insurance company holding a certificate of authority is not required to file a report, except for the reports as specified by the bill and by statutory provisions regarding insurance maintenance taxes. The bill requires a captive insurance company that holds a certificate of authority to engage in captive insurance business in Texas to file with the commissioner on or before March 1 of each year a statement of the company's financial condition verified by two of its executive officers and in a format prescribed by the commissioner and to file with the commissioner on or before June 1 of each year a report of the company's financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition. The bill authorizes a captive insurance company to make a written application to the commissioner for filing its annual report on a fiscal year-end and, if an alternative filing date is granted, requires the company to file the annual report, the report of its financial condition at last year-end, and certain additional supporting information by specified deadlines.

C.S.S.B. 734 establishes that a captive insurance company is not subject to a restriction on allowable investments, except as provided by the bill's provisions. The bill authorizes a captive insurance company to make loans to its affiliates with the prior approval of the commissioner and requires each loan to be evidenced by a note approved by the commissioner. The bill prohibits a captive insurance company from making a loan of the required minimum capital and surplus funds. The bill authorizes the commissioner to prohibit or limit an investment that

threatens the solvency or liquidity of a captive insurance company.

C.S.S.B. 734 prohibits a captive insurance company from amending its certificate of formation unless the amendment has been filed with and approved by the commissioner. The bill requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends. The bill prohibits a captive insurance company from joining or contributing financially to any plan, pool, association, or guaranty or insolvency fund in Texas. The bill establishes that a captive insurance company, its insured, or any affiliate is not entitled to receive any benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the company. The bill establishes the grounds on which the commissioner is authorized to revoke or suspend the certificate of authority of a captive insurance company after notice and an opportunity for hearing.

C.S.S.B. 734 authorizes the commissioner to adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company and authorizes the commissioner to approve the coverage of these risks by a captive insurance company until such rules are adopted.

C.S.S.B. 734 requires a captive management company to register with the commissioner by providing the information required on a form adopted by the commissioner before providing captive management services to a licensed captive insurance company. The bill subjects a captive insurance company to maintenance tax on direct premiums for risks located in Texas as applicable to the individual lines of business written by the captive insurance company. The bill authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of the bill governing the formation and operation of captive insurance companies.

C.S.S.B. 734 establishes that any information filed by an applicant or captive insurance company under the bill's provisions is confidential and privileged for all purposes, including for purposes of state public information law, a response to a subpoena, or evidence in a civil action. The bill prohibits the disclosure of such information without the prior written consent of the applicant or captive insurance company to which the information pertains, except as otherwise provided by the bill. The bill authorizes the commissioner to use such information in the furtherance of a legal or regulatory action relating to the administration of the Insurance Code. The bill authorizes the commissioner or another person to disclose confidential information relating to an applicant or a captive insurance company to certain entities, as specified by the bill, functioning in an official capacity if the recipient of the information has the legal authority to maintain the confidential or privileged status of the information and verifies that authority in writing.

C.S.S.B. 734 authorizes an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction to become a domestic captive insurance company in Texas on a determination by the commissioner that the authorized foreign or alien captive insurance company has complied with all of the requirements of the bill's provisions for the issuance of a certificate of authority to a domestic captive insurance company of the same type and all of the requirements of the Business Organizations Code for converting to an entity of this state for a domestic captive insurance company of the same type. The bill authorizes a domestic captive insurance company to transfer its domicile on the approval of the commissioner and establishes that the captive insurance company ceases to be a domestic captive insurance company on the transfer. The bill requires the commissioner to approve any proposed transfer unless the commissioner determines the transfer is not in the best interest of the policyholders. The bill authorizes the commissioner to postpone or waive the imposition of any fees or taxes under the Insurance Code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas.

C.S.S.B. 734 exempts a captive insurance company from Insurance Code provisions except as specified by the bill. The bill provides that the following Insurance Code provisions apply to a

captive insurance company: provisions relating to TDI and TDI funds, fees, and taxes; provisions relating to a captive insurance premium tax as provided by the bill; provisions relating to audits and examinations; provisions relating to supervision and conservatorship; the Insurer Receivership Act; and provisions relating to the location of books, records, accounts, and offices outside of Texas.

