

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE H. OTHER ENTITIES

CHAPTER 964. CAPTIVE INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 964.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliated company" or "affiliate" has the meaning assigned by Section 823.003 and includes a parent entity that controls a captive insurance company.

(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.

(3) "Captive management company" means an entity providing administrative services to a captive insurance company.

(4) "Control" means the power to direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with or corporate office held in the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(5) "Controlled unaffiliated business" means a person:

(A) that is not an affiliate;

(B) that has an existing contractual relationship with an affiliate under which the affiliate bears a potential financial loss; and

(C) the risks of which are managed by a captive insurance company under Section 964.066.

(6) "Operational risk" means any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

(7) "Redomestication" means the transfer to or from this state of the insurance domicile of an authorized captive insurer.

(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 captive exchange.

(b) Notwithstanding Section 30.003, in this chapter, "person" has the meaning assigned by Section 311.005, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.01, eff. June 15, 2017.

Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) Except as otherwise provided by this chapter, this code does not apply to a captive insurance company except:

- (1) Title 2;
- (2) Chapter 223A and Subtitles A and C, Title 3;
- (3) Chapter 401;
- (4) Chapter 441;
- (5) Chapter 443; and
- (6) Chapter 803.

(b) A captive insurance company operating under this chapter is subject to the Business Organizations Code, including the requirement to be authorized by the secretary of state, to the extent those laws do not conflict with this chapter.

(c) Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS.

(a) Except as provided by this section, a captive insurance company may write any type of insurance, but may only insure the operational risks of the company's affiliates and risks of a controlled unaffiliated business.

(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;

(7) residential property insurance;

(8) personal automobile insurance; or

(9) workers' compensation insurance.

(c) A captive insurance company may not issue a type of insurance, including automobile liability insurance, that is required, under the laws of this state or a political subdivision of this state, as a prerequisite for obtaining a license or permit if the law requires that the liability insurance be issued by an insurer authorized to engage in the business of insurance in this state.

(d) A captive insurance company is authorized to issue a contractual reimbursement policy to:

(1) an affiliated certified self-insurer authorized under Chapter 407, Labor Code, or a similar affiliated entity expressly authorized by analogous laws of another state; or

(2) an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.02, eff. June 15, 2017.

Sec. 964.052. REINSURANCE. (a) A captive insurance company may provide reinsurance to an insurer covering the operational risks of the captive insurance company's affiliates, or risks of a controlled unaffiliated business, that the captive insurance company may insure directly under Section 964.051 and:

(1) employee benefit plans offered by affiliates;

(2) liability insurance an affiliate must maintain as a prerequisite for obtaining a license or permit if the law requires maintenance of the liability insurance;

(3) credit life insurance and credit disability insurance offered as a part of, or directly relating to, the operational risks of an affiliate; and

(4) workers' compensation insurance and employer liability policies issued to affiliates if the insurer that directly issues workers' compensation insurance and employer's liability policies or its licensed, if required by law, administrator or adjuster:

(A) services all claims incurred during the policy period; and

(B) complies with all requirements for an insurer under this code, including Chapter 462, and under Title 5, Labor Code.

(b) A captive insurance company shall provide notice to the commissioner of a reinsurance agreement that the company becomes a party to not later than the 30th day after the date of the execution

of the agreement.

(c) A captive insurance company shall provide notice of a termination of a previously filed reinsurance agreement to the commissioner not later than the 30th day after the date of termination.

(d) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers under Subchapter C, Chapter 493.

(e) Notwithstanding Section 964.064, a captive insurance company, with the commissioner's approval, may accept risks from and cede risks to or take credit for reserves on risks ceded to:

(1) a captive reinsurance pool composed only of other captive insurance companies holding a certificate of authority under this chapter or a similar law of another jurisdiction; or

(2) an affiliated captive insurance company holding a certificate of authority under this chapter or a similar law of another jurisdiction.

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

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

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

(B) acceptable to the commissioner;

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

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

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

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

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

(D) is acceptable to the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 1, eff. June 15, 2015.

Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 2, eff. June 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 252 (H.B. 1187), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.03, eff. June 15, 2017.

Sec. 964.053. FORMATION. (a) A captive insurance company, other than a captive exchange, or an attorney in fact must be formed for the purpose of engaging in the business of insurance under this chapter by filing an appropriate application with the secretary of state.

(b) A captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code except a risk retention group or general partnership. A captive insurance company may only be formed as a nonprofit corporation if it is controlled by a nonprofit corporation.

(c) The certificate of formation of a captive insurance company, other than a captive exchange, or an attorney in fact must comply with the applicable requirements of the Business Organizations Code. The name of the company or attorney in fact in the certificate of formation may include the words "insurance," "company," or similar words indicating that the purpose of the company or attorney in fact is to operate as an insurance company or attorney in fact under this chapter.

