

1-1 By: Murphy, Capriglione (Senate Sponsor - Hughes) H.B. No. 1944
 1-2 (In the Senate - Received from the House May 8, 2017;
 1-3 May 8, 2017, read first time and referred to Committee on Business
 1-4 & Commerce; May 21, 2017, reported favorably by the following vote:
 1-5 Yeas 6, Nays 1; May 21, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Creighton		X		
1-9 Campbell	X			
1-10 Estes			X	
1-11 Nichols	X			
1-12 Schwertner	X			
1-13 Taylor of Galveston			X	
1-14 Whitmire	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to captive insurance companies.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 ARTICLE 1. REGULATION OF CAPTIVE INSURANCE COMPANIES
 1-22 SECTION 1.01. Section 964.001(a), Insurance Code, is
 1-23 amended by adding Subdivisions (1-a), (1-b), and (8) and amending
 1-24 Subdivision (2) to read as follows:
 1-25 (1-a) "Attorney in fact" means a firm or corporation
 1-26 that, under a power of attorney or other appropriate authorization
 1-27 of the attorney in fact, acts for subscribers of a captive exchange
 1-28 by issuing reciprocal or interinsurance contracts.
 1-29 (1-b) "Captive exchange" means a reciprocal or
 1-30 interinsurance exchange formed under this chapter. The term
 1-31 includes the attorney in fact through which a reciprocal or
 1-32 interinsurance contract, as defined by Section 942.001, is
 1-33 exchanged.
 1-34 (2) "Captive insurance company" means a company that
 1-35 holds a certificate of authority under this chapter to insure the
 1-36 operational risks of the company's affiliates or risks of a
 1-37 controlled unaffiliated business. The term includes a captive
 1-38 exchange.
 1-39 (8) "Subscriber" means an affiliated company or
 1-40 controlled unaffiliated business that enters into a reciprocal
 1-41 contract of insurance with an attorney in fact as a subscriber of a
 1-42 captive exchange.
 1-43 SECTION 1.02. Section 964.051(b), Insurance Code, is
 1-44 amended to read as follows:
 1-45 (b) A captive insurance company may not issue:
 1-46 (1) life insurance, except to insure employee benefits
 1-47 that are subject to the Employee Retirement Income Security Act of
 1-48 1974 (29 U.S.C. Section 1001 et seq.);
 1-49 (2) annuities;
 1-50 (3) accident and health insurance for the company's
 1-51 parent and affiliates, except to insure employee benefits that are
 1-52 subject to the Employee Retirement Income Security Act of 1974 (29
 1-53 U.S.C. Section 1001 et seq.);
 1-54 (4) title insurance;
 1-55 (5) mortgage guaranty insurance;
 1-56 (6) financial guaranty insurance;
 1-57 (7) residential property insurance;
 1-58 (8) personal automobile insurance; or
 1-59 (9) workers' compensation insurance.
 1-60 SECTION 1.03. Section 964.052, Insurance Code, is amended
 1-61 by adding Subsection (f) to read as follows:

2-1 (f) A captive insurance company may cede risks to or take
 2-2 credit for reserves on risks ceded to a nonaffiliated reinsurer if
 2-3 the reinsurer:

2-4 (1) holds a certificate of authority to transact
 2-5 insurance or reinsurance in a jurisdiction that is:

2-6 (A) on the list of qualified jurisdictions of the
 2-7 National Association of Insurance Commissioners; and

2-8 (B) acceptable to the commissioner;

2-9 (2) maintains minimum capital and surplus, or the
 2-10 equivalent, of \$250 million as of the end of the preceding year; and

2-11 (3) maintains a financial strength rating of B+ or its
 2-12 equivalent from a national or international rating agency that:

2-13 (A) has registered with the Securities and
 2-14 Exchange Commission;

2-15 (B) is designated as a nationally recognized
 2-16 statistical rating organization;

2-17 (C) is on the list of Credit Rating Providers by
 2-18 the Securities Valuation Office of the National Association of
 2-19 Insurance Commissioners; and

2-20 (D) is acceptable to the commissioner.

