

## **BILL ANALYSIS**

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C.S.S.B. 734  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Captive insurance companies (captives) are typically formed by large corporations for the purpose of providing insurance exclusively for the corporation. There are a number of types of captives that enable corporations, other entities, and individuals to self-insure, the most traditional type being a pure captive insurance company (pure captive). A pure captive offers a means to self-insure risk originating from a parent company and any affiliates. Under this model, the parent company provides capital in order to adequately fund the captive and, like an admitted carrier, determines what risks it will insure and the premium charged for that risk. Segregated account captive insurance companies are formed by a managing captive insurance company which oversees the individual segregated accounts. Like a pure captive, a segregated account captive insurance company exclusively insures the risk of its' owner; however, the assets and liabilities of each segregated account and the managing captive company are separate from one another.

Currently, over thirty states allow captives. A captive is generally subject to different regulations than a traditional insurance carrier, and insurance commissioners typically have significant discretion to regulate and set the captive's minimum financial requirements based on the financial strength of the captive's owner, the parent company.

The Texas Insurance Code does not currently allow for the formation of captives within the state; however, a number of large companies domiciled in Texas currently have a captive that has been formed in another state with captive enabling legislation. This creates additional expenses and administrative burdens for Texas companies because other states typically impose a number of obligations on an out-of-state company.

C.S.S.B. 734 amends the Texas Insurance Code to authorize the formation of pure captive insurance companies and segregated account captive insurance companies in Texas. The captive must be licensed with the Texas Department of Insurance. C.S.S.B. 734 also explicitly states the types of insurance and reinsurance the captive may issue and requires that the captive company obtain approval from the commissioner of insurance (commissioner) before providing reinsurance. Additionally, C.S.S.B. 734 requires an appropriate amount of initial capital, provides the commissioner the authority to conduct a detailed examination of the applicant to ensure that all statutory requirements have been met and that the applicant's business model is sufficient; requires a captive to file an annual report with the commissioner containing a statement of the company's financial condition; prohibits a captive from participating in the state guaranty fund; states the process for license suspension or revocation; and notes the captive's obligations for premium and maintenance taxes.

C.S.S.B. 734 amends current law relating to the licensing of captive insurance companies, authorizes fees, and authorizes and imposes taxes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 223A.006, Insurance Code), SECTION 2 (Sections 964.057, 964.066, and 964.069, Insurance Code), and SECTION 7 of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 223A, as follows:

### CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

Sec. 223A.001. DEFINITION. Defines "captive insurance company" in this chapter.

Sec. 223A.002. APPLICABILITY OF CHAPTER. Provides that 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. (a) Provides that an annual tax is imposed on each captive insurance company that receives gross premiums subject to taxation under this chapter. Provides that the rate of the tax is one-half percent of the company's taxable premium receipts for a calendar year.

(b) Requires the captive insurance company, except as provided by Subsection (c), in determining a captive insurance company's 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 located in this state.

(c) Provides that the following premium receipts are not included in determining a captive insurance company's taxable premium receipts: premium receipts received from another authorized insurer for reinsurance, returned premiums and dividends paid to policyholders, and premiums excluded by another law of this state.

(d) Provides that a company is not entitled to a deduction for premiums paid for reinsurance in determining a captive insurance company's taxable premium receipts.

(e) Provides that the annual minimum aggregate tax to be paid by a captive insurance company under this chapter is \$7,500 and the annual maximum aggregate tax to be paid by a company under this chapter is \$200,000. Provides that gross premiums subject to taxation under this chapter are not subject to taxes, surcharges, or other regulatory assessments or fees under this code other than insurance maintenance taxes as provided by Section 964.068.

Sec. 223A.004. TAX DUE DATES. (a) Provides that the total tax imposed by this chapter is due and payable not later than March 1 after the end of the calendar year for which the tax is due.

(b) Requires a captive insurance company that had a net tax liability for the previous calendar year of more than \$1,000 to make semiannual prepayments of tax on March 1 and August 1. Requires that the tax paid on each date be equal to 50 percent of the total amount of tax the company paid under this chapter for the previous calendar year. Requires that the tax paid on each date, if the company did not pay a tax under this chapter during the previous calendar year, be equal to the tax that would be owed on the aggregate of the gross premiums for the two previous calendar quarters.