(d) The board of directors or governing body of a captive insurance company formed in this state must have at least three members, and at least one of the members must be a resident of this state. If the captive insurance company is a captive exchange, the

principal office of the attorney in fact must be in this state.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.04, eff. June 15, 2017.

Sec. 964.054. RESERVES AND ACCOUNTING BASIS. (a) A captive insurance company shall maintain reserves in an amount stated in the aggregate to provide for the payment of all losses or claims for which the captive insurance company may be liable and that are:

(1) incurred on or before the date of the annual report under Section 964.060, whether reported or unreported; and

(2) unpaid as of the date of the annual report under Section 964.060.

(b) In addition to the reserves required by Subsection (a), a captive insurance company shall maintain reserves in an amount estimated to provide for the expenses of adjustment or settlement of the losses or claims described by Subsection (a).

(c) The captive insurance company shall use generally accepted accounting principles as an accounting basis except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws shall use statutory accounting principles.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED. (a) An entity may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority issued by the department to act as a captive insurance company. A

captive insurance company, when permitted by its certificate of formation or governing document, may apply for a certificate of authority under this chapter.

(b) An entity does not qualify for a certificate of authority under this chapter unless:

(1) its affiliates have significant operations in this state, as determined by the commissioner;

(2) its board of directors or governing body holds at least one meeting each year in this state;

(3) it maintains its principal office and books and records in this state, unless the commissioner grants an application to relocate the entity's books and records under Chapter 803; and

(4) it complies with Section 804.101 or 804.102.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.05, eff. June 15, 2017.

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

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

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

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

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

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

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

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

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

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

(1) United States currency;

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.06, eff. June 15, 2017.

Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) After forming a captive insurance company, other than a captive exchange, or an attorney in fact, the incorporators or organizers must pay to the commissioner an application fee and file with the commissioner an application for a certificate of authority for a captive insurance company, which must include:

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

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

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

of the captive insurance company, other than a captive exchange, or the attorney in fact;

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

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

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

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

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

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

(b) If the commissioner is not satisfied with the affidavit filed under Subsection (a)(4), the commissioner may require that the incorporators, organizers, or officers provide at their expense additional evidence as described by Subsection (a) before the commissioner takes action on the application.

(c) The application fee required under this section is \$1,500 or a greater amount set by the commissioner by rule as necessary to recover the cost of administering this section.

(e) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.07, eff. June 15, 2017.

Sec. 964.058. EXAMINATION BY COMMISSIONER. (a) After the application and application fee for a certificate of authority under Section 964.057 are filed with the department and the

applicant has complied with all legal requirements, the commissioner shall conduct an examination of the applicant to determine whether:

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

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

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

(b) The commissioner may appoint a competent and disinterested person to conduct the examination required by this section. The examiner shall file an affidavit of the examiner's findings with the commissioner. The commissioner shall record the affidavit.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.08, eff. June 15, 2017.

Sec. 964.059. ACTION ON APPLICATION. (a) The commissioner shall determine whether:

(1) the capital and surplus, or the equivalent, of the applicant meet the requirements of this chapter;

(2) the officers or members of the applicant's governing body have sufficient insurance experience, ability, standing, and good record to make success of the captive insurance company probable;

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

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

(b) In evaluating the application, the commissioner shall consider:

(1) the amount and liquidity of the applicant's assets relative to the risks to be assumed;

(2) the adequacy of the expertise, experience, and character of each individual who will manage the applicant;

(3) the overall soundness of the applicant's plan of operations and the projections contained in that plan;

(4) whether the applicant's affiliates have significant operations located in this state; and

(5) any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations.

(c) If the commissioner determines that the applicant has not met the standards set out by Subsection (a), the commissioner shall deny the application in writing, giving the reason for the denial. On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date the commissioner receives the applicant's request for a hearing, the commissioner shall set a hearing date.

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

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

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

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

(e) A certificate of authority issued to a captive insurance company under this section may not be sold.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.09, eff. June 15, 2017.

Sec. 964.060. ANNUAL REPORT. (a) A captive insurance company holding a certificate of authority under this chapter is not required to file a report, except as provided by this section, Chapter 223A, and Subtitle C, Title 3.

(b) A captive insurance company that holds a certificate of authority to engage in captive insurance business in this state

shall file with the commissioner:

(1) on or before March 1 of each year, a statement of the company's financial condition, verified by two of its executive officers and filed in a format prescribed by the commissioner; and

(2) on or before June 1 of each year, a report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition.

(c) A captive insurance company may make a written application to the commissioner for filing its annual report required under this section on a fiscal year-end. If an alternative filing date is granted, the company shall file:

(1) the annual report not later than the 60th day after the date of the company's fiscal year-end;

(2) the report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition not later than the 150th day after the date the annual report is due; and

(3) its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.10, eff. June 15, 2017.

Sec. 964.061. INVESTMENTS. (a) A captive insurance company is not subject to a restriction on allowable investments, except as provided by this section.

