

By: Smithee

H.B. No. 2788

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the licensing of captive insurance companies;  
3 authorizing fees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle H, Title 6, Insurance Code, is amended  
6 by adding Chapter 964 to read as follows:

7 CHAPTER 964. CAPTIVE INSURANCE COMPANIES

8 Sec. 964.001. DEFINITIONS. In this chapter:

9 (1) "Affiliated company" or "affiliate" means an  
10 entity in the same corporate holding company system as the captive  
11 insurance company, including a parent entity.

12 (2) "Captive insurance company" means a company that  
13 insures the operational risks of the company's affiliates.

14 (3) "Operational risk" means any potential financial  
15 loss of an affiliate, except for a loss arising from an insurance  
16 policy issued by the affiliate.

17 Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) The  
18 following provisions of this code apply to a captive insurance  
19 company to the extent the provisions do not conflict with this  
20 chapter:

21 (1) Titles 2 and 3;

22 (2) Chapter 421, unless the commissioner by order  
23 allows a captive insurance company to establish reserves as  
24 prescribed by generally accepted accounting principles;

1           (3) Subtitle C, Title 4; and

2           (4) Chapter 401.

3           (b) A captive insurance company formed under this chapter is  
4 not subject to Chapter 823, except to the extent that the captive  
5 insurance company is part of an insurance holding company system as  
6 described by Chapter 823.

7           (c) A captive insurance company operating under this  
8 chapter is subject to the Texas For-Profit Corporation Law, as  
9 cited in Section 1.008, Business Organizations Code, and any other  
10 provision of the Business Organizations Code that governs  
11 for-profit corporations to the extent those laws do not conflict  
12 with this chapter.

13           Sec. 964.003. AUTHORITY TO WRITE BUSINESS. (a) Except as  
14 provided by this section, a captive insurance company may write any  
15 type of insurance, but may only insure or reinsure the operational  
16 risk of the company's affiliates.

17           (b) A captive insurance company may not issue or reinsure:

18                   (1) life insurance;

19                   (2) annuities;

20                   (3) accident and health insurance;

21                   (4) title insurance;

22                   (5) mortgage guaranty insurance;

23                   (6) financial guaranty insurance;

24                   (7) residential property insurance;

25                   (8) personal automobile insurance; or

26                   (9) workers' compensation insurance.

27           (c) A captive insurance company may not issue or reinsure a

1 type of insurance, including automobile liability insurance, that  
2 is required, under the laws of this state or any political  
3 subdivision of this state, as a prerequisite for obtaining a  
4 license or permit if the law requires that the liability insurance  
5 be issued by an insurer authorized to engage in the business of  
6 insurance in this state.

7 Sec. 964.004. AUTHORITY TO PROVIDE REINSURANCE. (a) A  
8 captive insurance company may only reinsure risks as described by  
9 this section.

10 (b) With the commissioner's prior approval, a captive  
11 insurance company may provide reinsurance on risks that it has  
12 authority to insure directly under Section 964.003.

13 (c) Not later than the 60th day before the effective date of  
14 a proposed reinsurance agreement, the captive insurance company  
15 applying to provide reinsurance under Subsection (b) must file with  
16 the commissioner the agreement and any other documentation and  
17 information necessary for the commissioner to determine that:

18 (1) the agreement does not violate a law; and  
19 (2) the captive insurance company would be able to  
20 continue to operate in a sound manner.

21 (d) The commissioner by rule may authorize a shorter  
22 approval period under Subsection (c).

23 (e) A captive insurance company may not enter into an  
24 agreement filed under Subsection (c) if the commissioner  
25 disapproves the proposed agreement during the approval period.

26 (f) A change to a reinsurance agreement must be filed for  
27 prior approval under Subsection (c).

1 (g) Not later than the 30th day after the date a previously  
2 filed reinsurance agreement terminates, the captive insurance  
3 company shall give notice of the termination to the commissioner.