2-21 SECTION 1.04. Sections 964.053(a), (c), (d), and (e),
 2-22 Insurance Code, are amended to read as follows:

2-23 (a) A captive insurance company, other than a captive
 2-24 exchange, or an attorney in fact must be formed for the purpose of
 2-25 engaging in the business of insurance under this chapter by filing
 2-26 an appropriate application with the secretary of state.

2-27 (c) The certificate of formation of a captive insurance
 2-28 company, other than a captive exchange, or an attorney in fact must
 2-29 comply with the applicable requirements of the Business
 2-30 Organizations Code. The ~~must include:~~

2-31 ~~[(1) the] name of the company or attorney in fact in~~
 2-32 ~~the certificate of formation may include the words "insurance,"~~
 2-33 ~~"company," or similar words indicating that the purpose of the~~
 2-34 ~~company or attorney in fact is to operate as an insurance company or~~
 2-35 ~~attorney in fact under this chapter [, which may not be the same as,~~
 2-36 ~~deceptively similar to, or likely to be confused with or mistaken~~
 2-37 ~~for any other existing business name registered in this state;~~

2-38 ~~[(2) the location of the company's principal business~~
 2-39 ~~office;~~

2-40 ~~[(3) the type of insurance business in which the~~
 2-41 ~~company proposes to engage;~~

2-42 ~~[(4) the number of directors or members of the~~
 2-43 ~~governing body of the company;~~

2-44 ~~[(5) the number of authorized shares and the par value~~
 2-45 ~~of the company's capital stock for a captive insurance company~~
 2-46 ~~formed as a corporation;~~

2-47 ~~[(6) the amount of the company's initial capital and~~
 2-48 ~~surplus; and~~

2-49 ~~[(7) any other information required by the~~
 2-50 ~~commissioner as necessary to explain the company's objectives,~~
 2-51 ~~management, and control].~~

2-52 (d) The board of directors or governing body of a captive
 2-53 insurance company formed in this state must have at least three
 2-54 members, and at least one of the members must be a resident of this
 2-55 state. If the captive insurance company is a captive exchange, the
 2-56 principal office of the attorney in fact must be in this state.

2-57 (e) The certificate of formation, ~~or~~ bylaws, or governing
 2-58 document of a captive insurance company must authorize a quorum of
 2-59 the board of directors or governing body to consist of not fewer
 2-60 than one-third of the fixed number of directors or members of the
 2-61 governing body.

2-62 SECTION 1.05. Section 964.055(a), Insurance Code, is
 2-63 amended to read as follows:

2-64 (a) An entity may not engage in business as a captive
 2-65 insurance company domiciled in this state unless it holds a
 2-66 certificate of authority issued by the department to act as a
 2-67 captive insurance company. A captive insurance company, when
 2-68 permitted by its certificate of formation or governing document,
 2-69 may apply for a certificate of authority under this chapter.

3-1 SECTION 1.06. Section 964.056, Insurance Code, is amended
3-2 to read as follows:

3-3 Sec. 964.056. CAPITAL AND SURPLUS OR EQUIVALENT
3-4 REQUIREMENTS. (a) The department may not issue a certificate of
3-5 authority to a captive insurance company unless the company
3-6 possesses and maintains unencumbered capital and surplus, or the
3-7 equivalent, in an amount determined by the commissioner after
3-8 considering:

3-9 (1) the amount of premium written by the captive
3-10 insurance company;

3-11 (2) the characteristics of the assets held by the
3-12 captive insurance company;

3-13 (3) the terms of reinsurance arrangements entered into
3-14 by the captive insurance company;

3-15 (4) the type of business covered in policies issued by
3-16 the captive insurance company;

3-17 (5) the underwriting practices and procedures of the
3-18 captive insurance company; and

3-19 (6) any other criteria that has an impact on the
3-20 operations of the captive insurance company determined to be
3-21 significant by the commissioner.

3-22 (b) The amount of capital and surplus, or the equivalent,
3-23 determined by the commissioner under Subsection (a) may not be less
3-24 than \$250,000.

