

By: Murphy, Capriglione

H.B. No. 1944

A BILL TO BE ENTITLED

AN ACT

relating to captive insurance companies.

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

ARTICLE 1. REGULATION OF CAPTIVE INSURANCE COMPANIES

SECTION 1.01. Section 964.001(a), Insurance Code, is amended by adding Subdivisions (1-a), (1-b), and (8) and amending Subdivision (2) to read as follows:

(1-a) "Attorney in fact" means a firm or corporation that, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of a captive exchange by issuing reciprocal or interinsurance contracts.

(1-b) "Captive exchange" means a reciprocal or interinsurance exchange formed under this chapter. The term includes the attorney in fact through which a reciprocal or interinsurance contract, as defined by Section 942.001, is exchanged.

(2) "Captive insurance company" means a company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. The term includes a captive exchange.

(8) "Subscriber" means an affiliated company or controlled unaffiliated business that enters into a reciprocal contract of insurance with an attorney in fact as a subscriber of a

1 captive exchange.

2 SECTION 1.02. Section 964.051(b), Insurance Code, is
3 amended to read as follows:

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

5 (1) life insurance, except to insure employee benefits
6 that are subject to the Employee Retirement Income Security Act of
7 1974 (29 U.S.C. Section 1001 et seq.);

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 SECTION 1.03. Section 964.052, Insurance Code, is amended
20 by adding Subsection (f) to read as follows:

21 (f) A captive insurance company may cede risks to or take
22 credit for reserves on risks ceded to a nonaffiliated reinsurer if
23 the reinsurer:

24 (1) holds a certificate of authority to transact
25 insurance or reinsurance in a jurisdiction that is:

26 (A) on the list of qualified jurisdictions of the
27 National Association of Insurance Commissioners; and

1 (B) acceptable to the commissioner;

2 (2) maintains minimum capital and surplus, or the
3 equivalent, of \$250 million as of the end of the preceding year; and

4 (3) maintains a financial strength rating of B+ or its
5 equivalent from a national or international rating agency that:

6 (A) has registered with the Securities and
7 Exchange Commission;

8 (B) is designated as a nationally recognized
9 statistical rating organization;

10 (C) is on the list of Credit Rating Providers by
11 the Securities Valuation Office of the National Association of
12 Insurance Commissioners; and

13 (D) is acceptable to the commissioner.

14 SECTION 1.04. Sections 964.053(a), (c), (d), and (e),
15 Insurance Code, are amended to read as follows:

16 (a) A captive insurance company, other than a captive
17 exchange, or an attorney in fact must be formed for the purpose of
18 engaging in the business of insurance under this chapter by filing
19 an appropriate application with the secretary of state.

20 (c) The certificate of formation of a captive insurance
21 company, other than a captive exchange, or an attorney in fact must
22 comply with the applicable requirements of the Business
23 Organizations Code. The ~~must include:~~

24 ~~[(1) the]~~ name of the company or attorney in fact in
25 the certificate of formation may include the words "insurance,"
26 "company," or similar words indicating that the purpose of the
27 company or attorney in fact is to operate as an insurance company or

1 attorney in fact under this chapter [~~, which may not be the same as,~~
2 ~~deceptively similar to, or likely to be confused with or mistaken~~
3 ~~for any other existing business name registered in this state,~~

4 [~~(2) the location of the company's principal business~~
5 ~~office,~~

6 [~~(3) the type of insurance business in which the~~
7 ~~company proposes to engage,~~

8 [~~(4) the number of directors or members of the~~
9 ~~governing body of the company,~~

10 [~~(5) the number of authorized shares and the par value~~
11 ~~of the company's capital stock for a captive insurance company~~
12 ~~formed as a corporation,~~

13 [~~(6) the amount of the company's initial capital and~~
14 ~~surplus; and~~

15 [~~(7) any other information required by the~~
16 ~~commissioner as necessary to explain the company's objectives,~~
17 ~~management, and control].~~

18 (d) The board of directors or governing body of a captive
19 insurance company formed in this state must have at least three
20 members, and at least one of the members must be a resident of this
21 state. If the captive insurance company is a captive exchange, the
22 principal office of the attorney in fact must be in this state.

23 (e) The certificate of formation, ~~[or]~~ bylaws, or governing
24 document of a captive insurance company must authorize a quorum of
25 the board of directors or governing body to consist of not fewer
26 than one-third of the fixed number of directors or members of the
27 governing body.

1 SECTION 1.05. Section 964.055(a), Insurance Code, is
2 amended to read as follows:

3 (a) An entity may not engage in business as a captive
4 insurance company domiciled in this state unless it holds a
5 certificate of authority issued by the department to act as a
6 captive insurance company. A captive insurance company, when
7 permitted by its certificate of formation or governing document,
8 may apply for a certificate of authority under this chapter.

