

By: Carona

S.B. No. 734

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of captive insurance companies;
authorizing fees and authorizing and imposing taxes.

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

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. (a) An annual tax is imposed on each captive insurance company that receives gross premiums subject to taxation under this chapter. The rate of the tax is one-half percent of the company's taxable premium receipts for a calendar year.

(b) Except as provided by Subsection (c), in determining a captive insurance company's taxable premium receipts, the captive insurance company shall 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

1 company on each kind of property or risk without regard to the
2 location of the property or risk.

3 (c) The following premium receipts are not included in
4 determining a captive insurance company's taxable premium
5 receipts:

6 (1) premium receipts received from another authorized
7 insurer for reinsurance;

8 (2) returned premiums and dividends paid to
9 policyholders; and

10 (3) premiums excluded by another law of this state.

11 (d) In determining a captive insurance company's taxable
12 premium receipts, a company is not entitled to a deduction for
13 premiums paid for reinsurance.

14 (e) The annual minimum aggregate tax to be paid by a captive
15 insurance company under this chapter is \$7,500 and the annual
16 maximum aggregate tax to be paid by a company under this chapter is
17 \$200,000. Gross premiums subject to taxation under this chapter
18 are not subject to taxes, surcharges, or other regulatory
19 assessments or fees under this code other than insurance
20 maintenance taxes as provided by Section 964.068.

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

24 (b) A captive insurance company that had a net tax liability
25 for the previous calendar year of more than \$1,000 shall make
26 semiannual prepayments of tax on March 1 and August 1. The tax paid
27 on each date must be equal to 50 percent of the total amount of tax

1 the company paid under this chapter for the previous calendar year.
2 If the company did not pay a tax under this chapter during the
3 previous calendar year, the tax paid on each date must be equal to
4 the tax that would be owed on the aggregate of the gross premiums
5 for the two previous calendar quarters.

6 (c) The comptroller may refund any overpayment of taxes that
7 results from the semiannual prepayment system prescribed by this
8 section.

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

13 (b) The tax report is due on the date the tax is due under
14 Section 223A.004(a).

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

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

21 Sec. 223A.007. CREDIT FOR FEES PAID. (a) A captive
22 insurance company is entitled to a credit on the amount of tax due
23 under this chapter for all examination and evaluation fees paid to
24 this state during the calendar year for which the tax is due. The
25 limitations provided by Sections 803.007(1) and (2)(B) for a
26 domestic insurance company apply to a captive insurance company.

27 (b) The credit provided by this section is in addition to

1 any other credit authorized by statute.

2 Sec. 223A.008. FAILURE TO PAY TAXES. A captive insurance
3 company that fails to pay all taxes imposed by this chapter is
4 subject to Section 203.002 of this code and Subtitles A and B, Title
5 2, Tax Code.

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

8 CHAPTER 964. CAPTIVE INSURANCE COMPANIES

9 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

27 (5) "Controlled unaffiliated business" means a

1 person:

2 (A) that is not an affiliate;

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

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

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

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

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

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

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

25 (11) "Segregated account" means a separate account
26 that is separately formed, holds a separate certificate of
27 authority, and is established and maintained by a managing captive

1 insurance company and in which:

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

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

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

11 Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) Except as
12 otherwise provided by this chapter, this code does not apply to a
13 captive insurance company except:

14 (1) Title 2;

15 (2) Chapter 223A and Subtitles A and C, Title 3;

16 (3) Chapter 401;

17 (4) Chapter 441;

18 (5) Chapter 443; and

19 (6) Chapter 803.

20 (b) A captive insurance company operating under this
21 chapter is subject to the Business Organizations Code, including
22 the requirement to be authorized by the secretary of state, to the
23 extent those laws do not conflict with this chapter.

24 (c) Chapter 823 applies to a captive insurance company only
25 if the company is affiliated with another insurer that is subject to
26 Chapter 823.