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

(c) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of a captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.11, eff. June 15, 2017.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.12, eff. June 15, 2017.

Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS. (a) A captive insurance company shall notify the commissioner in writing when issuing policyholder dividends or distributions to policyholders.

(b) A captive insurance company, with the commissioner's approval, may issue dividends or distributions to the holders of an equity interest in the captive insurance company. The commissioner shall adopt rules to implement this subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 3, eff. June 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.13,

eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.14,
eff. June 15, 2017.

Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO CERTAIN ENTITIES AND FUNDS. A captive insurance company may not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, its insured, or any affiliate is not entitled to receive any benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2,
eff. June 14, 2013.

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

- (1) insolvency or impairment of required capital or surplus, or the equivalent, to policyholders;
- (2) failure to submit an annual report, as required by Section 964.060;
- (3) failure to comply with the provisions of its own charter, bylaws, rules, or other governing document;
- (4) failure to submit to examination, as required by Chapter 401;
- (5) failure to pay the cost of examination, as required by Chapter 401;
- (6) failure to pay any tax or fee required by this code;
- (7) removal of its principal office or books and records from this state without prior approval of the commissioner;
- (8) use of practices that render its operation detrimental to the public or its condition unsound; or
- (9) failure to otherwise comply with the laws of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.15, eff. June 15, 2017.

Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED UNAFFILIATED BUSINESS. The commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company. Until rules under this section are adopted, the commissioner may approve the coverage of these risks by a captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.067. CAPTIVE MANAGERS. Before providing captive management services to a licensed captive insurance company, a captive management company shall register with the commissioner by providing the information required on a form adopted by the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.068. MAINTENANCE TAX. A captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.069. RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2,

eff. June 14, 2013.

Sec. 964.070. CONFIDENTIALITY. (a) Any information filed with the commissioner by an applicant or captive insurance company under this chapter is confidential and privileged for all purposes, including for purposes of Chapter 552, Government Code, a response to a subpoena, or evidence in a civil action. Except as provided by Subsections (b) and (c), the information may not be disclosed without the prior written consent of the applicant or captive insurance company to which the information pertains.

(b) If the recipient of the information described by Subsection (a) has the legal authority to maintain the confidential or privileged status of the information and verifies that authority in writing, the commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general;

(5) a grand jury;

(6) the National Association of Insurance Commissioners if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823;

(7) another state or federal regulator if the applicant or captive insurance company to which the information relates operates in the entity's jurisdiction;

(8) an international insurance regulator or analogous financial agency if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823 and the holding company system operates in the entity's jurisdiction; or

(9) members of a supervisory college described by Section 823.0145, if the captive insurance company is affiliated with an insurance company that is part of an insurance holding

company system as described in Chapter 823.

(c) The commissioner may use information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.16, eff. June 15, 2017.

Sec. 964.071. REDOMESTICATION. (a) An authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the authorized foreign or alien captive insurance company has complied with all of the requirements of this chapter for the issuance of a certificate of authority to, and the Business Organizations Code for converting to an entity of this state for, a domestic captive insurance company of the same type.

(b) A domestic captive insurance company, on the approval of the commissioner, may transfer its domicile. On the transfer, the captive insurance company ceases to be a domestic captive insurance company. The commissioner shall approve any proposed transfer unless the commissioner determines the transfer is not in the best interest of the policyholders.

(c) The commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.072. APPROVAL OF CAPTIVE REINSURANCE POOLS. Before determining whether to approve a captive insurance

company's participation in a captive reinsurance pool under Section 964.052, the commissioner may:

(1) require the captive insurance company provide to the commissioner evidence that the captive reinsurance pool:

(A) is composed only of other captive insurance companies holding a certificate of authority under this chapter or a similar law of another jurisdiction; and

(B) will be able to meet the pool's financial obligations; and

(2) impose any other limitation or requirement on the captive insurance company that is necessary and proper to provide adequate security for the captive insurance company.

Added by Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 4, eff. June 15, 2015.

Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED; EXCEPTION.

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.17, eff. June 15, 2017.

SUBCHAPTER C. CAPTIVE EXCHANGES

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

(1) this chapter; and

(2) Sections 942.051, 942.053, and 942.054.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

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

(1) be:

(A) a corporation organized in this state; or

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

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

- (1) supervise the finances of the captive exchange;
- (2) supervise the captive exchange's operations to ensure the captive exchange's conformity with the captive exchange's subscriber declaration and power of attorney; and
- (3) obtain, as necessary, an audit of the account and records of the attorney in fact at the expense of the captive exchange.

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

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

- (1) the information described by Section 942.053;
- (2) the amount of the captive exchange's initial surplus; and
- (3) a provision to authorize a quorum of the governing body of the captive exchange's attorney in fact to consist of not fewer than one-third of the fixed number of members of the governing body.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.