4 (h) A captive insurance company may take credit for reserves  
5 on risks or portions of risks ceded to reinsurers that comply with  
6 Subtitle F, Title 4.

7 Sec. 964.005. CERTIFICATE OF AUTHORITY REQUIRED. (a) An  
8 entity may not engage in business as a captive insurance company  
9 unless it holds a certificate of authority to act as a captive  
10 insurance company issued by the department. An insurance company,  
11 when permitted by its organizational document, may apply for a  
12 certificate of authority under this section.

13 (b) An entity does not qualify for a certificate of  
14 authority under this section unless:

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

17 (2) its board of directors holds at least one meeting  
18 each year in this state;

19 (3) it maintains its principal office and records in  
20 this state; and

21 (4) it complies with Section 804.102.

22 Sec. 964.006. FORMATION OF CAPTIVE INSURANCE COMPANY. (a)  
23 Any number of persons may form a captive insurance company for the  
24 purpose of engaging in the business of insurance under this  
25 chapter.

26 (b) To form a captive insurance company, each incorporator  
27 must adopt and sign the articles of incorporation of the captive

1 insurance company as provided by this section.

2 (c) The articles of incorporation of a captive insurance  
3 company must include:

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

8 (2) the location of the captive insurance company's  
9 principal business office;

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

12 (4) the number of directors of the captive insurance  
13 company;

14 (5) the number of authorized shares and the par value  
15 of the captive insurance company's capital stock;

16 (6) the amount of the captive insurance company's  
17 capital and surplus; and

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

21 (d) The board of directors of a captive insurance company  
22 incorporated in this state must have at least three members, and at  
23 least two of the members must be residents of this state.

24 (e) The articles of incorporation or bylaws of a captive  
25 insurance company must authorize a quorum of the board of directors  
26 to consist of not fewer than one-third of the fixed number of  
27 directors.

1       Sec. 964.007. CAPITAL AND SURPLUS REQUIREMENTS. (a) The  
2 department may not issue a certificate of authority to a captive  
3 insurance company unless the company possesses and maintains  
4 unencumbered capital and surplus in an amount determined by the  
5 commissioner by rule based on the type, volume, and nature of the  
6 insurance business transacted.

7       (b) The amount of capital and surplus determined by the  
8 commissioner under Subsection (a) may not be less than \$250,000 or  
9 greater than \$5 million.

10       (c) The minimum capital and surplus required under  
11 Subsection (a) must be in the form of:

12               (1) United States currency;

13               (2) an irrevocable letter of credit, in a form  
14 approved by the commissioner, naming the commissioner as  
15 beneficiary for the security of the captive insurance company's  
16 policyholders and issued by a bank approved by the commissioner;

17               (3) bonds of this state; or

18               (4) bonds or other evidences of indebtedness of the  
19 United States, the principal and interest of which are guaranteed  
20 by the United States.

21       Sec. 964.008. APPLICATION FOR CHARTER AND CERTIFICATE OF  
22 AUTHORITY. (a) To obtain a charter and certificate of authority  
23 for a captive insurance company, the incorporators must pay to the  
24 commissioner an application fee and file with the commissioner an  
25 application for the charter and certificate of authority, which  
26 must include:

27               (1) a financial statement certified by two principal

1 officers;

2 (2) a plan of operation and projections, which must  
3 include an actuarial report prepared by a qualified independent  
4 actuary;

5 (3) the captive insurance company's proposed articles  
6 of incorporation;

7 (4) an affidavit by the incorporators or officers of  
8 the captive insurance company stating that:

9 (A) the capital and surplus are the bona fide  
10 property of the company; and

11 (B) the articles of incorporation are true and  
12 correct; and

13 (5) if the application provides for the issuance of  
14 shares of stock without par value, a certificate authenticated by  
15 the incorporators or officers stating:

16 (A) the number of shares without par value that  
17 are subscribed; and

18 (B) the actual consideration received by the  
19 captive insurance company for those shares.

