

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 16, 2013

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB734 by Carona (Relating to the licensing of captive insurance companies; authorizing fees and authorizing and imposing taxes.), **As Passed 2nd House**

The fiscal implications of the bill are indeterminate due to the unknown losses of insurance premium tax revenues and unknown offsetting revenue gains from the newly created captive insurance premium tax assessment; however, significant fiscal implications to the State are not anticipated.

The bill would amend the Insurance Code relating to the licensing of captive insurance companies and authorizing fees and imposing taxes. The bill would allow the licensing of captive insurers, defined as a company that insures the operational risks of the company's affiliates. The bill would require captive insurance companies to apply for, and obtain, a certificate of authority from the Texas Department of Insurance (TDI). The bill would require an application fee of \$1,500 through calendar 2018; from January 1, 2019, onward TDI could set a higher application fee by rule to cover the costs of administering this chapter.

The bill would describe the certificate application and approval process, as well as captive insurance company reporting requirements and investment restrictions. The bill would prohibit captive insurance companies from contributing to, or receiving benefits from any guaranty association funds. Data reported by captive insurance companies to TDI would be protected by certain confidentiality guarantees under the provisions of the bill and TDI could, in certain circumstances, suspend or revoke a captive's certificate of authority.

The bill would subject captive insurance companies to a 0.5 percent premium tax on all business written, with total premium tax of no less than \$7,500 and no more than \$200,000 per company each year. The bill would also subject captive companies to maintenance taxes, as applicable to the lines of business written. The bill would allow the Commissioner of Insurance to postpone or waive the imposition of any insurance fees or taxes for up to two years for any captive insurance company relocating to this state.

Not later than January 1, 2014, the insurance commissioner would be required to adopt rules and procedures necessary to implement the provisions of Chapter 964 of the Insurance Code.

According to the Comptroller of Public Accounts (CPA), insurance premiums paid to captive insurance companies are generally considered to be unauthorized insurance and are taxed at a rate of 4.85 percent under current law. In calendar year 2011, \$58,000,000 in captive insurance premiums were reported to the CPA by 12 captive insurance companies and \$2,801,000 in unauthorized insurance premium tax payments were received in fiscal year 2012. If a tax rate of

0.5 percent would have been applied to captive insurance companies' premiums, then the associated premium tax revenue under the provisions of the bill would have been approximately \$289,000, which is a reduction of \$2,512,000. In addition, the CPA assumes insurance premiums paid to captive insurance companies would grow at the average rate of growth of premium tax revenues from 2006-12 (3.1 percent) and that those captive insurance companies would choose to re-domesticate to this state which would reduce revenues collected from captive insurance companies.

According to TDI, new captive insurance companies would be formed and apply for a license to operate in Texas which would potentially offset some of the revenue losses assumed by the CPA. TDI assumes a \$1,500 application fee would be assessed and collected from each company subject to that fee in addition to the Captive Insurance Premium Tax as required by the bill (between \$7,500 and \$200,000). Assuming the same number of captive insurance companies identified in fiscal year 2012 would be active over the next five years and assuming the \$200,000 assessment would be assessed based on information provided by TDI, revenues of \$2,418,000 (including the application fee) could be realized in fiscal year 2014 with up to \$2,400,000 in each subsequent year from the Captive Insurance Premium tax assessment.

The impact from implementing the provisions of the bill are indeterminate because the number and timing of applications, the actual fees that would be assessed, and the amounts of gross premiums subject to taxation are unknown. Accordingly, the potential offsetting revenues cannot be determined; however, information provided by TDI supports a less significant fiscal impact to the state being realized.

This bill would take effect immediately upon receiving a two-thirds majority votes in both houses; otherwise, it would take effect September 1, 2013.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 454 Department of Insurance

LBB Staff: UP, AG, MW, ER, RB, LXH