

By: Murphy

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:

SECTION 1. Section 964.001(a), Insurance Code, is amended by adding Subdivision (1-a) to read as follows:

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

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

(b) A captive insurance company may not issue:

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

(2) annuities;

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

(4) title insurance;

(5) mortgage guaranty insurance;

(6) financial guaranty insurance;

- 1 (7) residential property insurance;
- 2 (8) personal automobile insurance; or
- 3 (9) workers' compensation insurance.

4 SECTION 3. Section 964.052, Insurance Code, is amended by
5 adding Subsection (f) to read as follows:

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

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

11 (A) on the list of qualified jurisdictions of the
12 National Association of Insurance Commissioners; and

13 (B) acceptable to the commissioner;

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

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

18 (A) has registered with the Securities and
19 Exchange Commission;

20 (B) is designated as a nationally recognized
21 statistical rating organization;

22 (C) is on the list of Credit Rating Providers by
23 the Securities Valuation Office of the National Association of
24 Insurance Commissioners; and

25 (D) is acceptable to the commissioner.

26 SECTION 4. Sections 964.053(b), (d), and (e), Insurance
27 Code, are amended to read as follows:

1 (b) A captive insurance company may be formed and operated
2 as a captive exchange in accordance with Subchapter C or in any form
3 of business organization authorized under the Business
4 Organizations Code except a risk retention group or general
5 partnership. A captive exchange [~~insurance company~~] may only be
6 formed as a nonprofit corporation if it is controlled by a nonprofit
7 corporation.

8 (d) The board of directors or governing body of a captive
9 insurance company formed in this state must have at least three
10 members, and at least one of the members must be a resident of this
11 state. If the captive insurance company is a captive exchange, the
12 principal office of the attorney in fact must be in this state.

13 (e) The certificate of formation, ~~or~~ bylaws, or governing
14 document of a captive insurance company must authorize a quorum of
15 the board of directors or governing body to consist of not fewer
16 than one-third of the fixed number of directors or members of the
17 governing body.

18 SECTION 5. Section 964.055(a), Insurance Code, is amended
19 to read as follows:

20 (a) An entity may not engage in business as a captive
21 insurance company domiciled in this state unless it holds a
22 certificate of authority issued by the department to act as a
23 captive insurance company. A captive insurance company, when
24 permitted by its certificate of formation or governing document,
25 may apply for a certificate of authority under this chapter.

26 SECTION 6. Section 964.056(c), Insurance Code, is amended
27 to read as follows:

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

3 (1) United States currency;

4 (2) an irrevocable letter of credit, in a form
5 approved by the commissioner and not secured by a guarantee from an
6 affiliate, naming the commissioner as beneficiary for the security
7 of the captive insurance company's policyholders and issued by a
8 bank approved by the commissioner;

9 (3) bonds of this state or a county or municipality of
10 this state; or

11 (4) bonds or other evidences of indebtedness of the
12 United States, the principal and interest of which are guaranteed
13 by the United States.

14 SECTION 7. Section 964.057(a), Insurance Code, is amended
15 to read as follows:

16 (a) To obtain a certificate of authority for a captive
17 insurance company, the incorporators or organizers must pay to the
18 commissioner an application fee and file with the commissioner an
19 application for the certificate of authority, which must include:

20 (1) a financial statement certified by two principal
21 officers;

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

25 (3) the captive insurance company's certificate of
26 formation or other documentation demonstrating the captive
27 insurance company's valid formation;

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

3 (A) the capital and surplus are the bona fide
4 property of the company; and

5 (B) the certificate of formation or other
6 documentation demonstrating the captive insurance company's valid
7 formation is true and correct; and

8 (5) if the application provides for the issuance of
9 shares of stock or other type of equity instrument without par
10 value, a certificate authenticated by the incorporators or officers
11 stating:

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

14 (B) the actual consideration received by the
15 captive insurance company for those shares or other type of equity
16 instrument.

17 SECTION 8. Sections 964.059(a) and (d), Insurance Code, are
18 amended to read as follows:

19 (a) The commissioner shall determine whether:

20 (1) the capital structure of the applicant meets the
21 requirements of this chapter;

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

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

27 (4) the applicant otherwise satisfies the

1 requirements of this chapter.