27 SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

1 Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS.

2 (a) Except as provided by this section, a captive insurance
3 company may write any type of insurance, but may only insure the
4 operational risks of the company's affiliates and risks of a
5 controlled unaffiliated business.

6 (b) A captive insurance company may not issue:

7 (1) life insurance;

8 (2) annuities;

9 (3) accident and health insurance for the company's
10 parent and affiliates, except to insure employee benefits that are
11 subject to the Employee Retirement Income Security Act of 1974 (29
12 U.S.C. Section 1001 et seq.);

13 (4) title insurance;

14 (5) mortgage guaranty insurance;

15 (6) financial guaranty insurance;

16 (7) residential property insurance;

17 (8) personal automobile insurance; or

18 (9) workers' compensation insurance.

19 (c) A captive insurance company may not issue a type of
20 insurance, including automobile liability insurance, that is
21 required, under the laws of this state or a political subdivision of
22 this state, as a prerequisite for obtaining a license or permit if
23 the law requires that the liability insurance be issued by an
24 insurer authorized to engage in the business of insurance in this
25 state.

26 (d) A captive insurance company is authorized to issue a
27 contractual reimbursement policy to:

1 (1) an affiliated certified self-insurer authorized
2 under Chapter 407, Labor Code, or a similar affiliated entity
3 expressly authorized by analogous laws of another state; or

4 (2) an affiliate that is insured by a workers'
5 compensation insurance policy with a negotiated deductible
6 endorsement.

7 Sec. 964.052. AUTHORITY TO PROVIDE REINSURANCE. (a) A
8 captive insurance company may provide reinsurance to an insurer
9 covering the operational risks of the captive insurance company's
10 affiliates or risks of a controlled unaffiliated business that the
11 captive insurance company may insure directly under Section 964.051
12 and:

13 (1) employee benefit plans offered by affiliates;

14 (2) liability insurance an affiliate must maintain as
15 a prerequisite for obtaining a license or permit if the law requires
16 maintenance of the liability insurance; and

17 (3) workers' compensation insurance and employer
18 liability policies issued to affiliates if the insurer that
19 directly issues workers' compensation insurance and employer's
20 liability policies or its licensed, if required by law,
21 administrator or adjuster:

22 (A) services all claims incurred during the
23 policy period; and

24 (B) complies with all requirements for an insurer
25 under this code, including Chapter 462, and under Title 5, Labor
26 Code.

27 (b) A captive insurance company shall provide notice to the

1 commissioner of a reinsurance agreement that the company becomes a
2 party to not later than the 30th day after the date of the execution
3 of the agreement.

4 (c) A captive insurance company shall provide notice of a
5 termination of a previously filed reinsurance agreement to the
6 commissioner not later than the 30th day after the date of
7 termination.

8 (d) A captive insurance company may take credit for reserves
9 on risks or portions of risks ceded to reinsurers under Subchapter
10 C, Chapter 492, and Subchapter C, Chapter 493.

11 Sec. 964.053. FORMATION. (a) A captive insurance company
12 must be formed for the purpose of engaging in the business of
13 insurance under this chapter.

14 (b) A captive insurance company may be formed and operated
15 in any form of business organization authorized under the Business
16 Organizations Code except a risk retention group or general
17 partnership. A captive insurance company may only be formed as a
18 nonprofit corporation if it is controlled by a nonprofit
19 corporation.

20 (c) The certificate of formation of a captive insurance
21 company must include:

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

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

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

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

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

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

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

13 (d) The board of directors or governing body of a captive
14 insurance company formed in this state must have at least three
15 members, and at least one of the members must be a resident of this
16 state.

17 (e) The certificate of formation or bylaws of a captive
18 insurance company must authorize a quorum of the board of directors
19 or governing body to consist of not fewer than one-third of the
20 fixed number of directors or members of the governing body.

