

SUBJECT: Allowing formation of a captive insurance exchange

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul,
Sanford, Turner, Vo

0 nays

WITNESSES: For — Burnie Burner, Mitchell Williams; Scott Irwin, Phillips 66; Josh Magden, Texas Captive Insurance Association; (*Registered, but did not testify*: Steve Perry, Chevron USA; Frank Galitski, Farmers Insurance; Lee Loftis, Independent Insurance Agents of Texas; Amy Maxwell, Marathon Oil Corporation; Neftali Partida, Phillips 66; Amanda Martin, Texas Association of Business; Jay Brown, Valero)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

BACKGROUND: Insurance Code, ch. 964 defines a captive insurance company as a company that holds a certificate of authority from the Texas Department of Insurance to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. Texas authorizes the operation of captive insurance companies but does not authorize captive insurance companies to take credit for reinsurance from approved, non-affiliated insurers or to create a reciprocal exchange.

DIGEST: CSHB 1944 would allow for the formation of a captive exchange and would include a captive exchange under the definition of a "captive insurance company" in Texas law. The bill also would allow a captive insurance company to cede risks to or take credit for reserves on risks ceded to a non-affiliated reinsurer if the reinsurer:

- held a certificate of authority to transact insurance or reinsurance in

- a jurisdiction that was on the list of qualified jurisdictions from the National Association of Insurance Commissioners and was acceptable to the Texas commissioner of insurance;
- maintained minimum capital and surplus or the equivalent of \$250 million at the end of the previous year; and
 - maintained a financial strength rating of B+ or its equivalent from a national or international rating agency as specified in the bill.

CSHB 1944 would allow a captive exchange to be formed that would operate as a captive insurance company under Texas law except as specified by the bill. The bill would define a "captive exchange" to mean a reciprocal or interinsurance exchange. It would set subscriber and attorney in fact requirements for a captive exchange. A "subscriber" would mean 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.

The bill would define an "attorney in fact" to mean 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. The attorney in fact would have its principal office in Texas.

The bill would require a captive exchange to file a subscriber declaration with the Department of Insurance that would include information specified by the bill, including the amount of the captive exchange's initial surplus and a provision to authorize a quorum of the captive exchange's attorney in fact to consist of at least one-third the size of the members of the governing body.

CSHB 1944 would allow the commissioner of insurance to waive the requirement for a captive insurance company to file an actuarial report with the company's annual report if the commissioner determined that the company had less than \$1 million of net written premium or reinsurance assumed, or the company had been in operation for less than six months at the end of the previous calendar year.

The bill would make other changes to captive insurance companies, including allowing a captive insurance company to issue life insurance if it insured employee benefits, and requiring the company to notify the insurance commissioner when issuing distributions to policyholders. A captive insurance company would not be required to use an insurance adjuster to adjust losses but would be required to use an insurance adjuster to adjust a claim that a person made against an affiliated company insured by the captive insurance company if the person was not an affiliated company or an insured controlled unaffiliated business.

The bill would allow a captive insurance company to have and maintain "the equivalent" of unencumbered capital and surplus for the purposes of meeting certain capital and surplus requirements in Texas law. CSHB 1944 would specify that the capital and surplus or the equivalent could be in the form of county or municipal bonds in addition to Texas bonds for the purpose of the Department of Insurance issuing a company a certificate of authority.

Under the bill, a captive insurance company, other than a captive exchange or an attorney in fact as defined by the bill, would be formed by filing an appropriate application with the secretary of state. The certificate of formation of such a company would have to comply with applicable requirements of the Business Organizations Code. The name of a captive insurance company or the attorney in fact could include the words "insurance," "company," or similar words that indicated the entity was meant to operate as an insurance company or attorney in fact.

Any information related to captive insurance companies that was filed with the commissioner would be confidential and privileged for all purposes. The secretary of state could index in the public record any document filed with the secretary by an applicant or captive insurance company. Bill provisions regarding information filed with the secretary of state would apply only to information filed on or after September 1, 2017. Information filed after that date would be governed by the law as it existed immediately before the bill's effective date and would continue the law in

effect for that purpose.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES:

A companion bill, SB 915 by Hughes, was left pending in the Business and Commerce Committee after a public hearing on April 25.