3-25 (c) The capital and surplus, or the equivalent, required by
3-26 Subsection (a) must be in the form of:

3-27 (1) United States currency;

3-28 (2) an irrevocable letter of credit, in a form
3-29 approved by the commissioner and not secured by a guarantee from an
3-30 affiliate, naming the commissioner as beneficiary for the security
3-31 of the captive insurance company's policyholders and issued by a
3-32 bank approved by the commissioner;

3-33 (3) bonds of this state or a county or municipality of
3-34 this state; or

3-35 (4) bonds or other evidences of indebtedness of the
3-36 United States, the principal and interest of which are guaranteed
3-37 by the United States.

3-38 SECTION 1.07. Section 964.057(a), Insurance Code, is
3-39 amended to read as follows:

3-40 (a) After forming [To obtain a certificate of authority for]
3-41 a captive insurance company, other than a captive exchange, or an
3-42 attorney in fact, the incorporators or organizers must pay to the
3-43 commissioner an application fee and file with the commissioner an
3-44 application for a [the] certificate of authority for a captive
3-45 insurance company, which must include:

3-46 (1) a financial statement certified by two principal
3-47 officers;

3-48 (2) a plan of operation and projections, which must
3-49 include an actuarial report prepared by a qualified independent
3-50 actuary;

3-51 (3) the captive insurance company's certificate of
3-52 formation or other documentation demonstrating the valid formation
3-53 of the captive insurance company, other than a captive exchange, or
3-54 the attorney in fact;

3-55 (4) an affidavit by the incorporators, organizers, or
3-56 officers of the captive insurance company stating that:

3-57 (A) the capital and surplus, or the equivalent,
3-58 are the bona fide property of the company; and

3-59 (B) the certificate of formation or other
3-60 documentation demonstrating the captive insurance company's or
3-61 attorney in fact's valid formation is true and correct; and

3-62 (5) if the application provides for the issuance of
3-63 shares of stock or other type of equity instrument without par
3-64 value, a certificate authenticated by the incorporators or officers
3-65 stating:

3-66 (A) the number of shares or other type of equity
3-67 instrument without par value that are subscribed; and

3-68 (B) the actual consideration received by the
3-69 captive insurance company for those shares or other type of equity

4-1 instrument.

4-2 SECTION 1.08. Section 964.058(a), Insurance Code, is
4-3 amended to read as follows:

4-4 (a) After the application and application fee for a
4-5 certificate of authority under Section 964.057 are filed with the
4-6 department and the applicant has complied with all legal
4-7 requirements, the commissioner shall conduct an examination of the
4-8 applicant to determine whether:

4-9 (1) the minimum capital and surplus, or the
4-10 equivalent, requirements of Section 964.056 are satisfied;

4-11 (2) the capital and surplus, or the equivalent, are
4-12 the bona fide property of the applicant; and

4-13 (3) the applicant has fully complied with applicable
4-14 insurance laws.

4-15 SECTION 1.09. Sections 964.059(a) and (d), Insurance Code,
4-16 are amended to read as follows:

4-17 (a) The commissioner shall determine whether:

4-18 (1) the capital and surplus, or the equivalent,
4-19 [~~structure~~] of the applicant meet [~~meets~~] the requirements of this
4-20 chapter;

4-21 (2) the officers or members [~~directors~~] of the
4-22 applicant's governing body [~~applicant~~] have sufficient insurance
4-23 experience, ability, standing, and good record to make success of
4-24 the captive insurance company probable;

4-25 (3) the applicant is acting in good faith; and

4-26 (4) the applicant otherwise satisfies the
4-27 requirements of this chapter.

4-28 (d) If the commissioner does not deny the application under
4-29 Subsection (c), the commissioner shall approve the application and:

4-30 (1) issue to the applicant a certificate of authority
4-31 to engage in business as provided for in the applicant's
4-32 certificate of formation or other governing document;

4-33 (2) certify and file the approved document with the
4-34 department; and

4-35 (3) issue a certified copy of the certificate of
4-36 authority to the applicant's incorporators or officers.