21 Sec. 964.054. RESERVES AND ACCOUNTING BASIS. (a) A
22 captive insurance company shall maintain reserves in an amount
23 stated in the aggregate to provide for the payment of all losses or
24 claims for which the captive insurance company may be liable and
25 that are:

26 (1) incurred on or before the date of the annual report
27 under Section 964.060, whether reported or unreported; and

1 (2) unpaid as of the date of the annual report under
2 Section 964.060.

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

7 (c) The captive insurance company shall use generally
8 accepted accounting principles as an accounting basis except that a
9 captive insurance company that is required to hold a certificate of
10 authority under another jurisdiction's insurance laws shall use
11 statutory accounting principles.

12 Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED. (a) An
13 entity may not engage in business as a captive insurance company
14 domiciled in this state unless it holds a certificate of authority
15 to act as a captive insurance company issued by the department. A
16 captive insurance company, when permitted by its certificate of
17 formation, may apply for a certificate of authority under this
18 chapter.

19 (b) An entity does not qualify for a certificate of
20 authority under this chapter unless:

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

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

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

1 Chapter 803; and

2 (4) it complies with Section 804.101 or 804.102.

3 Sec. 964.056. CAPITAL AND SURPLUS REQUIREMENTS. (a) The
4 department may not issue a certificate of authority to a captive
5 insurance company unless the company possesses and maintains
6 unencumbered capital and surplus in an amount determined by the
7 commissioner after considering:

8 (1) the amount of premium written by the captive
9 insurance company;

10 (2) the characteristics of the assets held by the
11 captive insurance company;

12 (3) the terms of reinsurance arrangements entered into
13 by the captive insurance company;

14 (4) the type of business covered in policies issued by
15 the captive insurance company;

16 (5) the underwriting practices and procedures of the
17 captive insurance company; and

18 (6) any other criteria that has an impact on the
19 operations of the captive insurance company determined to be
20 significant by the commissioner.

21 (b) The amount of capital and surplus determined by the
22 commissioner under Subsection (a) may not be less than \$250,000.

23 (c) The capital and surplus required by Subsection (a) must
24 be in the form of:

25 (1) United States currency;

26 (2) an irrevocable letter of credit, in a form
27 approved by the commissioner and not secured by a guarantee from an

1 affiliate, naming the commissioner as beneficiary for the security
2 of the captive insurance company's policyholders and issued by a
3 bank approved by the commissioner;

4 (3) bonds of this state; or

5 (4) bonds or other evidences of indebtedness of the
6 United States, the principal and interest of which are guaranteed
7 by the United States.

8 Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY.

9 (a) To obtain a certificate of authority for a captive insurance
10 company, the incorporators or organizers must pay to the
11 commissioner an application fee and file with the commissioner an
12 application for the certificate of authority, which must include:

13 (1) a financial statement certified by two principal
14 officers;

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

18 (3) the captive insurance company's certificate of
19 formation;

20 (4) an affidavit by the incorporators, organizers, or
21 officers of the captive insurance company stating that:

22 (A) the capital and surplus are the bona fide
23 property of the company; and

24 (B) the certificate of formation is true and
25 correct; and

26 (5) if the application provides for the issuance of
27 shares of stock or other type of equity instrument without par

1 value, a certificate authenticated by the incorporators or officers
2 stating:

3 (A) the number of shares or other type of equity
4 instrument without par value that are subscribed; and

5 (B) the actual consideration received by the
6 captive insurance company for those shares or other type of equity
7 instrument.

8 (b) If the commissioner is not satisfied with the affidavit
9 filed under Subsection (a)(4), the commissioner may require that
10 the incorporators, organizers, or officers provide at their expense
11 additional evidence as described by Subsection (a) before the
12 commissioner takes action on the application.

13 (c) The application fee required under this section is
14 \$1,500 or a greater amount set by the commissioner by rule as
15 necessary to recover the cost of administering this section.

