

1-1 By: Carona S.B. No. 734
 1-2 (In the Senate - Filed February 21, 2013; February 25, 2013,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 April 8, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 8, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10				
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 734 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing of captive insurance companies;
 1-22 authorizing fees and authorizing and imposing taxes.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle B, Title 3, Insurance Code, is amended
 1-25 by adding Chapter 223A to read as follows:

1-26 CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

1-27 Sec. 223A.001. DEFINITION. In this chapter, "captive
 1-28 insurance company" means a captive insurance company or segregated
 1-29 account holding a certificate of authority under Chapter 964.

1-30 Sec. 223A.002. APPLICABILITY OF CHAPTER. This chapter
 1-31 applies to a captive insurance company or segregated account
 1-32 holding a certificate of authority under Chapter 964.

1-33 Sec. 223A.003. TAX IMPOSED; RATE. (a) An annual tax is
 1-34 imposed on each captive insurance company that receives gross
 1-35 premiums subject to taxation under this chapter. The rate of the
 1-36 tax is one-half percent of the company's taxable premium receipts
 1-37 for a calendar year.

1-38 (b) Except as provided by Subsection (c), in determining a
 1-39 captive insurance company's taxable premium receipts, the captive
 1-40 insurance company shall include the total gross amounts of
 1-41 premiums, membership fees, assessments, dues, revenues, and other
 1-42 considerations for insurance written by the captive insurance
 1-43 company in a calendar year from any kind of insurance written by the
 1-44 company on each kind of property or risk located in this state.

1-45 (c) The following premium receipts are not included in
 1-46 determining a captive insurance company's taxable premium
 1-47 receipts:

1-48 (1) premium receipts received from another authorized
 1-49 insurer for reinsurance;

1-50 (2) returned premiums and dividends paid to
 1-51 policyholders; and

1-52 (3) premiums excluded by another law of this state.

1-53 (d) In determining a captive insurance company's taxable
 1-54 premium receipts, a company is not entitled to a deduction for
 1-55 premiums paid for reinsurance.

1-56 (e) The annual minimum aggregate tax to be paid by a captive
 1-57 insurance company under this chapter is \$7,500 and the annual
 1-58 maximum aggregate tax to be paid by a company under this chapter is
 1-59 \$200,000. Gross premiums subject to taxation under this chapter
 1-60 are not subject to taxes, surcharges, or other regulatory

2-1 assessments or fees under this code other than insurance
 2-2 maintenance taxes as provided by Section 964.068.

2-3 Sec. 223A.004. TAX DUE DATES. (a) The total tax imposed by
 2-4 this chapter is due and payable not later than March 1 after the end
 2-5 of the calendar year for which the tax is due.

2-6 (b) A captive insurance company that had a net tax liability
 2-7 for the previous calendar year of more than \$1,000 shall make
 2-8 semiannual prepayments of tax on March 1 and August 1. The tax paid
 2-9 on each date must be equal to 50 percent of the total amount of tax
 2-10 the company paid under this chapter for the previous calendar year.
 2-11 If the company did not pay a tax under this chapter during the
 2-12 previous calendar year, the tax paid on each date must be equal to
 2-13 the tax that would be owed on the aggregate of the gross premiums
 2-14 for the two previous calendar quarters.

2-15 (c) The comptroller may refund any overpayment of taxes that
 2-16 results from the semiannual prepayment system prescribed by this
 2-17 section.

2-18 Sec. 223A.005. TAX REPORT. (a) A captive insurance
 2-19 company liable for the tax imposed by this chapter must file
 2-20 annually with the comptroller a tax report on a form prescribed by
 2-21 the comptroller.

2-22 (b) The tax report is due on the date the tax is due under
 2-23 Section 223A.004(a).

2-24 Sec. 223A.006. CHANGE IN DUE DATES. (a) The comptroller
 2-25 by rule may change the dates for reporting and paying taxes under
 2-26 this chapter to improve operating efficiencies within the agency.

2-27 (b) A change by the comptroller in a reporting or payment
 2-28 date must retain the system of semiannual prepayments prescribed by
 2-29 Section 223A.004.

2-30 Sec. 223A.007. CREDIT FOR FEES PAID. (a) A captive
 2-31 insurance company is entitled to a credit on the amount of tax due
 2-32 under this chapter for all examination and evaluation fees paid to
 2-33 this state during the calendar year for which the tax is due. The
 2-34 limitations provided by Sections 803.007(1) and (2)(B) for a
 2-35 domestic insurance company apply to a captive insurance company.

2-36 (b) The credit provided by this section is in addition to
 2-37 any other credit authorized by statute.

2-38 Sec. 223A.008. FAILURE TO PAY TAXES. A captive insurance
 2-39 company that fails to pay all taxes imposed by this chapter is
 2-40 subject to Section 203.002 of this code and Subtitles A and B, Title
 2-41 2, Tax Code.

2-42 SECTION 2. Subtitle H, Title 6, Insurance Code, is amended
 2-43 by adding Chapter 964 to read as follows:

2-44 CHAPTER 964. CAPTIVE INSURANCE COMPANIES

2-45 SUBCHAPTER A. GENERAL PROVISIONS

2-46 Sec. 964.001. DEFINITIONS. (a) In this chapter:

2-47 (1) "Affiliated company" or "affiliate" has the
 2-48 meaning assigned by Section 823.003 and includes a parent entity
 2-49 that controls a captive insurance company.