(c) Authorizes the comptroller of public accounts of the State of Texas (comptroller) to refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Sec. 223A.005. TAX REPORT. (a) Requires a captive insurance company liable for the tax imposed by this chapter to file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) Provides that the tax report is due on the date the tax is due under Section 223A.004(a).

Sec. 223A.006. CHANGE IN DUE DATES. (a) Authorizes the comptroller by rule to change the dates for reporting and paying taxes under this chapter to improve operating efficiencies within the agency.

(b) Requires a change by the comptroller in a reporting or payment date to retain the system of semiannual prepayments prescribed by Section 223A.004.

Sec. 223A.007. CREDIT FOR FEES PAID. (a) Entitles a captive insurance company to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to this state during the calendar year for which the tax is due. Provides that the limitations provided by Sections 803.007(1) (relating to prohibiting a credit on or an offset against the amount of premium taxes to be paid by a domestic company to the state in a taxable year from being allowed on a fee or examination expense paid to another state) and (2)(B) (relating to prohibiting a credit on or an offset against the amount of premium taxes to be paid by a domestic company to the state in a taxable year from being allowed on an examination expense paid in a different taxable year) for a domestic insurance company apply to a captive insurance company.

(b) Provides that the credit provided by this section is in addition to any other credit authorized by statute.

Sec. 223A.008. FAILURE TO PAY TAXES. Provides that a captive insurance company that fails to pay all taxes imposed by this chapter is subject to Section 203.002 (Tax Imposed) of this code and Subtitles A (Tax Imposed) and B (Records, Payments, and Reports), Title 2 (State Taxation), Tax Code.

SECTION 2. Amends Subtitle H, Title 6, Insurance Code, by adding Chapter 964, as follows:

#### CHAPTER 964. CAPTIVE INSURANCE COMPANIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 964.001. DEFINITIONS. (a) Defines "affiliated company" or "affiliate," "captive insurance company," "captive management company," "control," "controlled unaffiliated business," "managing captive insurance company," "operational risk," "participant," "participant contract," "redomestication," and "segregated account," in this chapter.

(b) Provides that in this chapter "person," notwithstanding Section 30.003 (Definition of Person), has the meaning assigned by Section 311.005 (General Definitions), Government Code.

Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) Provides that this code does not apply to a captive insurance company, except as otherwise provided by this chapter, except Title 2 (Texas Department of Insurance), Chapter 223A and Subtitles A (General Provisions) and C (Insurance Maintenance Taxes), Title 3 (Department Funds, Fees, and Taxes), Chapter 401 (Audits and Examinations), Chapter 441 (Supervision and Conservatorship), Chapter 443 (Insurer Receivership Act), and Chapter 803 (Location of Books, Records, Accounts, and Offices Outside of this State).

(b) Provides that a captive insurance company operating under this chapter 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 this chapter.

(c) Provides that Chapter 823 (Insurance Holding Company Systems) applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

#### SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

Sec. 964.051. **AUTHORITY TO WRITE DIRECT BUSINESS.** (a) Authorizes a captive insurance company to write any type of insurance, except as provided by this section, but is authorized to only insure the operational risks of the company's affiliates and risks of a controlled unaffiliated business.

(b) Prohibits a captive insurance company from issuing:

- (1) life insurance;
- (2) annuities;
- (3) accident and health insurance for the company's parent and affiliates, except to insure employee benefits that are subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
- (4) title insurance;
- (5) mortgage guaranty insurance;
- (6) financial guaranty insurance;
- (7) residential property insurance;
- (8) personal automobile insurance; or
- (9) workers' compensation insurance.

(c) 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 this state.

(d) Authorizes a captive insurance company to issue a contractual reimbursement policy to an affiliated certified self-insurer authorized under Chapter 407 (Self-Insurance Regulation), Labor Code, or a similar affiliated entity expressly authorized by analogous laws of another state, or an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Sec. 964.052. **AUTHORITY TO PROVIDE REINSURANCE.** (a) 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 is authorized to insure directly under Section 964.051 and employee benefit plans offered by affiliates; liability insurance an affiliate must maintain as a prerequisite for obtaining a license or permit if the law requires maintenance of the liability insurance; and workers' compensation insurance and employer liability policies issued to affiliates if the insurer that directly issues workers' compensation insurance and employer's liability policies or its licensed, if required by law, administrator or adjuster services all claims incurred during the policy period, and complies with all requirements for an insurer under this code, including Chapter 462 (Texas Property and Casualty Insurance Guaranty Association), and under Title 5 (Workers' Compensation), Labor Code.

