

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE G. LLOYD'S PLAN AND RECIPROCAL AND INTERINSURANCE

EXCHANGES

CHAPTER 942. RECIPROCAL AND INTERINSURANCE EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 942.001. DEFINITIONS. In this chapter:

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

(2) "Exchange" means a reciprocal or interinsurance exchange and includes the office through which a reciprocal or interinsurance contract is exchanged.

(3) "Reciprocal or interinsurance contract" means an insurance policy or other contract that provides indemnity among a group of subscribers for certain losses.

(4) "Subscriber" means an individual, partnership, or corporation who, through an attorney in fact, enters into a reciprocal or interinsurance contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.002. SUBSCRIBER INSURANCE COVERAGE THROUGH EXCHANGE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (c), subscribers of this state may exchange reciprocal or interinsurance contracts with other subscribers of this state or of another state or country to provide indemnity among those subscribers for a loss for which insurance coverage may be obtained under other law.

(b) A public, private, or municipal corporation organized under the laws of this state may act as a subscriber, and the right to exchange a reciprocal or interinsurance contract is:

(1) incidental to the purpose for which the corporation is organized; and

(2) in addition to the corporate rights and powers

expressly conferred in the corporation's articles of incorporation.

(c) An exchange may not engage in the business of life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) An exchange is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless exchanges are specifically mentioned in the other law.

(b) An exchange is subject to:

(1) Subchapter A, Chapter 5, Chapter 254, Subchapters A and B, Chapter 1806, and Subtitle C, Title 10;

(2) Articles 5.35, 5.39, and 5.40;

(3) Article 5.13-2, as provided by that article, Chapter 2251, as provided by that chapter, and Chapter 2301, as provided by that chapter;

(4) Chapters 402, 541, and 2253;

(5) Subchapter A, Chapter 401, and Sections 401.051, 401.052, 401.054, 401.055, 401.056, 401.057, 401.058, 401.059, 401.060, 401.061, 401.062, 401.151, 401.152, 401.155, and 401.156;

(6) Subchapter B, Chapter 404;

(7) Subchapter C, Chapter 1806; and

(8) Sections 38.001, 501.159, 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), 862.003, 2002.002, 2002.005, 2002.051, and 2002.052.

(c) Chapter 2007 applies to rates for motor vehicle insurance written by an exchange.

(d) The provisions of the Texas Business Corporation Act that relate to the indemnification of officers and directors apply to an exchange.

(e) Subscribers and their attorney in fact are subject to Sections 822.051, 822.057-822.060, and 822.201, except that:

(1) the declaration of the subscribers prescribed by Section 942.053 replaces the articles of incorporation; and

(2) the unencumbered surplus of the exchange

constitutes capital structure for purposes of Section 822.060.

(f) An exchange is subject to Chapter 2210, as provided by that chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.44(a), (b), eff. June 11, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1295 (H.B. 2614), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.119, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.027, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.027, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 43, eff. June 19, 2009.

SUBCHAPTER B. FORMATION AND STRUCTURE OF EXCHANGE

Sec. 942.051. APPOINTMENT OF ATTORNEY IN FACT; APPROVAL BY DEPARTMENT OF POWER OF ATTORNEY OR OTHER AUTHORIZATION REQUIRED.

(a) A reciprocal or interinsurance contract may be executed by an attorney in fact appointed by the subscribers of an exchange.

(b) A corporation may be organized in this state to act as attorney in fact for an exchange. The general laws regarding incorporation supplement this chapter to the extent consistent with this chapter. A corporation organized in this state to act as attorney in fact for an exchange may be organized under the Texas Business Corporation Act, notwithstanding any conflicting provision of that Act.

(c) The form of the power of attorney or other document granting authority to the attorney in fact and under which the insurance is to be exchanged is subject to approval by the department. This subsection may not be construed to permit the

department to require the filing or use of uniform forms of those documents except as otherwise provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.052. SECURITY REQUIREMENTS. (a) Except as provided by Subsection (d), to act as an attorney in fact, an individual, firm, or corporation must execute a good and sufficient fidelity bond that obligates the principal and surety to pay a pecuniary loss of money or property, not exceeding the amount of the bond, that is sustained by the exchange through fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of the attorney in fact, directly or through connivance with others.