2-50 (2) "Captive insurance company" means a company that
 2-51 holds a certificate of authority under this chapter to insure the
 2-52 operational risks of the company's affiliates or risks of a
 2-53 controlled unaffiliated business.

2-54 (3) "Captive management company" means an entity
 2-55 providing administrative services to a captive insurance company.

2-56 (4) "Control" means the power to direct, or cause the
 2-57 direction of, the management and policies of an entity, other than
 2-58 the power that results from an official position with or corporate
 2-59 office held in the entity. The power may be possessed directly or
 2-60 indirectly by any means, including through the ownership of voting
 2-61 securities or by contract, other than a commercial contract for
 2-62 goods or nonmanagement services.

2-63 (5) "Controlled unaffiliated business" means a
 2-64 person:

2-65 (A) that is not an affiliate;

2-66 (B) that has an existing contractual
 2-67 relationship with an affiliate under which the affiliate bears a
 2-68 potential financial loss; and

2-69 (C) the risks of which are managed by a captive

- 3-1 insurance company under Section 964.066.
- 3-2 (6) "Managing captive insurance company" means a
 3-3 captive insurance company that meets the requirements of Subchapter
 3-4 B and organizes and operates a segregated account.
- 3-5 (7) "Operational risk" means any potential financial
 3-6 loss of an affiliate, except for a loss arising from an insurance
 3-7 policy issued by a captive or insurance affiliate.
- 3-8 (8) "Participant" means a person and affiliate of that
 3-9 person who is insured by a managing captive insurance company
 3-10 through a participant contract.
- 3-11 (9) "Participant contract" means a contract by which a
 3-12 managing captive insurance company insures the risks of a
 3-13 participant and limits the losses of the participant to the
 3-14 participant's pro rata share of the assets of the segregated
 3-15 account identified by the contract.
- 3-16 (10) "Redomestication" means the transfer to or from
 3-17 this state of the insurance domicile of an authorized captive
 3-18 insurer.
- 3-19 (11) "Segregated account" means a separate account
 3-20 that is separately formed, holds a separate certificate of
 3-21 authority, and is established and maintained by a managing captive
 3-22 insurance company and in which:
- 3-23 (A) the assets are maintained for a participant
 3-24 under a participant contract to fund the liabilities of the
 3-25 managing captive insurance company assumed by the participant under
 3-26 the participant contract; and
- 3-27 (B) the minimum capital and surplus required by
 3-28 applicable law may be provided by a person.
- 3-29 (b) Notwithstanding Section 30.003, in this chapter,
 3-30 "person" has the meaning assigned by Section 311.005, Government
 3-31 Code.
- 3-32 Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) Except as
 3-33 otherwise provided by this chapter, this code does not apply to a
 3-34 captive insurance company except:
- 3-35 (1) Title 2;
 3-36 (2) Chapter 223A and Subtitles A and C, Title 3;
 3-37 (3) Chapter 401;
 3-38 (4) Chapter 441;
 3-39 (5) Chapter 443; and
 3-40 (6) Chapter 803.
- 3-41 (b) A captive insurance company operating under this
 3-42 chapter is subject to the Business Organizations Code, including
 3-43 the requirement to be authorized by the secretary of state, to the
 3-44 extent those laws do not conflict with this chapter.
- 3-45 (c) Chapter 823 applies to a captive insurance company only
 3-46 if the company is affiliated with another insurer that is subject to
 3-47 Chapter 823.
- 3-48 SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES
- 3-49 Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS.
- 3-50 (a) Except as provided by this section, a captive insurance
 3-51 company may write any type of insurance, but may only insure the
 3-52 operational risks of the company's affiliates and risks of a
 3-53 controlled unaffiliated business.
- 3-54 (b) A captive insurance company may not issue:
- 3-55 (1) life insurance;
 3-56 (2) annuities;
 3-57 (3) accident and health insurance for the company's
 3-58 parent and affiliates, except to insure employee benefits that are
 3-59 subject to the Employee Retirement Income Security Act of 1974 (29
 3-60 U.S.C. Section 1001 et seq.);
- 3-61 (4) title insurance;
 3-62 (5) mortgage guaranty insurance;
 3-63 (6) financial guaranty insurance;
 3-64 (7) residential property insurance;
 3-65 (8) personal automobile insurance; or
 3-66 (9) workers' compensation insurance.
- 3-67 (c) A captive insurance company may not issue a type of
 3-68 insurance, including automobile liability insurance, that is
 3-69 required, under the laws of this state or a political subdivision of

4-1 this state, as a prerequisite for obtaining a license or permit if
 4-2 the law requires that the liability insurance be issued by an
 4-3 insurer authorized to engage in the business of insurance in this
 4-4 state.

4-5 (d) A captive insurance company is authorized to issue a
 4-6 contractual reimbursement policy to:

4-7 (1) an affiliated certified self-insurer authorized
 4-8 under Chapter 407, Labor Code, or a similar affiliated entity
 4-9 expressly authorized by analogous laws of another state; or

4-10 (2) an affiliate that is insured by a workers'
 4-11 compensation insurance policy with a negotiated deductible
 4-12 endorsement.