4-37 SECTION 1.10. Section 964.060, Insurance Code, is amended
4-38 by adding Subsection (d) to read as follows:

4-39 (d) The commissioner may waive the requirement for a captive
4-40 insurance company to file an actuarial report with the company's
4-41 annual report if the commissioner determines that the company:

4-42 (1) has less than \$1 million of net written premium or
4-43 reinsurance assumed; or

4-44 (2) has been in operation for less than six months as
4-45 of the end of the previous calendar year.

4-46 SECTION 1.11. Section 964.061(b), Insurance Code, is
4-47 amended to read as follows:

4-48 (b) A captive insurance company may make loans to its
4-49 affiliates with the prior approval of the commissioner. Each loan
4-50 must be evidenced by a note approved by the commissioner. A
4-51 captive insurance company may not make a loan of the minimum capital
4-52 and surplus funds, or the equivalent, required by this chapter.

4-53 SECTION 1.12. Section 964.062, Insurance Code, is amended
4-54 to read as follows:

4-55 Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION OR
4-56 GOVERNING DOCUMENT. A captive insurance company may not amend its
4-57 certificate of formation or other governing document unless the
4-58 amendment has been filed with and approved by the commissioner.

4-59 SECTION 1.13. The heading to Section 964.063, Insurance
4-60 Code, is amended to read as follows:

4-61 Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS.

4-62 SECTION 1.14. Section 964.063(a), Insurance Code, is
4-63 amended to read as follows:

4-64 (a) A captive insurance company shall notify the
4-65 commissioner in writing when issuing policyholder dividends or
4-66 distributions to policyholders.

4-67 SECTION 1.15. Section 964.065, Insurance Code, is amended
4-68 to read as follows:

4-69 Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF

5-1 AUTHORITY. The commissioner, after notice and an opportunity for
 5-2 hearing, may revoke or suspend the certificate of authority of a
 5-3 captive insurance company for:

5-4 (1) insolvency or impairment of required capital or
 5-5 surplus, or the equivalent, to policyholders;

5-6 (2) failure to submit an annual report, as required by
 5-7 Section 964.060;

5-8 (3) failure to comply with the provisions of its own
 5-9 charter, ~~[or]~~ bylaws, rules, or other governing document;

5-10 (4) failure to submit to examination, as required by
 5-11 Chapter 401;

5-12 (5) failure to pay the cost of examination, as
 5-13 required by Chapter 401;

5-14 (6) failure to pay any tax or fee required by this
 5-15 code;

5-16 (7) removal of its principal office or books and
 5-17 records from this state without prior approval of the commissioner;

5-18 (8) use of practices that render its operation
 5-19 detrimental to the public or its condition unsound; or

5-20 (9) failure to otherwise comply with the laws of this
 5-21 state.

5-22 SECTION 1.16. Section 964.070, Insurance Code, is amended
 5-23 by amending Subsection (a) and adding Subsection (d) to read as
 5-24 follows:

5-25 (a) Any information filed with the commissioner by an
 5-26 applicant or captive insurance company under this chapter is
 5-27 confidential and privileged for all purposes, including for
 5-28 purposes of Chapter 552, Government Code, a response to a subpoena,
 5-29 or evidence in a civil action. Except as provided by Subsections
 5-30 (b) and (c), the information may not be disclosed without the prior
 5-31 written consent of the applicant or captive insurance company to
 5-32 which the information pertains.

5-33 (d) The secretary of state may index in the public record
 5-34 any document filed with the secretary by an applicant or captive
 5-35 insurance company.

5-36 SECTION 1.17. Subchapter B, Chapter 964, Insurance Code, is
 5-37 amended by adding Section 964.073 to read as follows:

5-38 Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED; EXCEPTION.

5-39 (a) Except as provided by Subsection (b), a captive insurance
 5-40 company is not required to use a person licensed as an adjuster
 5-41 under Chapter 4101 to adjust losses.