(b) The bond must:

- (1) be acceptable to the department;
- (2) be payable to the subscribers or the department;

and

(3) be in the amount of:

- (A) \$25,000 for an individual or firm; or
- (B) \$50,000 for a corporation.

(c) If the conditions of the bond are violated, the insurance supervisory authority of any state in which the attorney in fact is authorized to engage in the business of the exchange may bring an action to enforce the bond on behalf of the subscribers.

(d) Instead of a bond, an attorney in fact may deposit with the appropriate official of the exchange's state of domicile cash or securities of the kind in which a general casualty company is authorized to invest its funds. The deposit must be made in the same amount, and must be conditioned, approved, and payable in the same manner, as a bond required under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.053. SUBSCRIBER DECLARATION. (a) On entering into a reciprocal or interinsurance contract, the subscribers, through the attorney in fact, shall file with the department a declaration verified by the oath of the attorney in fact.

(b) The declaration must include:

- (1) the name of the proposed exchange;
- (2) the kinds of insurance to be provided under the reciprocal or interinsurance contract;
- (3) a copy of the form of the power of attorney or other authorization of the attorney in fact under which the insurance is to be provided;
- (4) the location of each office from which the reciprocal or interinsurance contracts are to be issued; and
- (5) any other information prescribed by the department, including an affidavit comparable to the affidavit prescribed by Section [822.057](#)(a)(3).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.054. NAME OF EXCHANGE. (a) The name of an exchange must contain the term "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors."

(b) The name selected for an exchange may not be so similar to the name of a similar organization or an insurer that, in the opinion of the department, the name is calculated to confuse or deceive.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.055. OFFICE LOCATIONS. The attorney in fact shall maintain the offices of the exchange at the places designated by the subscribers in the power of attorney or other authorization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 942.101. CERTIFICATE OF AUTHORITY REQUIRED; EFFECT ON FOREIGN CORPORATIONS. (a) An attorney in fact must hold a certificate of authority issued by the department under Sections [801.001](#), [801.002](#), [801.051-801.055](#), [801.057](#), [801.101](#), and [801.102](#). A certificate of authority obtained in accordance with this section authorizes the attorney in fact named in the certificate to exercise all powers and perform all duties of an attorney in fact.

(b) A corporation required to obtain a certificate of authority from the department under this section is not considered to be engaging in business in this state within the meaning of any law applying to foreign corporations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF EXCHANGE

Sec. 942.151. SUBSCRIBER LIABILITY FOR CERTAIN CONTINGENT PREMIUMS. (a) Except as provided by Section 942.152 and Subsection (b), if a certificate of authority is issued as provided by Subchapter C, the power of attorney or other authorization executed by the subscribers must provide that, in addition to the premium or premium deposit specified in the reciprocal or interinsurance contract, the subscribers are liable for a contingent premium equal to one additional annual premium or premium deposit.

(b) If the subscribers and their attorney in fact are authorized to issue reciprocal or interinsurance contracts for cash premiums only, the power of attorney or other authorization may waive all contingent premiums.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.152. SUBSCRIBER LIMITED LIABILITY BASED ON CERTAIN MINIMUM CAPITAL AND SURPLUS. If the unencumbered surplus of an exchange is at least equal to the minimum capital stock and minimum surplus required of a stock insurance company engaged in the same kinds of business, the subscribers of the exchange may provide by agreement that the premium or premium deposit specified in the reciprocal or interinsurance contract constitutes the entire liability of the subscribers through the exchange.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.153. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed the subscribers of an exchange and their attorney in fact to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.154. STATEMENTS RELATING TO INDEMNITY AMOUNTS.

(a) The attorney in fact for an exchange shall file with the department a sworn statement that shows the maximum amount of indemnity on any single risk.

(b) The attorney in fact for an exchange shall, as required by the department, file with the department a sworn statement that:

(1) the attorney has examined the commercial rating of each subscriber, as established by the reference book of a commercial agency with at least 100,000 subscribers; and

(2) based on the examination or other information in the attorney's possession, it appears that no subscriber has assumed on any single risk an amount greater than 10 percent of that subscriber's net worth.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.155. FINANCIAL REQUIREMENTS. (a) An exchange shall maintain at all times an unencumbered surplus over and above all liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of business.