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

4 (1) issue to the applicant a certificate of authority
5 to engage in business as provided for in the applicant's
6 certificate of formation or other governing document;

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

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

11 SECTION 9. Section 964.060, Insurance Code, is amended by
12 adding Subsection (d) to read as follows:

13 (d) A captive insurance company is exempt from the
14 requirement to file an actuarial report with the company's annual
15 report if the company:

16 (1) has less than \$1 million of total direct written
17 premium or reinsurance assumed; or

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

20 SECTION 10. Section 964.062, Insurance Code, is amended to
21 read as follows:

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

26 SECTION 11. The heading to Section 964.063, Insurance Code,
27 is amended to read as follows:

1 Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS.

2 SECTION 12. Section 964.063(a), Insurance Code, is amended
3 to read as follows:

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

7 SECTION 13. Section 964.065, Insurance Code, is amended to
8 read as follows:

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

13 (1) insolvency or impairment of required capital or
14 surplus to policyholders;

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

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

19 (4) failure to submit to examination, as required by
20 Chapter 401;

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

23 (6) failure to pay any tax or fee required by this
24 code;

25 (7) removal of its principal office or books and
26 records from this state without prior approval of the commissioner;

27 (8) use of practices that render its operation

1 detrimental to the public or its condition unsound; or

2 (9) failure to otherwise comply with the laws of this
3 state.

4 SECTION 14. Subchapter B, Chapter 964, Insurance Code, is
5 amended by adding Section 964.073 to read as follows:

6 Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED.

7 Notwithstanding Section 4101.051, a person who acts as an adjuster,
8 as defined by Section 4101.001, solely on behalf of a captive
9 insurance company in adjusting a claim of an affiliate or
10 controlled unaffiliated business insured by the company is not
11 required to hold a license under Chapter 4101.

12 SECTION 15. Chapter 964, Insurance Code, is amended by
13 adding Subchapter C to read as follows:

14 SUBCHAPTER C. CAPTIVE EXCHANGES

15 Sec. 964.101. DEFINITIONS. In this subchapter, a term
16 defined by Section 942.001 has the meaning assigned by that
17 section.

18 Sec. 964.102. APPLICABILITY OF OTHER LAW. (a) A captive
19 exchange is subject to:

20 (1) this chapter; and

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

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

24 Sec. 964.103. STATUS OF CAPTIVE EXCHANGES. A captive
25 exchange is formed as an exchange as provided by this subchapter
26 and, except as provided by this subchapter, shall operate as a
27 captive insurance company as provided by this chapter.

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

3 (1) be:

4 (A) a corporation organized in this state in
5 accordance with Section 942.051; or

6 (B) a limited liability company organized in this
7 state;

8 (2) on the date of the captive exchange's formation,
9 have an existing affiliation with all subscribers of the captive
10 exchange regardless of any affiliation relationship created by the
11 captive exchange;

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

13 (4) have at least three members in the governing body
14 of the attorney in fact and at least one of those members must be a
15 resident of this state.

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

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

19 (2) supervise the captive exchange's operations to
20 ensure the captive exchange's conformity with the captive
21 exchange's subscriber declaration and power of attorney; and

22 (3) obtain, as necessary, an audit of the account and
23 records of the attorney in fact at the expense of the captive
24 exchange.

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

1 Sec. 964.106. RELATIONSHIP REQUIREMENTS. (a) On the date
2 of the captive exchange's formation, each subscriber of a captive
3 exchange must have an existing affiliation with each other
4 subscriber regardless of any affiliation relationship created by
5 the captive exchange.

6 (b) On the date of the captive exchange's formation, a
7 controlled unaffiliated business of the captive exchange must have
8 an existing contractual relationship with an affiliate that
9 qualifies as a subscriber.

10 Sec. 964.107. SUBSCRIBER DECLARATION. A captive exchange
11 shall file with the department a subscriber declaration that
12 includes:

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

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

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

20 SECTION 16. This Act takes effect September 1, 2017.