16 (d) Notwithstanding Subsection (c), for a complete
17 application filed on or before December 30, 2018, the application
18 fee may not exceed \$1,500. This subsection expires January 1, 2019.

19 (e) Fees collected under this section shall be deposited to
20 the credit of the Texas Department of Insurance operating account.

21 Sec. 964.058. EXAMINATION BY COMMISSIONER. (a) After the
22 application and application fee for a certificate of authority
23 under Section 964.057 are filed with the department and the
24 applicant has complied with all legal requirements, the
25 commissioner shall conduct an examination of the applicant to
26 determine whether:

27 (1) the minimum capital and surplus requirements of

1 Section 964.056 are satisfied;

2 (2) the capital and surplus are the bona fide property
3 of the applicant; and

4 (3) the applicant has fully complied with applicable
5 insurance laws.

6 (b) The commissioner may appoint a competent and
7 disinterested person to conduct the examination required by this
8 section. The examiner shall file an affidavit of the examiner's
9 findings with the commissioner. The commissioner shall record the
10 affidavit.

11 Sec. 964.059. ACTION ON APPLICATION. (a) The commissioner
12 shall determine whether:

13 (1) the capital structure of the applicant meets the
14 requirements of this chapter;

15 (2) the officers or directors of the applicant have
16 sufficient insurance experience, ability, standing, and good
17 record to make success of the captive insurance company probable;

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

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

21 (b) In evaluating the application, the commissioner shall
22 consider:

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

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

27 (3) the overall soundness of the applicant's plan of

1 operations and the projections contained in that plan;

2 (4) whether the applicant's affiliates have
3 significant operations located in this state; and

4 (5) any other factors the commissioner considers
5 relevant to determine whether the applicant will be able to meet its
6 policy obligations.

7 (c) If the commissioner determines that the applicant has
8 not met the standards set out by Subsection (a), the commissioner
9 shall deny the application in writing, giving the reason for the
10 denial. On the applicant's request, the commissioner shall hold a
11 hearing on a denial. Not later than the 30th day after the date the
12 commissioner receives the applicant's request for a hearing, the
13 commissioner shall set a hearing date.

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

16 (1) issue to the applicant a certificate of authority
17 to engage in business as provided for in the applicant's
18 certificate of formation;

19 (2) certify and file the approved document with the
20 department; and

21 (3) issue a certified copy of the certificate of
22 authority to the applicant's incorporators or officers.

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

25 Sec. 964.060. ANNUAL REPORT. (a) A captive insurance
26 company holding a certificate of authority under this chapter is
27 not required to file a report, except as provided by this section,

1 Chapter 223A, and Subtitle C, Title 3.

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

5 (1) on or before March 1 of each year, a statement of
6 the company's financial condition, verified by two of its executive
7 officers and filed in a format prescribed by the commissioner; and

8 (2) on or before June 1 of each year, a report of its
9 financial condition at last year-end with an independent certified
10 public accountant's opinion of the company's financial condition.

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

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

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

21 (3) its balance sheet, income statement, and statement
22 of cash flows, verified by two of its executive officers, before
23 March 1 of each year to provide sufficient detail to support a
24 premium tax return.

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

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

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

9 Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION. A
10 captive insurance company may not amend its certificate of
11 formation unless the amendment has been filed with and approved by
12 the commissioner.

13 Sec. 964.063. NOTICE OF DIVIDENDS. A captive insurance
14 company shall notify the commissioner in writing when issuing
15 policyholder dividends.

16 Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO
17 CERTAIN ENTITIES AND FUNDS. A captive insurance company may not
18 join or contribute financially to any plan, pool, association, or
19 guaranty or insolvency fund in this state, and a captive insurance
20 company, its insured, or any affiliate is not entitled to receive
21 any benefit from a plan, pool, association, or guaranty or
22 insolvency fund for claims arising out of the operations of the
23 company.