(b) Requires a captive insurance company to provide notice to the commissioner of insurance (commissioner) 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.

(c) Requires a captive insurance company 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.

(d) Authorizes a captive insurance company to take credit for reserves on risks or portions of risks ceded to reinsurers under Subchapter C (Credit for Reinsurance), Chapter 492 (Reinsurance for Life, Health, and Accident Insurance Companies and Related Entities), and Subchapter C (Credit for Reinsurance), Chapter 493 (Reinsurance for Property and Casualty Insurers).

Sec. 964.053. **FORMATION.** (a) Requires a captive insurance company to be formed for the purpose of engaging in the business of insurance under this chapter.

(b) 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. Authorizes a captive insurance company to only be formed as a nonprofit corporation if it is controlled by a nonprofit corporation.

(c) Requires that the certificate of formation of a captive insurance company include:

(1) the name of the company, which may not be the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state;

(2) the location of the company's principal business office;

(3) the type of insurance business in which the company proposes to engage;

(4) the number of directors or members of the governing body of the company;

(5) the number of authorized shares and the par value of the company's capital stock for a captive insurance company formed as a corporation;

(6) the amount of the company's initial capital and surplus; and

(7) any other information required by the commissioner as necessary to explain the company's objectives, management, and control.

(d) Requires the board of directors or governing body of a captive insurance company formed in this state to have at least three members, and requires at least one of the members to be a resident of this state.

(e) Requires that the certificate of formation or bylaws of a captive insurance company 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.

Sec. 964.054. **RESERVES AND ACCOUNTING BASIS.** (a) 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 annual report under Section 964.060, whether reported or unreported, and unpaid as of the date of the annual report under Section 964.060.

(b) Requires a captive insurance company, in addition to the reserves required by Subsection (a), to maintain reserves in an amount estimated to provide for the expenses of adjustment or settlement of the losses or claims described by Subsection (a).

(c) Requires the 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 shall use statutory accounting principles.

Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED. (a) Prohibits an entity from engaging in business as a captive insurance company domiciled in this state unless it holds a certificate of authority to act as a captive insurance company issued by the Texas Department of Insurance (TDI). Authorizes a captive insurance company, when permitted by its certificate of formation, to apply for a certificate of authority under this chapter.

(b) Provides that an entity does not qualify for a certificate of authority under this chapter unless:

(1) its affiliates have significant operations in this state, as determined by the commissioner;

(2) its board of directors or governing body holds at least one meeting each year in this state;

(3) it maintains its principal office and books and records in this state, unless the commissioner grants an application to relocate the entity's books and records under Chapter 803; and

(4) it complies with Section 804.101 (Domestic Company) or 804.102 (Domestic Company that Maintains Principal Offices or Books, Records, and Accounts Out of State).

Sec. 964.056. CAPITAL AND SURPLUS REQUIREMENTS. (a) Prohibits TDI from issuing a certificate of authority to a captive insurance company unless the company possesses and maintains unencumbered capital and surplus in an amount determined by the commissioner after considering the amount of premium written by the captive insurance company, the characteristics of the assets held by the captive insurance company, the terms of reinsurance arrangements entered into by the captive insurance company, the type of business covered in policies issued by the captive insurance company, the underwriting practices and procedures of the captive insurance company, and any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner.

(b) Prohibits the amount of capital and surplus determined by the commissioner under Subsection (a) from being less than \$250,000.

(c) Requires that the capital and surplus required by Subsection (a) be in the form of United States currency; an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner; bonds of this state; or bonds or other evidences of indebtedness of the United States, the principal and interest of which are guaranteed by the United States.

Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) Requires the 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, which is required to include:

- (1) a financial statement certified by two principal officers;
- (2) a plan of operation and projections, which is required to include an actuarial report prepared by a qualified independent actuary;
- (3) the captive insurance company's certificate of formation;
- (4) 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 the certificate of formation is true and correct; and
- (5) if the application provides for the issuance of shares of stock or other type of equity instrument without par value, a certificate authenticated by the incorporators or officers stating the number of shares or other type of equity instrument without par value that are subscribed, and the actual consideration received by the captive insurance company for those shares or other type of equity instrument.

(b) Authorizes the commissioner, if the commissioner is not satisfied with the affidavit filed under Subsection (a)(4), to require that the incorporators, organizers, or officers provide at their expense additional evidence as described by Subsection (a) before the commissioner takes action on the application.

(c) Provides that the application fee required under this section is \$1,500 or a greater amount set by the commissioner by rule as necessary to recover the cost of administering this section.

(d) Prohibits the application fee, notwithstanding Subsection (c), for a complete application filed on or before December 30, 2018, from exceeding \$1,500. Provides that this subsection expires January 1, 2019.

(e) Requires that fees collected under this section be deposited to the credit of TDI operating account.

Sec. 964.058. EXAMINATION BY COMMISSIONER. (a) Requires the commissioner, after the application and application fee for a certificate of authority under Section 964.057 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 of Section 964.056 are satisfied, the capital and surplus are the bona fide property of the applicant, and the applicant has fully complied with applicable insurance laws.

(b) Authorizes the commissioner to appoint a competent and disinterested person to conduct the examination required by this section. Requires the examiner to file an affidavit of the examiner's findings with the commissioner. Requires the commissioner to record the affidavit.

Sec. 964.059. ACTION ON APPLICATION. (a) Requires the commissioner to determine whether the capital structure of the applicant meets the requirements of this chapter; 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; the applicant is acting in good faith; and the applicant otherwise satisfies the requirements of this chapter.

(b) Requires the commissioner, in evaluating the application, to consider the amount and liquidity of the applicant's assets relative to the risks to be assumed; the adequacy of the expertise, experience, and character of each individual who will manage the applicant; the overall soundness of the applicant's plan of operations and the projections contained in that plan; whether the applicant's affiliates have significant operations located in this state; and any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations.

(c) Requires the commissioner, if the commissioner determines that the applicant has not met the standards set out by Subsection (a), to deny the application in writing, giving the reason for the denial. Requires the commissioner, on the applicant's request, to hold a hearing on a denial. Requires the commissioner, not later than the 30th day after the date the commissioner receives the applicant's request for a hearing, to set a hearing date.

(d) Requires the commissioner, if the commissioner does not deny the application under Subsection (c), 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, certify and file the approved document with TDI, and issue a certified copy of the certificate of authority to the applicant's incorporators or officers.

(e) Prohibits a certificate of authority issued to a captive insurance company under this section from being sold.

Sec. 964.060. ANNUAL REPORT. (a) Provides that a captive insurance company holding a certificate of authority under this chapter is not required to file a report, except as provided by this section, Chapter 223A, and Subtitle C, Title 3.

(b) Requires a captive insurance company that holds a certificate of authority to engage in captive insurance business in this state 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 filed in a format prescribed by the commissioner, and on or before June 1 of each year, a report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition.

(c) Authorizes a captive insurance company to make a written application to the commissioner for filing its annual report required under this section on a fiscal year-end. Requires the company, if an alternative filing date is granted, to file the annual report not later than the 60th day after the date of the company's fiscal year-end; the report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition not later than the 150th day after the date the annual report is due; and its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

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

(b) Authorizes a captive insurance company without segregated accounts to make loans to its affiliates with the prior approval of the commissioner. Requires that each loan be evidenced by a note approved by the commissioner. Prohibits a captive insurance company from making a loan of the minimum capital and surplus funds required by this chapter.



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

Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION. Prohibits a captive insurance company from amending its certificate of formation unless the amendment has been filed with and approved by the commissioner.

Sec. 964.063. NOTICE OF DIVIDENDS. Requires a captive insurance company to notify the commissioner in writing when issuing policyholder dividends.

Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO CERTAIN ENTITIES AND FUNDS. Prohibits a captive insurance company from joining or contributing financially to any plan, pool, association, or guaranty or insolvency fund in this state, and 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.

Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. Authorizes the commissioner, after notice and an opportunity for hearing, to revoke or suspend the certificate of authority of a captive insurance company for:

- (1) insolvency or impairment of required capital or surplus to policyholders;
- (2) failure to submit an annual report, as required by Section 964.060;
- (3) failure to comply with the provisions of its own charter or bylaws;
- (4) failure to submit to examination, as required by Chapter 401;
- (5) failure to pay the cost of examination, as required by Chapter 401;
- (6) failure to pay any tax or fee required by this code;
- (7) removal of its principal office or books and records from this state without prior approval of the commissioner;
- (8) use of practices that render its operation detrimental to the public or its condition unsound; or
- (9) failure to otherwise comply with the laws of this state.

Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED UNAFFILIATED BUSINESS. 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. Authorizes the commissioner, until rules under this section are adopted, to approve the coverage of these risks by a captive insurance company.

Sec. 964.067. CAPTIVE MANAGERS. Requires a captive management company, before providing captive management services to a licensed captive insurance company, to register with the commissioner by providing the information required on a form adopted by the commissioner.

Sec. 964.068. MAINTENANCE TAX. Provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on direct premiums for risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Sec. 964.069. RULEMAKING AUTHORITY. Authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Sec. 964.070. CONFIDENTIALITY. (a) Provides that 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 (Public Information), Government Code, a response to a subpoena, or evidence in a civil action. Prohibits the information, except as provided by Subsections (b) and (c), from being disclosed without the prior written consent of the applicant or captive insurance company to which the information pertains.

(b) Authorizes the commissioner or another person, 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, to 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 (Supervisory Colleges), 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) Authorizes the commissioner to 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. (a) Authorizes an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction to become a domestic captive insurance company in this state on a determination by the commissioner that the authorized foreign or alien captive insurance company has complied with all of the requirements of this chapter for the issuance of a certificate of authority to, and the Business Organizations Code for converting to an entity of this state for, a domestic captive insurance company of the same type.

(b) Authorizes a domestic captive insurance company, on the approval of the commissioner, to transfer its domicile. Provides that the captive insurance company, on the transfer, ceases to be a domestic captive insurance company. Requires the commissioner to approve any proposed transfer unless the commissioner determines the transfer is not in the best interest of the policyholders.

(c) Authorizes the commissioner to postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

#### SUBCHAPTER C. MANAGING CAPTIVE INSURANCE COMPANIES

Sec. 964.101. SEGREGATED ACCOUNT. (a) Authorizes a managing captive insurance company to form a segregated account to insure risks of a participant.

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

(c) Provides that a managing captive insurance company is a single legal entity and is required to establish each segregated account as a separate legal entity. Requires that each segregated account 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) Authorizes a managing captive insurance company to 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. Requires that the proceeds of each issue 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. Provides that 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) Authorizes a managing captive insurance company to 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) Requires that segregated account dividends or distributions be paid on the segregated account shares of stock or other type of equity instrument from the segregated account assets. Requires that the dividends or distributions 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)

Provides that the assets of a managing captive insurance company are general assets or assets of an individual segregated account. Provides that 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. Provides that 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) Provides that 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. Provides that "reserves," for purposes of this subsection, includes retained earnings, capital, and paid-in capital.

Sec. 964.104. **REQUIRED PROCEDURES.** (a) Requires the directors or members of the governing body of a managing captive insurance company to establish and maintain, or cause to be established and maintained, procedures to segregate, and keep segregated, segregated account assets from general assets; to segregate, and keep segregated, segregated account assets of each segregated account captive insurance company from segregated account assets of another segregated account; and 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) Requires a managing captive insurance company to obtain prior approval from the commissioner before the company apportions or transfers assets and liabilities between segregated accounts of the managing captive insurance company.

(c) Prohibits a managing captive insurance company from transferring assets and liabilities between segregated accounts and general assets of the managing captive insurance company.

Sec. 964.105. **USE OF SEGREGATED ACCOUNT ASSETS.** (a) Provides that segregated account assets are required to only be available and used to meet liabilities of the creditors with respect to that segregated account, and requires those creditors to be entitled to have recourse only to the segregated account assets attributable to that segregated account; and are prohibited from being available or used to meet liabilities of, and are required to 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) Provides that the liability extends only to that segregated account, if a liability of a managing captive insurance company to a creditor arises with respect to a particular segregated account. Requires the creditor, with respect to that liability, to be entitled to have recourse only to the segregated account assets attributable to the segregated account.