20 (b) If the commissioner is not satisfied with the affidavit  
21 filed under Subsection (a)(4), the commissioner may require that  
22 the incorporators or officers provide at their expense additional  
23 evidence as described by Subsection (a) before the commissioner  
24 takes action on the application.

25 (c) The application fee required under this section is  
26 \$1,500 or a greater amount set by the commissioner by rule as  
27 necessary to recover the cost of administering this chapter.

1 (d) Notwithstanding Subsection (c), for a complete  
2 application filed on or before December 30, 2018, the application  
3 fee may not exceed \$1,500 unless the commissioner by rule has raised  
4 the filing fee. This subsection expires January 1, 2019.

5 Sec. 964.009. EXAMINATION BY COMMISSIONER. (a) After the  
6 application and application fee for a charter and certificate of  
7 authority under Section 964.008 are filed with the department and  
8 the applicant has complied with all legal requirements, the  
9 commissioner shall conduct an examination of the applicant to  
10 determine whether:

11 (1) the minimum capital stock and surplus requirements  
12 of Section 964.007 are satisfied;

13 (2) the capital stock and surplus are the bona fide  
14 property of the captive insurance company; and

15 (3) the captive insurance company has fully complied  
16 with applicable insurance laws.

17 (b) The commissioner may appoint a competent and  
18 disinterested person to conduct the examination required by this  
19 section. The examiner shall file an affidavit of the examiner's  
20 findings with the commissioner. The commissioner shall record the  
21 affidavit.

22 Sec. 964.010. ACTION ON APPLICATION. (a) The commissioner  
23 shall determine whether:

24 (1) the proposed capital structure of the applicant  
25 meets the requirements of this chapter;

26 (2) the proposed officers or directors of the  
27 applicant have sufficient insurance experience, ability, standing,



1 and good record to make success of the captive insurance company  
2 probable;

3 (3) the applicant is acting in good faith; and

4 (4) the applicant otherwise satisfies the  
5 requirements of this chapter.

6 (b) In evaluating the application, the commissioner shall  
7 consider:

8 (1) the amount and liquidity of the applicant's assets  
9 relative to the risks to be assumed;

10 (2) the adequacy of the expertise, experience, and  
11 character of each individual who will manage the applicant;

12 (3) the overall soundness of the applicant's plan of  
13 operations and the projections contained in that plan;

14 (4) the adequacy of the loss prevention programs of  
15 the applicant's parent;

16 (5) whether the applicant's affiliates have  
17 significant operations located in this state; and

18 (6) any other factors the commissioner considers  
19 relevant to determine whether the proposed captive insurance  
20 company will be able to meet its policy obligations.

21 (c) If the commissioner determines that the applicant has  
22 not met the standards set out by Subsection (a), the commissioner  
23 shall deny the application in writing, giving the reason for the  
24 denial. On the applicant's request, the commissioner shall hold a  
25 hearing on a denial. Not later than the 30th day after the date the  
26 commissioner receives the applicant's request for a hearing, the  
27 commissioner shall set a hearing date.

1       (d) If the commissioner does not deny the application under  
2 Subsection (c), the commissioner shall approve the application and:

3           (1) issue to the applicant a certificate of authority  
4 to engage in business as proposed in the applicant's articles of  
5 incorporation or application;

6           (2) certify and file the approved documents with the  
7 department; and

8           (3) issue certified copies of the charter and  
9 certificate of authority to the applicant's incorporators.

10       (e) A certificate of authority issued to a captive insurance  
11 company under this section may not be sold.

12       Sec. 964.011. ORGANIZATION AND CORPORATE PROCEDURE. A  
13 captive insurance company may be incorporated as a stock insurer  
14 with its capital divided into shares and held by the stockholders.

15       Sec. 964.012. ANNUAL REPORT. (a) A captive insurance  
16 company licensed under this chapter is not required to file any  
17 report, except as provided by this section.