9 SECTION 1.06. Section 964.056, Insurance Code, is amended
10 to read as follows:

11 Sec. 964.056. CAPITAL AND SURPLUS OR EQUIVALENT
12 REQUIREMENTS. (a) The department may not issue a certificate of
13 authority to a captive insurance company unless the company
14 possesses and maintains unencumbered capital and surplus, or the
15 equivalent, in an amount determined by the commissioner after
16 considering:

17 (1) the amount of premium written by the captive
18 insurance company;

19 (2) the characteristics of the assets held by the
20 captive insurance company;

21 (3) the terms of reinsurance arrangements entered into
22 by the captive insurance company;

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

25 (5) the underwriting practices and procedures of the
26 captive insurance company; and

27 (6) any other criteria that has an impact on the

1 operations of the captive insurance company determined to be
2 significant by the commissioner.

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

6 (c) The capital and surplus, or the equivalent, required by
7 Subsection (a) must be in the form of:

8 (1) United States currency;

9 (2) an irrevocable letter of credit, in a form
10 approved by the commissioner and not secured by a guarantee from an
11 affiliate, naming the commissioner as beneficiary for the security
12 of the captive insurance company's policyholders and issued by a
13 bank approved by the commissioner;

14 (3) bonds of this state or a county or municipality of
15 this state; or

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

19 SECTION 1.07. Section 964.057(a), Insurance Code, is
20 amended to read as follows:

21 (a) After forming [~~To obtain a certificate of authority for~~]
22 a captive insurance company, other than a captive exchange, or an
23 attorney in fact, the incorporators or organizers must pay to the
24 commissioner an application fee and file with the commissioner an
25 application for a [~~the~~] certificate of authority for a captive
26 insurance company, which must include:

27 (1) a financial statement certified by two principal

1 officers;

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

5 (3) the captive insurance company's certificate of
6 formation or other documentation demonstrating the valid formation
7 of the captive insurance company, other than a captive exchange, or
8 the attorney in fact;

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

11 (A) the capital and surplus, or the equivalent,
12 are the bona fide property of the company; and

13 (B) the certificate of formation or other
14 documentation demonstrating the captive insurance company's or
15 attorney in fact's valid formation is true and correct; and

16 (5) if the application provides for the issuance of
17 shares of stock or other type of equity instrument without par
18 value, a certificate authenticated by the incorporators or officers
19 stating:

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

22 (B) the actual consideration received by the
23 captive insurance company for those shares or other type of equity
24 instrument.

25 SECTION 1.08. Section 964.058(a), Insurance Code, is
26 amended to read as follows:

27 (a) After the application and application fee for a

1 certificate of authority under Section 964.057 are filed with the
2 department and the applicant has complied with all legal
3 requirements, the commissioner shall conduct an examination of the
4 applicant to determine whether:

5 (1) the minimum capital and surplus, or the
6 equivalent, requirements of Section 964.056 are satisfied;

7 (2) the capital and surplus, or the equivalent, are
8 the bona fide property of the applicant; and

9 (3) the applicant has fully complied with applicable
10 insurance laws.

11 SECTION 1.09. Sections 964.059(a) and (d), Insurance Code,
12 are amended to read as follows:

13 (a) The commissioner shall determine whether:

14 (1) the capital and surplus, or the equivalent,
15 [~~structure~~] of the applicant meet [~~meets~~] the requirements of this
16 chapter;

17 (2) the officers or members [~~directors~~] of the
18 applicant's governing body [~~applicant~~] have sufficient insurance
19 experience, ability, standing, and good record to make success of
20 the captive insurance company probable;

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

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

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

26 (1) issue to the applicant a certificate of authority
27 to engage in business as provided for in the applicant's

1 certificate of formation or other governing document;

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

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

6 SECTION 1.10. Section 964.060, Insurance Code, is amended
7 by adding Subsection (d) to read as follows:

8 (d) The commissioner may waive the requirement for a captive
9 insurance company to file an actuarial report with the company's
10 annual report if the commissioner determines that the company:

11 (1) has less than \$1 million of net written premium or
12 reinsurance assumed; or

13 (2) has been in operation for less than six months as
14 of the end of the previous calendar year.

15 SECTION 1.11. Section 964.061(b), Insurance Code, is
16 amended to read as follows:

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

22 SECTION 1.12. Section 964.062, Insurance Code, is amended
23 to read as follows:

24 Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION OR
25 GOVERNING DOCUMENT. A captive insurance company may not amend its
26 certificate of formation or other governing document unless the
27 amendment has been filed with and approved by the commissioner.

1 SECTION 1.13. The heading to Section 964.063, Insurance
2 Code, is amended to read as follows:

3 Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS.

4 SECTION 1.14. Section 964.063(a), Insurance Code, is
5 amended to read as follows:

6 (a) A captive insurance company shall notify the
7 commissioner in writing when issuing policyholder dividends or
8 distributions to policyholders.