4-13 Sec. 964.052. AUTHORITY TO PROVIDE REINSURANCE. (a) A
 4-14 captive insurance company may provide reinsurance to an insurer
 4-15 covering the operational risks of the captive insurance company's
 4-16 affiliates or risks of a controlled unaffiliated business that the
 4-17 captive insurance company may insure directly under Section 964.051
 4-18 and:

4-19 (1) employee benefit plans offered by affiliates;

4-20 (2) liability insurance an affiliate must maintain as
 4-21 a prerequisite for obtaining a license or permit if the law requires
 4-22 maintenance of the liability insurance; and

4-23 (3) workers' compensation insurance and employer
 4-24 liability policies issued to affiliates if the insurer that
 4-25 directly issues workers' compensation insurance and employer's
 4-26 liability policies or its licensed, if required by law,
 4-27 administrator or adjuster:

4-28 (A) services all claims incurred during the
 4-29 policy period; and

4-30 (B) complies with all requirements for an insurer
 4-31 under this code, including Chapter 462, and under Title 5, Labor
 4-32 Code.

4-33 (b) A captive insurance company shall provide notice to the
 4-34 commissioner of a reinsurance agreement that the company becomes a
 4-35 party to not later than the 30th day after the date of the execution
 4-36 of the agreement.

4-37 (c) A captive insurance company shall provide notice of a
 4-38 termination of a previously filed reinsurance agreement to the
 4-39 commissioner not later than the 30th day after the date of
 4-40 termination.

4-41 (d) A captive insurance company may take credit for reserves
 4-42 on risks or portions of risks ceded to reinsurers under Subchapter
 4-43 C, Chapter 492, and Subchapter C, Chapter 493.

4-44 Sec. 964.053. FORMATION. (a) A captive insurance company
 4-45 must be formed for the purpose of engaging in the business of
 4-46 insurance under this chapter.

4-47 (b) A captive insurance company may be formed and operated
 4-48 in any form of business organization authorized under the Business
 4-49 Organizations Code except a risk retention group or general
 4-50 partnership. A captive insurance company may only be formed as a
 4-51 nonprofit corporation if it is controlled by a nonprofit
 4-52 corporation.

4-53 (c) The certificate of formation of a captive insurance
 4-54 company must include:

4-55 (1) the name of the company, which may not be the same
 4-56 as, deceptively similar to, or likely to be confused with or
 4-57 mistaken for any other existing business name registered in this
 4-58 state;

4-59 (2) the location of the company's principal business
 4-60 office;

4-61 (3) the type of insurance business in which the
 4-62 company proposes to engage;

4-63 (4) the number of directors or members of the
 4-64 governing body of the company;

4-65 (5) the number of authorized shares and the par value
 4-66 of the company's capital stock for a captive insurance company
 4-67 formed as a corporation;

4-68 (6) the amount of the company's initial capital and
 4-69 surplus; and

5-1 (7) any other information required by the commissioner
 5-2 as necessary to explain the company's objectives, management, and
 5-3 control.

5-4 (d) The board of directors or governing body of a captive
 5-5 insurance company formed in this state must have at least three
 5-6 members, and at least one of the members must be a resident of this
 5-7 state.

5-8 (e) The certificate of formation or bylaws of a captive
 5-9 insurance company must authorize a quorum of the board of directors
 5-10 or governing body to consist of not fewer than one-third of the
 5-11 fixed number of directors or members of the governing body.

5-12 Sec. 964.054. RESERVES AND ACCOUNTING BASIS. (a) A
 5-13 captive insurance company shall maintain reserves in an amount
 5-14 stated in the aggregate to provide for the payment of all losses or
 5-15 claims for which the captive insurance company may be liable and
 5-16 that are:

5-17 (1) incurred on or before the date of the annual report
 5-18 under Section 964.060, whether reported or unreported; and

5-19 (2) unpaid as of the date of the annual report under
 5-20 Section 964.060.

5-21 (b) In addition to the reserves required by Subsection (a),
 5-22 a captive insurance company shall maintain reserves in an amount
 5-23 estimated to provide for the expenses of adjustment or settlement
 5-24 of the losses or claims described by Subsection (a).

5-25 (c) The captive insurance company shall use generally
 5-26 accepted accounting principles as an accounting basis except that a
 5-27 captive insurance company that is required to hold a certificate of
 5-28 authority under another jurisdiction's insurance laws shall use
 5-29 statutory accounting principles.

5-30 Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED. (a) An
 5-31 entity may not engage in business as a captive insurance company
 5-32 domiciled in this state unless it holds a certificate of authority
 5-33 to act as a captive insurance company issued by the department. A
 5-34 captive insurance company, when permitted by its certificate of
 5-35 formation, may apply for a certificate of authority under this
 5-36 chapter.

5-37 (b) An entity does not qualify for a certificate of
 5-38 authority under this chapter unless:

5-39 (1) its affiliates have significant operations in this
 5-40 state, as determined by the commissioner;

5-41 (2) its board of directors or governing body holds at
 5-42 least one meeting each year in this state;

5-43 (3) it maintains its principal office and books and
 5-44 records in this state, unless the commissioner grants an
 5-45 application to relocate the entity's books and records under
 5-46 Chapter 803; and

5-47 (4) it complies with Section 804.101 or 804.102.

5-48 Sec. 964.056. CAPITAL AND SURPLUS REQUIREMENTS. (a) The
 5-49 department may not issue a certificate of authority to a captive
 5-50 insurance company unless the company possesses and maintains
 5-51 unencumbered capital and surplus in an amount determined by the
 5-52 commissioner after considering:

5-53 (1) the amount of premium written by the captive
 5-54 insurance company;

5-55 (2) the characteristics of the assets held by the
 5-56 captive insurance company;

5-57 (3) the terms of reinsurance arrangements entered into
 5-58 by the captive insurance company;

5-59 (4) the type of business covered in policies issued by
 5-60 the captive insurance company;

5-61 (5) the underwriting practices and procedures of the
 5-62 captive insurance company; and

5-63 (6) any other criteria that has an impact on the
 5-64 operations of the captive insurance company determined to be
 5-65 significant by the commissioner.