24 Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF
25 AUTHORITY. The commissioner, after notice and an opportunity for
26 hearing, may revoke or suspend the certificate of authority of a
27 captive insurance company for:

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

19 Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED
20 UNAFFILIATED BUSINESS. The commissioner may adopt rules
21 establishing standards to ensure that an affiliated company is able
22 to exercise control of the risk management function of any
23 controlled unaffiliated business to be insured by the captive
24 insurance company. Until rules under this section are adopted, the
25 commissioner may approve the coverage of these risks by a captive
26 insurance company.

27 Sec. 964.067. CAPTIVE MANAGERS. Before providing captive

1 management services to a licensed captive insurance company, a
2 captive management company shall register with the commissioner by
3 providing the information required on a form adopted by the
4 commissioner.

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

10 Sec. 964.069. RULEMAKING AUTHORITY. The commissioner may
11 adopt reasonable rules as necessary to implement the purposes and
12 provisions of this chapter.

13 Sec. 964.070. CONFIDENTIALITY. (a) Any information filed
14 by an applicant or captive insurance company under this chapter is
15 confidential and privileged for all purposes, including for
16 purposes of Chapter 552, Government Code, a response to a subpoena,
17 or evidence in a civil action. Except as provided by Subsections
18 (b) and (c), the information may not be disclosed without the prior
19 written consent of the applicant or captive insurance company to
20 which the information pertains.

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

27 (1) a commissioner of insurance or an insurance

- 1 department of another state;
2 (2) an authorized law enforcement official;
3 (3) a district attorney of this state;
4 (4) the attorney general;
5 (5) a grand jury;
6 (6) the National Association of Insurance
7 Commissioners if the captive insurance company is affiliated with
8 an insurance company that is part of an insurance holding company
9 system as described in Chapter 823;
10 (7) another state or federal regulator if the state or
11 federal regulator is operating in its official capacity and the
12 applicant or captive insurance company to which the information
13 relates operates in the entity's jurisdiction;
14 (8) an international insurance regulator or analogous
15 financial agency operating in an official capacity, if the captive
16 insurance company is affiliated with an insurance company that is
17 part of an insurance holding company system as described in Chapter
18 823 and the holding company system operates in the entity's
19 jurisdiction; or
20 (9) members of a supervisory college described by
21 Section 823.0145, if the captive insurance company is affiliated
22 with an insurance company that is part of an insurance holding
23 company system as described in Chapter 823.
24 (c) 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. 964.071. REDOMESTICATION. (a) An authorized foreign

1 or alien captive insurance company licensed under laws of any
2 jurisdiction may become a domestic captive insurance company in
3 this state on a determination by the commissioner that the
4 authorized foreign or alien captive insurance company has complied
5 with all of the requirements of this chapter for the issuance of a
6 certificate of authority to, and the Business Organizations Code
7 for converting to an entity of this state for, a domestic captive
8 insurance company of the same type.

9 (b) A domestic captive insurance company, on the approval of
10 the commissioner, may transfer its domicile. On the transfer, the
11 captive insurance company ceases to be a domestic captive insurance
12 company. The commissioner shall approve any proposed transfer
13 unless the commissioner determines the transfer is not in the best
14 interest of the policyholders.

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

19 SUBCHAPTER C. MANAGING CAPTIVE INSURANCE COMPANIES

20 Sec. 964.101. SEGREGATED ACCOUNT. (a) A managing captive
21 insurance company may form a segregated account to insure risks of a
22 participant.

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

1 company.

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

7 Sec. 964.102. ORGANIZATION AND STRUCTURE OF SEGREGATED
8 ACCOUNT. (a) A managing captive insurance company may issue
9 segregated account shares of stock or other type of equity
10 instrument in one or more classes or series for one or more
11 segregated accounts, or for the managing captive insurance company
12 as a whole. The proceeds of each issue shall be included in the
13 assets of the segregated account for which the segregated account
14 shares of stock or other type of equity instrument was issued. The
15 proceeds of the issue of shares of stock or other type of equity
16 instrument, other than segregated account shares of stock or other
17 type of equity instrument, is included in the managing captive
18 insurance company's general assets.