9 SECTION 1.15. Section 964.065, Insurance Code, is amended
10 to read as follows:

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

15 (1) insolvency or impairment of required capital or
16 surplus, or the equivalent, to policyholders;

17 (2) failure to submit an annual report, as required by
18 Section 964.060;

19 (3) failure to comply with the provisions of its own
20 charter, ~~or~~ bylaws, rules, or other governing document;

21 (4) failure to submit to examination, as required by
22 Chapter 401;

23 (5) failure to pay the cost of examination, as
24 required by Chapter 401;

25 (6) failure to pay any tax or fee required by this
26 code;

27 (7) removal of its principal office or books and

1 records from this state without prior approval of the commissioner;

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

4 (9) failure to otherwise comply with the laws of this
5 state.

6 SECTION 1.16. Section 964.070, Insurance Code, is amended
7 by amending Subsection (a) and adding Subsection (d) to read as
8 follows:

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

17 (d) The secretary of state may index in the public record
18 any document filed with the secretary by an applicant or captive
19 insurance company.

20 SECTION 1.17. Subchapter B, Chapter 964, Insurance Code, is
21 amended by adding Section 964.073 to read as follows:

22 Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED; EXCEPTION.

23 (a) Except as provided by Subsection (b), a captive insurance
24 company is not required to use a person licensed as an adjuster
25 under Chapter 4101 to adjust losses.

26 (b) A captive insurance company shall use a person licensed
27 as an adjuster under Chapter 4101 to adjust a claim that a person

1 that is not an affiliated company or an insured controlled
2 unaffiliated business makes against an affiliated company insured
3 by the captive insurance company.

4 ARTICLE 2. CAPTIVE EXCHANGES

5 SECTION 2.01. Chapter 964, Insurance Code, is amended by
6 adding Subchapter C to read as follows:

7 SUBCHAPTER C. CAPTIVE EXCHANGES

8 Sec. 964.101. APPLICABILITY OF OTHER LAW. (a) A captive
9 exchange is subject to:

10 (1) this chapter; and

11 (2) Sections 942.051, 942.053, and 942.054.

12 (b) To the extent of a conflict, this chapter controls over
13 other law applicable to a captive exchange under this section.

14 Sec. 964.102. STATUS OF CAPTIVE EXCHANGES. A captive
15 exchange is formed as an exchange as provided by this subchapter
16 and, except as provided by this subchapter, shall operate as a
17 captive insurance company as provided by this chapter.

18 Sec. 964.103. SUBSCRIBER REQUIREMENTS. On and after the
19 date of the captive exchange's formation, each subscriber of the
20 captive exchange must:

21 (1) have an existing affiliation with each other
22 subscriber; or

23 (2) satisfy the definition of a controlled
24 unaffiliated business regardless of any affiliation relationship
25 created by the captive exchange.

26 Sec. 964.104. ATTORNEY IN FACT REQUIREMENTS. The attorney
27 in fact of a captive exchange must:

1 (1) be:

2 (A) a corporation organized in this state; or

3 (B) a limited liability company organized in this
4 state;

5 (2) on the date of the captive exchange's formation,
6 have and maintain a power of attorney with all subscribers of the
7 captive exchange;

8 (3) have its principal office in this state; and

9 (4) have at least three members in the governing body
10 of the attorney in fact, and at least one of those members must be a
11 resident of this state.

12 Sec. 964.105. ATTORNEY IN FACT POWERS AND DUTIES. (a) The
13 attorney in fact of a captive exchange shall:

14 (1) supervise the finances of the captive exchange;

15 (2) supervise the captive exchange's operations to
16 ensure the captive exchange's conformity with the captive
17 exchange's subscriber declaration and power of attorney; and

18 (3) obtain, as necessary, an audit of the account and
19 records of the attorney in fact at the expense of the captive
20 exchange.

21 (b) The attorney in fact of a captive exchange has any
22 additional powers and duties conferred by the captive exchange's
23 subscriber declaration and power of attorney.

24 Sec. 964.106. SUBSCRIBER DECLARATION. A captive exchange
25 shall file with the department a subscriber declaration that
26 includes:

27 (1) the information described by Section [942.053](#);

1 (2) the amount of the captive exchange's initial
2 surplus; and

3 (3) a provision to authorize a quorum of the governing
4 body of the captive exchange's attorney in fact to consist of not
5 fewer than one-third of the fixed number of members of the governing
6 body.

7 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

8 SECTION 3.01. The change in law made by this Act to Section
9 964.070, Insurance Code, applies only to information filed with the
10 secretary of state on or after September 1, 2017. Information filed
11 with the secretary of state before September 1, 2017, is governed by
12 the law applicable to the information immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 3.02. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2017.