(c) Provides that 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. Requires the creditor, with respect to that liability, to be entitled to have recourse only to the managing captive insurance company's general assets.

(d) Provides that 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. Provides that 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 amounts required by this chapter.

Sec. 964.106. **SEPARATE RECORDS.** Requires the managing captive insurance company to 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.

Sec. 964.107. **TRANSACTIONS REQUIRING COMMISSIONER APPROVAL.** (a) Prohibits the managing captive insurance company from making 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) Prohibits a dividend or distribution from being made from the company's segregated assets to any person without the commissioner's prior written approval.

(c) Prohibits the commissioner from approving a transaction described by Subsection (a) or (b) if the transaction would result in the insolvency or impairment of the segregated account.

(d) Provides that a participant contract is not effective without the commissioner's prior written approval. Provides that 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.

Sec. 964.108. **NOTIFICATION REQUIRED.** Requires each managing captive insurance company to 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.

Sec. 964.109. **QUALIFICATIONS OF PARTICIPANT.** (a) Authorizes any person to be a participant in a segregated account organized or holding a certificate of authority under this chapter.

(b) Provides that a participant in a segregated account is not required to be a holder of a segregated 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.** Provides that Subchapters A and B apply to each segregated account, except:

(1) Sections 964.056(a) and (b);

(2) Sections 964.059(a)(2) (requiring the commissioner to determine 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) and (b)(2) (requiring the commissioner, in evaluating the application, to consider the adequacy of the expertise, experience, and character of each individual who will manage the applicant);

(3) Section 964.061;

(4) Section 964.063; and

(5) Section 964.071.

Sec. 964.111. **CAPITAL AND SURPLUS REQUIREMENTS OF SEGREGATED ACCOUNT.** (a) Provides that the minimum amount of capital and surplus in each segregated account is \$100,000.

(b) Authorizes the commissioner to 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 to determine

the amount of capital and surplus, if any, that may be in the form of an irrevocable letter of credit.

(c) Requires that the minimum capital and surplus required under Subsection (a) be in the form required by Section 964.056(c).

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

Sec. 964.113. **SEGREGATED ACCOUNT INVESTMENTS.** (a) Requires that each segregated account file with the commissioner a proposed investment strategy, and any changes to the strategy, which requires the commissioner to approve if the strategy does not threaten the solvency, liquidity, or overall operating soundness of the segregated account.

(b) Authorizes a managing captive insurance company to 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 insurance company.

Sec. 964.114. **SUPPLEMENTAL APPLICATION MATERIALS.** Requires each managing captive insurance company, in addition to the information required to obtain a certificate of authority under Subchapter B, to file with the commissioner the following: materials demonstrating how the company will account for the loss and expense experience of each segregated account and how expenses will be allocated, and all contracts or sample contracts between the managing captive insurance company and a participant.

SECTION 3. Amends Section 203.001(b), Insurance Code, to prohibit an insurer or health maintenance organization subject to a tax imposed by certain chapters, including Chapter 223A, except as otherwise provided by this code or the Labor Code, 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.

SECTION 4. Amends Section 203.002(b), Insurance Code, to require the commissioner, 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, to report that determination to the comptroller.

SECTION 5. Amends Section 228.001(11), Insurance Code, to redefine "State premium tax liability" to include any liability incurred by any person under certain chapters, including Chapter 223A.

SECTION 6. Amends Section 171.052(a), Tax Code, to provide that an insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapters 221 (Property and Casualty Insurance Premium Tax), 222 (Life, Health, and Accident Insurance Premium Tax), 223 (Title Insurance Premium Tax), 223A, and 224 (Reciprocal and Interinsurance Exchange Premium Tax), Insurance Code, rather than under Chapter 4 (Taxes and Fees) or 9 [Repealed], Insurance Code, except as provided by Subsection (c), measured by its gross premium receipts, is exempted from the franchise tax from that same tax year.

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

SECTION 8. Effective date: upon passage or September 1, 2013.