C.S.S.B. 734 establishes that a captive insurance company operating under the bill's provisions is subject to the Business Organizations Code, including the requirement to be authorized by the secretary of state, to the extent those laws do not conflict with the bill's provisions. The bill establishes that statutory provisions governing insurance holding company systems apply to a captive insurance company only if the company is affiliated with another insurer that is subject to those provisions.

C.S.S.B. 734 imposes an annual tax on each captive insurance company holding a certificate of authority under the bill's provisions that receives gross premiums subject to taxation under the bill's provisions. The bill sets the rate of the tax at one-half percent of the company's taxable premium receipts for a calendar year. The bill requires a captive insurance company, in determining its taxable premium receipts, to include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations for insurance written by the captive insurance company in a calendar year from any kind of insurance written by the company on each kind of property or risk without regard to the location of the property or risk. The bill excludes certain premium receipts from the determination of a captive insurance company's taxable premium receipts and establishes that a captive insurance company is not entitled to a deduction for premiums paid for reinsurance in determining the company's taxable premium receipts. The bill sets the annual minimum aggregate premium tax to be paid by a captive insurance company at \$7,500 and the annual maximum aggregate premium tax to be paid by a company at \$200,000. The bill establishes that gross premiums subject to such taxation are not subject to taxes, surcharges, or other regulatory assessments or fees under the Insurance Code other than insurance maintenance taxes as provided by the bill's provisions.

C.S.S.B. 734 establishes that the total tax is due and payable not later than March 1 after the end of the calendar year for which the tax is due, provides for semiannual prepayments by a captive insurance company that had a net tax liability for the previous calendar year of more than \$1,000, and authorizes the comptroller of public accounts to refund any overpayment of taxes that results from the semiannual prepayment system.

C.S.S.B. 734 requires a captive insurance company liable for the captive insurance premium tax to file annually with the comptroller a tax report on a form prescribed by the comptroller and establishes that the tax report is due on the date the tax is due. The bill authorizes the comptroller by rule to change the dates for reporting and paying captive insurance premium taxes to improve operating efficiencies within the agency. The bill requires a change by the comptroller in a reporting or payment date to retain the system of semiannual prepayments required for certain companies.

C.S.S.B. 734 entitles a captive insurance company to a credit on the amount of premium tax due for all examination and evaluation fees paid to the state during the calendar year for which the tax is due. The bill applies limitations on credits for examination expenses provided for a domestic insurance company to a captive insurance company and clarifies that the credit is in addition to any other credit authorized by statute. The bill subjects a captive insurance company that fails to pay all captive insurance premium taxes to certain specified Insurance Code and Tax Code provisions.

C.S.S.B. 734 prohibits an insurer or health maintenance organization subject to the captive insurance premium tax from being required to pay any additional tax imposed by this state or a county or municipality in proportion to the insurer's or health maintenance organization's gross premium receipts, except as otherwise provided by the Insurance Code or the Labor Code. The

bill redefines "state premium tax liability" to include any liability incurred by any person with respect to captive insurance premium taxes.

C.S.S.B. 734 amends the Tax Code to establish that an insurance organization, title insurance company, or title insurance agent that is authorized to engage in the business of insurance in Texas and required to pay an annual property and casualty insurance premium tax, life, health, and accident insurance premium tax, title insurance premium tax, captive insurance premium tax, or reciprocal and interinsurance exchange premium tax measured by its gross premium receipts is exempted from the franchise tax.

C.S.S.B. 734 requires the commissioner to adopt rules and procedures necessary to implement the bill's provisions governing the formation and operation of captive insurance companies as soon as practicable after the bill's effective date but not later than January 1, 2014.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 734 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 223A to read as follows:

CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

Sec. 223A.001. DEFINITION. In this chapter, "captive insurance company" means a captive insurance company or segregated account holding a certificate of authority under Chapter 964.

Sec. 223A.002. APPLICABILITY OF CHAPTER. This chapter applies to a captive insurance company or segregated account holding a certificate of authority under Chapter 964.

Sec. 223A.003. TAX IMPOSED; RATE.

Sec. 223A.004. TAX DUE DATES.