5-66 (b) The amount of capital and surplus determined by the
 5-67 commissioner under Subsection (a) may not be less than \$250,000.

5-68 (c) The capital and surplus required by Subsection (a) must
 5-69 be in the form of:

6-1 (1) United States currency;
 6-2 (2) an irrevocable letter of credit, in a form
 6-3 approved by the commissioner and not secured by a guarantee from an
 6-4 affiliate, naming the commissioner as beneficiary for the security
 6-5 of the captive insurance company's policyholders and issued by a
 6-6 bank approved by the commissioner;
 6-7 (3) bonds of this state; or
 6-8 (4) bonds or other evidences of indebtedness of the
 6-9 United States, the principal and interest of which are guaranteed
 6-10 by the United States.

6-11 Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY.
 6-12 (a) To obtain a certificate of authority for a captive insurance
 6-13 company, the incorporators or organizers must pay to the
 6-14 commissioner an application fee and file with the commissioner an
 6-15 application for the certificate of authority, which must include:

6-16 (1) a financial statement certified by two principal
 6-17 officers;
 6-18 (2) a plan of operation and projections, which must
 6-19 include an actuarial report prepared by a qualified independent
 6-20 actuary;

6-21 (3) the captive insurance company's certificate of
 6-22 formation;
 6-23 (4) an affidavit by the incorporators, organizers, or
 6-24 officers of the captive insurance company stating that:

6-25 (A) the capital and surplus are the bona fide
 6-26 property of the company; and

6-27 (B) the certificate of formation is true and
 6-28 correct; and

6-29 (5) if the application provides for the issuance of
 6-30 shares of stock or other type of equity instrument without par
 6-31 value, a certificate authenticated by the incorporators or officers
 6-32 stating:

6-33 (A) the number of shares or other type of equity
 6-34 instrument without par value that are subscribed; and

6-35 (B) the actual consideration received by the
 6-36 captive insurance company for those shares or other type of equity
 6-37 instrument.

6-38 (b) If the commissioner is not satisfied with the affidavit
 6-39 filed under Subsection (a)(4), the commissioner may require that
 6-40 the incorporators, organizers, or officers provide at their expense
 6-41 additional evidence as described by Subsection (a) before the
 6-42 commissioner takes action on the application.

6-43 (c) The application fee required under this section is
 6-44 \$1,500 or a greater amount set by the commissioner by rule as
 6-45 necessary to recover the cost of administering this section.

6-46 (d) Notwithstanding Subsection (c), for a complete
 6-47 application filed on or before December 30, 2018, the application
 6-48 fee may not exceed \$1,500. This subsection expires January 1, 2019.

6-49 (e) Fees collected under this section shall be deposited to
 6-50 the credit of the Texas Department of Insurance operating account.

6-51 Sec. 964.058. EXAMINATION BY COMMISSIONER. (a) After the
 6-52 application and application fee for a certificate of authority
 6-53 under Section 964.057 are filed with the department and the
 6-54 applicant has complied with all legal requirements, the
 6-55 commissioner shall conduct an examination of the applicant to
 6-56 determine whether:

6-57 (1) the minimum capital and surplus requirements of
 6-58 Section 964.056 are satisfied;

6-59 (2) the capital and surplus are the bona fide property
 6-60 of the applicant; and

6-61 (3) the applicant has fully complied with applicable
 6-62 insurance laws.

6-63 (b) The commissioner may appoint a competent and
 6-64 disinterested person to conduct the examination required by this
 6-65 section. The examiner shall file an affidavit of the examiner's
 6-66 findings with the commissioner. The commissioner shall record the
 6-67 affidavit.

6-68 Sec. 964.059. ACTION ON APPLICATION. (a) The commissioner
 6-69 shall determine whether:

7-1 (1) the capital structure of the applicant meets the
7-2 requirements of this chapter;
7-3 (2) the officers or directors of the applicant have
7-4 sufficient insurance experience, ability, standing, and good
7-5 record to make success of the captive insurance company probable;
7-6 (3) the applicant is acting in good faith; and
7-7 (4) the applicant otherwise satisfies the
7-8 requirements of this chapter.
7-9 (b) In evaluating the application, the commissioner shall
7-10 consider:
7-11 (1) the amount and liquidity of the applicant's assets
7-12 relative to the risks to be assumed;
7-13 (2) the adequacy of the expertise, experience, and
7-14 character of each individual who will manage the applicant;
7-15 (3) the overall soundness of the applicant's plan of
7-16 operations and the projections contained in that plan;
7-17 (4) whether the applicant's affiliates have
7-18 significant operations located in this state; and
7-19 (5) any other factors the commissioner considers
7-20 relevant to determine whether the applicant will be able to meet its
7-21 policy obligations.
7-22 (c) If the commissioner determines that the applicant has
7-23 not met the standards set out by Subsection (a), the commissioner
7-24 shall deny the application in writing, giving the reason for the
7-25 denial. On the applicant's request, the commissioner shall hold a
7-26 hearing on a denial. Not later than the 30th day after the date the
7-27 commissioner receives the applicant's request for a hearing, the
7-28 commissioner shall set a hearing date.
7-29 (d) If the commissioner does not deny the application under
7-30 Subsection (c), the commissioner shall approve the application and:
7-31 (1) issue to the applicant a certificate of authority
7-32 to engage in business as provided for in the applicant's
7-33 certificate of formation;
7-34 (2) certify and file the approved document with the
7-35 department; and
7-36 (3) issue a certified copy of the certificate of
7-37 authority to the applicant's incorporators or officers.
7-38 (e) A certificate of authority issued to a captive insurance
7-39 company under this section may not be sold.
7-40 Sec. 964.060. ANNUAL REPORT. (a) A captive insurance
7-41 company holding a certificate of authority under this chapter is
7-42 not required to file a report, except as provided by this section,
7-43 Chapter 223A, and Subtitle C, Title 3.
7-44 (b) A captive insurance company that holds a certificate of
7-45 authority to engage in captive insurance business in this state
7-46 shall file with the commissioner:
7-47 (1) on or before March 1 of each year, a statement of
7-48 the company's financial condition, verified by two of its executive
7-49 officers and filed in a format prescribed by the commissioner; and
7-50 (2) on or before June 1 of each year, a report of its
7-51 financial condition at last year-end with an independent certified
7-52 public accountant's opinion of the company's financial condition.
7-53 (c) A captive insurance company may make a written
7-54 application to the commissioner for filing its annual report
7-55 required under this section on a fiscal year-end. If an alternative
7-56 filing date is granted, the company shall file:
7-57 (1) the annual report not later than the 60th day after
7-58 the date of the company's fiscal year-end;
7-59 (2) the report of its financial condition at last
7-60 year-end with an independent certified public accountant's opinion
7-61 of the company's financial condition not later than the 150th day
7-62 after the date the annual report is due; and
7-63 (3) its balance sheet, income statement, and statement
7-64 of cash flows, verified by two of its executive officers, before
7-65 March 1 of each year to provide sufficient detail to support a
7-66 premium tax return.
7-67 Sec. 964.061. INVESTMENTS. (a) A captive insurance
7-68 company without segregated accounts is not subject to a restriction
7-69 on allowable investments, except as provided by this section.

8-1 (b) A captive insurance company without segregated accounts
 8-2 may make loans to its affiliates with the prior approval of the
 8-3 commissioner. Each loan must be evidenced by a note approved by the
 8-4 commissioner. A captive insurance company may not make a loan of
 8-5 the minimum capital and surplus funds required by this chapter.

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

8-9 Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION. A
 8-10 captive insurance company may not amend its certificate of
 8-11 formation unless the amendment has been filed with and approved by
 8-12 the commissioner.

8-13 Sec. 964.063. NOTICE OF DIVIDENDS. A captive insurance
 8-14 company shall notify the commissioner in writing when issuing
 8-15 policyholder dividends.

8-16 Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO
 8-17 CERTAIN ENTITIES AND FUNDS. A captive insurance company may not
 8-18 join or contribute financially to any plan, pool, association, or
 8-19 guaranty or insolvency fund in this state, and a captive insurance
 8-20 company, its insured, or any affiliate is not entitled to receive
 8-21 any benefit from a plan, pool, association, or guaranty or
 8-22 insolvency fund for claims arising out of the operations of the
 8-23 company.

8-24 Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF
 8-25 AUTHORITY. The commissioner, after notice and an opportunity for
 8-26 hearing, may revoke or suspend the certificate of authority of a
 8-27 captive insurance company for:

8-28 (1) insolvency or impairment of required capital or
 8-29 surplus to policyholders;

8-30 (2) failure to submit an annual report, as required by
 8-31 Section 964.060;

8-32 (3) failure to comply with the provisions of its own
 8-33 charter or bylaws;

8-34 (4) failure to submit to examination, as required by
 8-35 Chapter 401;

8-36 (5) failure to pay the cost of examination, as
 8-37 required by Chapter 401;

8-38 (6) failure to pay any tax or fee required by this
 8-39 code;

8-40 (7) removal of its principal office or books and
 8-41 records from this state without prior approval of the commissioner;

8-42 (8) use of practices that render its operation
 8-43 detrimental to the public or its condition unsound; or

8-44 (9) failure to otherwise comply with the laws of this
 8-45 state.

8-46 Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED
 8-47 UNAFFILIATED BUSINESS. The commissioner may adopt rules
 8-48 establishing standards to ensure that an affiliated company is able
 8-49 to exercise control of the risk management function of any
 8-50 controlled unaffiliated business to be insured by the captive
 8-51 insurance company. Until rules under this section are adopted, the
 8-52 commissioner may approve the coverage of these risks by a captive
 8-53 insurance company.

8-54 Sec. 964.067. CAPTIVE MANAGERS. Before providing captive
 8-55 management services to a licensed captive insurance company, a
 8-56 captive management company shall register with the commissioner by
 8-57 providing the information required on a form adopted by the
 8-58 commissioner.

8-59 Sec. 964.068. MAINTENANCE TAX. A captive insurance company
 8-60 is subject to maintenance tax under Subtitle C, Title 3, on direct
 8-61 premiums for risks located in this state as applicable to the
 8-62 individual lines of business written by the captive insurance
 8-63 company.

8-64 Sec. 964.069. RULEMAKING AUTHORITY. The commissioner may
 8-65 adopt reasonable rules as necessary to implement the purposes and
 8-66 provisions of this chapter.

8-67 Sec. 964.070. CONFIDENTIALITY. (a) Any information filed
 8-68 by an applicant or captive insurance company under this chapter is
 8-69 confidential and privileged for all purposes, including for

9-1 purposes of Chapter 552, Government Code, a response to a subpoena,
 9-2 or evidence in a civil action. Except as provided by Subsections
 9-3 (b) and (c), the information may not be disclosed without the prior
 9-4 written consent of the applicant or captive insurance company to
 9-5 which the information pertains.