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

25 (c) Segregated account dividends or distributions must be
26 paid on the segregated account shares of stock or other type of
27 equity instrument from the segregated account assets. The

1 dividends or distributions shall only be paid to the holders of the
2 segregated account shares of stock or other type of equity
3 instrument and in accordance with the rights of the shares of stock
4 or other type of equity instrument.

5 Sec. 964.103. ASSETS OF MANAGING CAPTIVE INSURANCE COMPANY.

6 (a) The assets of a managing captive insurance company are general
7 assets or assets of an individual segregated account. The
8 segregated account assets are the assets of the managing captive
9 insurance company held within or on behalf of the segregated
10 account of the managing captive insurance company. The general
11 assets of a managing captive insurance company are the assets of the
12 managing captive insurance company that are not segregated account
13 assets.

14 (b) The assets of a segregated account are assets
15 representing the capital, reserves held to support the liabilities
16 of the segregated account, or all other assets attributable to or
17 held within the segregated account. For purposes of this
18 subsection, "reserves" includes retained earnings, capital, and
19 paid-in capital.

20 Sec. 964.104. REQUIRED PROCEDURES. (a) The directors or
21 members of the governing body of a managing captive insurance
22 company shall establish and maintain, or cause to be established
23 and maintained, procedures:

24 (1) to segregate, and keep segregated, segregated
25 account assets from general assets;

26 (2) to segregate, and keep segregated, segregated
27 account assets of each segregated account captive insurance company

1 from segregated account assets of another segregated account; and
2 (3) if applicable, to apportion or transfer assets and
3 liabilities between segregated accounts, or between segregated
4 account assets and general assets, of the managing captive
5 insurance company.

6 (b) A managing captive insurance company must obtain prior
7 approval from the commissioner before the company apportions or
8 transfers assets and liabilities between segregated accounts of the
9 managing captive insurance company.

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

13 Sec. 964.105. USE OF SEGREGATED ACCOUNT ASSETS.

14 (a) Segregated account assets:

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

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

26 (b) If a liability of a managing captive insurance company
27 to a creditor arises with respect to a particular segregated

1 account, the liability extends only to that segregated account.
2 The creditor shall, with respect to that liability, be entitled to
3 have recourse only to the segregated account assets attributable to
4 the segregated account.

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

11 (d) Liabilities of a managing captive insurance company not
12 attributable to any of the company's segregated accounts are
13 discharged from the managing captive insurance company's general
14 assets. Income, receipts, and other property or rights of or
15 acquired by a managing captive insurance company not otherwise
16 attributable to any segregated account are allocated to the
17 managing captive insurance company's general assets to the extent
18 that the managing captive insurance company's general assets exceed
19 any minimum capital amounts required by this chapter.

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

1 Sec. 964.107. TRANSACTIONS REQUIRING COMMISSIONER
2 APPROVAL. (a) The managing captive insurance company may not make
3 a sale, exchange, or other transfer of assets between or among any
4 of its segregated accounts without the written consent of the
5 participants and the commissioner.

6 (b) A dividend or distribution shall not be made from the
7 company's segregated assets to any person without the
8 commissioner's prior written approval.

9 (c) The commissioner may not approve a transaction
10 described by Subsection (a) or (b) if the transaction would result
11 in the insolvency or impairment of the segregated account.

12 (d) A participant contract is not effective without the
13 commissioner's prior written approval. The withdrawal of a
14 participant from an existing segregated account is a change in the
15 strategic business plan of that segregated account requiring the
16 commissioner's prior written approval.