(b) An exchange shall maintain at all times the reserves required by the laws of this state or by rules adopted by the commissioner to be maintained by stock insurance companies engaged in the same kinds of business.

(c) An exchange shall maintain the required assets as to:

(1) minimum surplus requirements, as provided by Section 822.204; and

(2) other funds, as provided by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.120, eff. April 1, 2009.

Sec. 942.156. ISSUANCE OF FIDELITY AND SURETY BOND INSURANCE; DEPOSIT REQUIRED. (a) If a domestic exchange writes fidelity or surety bond insurance in this state, the exchange shall keep on deposit with the comptroller money, bonds, or other securities in an amount of not less than \$50,000. The department shall approve for the deposit securities described by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073, and the exchange shall maintain the approved securities intact at all times.

(b) A foreign exchange that writes fidelity or surety bond insurance in this state shall file with the department evidence satisfactory to the department that the exchange has, for the protection of its subscribers, at least \$100,000 in money, bonds, or other securities as described by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073, on deposit with the comptroller or other appropriate official of its state of domicile or in escrow under that official's supervision and control in a reliable bank or trust company. If those bonds or other securities are not acceptable to and approved by the department, the department may deny the attorney in fact for the exchange a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.121, eff. April 1, 2009.

Sec. 942.157. TRANSACTIONS BETWEEN CERTAIN INSURERS AND AFFILIATED EXCHANGES. (a) In this section, "affiliate" has the meaning assigned by Section 823.003.

(b) An insurer subject to Article 5.26 may not directly or indirectly assume all or a substantial part of any risk covered by a reciprocal or interinsurance contract written by an exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer or any affiliate of the insurer that is subject to Article 5.26.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.158. ADVANCES OF MONEY BY ATTORNEY IN FACT. (a) The attorney in fact for an exchange may advance to the exchange any amount of money necessary to conduct the business of the exchange, including any amount necessary to enable the exchange to comply with a legal requirement.

(b) Subject to the approval of the department, the advanced amount and any agreed interest on that amount, not exceeding 10 percent a year:

(1) is payable only from the surplus of the exchange remaining after providing for all reserves, other liabilities, and required surplus; and

(2) may not otherwise be a liability or claim against the exchange or any of the exchange's assets.

(c) A commission, promotion expense, or other bonus may not be paid in connection with the advance of money to the exchange.

(d) The amount of each advance must be reported in the exchange's annual report.

(e) The department may not arbitrarily refuse approval under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.159. VIOLATION BY ATTORNEY IN FACT OF REQUIREMENTS REGARDING INDEMNITY CONTRACTS; CRIMINAL PENALTY. (a) An attorney in fact commits an offense if the attorney in fact:

(1) exchanges a reciprocal or interinsurance contract without first complying with the law governing the contract; or

(2) directly or indirectly solicits or negotiates an application for the contract without first complying with the law governing the contract.

(b) Subsection (a) does not apply to an action taken by an attorney in fact for the purpose of applying for a certificate of authority from the commissioner as provided by this chapter.

(c) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION OF EXCHANGES

Sec. 942.201. ANNUAL REPORT. (a) Not later than March 1 of each year, the attorney in fact for an exchange shall submit to the commissioner a report covering the previous year ending December 31.

(b) The report must:

(1) demonstrate that the financial condition of affairs at the exchange is in accordance with the financial requirements of this chapter under Section 942.155; and

(2) provide any additional information and reports as required to show:

(A) the total amount of premiums or deposits collected;

(B) the total amount of losses paid;

(C) the total amounts returned to subscribers; and

(D) the amounts retained for expenses.

(c) The attorney in fact is not required to provide in the report the name and address of any subscriber.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.202. EXAMINATION BY DEPARTMENT. The business affairs and assets of an exchange, as shown at the office of the attorney in fact, are subject to examination by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.203. FEES; TAXES; FILING FEE. (a) To the extent applicable, the schedule of fees established under Chapter 202 applies to an exchange and the exchange's attorney in fact.

(b) An exchange is subject to:

(1) Chapters 221 and 222; and

(2) Chapters 251-255.

(c) The comptroller shall collect the taxes and the filing fee for the annual report.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.122,

eff. April 1, 2009.