18       (b) A captive insurance company that holds a certificate of  
19 authority to engage in captive insurance business in this state  
20 shall file with the commissioner:

21           (1) on or before March 1 of each year, a statement of  
22 the company's financial condition, verified by two of its executive  
23 officers and filed in the annual statement format adopted and  
24 published each year by the National Association of Insurance  
25 Commissioners for the lines of business written by the captive  
26 insurance company; and

27           (2) on or before June 1 of each year, a report of its

1 financial condition at last year-end with an independent certified  
2 public accountant's opinion of the company's financial condition.

3 (c) A captive insurance company may make a written  
4 application to the commissioner for filing its annual report  
5 required under this section on a fiscal year-end. If an alternative  
6 filing date is granted, the captive insurance company shall file:

7 (1) the annual report not later than the 60th day after  
8 the date of the company's fiscal year-end;

9 (2) the report of its financial condition at last  
10 year-end with an independent certified public accountant's opinion  
11 of the company's financial condition not later than the 150th day  
12 after the date the annual report is due; and

13 (3) its balance sheet, income statement, and statement  
14 of cash flows, verified by two of its executive officers, before  
15 March 1 of each year to provide sufficient detail to support the  
16 premium tax return.

17 Sec. 964.013. INVESTMENTS. (a) A captive insurance  
18 company is not subject to a restriction on allowable investments,  
19 except as provided by this section.

20 (b) A captive insurance company may make loans to its  
21 affiliates with the prior approval of the commissioner. Each loan  
22 must be evidenced by a note approved by the commissioner. A captive  
23 insurance company may not make a loan of the minimum capital and  
24 surplus funds required by this chapter.

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

1       Sec. 964.014. AMENDMENTS TO CHARTER OR ARTICLES OF  
2 INCORPORATION. A captive insurance company may not amend its  
3 charter or articles of incorporation unless the amendment has been  
4 filed with and approved by the commissioner.

5       Sec. 964.015. NOTICE OF DIVIDENDS. A captive insurance  
6 company shall notify the commissioner in writing before issuing  
7 policyholder dividends.

8       Sec. 964.016. PROHIBITION ON JOINING OR CONTRIBUTING TO  
9 CERTAIN ENTITIES AND FUNDS. A captive insurance company may not  
10 join or contribute financially to any plan, pool, association, or  
11 guaranty or insolvency fund in this state, and a captive insurance  
12 company, its insured, or any affiliate is not entitled to receive  
13 any benefit from a plan, pool, association, or guaranty or  
14 insolvency fund for claims arising out of the operations of the  
15 captive insurance company.

16       Sec. 964.017. SUSPENSION OR REVOCATION OF LICENSE. The  
17 commissioner, after notice and an opportunity for hearing, may  
18 revoke or suspend the certificate of authority of a captive  
19 insurance company for:

20               (1) insolvency or impairment of required capital or  
21 surplus to policyholders;

22               (2) failure to submit an annual report, as required by  
23 Section 964.012;

24               (3) failure to comply with the provisions of its own  
25 charter or bylaws;

26               (4) failure to submit to examination as required by  
27 Chapter 401;

1           (5) failure to pay the cost of examination as required  
2 by Chapter 401;

3           (6) failure to pay any tax or fee required by this  
4 code;

5           (7) removal of its principal office or records from  
6 this state;

7           (8) use of practices that render its operation  
8 detrimental to the public or its condition unsound; or

9           (9) failure to otherwise comply with laws of this  
10 state.

11           Sec. 964.018. CONFIDENTIALITY. (a) Any information filed  
12 by an applicant or captive insurance company under this chapter,  
13 including an application filed under Section 964.008, is  
14 confidential and privileged for all purposes, including for  
15 purposes of Chapter 552, Government Code, a response to a subpoena,  
16 or evidence in a civil action. Except as provided by Subsections  
17 (b), (c), and (d), the information may not be disclosed without the  
18 prior written consent of the applicant or captive insurance company  
19 to which the information pertains.