17 Sec. 964.108. NOTIFICATION REQUIRED. Each managing captive
18 insurance company shall notify the commissioner not later than the
19 10th business day after the date a segregated account becomes
20 insolvent, impaired, or otherwise unable to meet its claims or
21 expense obligations.

22 Sec. 964.109. QUALIFICATIONS OF PARTICIPANT. (a) Any
23 person may be a participant in a segregated account organized or
24 holding a certificate of authority under this chapter.

25 (b) A participant in a segregated account is not required to
26 be a holder of a segregated account shares of stock or other type of
27 equity instrument issued within the segregated account or by the

1 managing captive insurance company or any affiliate of the managing
2 captive insurance company.

3 Sec. 964.110. APPLICABILITY OF CHAPTER TO SEGREGATED
4 ACCOUNTS. Subchapters A and B apply to each segregated account,
5 except:

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

7 (2) Sections 964.059(a)(2) and (b)(2);

8 (3) Section 964.061;

9 (4) Section 964.063; and

10 (5) Section 964.071.

11 Sec. 964.111. CAPITAL AND SURPLUS REQUIREMENTS OF
12 SEGREGATED ACCOUNT. (a) The minimum amount of capital and surplus
13 in each segregated account is \$100,000.

14 (b) The commissioner may require each segregated account to
15 maintain additional capital and surplus based on the type, volume,
16 and nature of the insurance business that is transacted by the
17 segregated account and may determine the amount of capital and
18 surplus, if any, that may be in the form of an irrevocable letter of
19 credit.

20 (c) The minimum capital and surplus required under
21 Subsection (a) must be in the form required by Section 964.056(c).

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

27 Sec. 964.113. SEGREGATED ACCOUNT INVESTMENTS. (a) Each

1 segregated account shall file with the commissioner a proposed
2 investment strategy, and any changes to the strategy, which the
3 commissioner shall approve if the strategy does not threaten the
4 solvency, liquidity, or overall operating soundness of the
5 segregated account.

6 (b) A managing captive insurance company may file with the
7 commissioner a proposed investment strategy, and any changes to the
8 strategy, that will be applicable to each segregated account of the
9 managing captive insurance company.

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

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

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

19 SECTION 3. Subsection (b), Section 203.001, Insurance Code,
20 is amended to read as follows:

21 (b) Except as otherwise provided by this code or the Labor
22 Code, an insurer or health maintenance organization subject to a
23 tax imposed by Chapter 4, 221, 222, 223A, 224, or 257 may not be
24 required to pay any additional tax imposed by this state or a county
25 or municipality in proportion to the insurer's or health
26 maintenance organization's gross premium receipts.

27 SECTION 4. Subsection (b), Section 203.002, Insurance Code,

1 is amended to read as follows:

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

10 SECTION 5. Subdivision (11), Section 228.001, Insurance
11 Code, is amended to read as follows:

12 (11) "State premium tax liability" means:

13 (A) any liability incurred by any person under
14 Chapter 221, 222, 223, 223A, or 224; or

15 (B) if the tax liability imposed under Chapter
16 221, 222, 223, or 224 is eliminated or reduced, any tax liability
17 imposed on an insurer or other person that had premium tax liability
18 under Subchapter A, Chapter 4, or Article 9.59 as those laws existed
19 on January 1, 2003.

20 SECTION 6. Subsection (a), Section 171.052, Tax Code, is
21 amended to read as follows:

22 (a) Except as provided by Subsection (c), an insurance
23 organization, title insurance company, or title insurance agent
24 authorized to engage in insurance business in this state now
25 required to pay an annual tax under Chapters 221, 222, 223, 223A,
26 and 224 [~~Chapter 4 or 9~~], Insurance Code, measured by its gross
27 premium receipts is exempted from the franchise tax. A nonadmitted

1 insurance organization that is required to pay a gross premium
2 receipts tax during a tax year is exempted from the franchise tax
3 for that same tax year.

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

8 SECTION 8. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2013.