CHAPTER 569
S.B. No. 734
AN ACT
relating to the licensing of captive insurance companies; authorizing fees and authorizing and
imposing taxes.
Be it enacted by the Legislature of the State of Texas:
SECTION 1. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 223A to
read as follows:

CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

Sec. 223A.001. DEFINITION. In this chapter, "captive insurance company" means a
captive insurance company holding a certificate of authority under Chapter 964.

Sec. 223A.002. APPLICABILITY OF CHAPTER. This chapter applies to a captive
insurance company holding a certificate of authority under Chapter 964.

Sec. 223A.003. TAX IMPOSED; RATE. (a) An annual tax is imposed on each captive
insurance company that receives gross premiums subject to taxation under this chapter. The rate of the tax is one-half percent of the company's taxable premium receipts for a
calendar year.

(b) Except as provided by Subsection (c), in determining a captive insurance company's
taxable premium receipts, the captive insurance company shall include the total gross
amounts of premiums, membership fees, assessments, dues, revenues, and other consider-
ations for insurance written by the captive insurance company in a calendar year from any
kind of insurance written by the company on each kind of property or risk without regard to
the location of the property or risk.

(c) The following premium receipts are not included in determining a captive insurance
company's taxable premium receipts:

(1) premium receipts received from another authorized insurer for reinsurance;
(2) returned premiums and dividends paid to policyholders; and
(3) premiums excluded by another law of this state.

(d) In determining a captive insurance company's taxable premium receipts, a company
is not entitled to a deduction for premiums paid for reinsurance.

(e) The annual minimum aggregate tax to be paid by a captive insurance company under
this chapter is $7,500 and the annual maximum aggregate tax to be paid by a company
under this chapter is $200,000. Gross premiums subject to taxation under this chapter are
not subject to taxes, surcharges, or other regulatory assessments or fees under this code other
than insurance maintenance taxes as provided by Section 964.068.

Sec. 223A.004. TAX DUE DATES. (a) The total tax imposed by this chapter is due and
payable not later than March 1 after the end of the calendar year for which the tax is due.

(b) A captive insurance company that had a net tax liability for the previous calendar
year of more than $1,000 shall make semiannual prepayments of tax on March 1 and
August 1. The tax paid on each date must be equal to 50 percent of the total amount of tax
the company paid under this chapter for the previous calendar year. If the company did not
pay a tax under this chapter during the previous calendar year, the tax paid on each date
must be equal to the tax that would be owed on the aggregate of the gross premiums for the
two previous calendar quarters.
(c) The comptroller may refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Sec. 223A.005. TAX REPORT. (a) A captive insurance company liable for the tax imposed by this chapter must file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) The tax report is due on the date the tax is due under Section 223A.004(a).

Sec. 223A.006. CHANGE IN DUE DATES. (a) The comptroller by rule may change the dates for reporting and paying taxes under this chapter to improve operating efficiencies within the agency.

(b) A change by the comptroller in a reporting or payment date must retain the system of semiannual prepayments prescribed by Section 223A.004.

Sec. 223A.007. CREDIT FOR FEES PAID. (a) A captive insurance company is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to this state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a captive insurance company.

(b) The credit provided by this section is in addition to any other credit authorized by statute.

Sec. 223A.008. FAILURE TO PAY TAXES. A captive insurance company that fails to pay all taxes imposed by this chapter is subject to Section 203.002 of this code and Subtitles A and B, Title 2, Tax Code.

SECTION 2. Subtitle H, Title 6, Insurance Code, is amended by adding Chapter 964 to read as follows:

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.

(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.

(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.

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

(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.

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;
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.

Sec. 964.052. AUTHORITY TO PROVIDE 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; and
(3) 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 492, and Subchapter C, Chapter 493.

Sec. 964.053. FORMATION. (a) A captive insurance company must be formed for the purpose of engaging in the business of insurance under this chapter.

(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 must include:

(1) the name of the company, which may not be the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state;

(2) the location of the company’s principal business office;

(3) the type of insurance business in which the company proposes to engage;

(4) the number of directors or members of the governing body of the company;

(5) the number of authorized shares and the par value of the company’s capital stock for a captive insurance company formed as a corporation;

(6) the amount of the company’s initial capital and surplus; and

(7) any other information required by the commissioner as necessary to explain the company’s objectives, management, and control.

(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.

(e) The certificate of formation or bylaws 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.

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.
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, 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.

Sec. 964.056. CAPITAL AND SURPLUS 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 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 determined by the commissioner under Subsection (a) may not be less than $250,000.

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

Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) To obtain a certificate of authority for a captive insurance company, the incorporators or organizers must pay to the commissioner an application fee and file with the commissioner an application for the certificate of authority, 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;
4. an affidavit by the incorporators, organizers, or officers of the captive insurance company stating that:
   A. the capital and surplus are the bona fide property of the company; and
   B. the certificate of 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.

(d) Notwithstanding Subsection (c), for a complete application filed on or before December 30, 2018, the application fee may not exceed $1,500. This subsection expires January 1, 2019.

(e) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

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 requirements of Section 964.056 are satisfied;

(2) the capital and surplus 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.

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

(1) the capital structure of the applicant meets the requirements of this chapter,

(2) the officers or directors of the applicant 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;

(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.

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.

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 required by this chapter.

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

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

Sec. 964.063. NOTICE OF DIVIDENDS. A captive insurance company shall notify the commissioner in writing when issuing policyholder dividends.

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.

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 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 or bylaws;
(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.

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.

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.

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.

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

Sec. 964.070. CONFIDENTIALITY. (a) Any information filed 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.

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, 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.

SECTION 3. Subsection (b), Section 203.001, Insurance Code, is amended to read as follows:

(b) Except as otherwise provided by this code or the Labor Code, an insurer or health maintenance organization subject to a tax imposed by Chapter 4, 221, 222, 223, 223A, or 224 may not be required to pay any additional tax imposed by this state or a county or municipality in proportion to the insurer's or health maintenance organization's gross premium receipts.

SECTION 4. Subdivision (11), Section 228.001, Insurance Code, is amended to read as follows:

(11) “State premium tax liability” means:
  (A) any liability incurred by any person under Chapter 221, 222, 223, 223A, or 224; or
  (B) if the tax liability imposed under Chapter 221, 222, 223, or 224 is eliminated or reduced, any tax liability imposed on an insurer or other person that had premium tax liability under Subchapter A, Chapter 4, or Article 9.69 as those laws existed on January 1, 2003.

SECTION 5. Subsection (a), Section 171.052, Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (c), an insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapters 221, 222, 223, 223A, and 224 [Chapter 4 or 9], Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. A nonadmitted insurance organization that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for that same tax year.

SECTION 6. As soon as practicable after the effective date of this Act, but not later than January 1, 2014, the commissioner of insurance shall adopt rules and procedures necessary to implement Chapter 964, Insurance Code, as added by this Act.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed the Senate on April 16, 2013: Yeas 29, Nays 0; the Senate concurred in House amendments on May 20, 2013; Yeas 31, Nays 0; passed the House, with amendments, on May 16, 2013: Yeas 139, Nays 1, two present not voting.

Approved June 14, 2013.
Effective June 14, 2013.