20           (b) The commissioner may publish all or any part of the  
21 information described by Subsection (a) in the manner that the  
22 commissioner considers appropriate if the commissioner, after  
23 notice to the applicant or captive insurance company and its  
24 affected affiliates and an opportunity for hearing, determines that  
25 the interests of the public will be served by the publication of the  
26 information.

27           (c) If the recipient of the information described by

1 Subsection (a) has the legal authority to maintain the confidential  
2 or privileged status of the information and verifies that authority  
3 in writing, the commissioner or another person may disclose the  
4 information to any of the following entities functioning in an  
5 official capacity:

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

8 (2) an authorized law enforcement official;

9 (3) a district attorney of this state;

10 (4) the attorney general;

11 (5) a grand jury;

12 (6) members of a supervisory college described by  
13 Section 823.0145;

14 (7) the National Association of Insurance  
15 Commissioners and its affiliates and subsidiaries; or

16 (8) another state, federal, or international  
17 insurance agency or analogous financial agency if the entity is  
18 operating in its official capacity and the applicant, captive  
19 insurance company, or corporate system to which the information  
20 relates operates in the entity's jurisdiction.

21 (d) The commissioner shall enter into written agreements  
22 with the National Association of Insurance Commissioners that must:

23 (1) specify procedures and protocols regarding the  
24 confidentiality and security of information shared with the  
25 National Association of Insurance Commissioners and its affiliates  
26 and subsidiaries under this section, including procedures and  
27 protocols for sharing by the National Association of Insurance

1 Commissioners with other state, federal, or international  
2 regulators;

3 (2) specify that ownership of information shared with  
4 the National Association of Insurance Commissioners and its  
5 affiliates and subsidiaries under this section remains with the  
6 commissioner, and that use of the information by the National  
7 Association of Insurance Commissioners is subject to the direction  
8 of the commissioner;

9 (3) require prompt notice to an applicant or captive  
10 insurance company whose confidential information is in the  
11 possession of the National Association of Insurance Commissioners  
12 under this section that the information is subject to a request or  
13 subpoena to the National Association of Insurance Commissioners for  
14 disclosure or production; and

15 (4) require the National Association of Insurance  
16 Commissioners and its affiliates and subsidiaries to give consent  
17 to intervention by an applicant or captive insurance company in any  
18 judicial or administrative action in which the National Association  
19 of Insurance Commissioners and its affiliates and subsidiaries may  
20 be required to disclose confidential information about the  
21 applicant or captive insurance company shared with the National  
22 Association of Insurance Commissioners and its affiliates and  
23 subsidiaries under this section.

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

27 Sec. 964.019. PREMIUM AND MAINTENANCE TAXES. (a) A captive

1 insurance company is subject to premium taxes under Subtitle B,  
2 Title 3, as applicable to the individual lines of business written  
3 by the captive insurance company, provided that the premium tax  
4 rate imposed on all business written by the captive insurance  
5 company is one half of one percent of the business.

6 (b) The total amount of premium tax assessed each year may  
7 not exceed \$200,000.

8 (c) A captive insurance company is subject to maintenance  
9 taxes under Subtitle C, Title 3, as applicable to the individual  
10 lines of business written by the captive insurance company.

11 Sec. 964.020. RULEMAKING AUTHORITY. The commissioner may  
12 adopt reasonable rules as necessary to implement the purposes and  
13 provisions of this chapter.

14 SECTION 2. As soon as practicable after the effective date  
15 of this Act, but not later than January 1, 2014, the commissioner  
16 shall adopt rules and procedures necessary to implement Chapter  
17 964, Insurance Code, as added by this Act.

18 SECTION 3. This Act takes effect immediately if it receives  
19 a vote of two-thirds of all the members elected to each house, as  
20 provided by Section 39, Article III, Texas Constitution. If this  
21 Act does not receive the vote necessary for immediate effect, this  
22 Act takes effect September 1, 2013.