Sec. 223A.005. TAX REPORT.

Sec. 223A.006. CHANGE IN DUE DATES.

Sec. 223A.007. CREDIT FOR FEES PAID.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 223A to read as follows:

CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

Sec. 223A.001. DEFINITION. In this chapter, "captive insurance company" means a captive insurance company holding a certificate of authority under Chapter 964.

Sec. 223A.002. APPLICABILITY OF CHAPTER. This chapter applies to a captive insurance company holding a certificate of authority under Chapter 964.

Sec. 223A.003. TAX IMPOSED; RATE.

Sec. 223A.004. TAX DUE DATES.

Sec. 223A.005. TAX REPORT.

Sec. 223A.006. CHANGE IN DUE DATES.

Sec. 223A.007. CREDIT FOR FEES PAID.

Sec. 223A.008. FAILURE TO PAY TAXES.

SECTION 2. Subtitle H, Title 6, Insurance Code, is amended by adding Chapter 964 to read as follows:

CHAPTER 964. CAPTIVE INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 964.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliated company" or "affiliate" has the meaning assigned by Section 823.003 and includes a parent entity that controls a captive insurance company.

(2) "Captive insurance company" means a company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business.

(3) "Captive management company" means an entity providing administrative services to a captive insurance company.

(4) "Control" means the power to direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with or corporate office held in the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(5) "Controlled unaffiliated business" means a person:

(A) that is not an affiliate;

(B) that has an existing contractual relationship with an affiliate under which the affiliate bears a potential financial loss; and

(C) the risks of which are managed by a captive insurance company under Section 964.066.

(6) "Managing captive insurance company" means a captive insurance company that meets the requirements of Subchapter B and organizes and operates a segregated account.

(7) "Operational risk" means any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

Sec. 223A.008. FAILURE TO PAY TAXES.

SECTION 2. Subtitle H, Title 6, Insurance Code, is amended by adding Chapter 964 to read as follows:

CHAPTER 964. CAPTIVE INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 964.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliated company" or "affiliate" has the meaning assigned by Section 823.003 and includes a parent entity that controls a captive insurance company.

(2) "Captive insurance company" means a company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business.

(3) "Captive management company" means an entity providing administrative services to a captive insurance company.

(4) "Control" means the power to direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with or corporate office held in the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(5) "Controlled unaffiliated business" means a person:

(A) that is not an affiliate;

(B) that has an existing contractual relationship with an affiliate under which the affiliate bears a potential financial loss; and

(C) the risks of which are managed by a captive insurance company under Section 964.066.

(6) "Operational risk" means any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

(8) "Participant" means a person and affiliate of that person who is insured by a managing captive insurance company through a participant contract.

(9) "Participant contract" means a contract by which a managing captive insurance company insures the risks of a participant and limits the losses of the participant to the participant's pro rata share of the assets of the segregated account identified by the contract.

(10) "Redomestication" means the transfer to or from this state of the insurance domicile of an authorized captive insurer.

(11) "Segregated account" means a separate account that is separately formed, holds a separate certificate of authority, and is established and maintained by a managing captive insurance company and in which:

(A) the assets are maintained for a participant under a participant contract to fund the liabilities of the managing captive insurance company assumed by the participant under the participant contract; and

(B) the minimum capital and surplus required by applicable law may be provided by a person.

(b) Notwithstanding Section 30.003, in this chapter, "person" has the meaning assigned by Section 311.005, Government Code.

Sec. 964.002. APPLICABILITY OF OTHER LAWS.

SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS.

Sec. 964.052. AUTHORITY TO PROVIDE REINSURANCE.

Sec. 964.053. FORMATION.

Sec. 964.054. RESERVES AND ACCOUNTING BASIS.

Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED.

Sec. 964.056. CAPITAL AND SURPLUS REQUIREMENTS.

(7) "Redomestication" means the transfer to or from this state of the insurance domicile of an authorized captive insurer.

(b) Notwithstanding Section 30.003, in this chapter, "person" has the meaning assigned by Section 311.005, Government Code.

Sec. 964.002. APPLICABILITY OF OTHER LAWS.

SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS.

Sec. 964.052. AUTHORITY TO PROVIDE REINSURANCE.