5-42 (b) A captive insurance company shall use a person licensed
 5-43 as an adjuster under Chapter 4101 to adjust a claim that a person
 5-44 that is not an affiliated company or an insured controlled
 5-45 unaffiliated business makes against an affiliated company insured
 5-46 by the captive insurance company.

5-47 ARTICLE 2. CAPTIVE EXCHANGES

5-48 SECTION 2.01. Chapter 964, Insurance Code, is amended by
 5-49 adding Subchapter C to read as follows:

5-50 SUBCHAPTER C. CAPTIVE EXCHANGES

5-51 Sec. 964.101. APPLICABILITY OF OTHER LAW. (a) A captive
 5-52 exchange is subject to:

5-53 (1) this chapter; and

5-54 (2) Sections 942.051, 942.053, and 942.054.

5-55 (b) To the extent of a conflict, this chapter controls over
 5-56 other law applicable to a captive exchange under this section.

5-57 Sec. 964.102. STATUS OF CAPTIVE EXCHANGES. A captive
 5-58 exchange is formed as an exchange as provided by this subchapter
 5-59 and, except as provided by this subchapter, shall operate as a
 5-60 captive insurance company as provided by this chapter.

5-61 Sec. 964.103. SUBSCRIBER REQUIREMENTS. On and after the
 5-62 date of the captive exchange's formation, each subscriber of the
 5-63 captive exchange must:

5-64 (1) have an existing affiliation with each other
 5-65 subscriber; or

5-66 (2) satisfy the definition of a controlled
 5-67 unaffiliated business regardless of any affiliation relationship
 5-68 created by the captive exchange.

5-69 Sec. 964.104. ATTORNEY IN FACT REQUIREMENTS. The attorney

6-1 in fact of a captive exchange must:

6-2 (1) be:

6-3 (A) a corporation organized in this state; or

6-4 (B) a limited liability company organized in this
6-5 state;

6-6 (2) on the date of the captive exchange's formation,
6-7 have and maintain a power of attorney with all subscribers of the
6-8 captive exchange;

6-9 (3) have its principal office in this state; and

6-10 (4) have at least three members in the governing body
6-11 of the attorney in fact, and at least one of those members must be a
6-12 resident of this state.

6-13 Sec. 964.105. ATTORNEY IN FACT POWERS AND DUTIES. (a) The
6-14 attorney in fact of a captive exchange shall:

6-15 (1) supervise the finances of the captive exchange;

6-16 (2) supervise the captive exchange's operations to
6-17 ensure the captive exchange's conformity with the captive
6-18 exchange's subscriber declaration and power of attorney; and

6-19 (3) obtain, as necessary, an audit of the account and
6-20 records of the attorney in fact at the expense of the captive
6-21 exchange.

6-22 (b) The attorney in fact of a captive exchange has any
6-23 additional powers and duties conferred by the captive exchange's
6-24 subscriber declaration and power of attorney.

6-25 Sec. 964.106. SUBSCRIBER DECLARATION. A captive exchange
6-26 shall file with the department a subscriber declaration that
6-27 includes:

6-28 (1) the information described by Section 942.053;

6-29 (2) the amount of the captive exchange's initial
6-30 surplus; and

6-31 (3) a provision to authorize a quorum of the governing
6-32 body of the captive exchange's attorney in fact to consist of not
6-33 fewer than one-third of the fixed number of members of the governing
6-34 body.

6-35 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

6-36 SECTION 3.01. The change in law made by this Act to Section
6-37 964.070, Insurance Code, applies only to information filed with the
6-38 secretary of state on or after September 1, 2017. Information filed
6-39 with the secretary of state before September 1, 2017, is governed by
6-40 the law applicable to the information immediately before the
6-41 effective date of this Act, and that law is continued in effect for
6-42 that purpose.

6-43 SECTION 3.02. This Act takes effect immediately if it
6-44 receives a vote of two-thirds of all the members elected to each
6-45 house, as provided by Section 39, Article III, Texas Constitution.
6-46 If this Act does not receive the vote necessary for immediate
6-47 effect, this Act takes effect September 1, 2017.

6-48 * * * * *