9-6 (b) If the recipient of the information described by
 9-7 Subsection (a) has the legal authority to maintain the confidential
 9-8 or privileged status of the information and verifies that authority
 9-9 in writing, the commissioner or another person may disclose the
 9-10 information to any of the following entities functioning in an
 9-11 official capacity:

9-12 (1) a commissioner of insurance or an insurance
 9-13 department of another state;

9-14 (2) an authorized law enforcement official;

9-15 (3) a district attorney of this state;

9-16 (4) the attorney general;

9-17 (5) a grand jury;

9-18 (6) the National Association of Insurance
 9-19 Commissioners if the captive insurance company is affiliated with
 9-20 an insurance company that is part of an insurance holding company
 9-21 system as described in Chapter 823;

9-22 (7) another state or federal regulator if the state or
 9-23 federal regulator is operating in its official capacity and the
 9-24 applicant or captive insurance company to which the information
 9-25 relates operates in the entity's jurisdiction;

9-26 (8) an international insurance regulator or analogous
 9-27 financial agency operating in an official capacity, if the captive
 9-28 insurance company is affiliated with an insurance company that is
 9-29 part of an insurance holding company system as described in Chapter
 9-30 823 and the holding company system operates in the entity's
 9-31 jurisdiction; or

9-32 (9) members of a supervisory college described by
 9-33 Section 823.0145, if the captive insurance company is affiliated
 9-34 with an insurance company that is part of an insurance holding
 9-35 company system as described in Chapter 823.

9-36 (c) The commissioner may use information described by
 9-37 Subsection (a) in the furtherance of a legal or regulatory action
 9-38 relating to the administration of this code.

9-39 Sec. 964.071. REDOMESTICATION. (a) An authorized foreign
 9-40 or alien captive insurance company licensed under laws of any
 9-41 jurisdiction may become a domestic captive insurance company in
 9-42 this state on a determination by the commissioner that the
 9-43 authorized foreign or alien captive insurance company has complied
 9-44 with all of the requirements of this chapter for the issuance of a
 9-45 certificate of authority to, and the Business Organizations Code
 9-46 for converting to an entity of this state for, a domestic captive
 9-47 insurance company of the same type.

9-48 (b) A domestic captive insurance company, on the approval of
 9-49 the commissioner, may transfer its domicile. On the transfer, the
 9-50 captive insurance company ceases to be a domestic captive insurance
 9-51 company. The commissioner shall approve any proposed transfer
 9-52 unless the commissioner determines the transfer is not in the best
 9-53 interest of the policyholders.

9-54 (c) The commissioner may postpone or waive the imposition of
 9-55 any fees or taxes under this code for a period not to exceed two
 9-56 years for any foreign or alien captive insurance company
 9-57 redomesticating to this state.

9-58 SUBCHAPTER C. MANAGING CAPTIVE INSURANCE COMPANIES

9-59 Sec. 964.101. SEGREGATED ACCOUNT. (a) A managing captive
 9-60 insurance company may form a segregated account to insure risks of a
 9-61 participant.

9-62 (b) The assets and liabilities of a managing captive
 9-63 insurance company and each segregated account shall be held
 9-64 separately. The assets and liabilities of each segregated account
 9-65 shall be held separately from the assets and liabilities of all
 9-66 other segregated accounts and the managing captive insurance
 9-67 company.

9-68 (c) A managing captive insurance company is a single legal
 9-69 entity and must establish each segregated account as a separate

10-1 legal entity. Each segregated account shall be separately
 10-2 identified or designated as being a part of the managing captive
 10-3 insurance company.

10-4 Sec. 964.102. ORGANIZATION AND STRUCTURE OF SEGREGATED
 10-5 ACCOUNT. (a) A managing captive insurance company may issue
 10-6 segregated account shares of stock or other type of equity
 10-7 instrument in one or more classes or series for one or more
 10-8 segregated accounts, or for the managing captive insurance company
 10-9 as a whole. The proceeds of each issue shall be included in the
 10-10 assets of the segregated account for which the segregated account
 10-11 shares of stock or other type of equity instrument was issued. The
 10-12 proceeds of the issue of shares of stock or other type of equity
 10-13 instrument, other than segregated account shares of stock or other
 10-14 type of equity instrument, is included in the managing captive
 10-15 insurance company's general assets.

10-16 (b) A managing captive insurance company may pay a dividend
 10-17 on segregated account shares of stock or other type of equity
 10-18 instrument of any class or series regardless of whether a dividend
 10-19 is declared on another class or series of segregated account shares
 10-20 of stock or other type of equity instrument, or any other shares of
 10-21 stock or other type of equity instrument.

10-22 (c) Segregated account dividends or distributions must be
 10-23 paid on the segregated account shares of stock or other type of
 10-24 equity instrument from the segregated account assets. The
 10-25 dividends or distributions shall only be paid to the holders of the
 10-26 segregated account shares of stock or other type of equity
 10-27 instrument and in accordance with the rights of the shares of stock
 10-28 or other type of equity instrument.

10-29 Sec. 964.103. ASSETS OF MANAGING CAPTIVE INSURANCE COMPANY.
 10-30 (a) The assets of a managing captive insurance company are general
 10-31 assets or assets of an individual segregated account. The
 10-32 segregated account assets are the assets of the managing captive
 10-33 insurance company held within or on behalf of the segregated
 10-34 account of the managing captive insurance company. The general
 10-35 assets of a managing captive insurance company are the assets of the
 10-36 managing captive insurance company that are not segregated account
 10-37 assets.