Sec. 964.053. FORMATION.

Sec. 964.054. RESERVES AND ACCOUNTING BASIS.

Sec. 964.055. Substantially the same as engrossed version.

Sec. 964.056. CAPITAL AND SURPLUS REQUIREMENTS.

Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY.

Sec. 964.058. EXAMINATION BY COMMISSIONER.

Sec. 964.059. ACTION ON APPLICATION.

Sec. 964.060. ANNUAL REPORT.

Sec. 964.061. INVESTMENTS. (a) A captive insurance company without segregated accounts is not subject to a restriction on allowable investments, except as provided by this section.

(b) A captive insurance company without segregated accounts may make loans to its affiliates with the prior approval of the commissioner. Each loan must be evidenced by a note approved by the commissioner. A captive insurance company may not make a loan of the minimum capital and surplus funds required by this chapter.

(c) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of a captive insurance company.

Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION.

Sec. 964.063. NOTICE OF DIVIDENDS.

Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO CERTAIN ENTITIES AND FUNDS.

Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.

Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED UNAFFILIATED BUSINESS.

Sec. 964.067. CAPTIVE MANAGERS.

Sec. 964.068. MAINTENANCE TAX.

Sec. 964.069. RULEMAKING AUTHORITY.

Sec. 964.070. CONFIDENTIALITY. (a) Any information filed by an applicant or

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Sec. 964.067. CAPTIVE MANAGERS.

Sec. 964.068. MAINTENANCE TAX.

Sec. 964.069. RULEMAKING AUTHORITY.

Sec. 964.070. CONFIDENTIALITY. (a) Any information filed by an applicant or

captive insurance company under this chapter is confidential and privileged for all purposes, including for purposes of Chapter 552, Government Code, a response to a subpoena, or evidence in a civil action. Except as provided by Subsections (b) and (c), the information may not be disclosed without the prior written consent of the applicant or captive insurance company to which the information pertains.

(b) If the recipient of the information described by Subsection (a) has the legal authority to maintain the confidential or privileged status of the information and verifies that authority in writing, the commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general;

(5) a grand jury;

(6) the National Association of Insurance Commissioners if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823;

(7) another state or federal regulator if the state or federal regulator is operating in its official capacity and the applicant or captive insurance company to which the information relates operates in the entity's jurisdiction;

(8) an international insurance regulator or analogous financial agency operating in an official capacity, if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823 and the holding company system operates in the entity's jurisdiction; or

(9) members of a supervisory college described by Section 823.0145, if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823.

(c) The commissioner may use information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

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(b) If the recipient of the information described by Subsection (a) has the legal authority to maintain the confidential or privileged status of the information and verifies that authority in writing, the commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general;

(5) a grand jury;

(6) the National Association of Insurance Commissioners if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823;

(7) another state or federal regulator if the applicant or captive insurance company to which the information relates operates in the entity's jurisdiction;

(8) an international insurance regulator or analogous financial agency if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823 and the holding company system operates in the entity's jurisdiction; or

(9) members of a supervisory college described by Section 823.0145, if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823.

(c) The commissioner may use information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

Sec. 964.071. REDOMESTICATION.

SUBCHAPTER C. MANAGING CAPTIVE INSURANCE COMPANIES

Sec. 964.101. SEGREGATED ACCOUNT.

(a) A managing captive insurance company may form a segregated account to insure risks of a participant.

(b) The assets and liabilities of a managing captive insurance company and each segregated account shall be held separately. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts and the managing captive insurance company.

(c) A managing captive insurance company is a single legal entity and must establish each segregated account as a separate legal entity. Each segregated account shall be separately identified or designated as being a part of the managing captive insurance company.

Sec. 964.102. ORGANIZATION AND STRUCTURE OF SEGREGATED ACCOUNT.

(a) A managing captive insurance company may issue segregated account shares of stock or other type of equity instrument in one or more classes or series for one or more segregated accounts, or for the managing captive insurance company as a whole. The proceeds of each issue shall be included in the assets of the segregated account for which the segregated account shares of stock or other type of equity instrument was issued. The proceeds of the issue of shares of stock or other type of equity instrument, other than segregated account shares of stock or other type of equity instrument, is included in the managing captive insurance company's general assets.

(b) A managing captive insurance company may pay a dividend on segregated account shares of stock or other type of equity instrument of any class or series regardless of whether a dividend is declared on another class or series of segregated account shares of stock or other type of equity instrument, or any other shares of stock or other type of equity instrument.

(c) Segregated account dividends or distributions must be paid on the segregated

Sec. 964.071. REDOMESTICATION.

No equivalent provision.

No equivalent provision.

No equivalent provision.

account shares of stock or other type of equity instrument from the segregated account assets. The dividends or distributions shall only be paid to the holders of the segregated account shares of stock or other type of equity instrument and in accordance with the rights of the shares of stock or other type of equity instrument.

Sec. 964.103. ASSETS OF MANAGING CAPTIVE INSURANCE COMPANY. (a) The assets of a managing captive insurance company are general assets or assets of an individual segregated account. The segregated account assets are the assets of the managing captive insurance company held within or on behalf of the segregated account of the managing captive insurance company. The general assets of a managing captive insurance company are the assets of the managing captive insurance company that are not segregated account assets. (b) The assets of a segregated account are assets representing the capital, reserves held to support the liabilities of the segregated account, or all other assets attributable to or held within the segregated account. For purposes of this subsection, "reserves" includes retained earnings, capital, and paid-in capital.

No equivalent provision.

Sec. 964.104. REQUIRED PROCEDURES. (a) The directors or members of the governing body of a managing captive insurance company shall establish and maintain, or cause to be established and maintained, procedures: (1) to segregate, and keep segregated, segregated account assets from general assets; (2) to segregate, and keep segregated, segregated account assets of each segregated account captive insurance company from segregated account assets of another segregated account; and (3) if applicable, to apportion or transfer assets and liabilities between segregated accounts, or between segregated account assets and general assets, of the managing captive insurance company. (b) A managing captive insurance company must obtain prior approval from the commissioner before the company apportions or transfers assets and liabilities between segregated accounts of the

No equivalent provision.

managing captive insurance company.

(c) A managing captive insurance company may not transfer assets and liabilities between segregated accounts and general assets of the managing captive insurance company.

Sec. 964.105. USE OF SEGREGATED ACCOUNT ASSETS. (a) Segregated account assets:

(1) must only be available and used to meet liabilities of the creditors with respect to that segregated account, and those creditors shall be entitled to have recourse only to the segregated account assets attributable to that segregated account; and

(2) may not be available or used to meet liabilities of, and shall be absolutely protected from, the creditors of the managing captive insurance company and any other segregated account who are not creditors with respect to a particular segregated account, and those creditors are not entitled to have recourse to the protected segregated account assets.

(b) If a liability of a managing captive insurance company to a creditor arises with respect to a particular segregated account, the liability extends only to that segregated account. The creditor shall, with respect to that liability, be entitled to have recourse only to the segregated account assets attributable to the segregated account.

(c) If a liability, other than a liability described by Subsection (b), of a managing captive insurance company to a creditor arises, the liability extends only to the managing captive insurance company's general assets. The creditor shall, with respect to that liability, be entitled to have recourse only to the managing captive insurance company's general assets.

(d) Liabilities of a managing captive insurance company not attributable to any of the company's segregated accounts are discharged from the managing captive insurance company's general assets. Income, receipts, and other property or rights of or acquired by a managing captive insurance company not otherwise attributable to any segregated account are allocated to the managing captive insurance company's general assets to the extent that the managing captive insurance company's general assets exceed any minimum capital

No equivalent provision.

amounts required by this chapter.

Sec. 964.106. SEPARATE RECORDS. The managing captive insurance company shall account for each segregated account separately on the books and records of the managing captive insurance company to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends or other distributions to participants, and other factors provided by the participant contract or required by the commissioner.

No equivalent provision.