10-38 (b) The assets of a segregated account are assets
 10-39 representing the capital, reserves held to support the liabilities
 10-40 of the segregated account, or all other assets attributable to or
 10-41 held within the segregated account. For purposes of this
 10-42 subsection, "reserves" includes retained earnings, capital, and
 10-43 paid-in capital.

10-44 Sec. 964.104. REQUIRED PROCEDURES. (a) The directors or
 10-45 members of the governing body of a managing captive insurance
 10-46 company shall establish and maintain, or cause to be established
 10-47 and maintained, procedures:

10-48 (1) to segregate, and keep segregated, segregated
 10-49 account assets from general assets;

10-50 (2) to segregate, and keep segregated, segregated
 10-51 account assets of each segregated account captive insurance company
 10-52 from segregated account assets of another segregated account; and

10-53 (3) if applicable, to apportion or transfer assets and
 10-54 liabilities between segregated accounts, or between segregated
 10-55 account assets and general assets, of the managing captive
 10-56 insurance company.

10-57 (b) A managing captive insurance company must obtain prior
 10-58 approval from the commissioner before the company apportions or
 10-59 transfers assets and liabilities between segregated accounts of the
 10-60 managing captive insurance company.

10-61 (c) A managing captive insurance company may not transfer
 10-62 assets and liabilities between segregated accounts and general
 10-63 assets of the managing captive insurance company.

10-64 Sec. 964.105. USE OF SEGREGATED ACCOUNT ASSETS.
 10-65 (a) Segregated account assets:

10-66 (1) must only be available and used to meet
 10-67 liabilities of the creditors with respect to that segregated
 10-68 account, and those creditors shall be entitled to have recourse
 10-69 only to the segregated account assets attributable to that

11-1 segregated account; and
 11-2 (2) may not be available or used to meet liabilities
 11-3 of, and shall be absolutely protected from, the creditors of the
 11-4 managing captive insurance company and any other segregated account
 11-5 who are not creditors with respect to a particular segregated
 11-6 account, and those creditors are not entitled to have recourse to
 11-7 the protected segregated account assets.

11-8 (b) If a liability of a managing captive insurance company
 11-9 to a creditor arises with respect to a particular segregated
 11-10 account, the liability extends only to that segregated account.
 11-11 The creditor shall, with respect to that liability, be entitled to
 11-12 have recourse only to the segregated account assets attributable to
 11-13 the segregated account.

11-14 (c) If a liability, other than a liability described by
 11-15 Subsection (b), of a managing captive insurance company to a
 11-16 creditor arises, the liability extends only to the managing captive
 11-17 insurance company's general assets. The creditor shall, with
 11-18 respect to that liability, be entitled to have recourse only to the
 11-19 managing captive insurance company's general assets.

11-20 (d) Liabilities of a managing captive insurance company not
 11-21 attributable to any of the company's segregated accounts are
 11-22 discharged from the managing captive insurance company's general
 11-23 assets. Income, receipts, and other property or rights of or
 11-24 acquired by a managing captive insurance company not otherwise
 11-25 attributable to any segregated account are allocated to the
 11-26 managing captive insurance company's general assets to the extent
 11-27 that the managing captive insurance company's general assets exceed
 11-28 any minimum capital amounts required by this chapter.

11-29 Sec. 964.106. SEPARATE RECORDS. The managing captive
 11-30 insurance company shall account for each segregated account
 11-31 separately on the books and records of the managing captive
 11-32 insurance company to reflect the financial condition and results of
 11-33 operations of the segregated account, including net income or loss,
 11-34 dividends or other distributions to participants, and other factors
 11-35 provided by the participant contract or required by the
 11-36 commissioner.

11-37 Sec. 964.107. TRANSACTIONS REQUIRING COMMISSIONER
 11-38 APPROVAL. (a) The managing captive insurance company may not make
 11-39 a sale, exchange, or other transfer of assets between or among any
 11-40 of its segregated accounts without the written consent of the
 11-41 participants and the commissioner.

11-42 (b) A dividend or distribution shall not be made from the
 11-43 company's segregated assets to any person without the
 11-44 commissioner's prior written approval.

11-45 (c) The commissioner may not approve a transaction
 11-46 described by Subsection (a) or (b) if the transaction would result
 11-47 in the insolvency or impairment of the segregated account.

11-48 (d) A participant contract is not effective without the
 11-49 commissioner's prior written approval. The withdrawal of a
 11-50 participant from an existing segregated account is a change in the
 11-51 strategic business plan of that segregated account requiring the
 11-52 commissioner's prior written approval.

11-53 Sec. 964.108. NOTIFICATION REQUIRED. Each managing captive
 11-54 insurance company shall notify the commissioner not later than the
 11-55 10th business day after the date a segregated account becomes
 11-56 insolvent, impaired, or otherwise unable to meet its claims or
 11-57 expense obligations.

11-58 Sec. 964.109. QUALIFICATIONS OF PARTICIPANT. (a) Any
 11-59 person may be a participant in a segregated account organized or
 11-60 holding a certificate of authority under this chapter.

11-61 (b) A participant in a segregated account is not required to
 11-62 be a holder of a segregated account shares of stock or other type of
 11-63 equity instrument issued within the segregated account or by the
 11-64 managing captive insurance company or any affiliate of the managing
 11-65 captive insurance company.