Sec. 964.107. TRANSACTIONS REQUIRING COMMISSIONER APPROVAL. (a) The managing captive insurance company may not make a sale, exchange, or other transfer of assets between or among any of its segregated accounts without the written consent of the participants and the commissioner. (b) A dividend or distribution shall not be made from the company's segregated assets to any person without the commissioner's prior written approval. (c) The commissioner may not approve a transaction described by Subsection (a) or (b) if the transaction would result in the insolvency or impairment of the segregated account. (d) A participant contract is not effective without the commissioner's prior written approval. The withdrawal of a participant from an existing segregated account is a change in the strategic business plan of that segregated account requiring the commissioner's prior written approval.

No equivalent provision.

Sec. 964.108. NOTIFICATION REQUIRED. Each managing captive insurance company shall notify the commissioner not later than the 10th business day after the date a segregated account becomes insolvent, impaired, or otherwise unable to meet its claims or expense obligations.

No equivalent provision.

Sec. 964.109. QUALIFICATIONS OF PARTICIPANT. (a) Any person may be a participant in a segregated account organized or holding a certificate of authority under this chapter. (b) A participant in a segregated account is not required to be a holder of a segregated

No equivalent provision.

account shares of stock or other type of equity instrument issued within the segregated account or by the managing captive insurance company or any affiliate of the managing captive insurance company.

Sec. 964.110. APPLICABILITY OF CHAPTER TO SEGREGATED ACCOUNTS. Subchapters A and B apply to each segregated account, except:
(1) Sections 964.056(a) and (b);
(2) Sections 964.059(a)(2) and (b)(2);
(3) Section 964.061;
(4) Section 964.063; and
(5) Section 964.071.

No equivalent provision.

Sec. 964.111. CAPITAL AND SURPLUS REQUIREMENTS OF SEGREGATED ACCOUNT. (a) The minimum amount of capital and surplus in each segregated account is \$100,000.
(b) The commissioner may require each segregated account to maintain additional capital and surplus based on the type, volume, and nature of the insurance business that is transacted by the segregated account and may determine the amount of capital and surplus, if any, that may be in the form of an irrevocable letter of credit.
(c) The minimum capital and surplus required under Subsection (a) must be in the form required by Section 964.056(c).

No equivalent provision.

Sec. 964.112. ADDITIONAL ANNUAL REPORT REQUIREMENT. In addition to the requirements of Section 964.060, a managing captive insurance company must include in its annual report a financial statement detailing the financial experience of each segregated account.

No equivalent provision.

Sec. 964.113. SEGREGATED ACCOUNT INVESTMENTS. (a) Each segregated account shall file with the commissioner a proposed investment strategy, and any changes to the strategy, which the commissioner shall approve if the strategy does not threaten the solvency, liquidity, or overall operating soundness of the segregated account.
(b) A managing captive insurance company may file with the commissioner a proposed investment strategy, and any changes to the strategy, that will be applicable to each segregated account of the managing captive

No equivalent provision.

insurance company.

Sec. 964.114. SUPPLEMENTAL APPLICATION MATERIALS. In addition to the information required to obtain a certificate of authority under Subchapter B, each managing captive insurance company shall file with the commissioner the following:

(1) materials demonstrating how the company will account for the loss and expense experience of each segregated account and how expenses will be allocated; and

(2) all contracts or sample contracts between the managing captive insurance company and a participant.

SECTION 3. Subsection (b), Section 203.001, Insurance Code, is amended.

SECTION 4. Subsection (b), Section 203.002, Insurance Code, is amended to read as follows:

(b) If the commissioner determines by examining a company or segregated account or by other means that the company's or account's gross premium receipts in a year exceed the amount reported by the company or account for that year, the commissioner shall report that determination to the comptroller. The comptroller shall institute a collection action as the comptroller considers appropriate to collect taxes due on unreported gross premium receipts.

SECTION 5. Subdivision (11), Section 228.001, Insurance Code, is amended.

SECTION 6. Subsection (a), Section 171.052, Tax Code, is amended.

SECTION 7. As soon as practicable after the effective date of this Act, but not later than January 1, 2014, the commissioner of insurance shall adopt rules and procedures necessary to implement Chapter 964, Insurance Code, as added by this Act.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate

No equivalent provision.

SECTION 3. Same as engrossed version except for recitation.

No equivalent provision.

SECTION 4. Same as engrossed version except for recitation.

SECTION 5. Same as engrossed version except for recitation.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

effect, this Act takes effect September 1,
2013.