11-66 Sec. 964.110. APPLICABILITY OF CHAPTER TO SEGREGATED
 11-67 ACCOUNTS. Subchapters A and B apply to each segregated account,
 11-68 except:

11-69 (1) Sections 964.056(a) and (b);

- 12-1 (2) Sections 964.059(a)(2) and (b)(2);
 12-2 (3) Section 964.061;
 12-3 (4) Section 964.063; and
 12-4 (5) Section 964.071.

12-5 Sec. 964.111. CAPITAL AND SURPLUS REQUIREMENTS OF
 12-6 SEGREGATED ACCOUNT. (a) The minimum amount of capital and surplus
 12-7 in each segregated account is \$100,000.

12-8 (b) The commissioner may require each segregated account to
 12-9 maintain additional capital and surplus based on the type, volume,
 12-10 and nature of the insurance business that is transacted by the
 12-11 segregated account and may determine the amount of capital and
 12-12 surplus, if any, that may be in the form of an irrevocable letter of
 12-13 credit.

12-14 (c) The minimum capital and surplus required under
 12-15 Subsection (a) must be in the form required by Section 964.056(c).

12-16 Sec. 964.112. ADDITIONAL ANNUAL REPORT REQUIREMENT. In
 12-17 addition to the requirements of Section 964.060, a managing captive
 12-18 insurance company must include in its annual report a financial
 12-19 statement detailing the financial experience of each segregated
 12-20 account.

12-21 Sec. 964.113. SEGREGATED ACCOUNT INVESTMENTS. (a) Each
 12-22 segregated account shall file with the commissioner a proposed
 12-23 investment strategy, and any changes to the strategy, which the
 12-24 commissioner shall approve if the strategy does not threaten the
 12-25 solvency, liquidity, or overall operating soundness of the
 12-26 segregated account.

12-27 (b) A managing captive insurance company may file with the
 12-28 commissioner a proposed investment strategy, and any changes to the
 12-29 strategy, that will be applicable to each segregated account of the
 12-30 managing captive insurance company.

12-31 Sec. 964.114. SUPPLEMENTAL APPLICATION MATERIALS. In
 12-32 addition to the information required to obtain a certificate of
 12-33 authority under Subchapter B, each managing captive insurance
 12-34 company shall file with the commissioner the following:

12-35 (1) materials demonstrating how the company will
 12-36 account for the loss and expense experience of each segregated
 12-37 account and how expenses will be allocated; and

12-38 (2) all contracts or sample contracts between the
 12-39 managing captive insurance company and a participant.

12-40 SECTION 3. Subsection (b), Section 203.001, Insurance Code,
 12-41 is amended to read as follows:

12-42 (b) Except as otherwise provided by this code or the Labor
 12-43 Code, an insurer or health maintenance organization subject to a
 12-44 tax imposed by Chapter 4, 221, 222, 223A, 224, or 257 may not be
 12-45 required to pay any additional tax imposed by this state or a county
 12-46 or municipality in proportion to the insurer's or health
 12-47 maintenance organization's gross premium receipts.

12-48 SECTION 4. Subsection (b), Section 203.002, Insurance Code,
 12-49 is amended to read as follows:

12-50 (b) If the commissioner determines by examining a company or
 12-51 segregated account or by other means that the company's or account's
 12-52 gross premium receipts in a year exceed the amount reported by the
 12-53 company or account for that year, the commissioner shall report
 12-54 that determination to the comptroller. The comptroller shall
 12-55 institute a collection action as the comptroller considers
 12-56 appropriate to collect taxes due on unreported gross premium
 12-57 receipts.

12-58 SECTION 5. Subdivision (11), Section 228.001, Insurance
 12-59 Code, is amended to read as follows:

12-60 (11) "State premium tax liability" means:
 12-61 (A) any liability incurred by any person under
 12-62 Chapter 221, 222, 223, 223A, or 224; or
 12-63 (B) if the tax liability imposed under Chapter
 12-64 221, 222, 223, or 224 is eliminated or reduced, any tax liability
 12-65 imposed on an insurer or other person that had premium tax liability
 12-66 under Subchapter A, Chapter 4, or Article 9.59 as those laws existed
 12-67 on January 1, 2003.

12-68 SECTION 6. Subsection (a), Section 171.052, Tax Code, is
 12-69 amended to read as follows:

13-1 (a) Except as provided by Subsection (c), an insurance
13-2 organization, title insurance company, or title insurance agent
13-3 authorized to engage in insurance business in this state now
13-4 required to pay an annual tax under Chapters 221, 222, 223, 223A,
13-5 and 224 [~~Chapter 4 or 9~~], Insurance Code, measured by its gross
13-6 premium receipts is exempted from the franchise tax. A nonadmitted
13-7 insurance organization that is required to pay a gross premium
13-8 receipts tax during a tax year is exempted from the franchise tax
13-9 for that same tax year.

13-10 SECTION 7. As soon as practicable after the effective date
13-11 of this Act, but not later than January 1, 2014, the commissioner of
13-12 insurance shall adopt rules and procedures necessary to implement
13-13 Chapter 964, Insurance Code, as added by this Act.

13-14 SECTION 8. This Act takes effect immediately if it receives
13-15 a vote of two-thirds of all the members elected to each house, as
13-16 provided by Section 39, Article III, Texas Constitution. If this
13-17 Act does not receive the vote necessary for immediate effect, this
13-18 Act takes effect September 1, 2013.

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