

## BILL ANALYSIS

Senate Research Center  
85R11296 SCL-D

S.B. 915  
By: Hughes  
Business & Commerce  
3/13/2017  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

#### Background/Current law

In 2013, the Texas Legislature for the first time authorized captive insurance companies, which have been authorized in 37 other states.

In its simplest form, a captive is a wholly owned subsidiary created to provide insurance to its noninsurance parent company (or companies). Captive insurance companies are established to meet the risk and financial management needs of the owners or members. They are essentially a form of self-insurance because the insurer is wholly owned by the insured. The captive insures no public risk, only the risks of its parent and/or affiliates.

Because the key purpose of insurance regulation is to protect policyholders, captives are regulated differently than traditional insurance companies that serve the public.

#### Issue/Problem

S.B. 734, passed by the 83rd Legislature, Regular Session, 2013, was fairly limited in its scope, suitable mostly for very large companies. The statute was amended in 2015, opening up additional opportunities for a greater number of Texas companies. As more captive insurance companies have been formed in Texas, the need for further refinements of the Texas statute to provide more options for Texas businesses have become evident.

#### Solution/Statement of Purpose

S.B. 915 makes several changes to align regulatory oversight with captive regulation in other states to make it easier for Texas companies to form captives in Texas (rather than another state), including:

1. Allows capital and surplus to be held in the form of Texas county or municipal bonds.
2. Waives the requirement to provide an actuarial report with the captive's annual filing under certain circumstances.
3. Eliminates the requirement that the captive must have a licensed claims adjuster, if the claims are limited to first party claims of the parent and/or affiliates of the captive.
4. Allows a captive insurance company to insure life insurance benefits for employee benefits subject to ERISA (Employee Retirement Income Security Act of 1974).
5. Authorizes a Texas captive insurance company to take credit for reinsurance ceded to a non-affiliated reinsurer when specific requirements are met.
6. Authorizes a Texas captive insurance company to be formed as a reciprocal insurance exchange.
7. Simplifies the corporate formation processes between the secretary of state and the Texas Department of Insurance.

As proposed, S.B. 915 amends current law relating to captive insurance companies.

## **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 964.001(a), Insurance Code, by adding Subdivision (1-a) to define "captive exchange."

SECTION 2. Amends Section 964.051(b), Insurance Code, to prohibit a captive insurance company (company) from issuing 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.).

SECTION 3. Amends Section 964.052, Insurance Code, by adding Subsection (f), as follows:

(f) Authorizes a company to 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 on the list of qualified jurisdictions of the National Association of Insurance Commissioners (NAIC), and acceptable to the commissioner of insurance (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 has registered with the Securities and Exchange Commission, is designated as a nationally recognized statistical rating organization, is on the list of Credit Rating Providers by the Securities Valuation Office of the NAIC, and is acceptable to the commissioner.

SECTION 4. Amends Sections 964.053(b), (d), and (e), Insurance Code, as follows:

(b) Authorizes a company to be formed and operated as a captive exchange in accordance with Subchapter C or in any form of business organization authorized under the Business Organizations Code, with certain exceptions. Authorizes a captive exchange, rather than a company, to only be formed as a nonprofit corporation if it is controlled by a nonprofit corporation.

(d) Requires that, if the company is a captive exchange, the principal office of the attorney in fact must be in this state.

(e) Requires the certificate of formation, by laws, or governing document, rather than the certificate of formation or bylaws, of a company to 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. Makes nonsubstantive changes.

SECTION 5. Amends Section 964.055(a), Insurance Code, to authorize a company, when permitted by its certificate of formation or governing document, rather than by its certificate of formation, to apply for a certificate of authority under this chapter (Captive Insurance Companies).

SECTION 6. Amends Section 964.056(c), Insurance Code, to require the required capital and surplus to be in certain forms, including bonds of this state or a county or municipality of this state, rather than bonds of this state.

SECTION 7. Amends Section 964.057(a), Insurance Code, as follows:

(a) Requires that, to obtain a certificate of authority for a company, the incorporators or organizers pay to the commissioner an application fee and file with the commissioner an application for the certificate of authority, which is required to include certain items including the company's certificate of formation or other documentation demonstrating the company's valid information, and an affidavit by the company's incorporators, organizers, or officers stating that the certificate of formation or other documentation demonstrating the company's valid formation is true and correct.

SECTION 8. Amends Sections 964.059(a) and (d), Insurance Code, as follows:

(a) Requires the commissioner to determine whether the officers or members of the applicant's governing body, rather than the officers or directors of the applicant, have sufficient insurance experience, ability, standing, and good record to make success of the company probable.

(d) Makes a conforming change.

SECTION 9. Amends Section 964.060, Insurance Code, by adding Subsection (d), as follows:

(d) Provides that a company is exempt from the requirement to file an actuarial report with the company's annual report if the company has less than \$1 million of total direct written premium or reinsurance assumed, or has been in operation for less than six months as of the end of the previous calendar year.

SECTION 10. Amends Section 964.062, Insurance Code, as follows:

Sec. 964.062. New heading: AMENDMENTS TO CERTIFICATE OF FORMATION OR GOVERNING DOCUMENT. Prohibits a company from amending its certificate of formation or other governing document unless the amendment has been filed with and approved by the commissioner.

SECTION 11. Amends the heading to Section 964.063, Insurance Code, to read as follows:

Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS.

SECTION 12. Amends Section 964.063(a), Insurance Code, to require a company to notify the commissioner in writing when issuing policyholder dividends or distributions to policyholders.

SECTION 13. Amends Section 964.065, Insurance Code, as follows:

Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. Authorizes the commissioner, after notice and an opportunity for hearing, to revoke or suspend the certificate of authority of a company for, among certain other reasons, failure to comply with the provisions of its own charter, bylaws, rules or other governing document.

SECTION 14. Amends Subchapter B, Chapter 964, Insurance Code, by adding Section 964.073, as follows:

Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED. Provides that a person who acts as an adjuster, as defined by Section 4101.001 (Definitions), notwithstanding Section 4101.051(License Required), solely on behalf of a company in adjusting a claim of an affiliate or controlled unaffiliated business insured by the company is not required to hold a license under Chapter 4101 (Insurance Adjusters).

SECTION 15. Amends Chapter 964, Insurance Code, by adding Subchapter C, as follows:

## SUBCHAPTER C. CAPTIVE EXCHANGES

Sec. 964.101. DEFINITIONS. Provides that, in this subchapter, a term defined by Section 942.001 (Definitions), has the meaning assigned by that section.

Sec. 964.102. APPLICABILITY OF OTHER LAW. (a) Provides that a captive exchange is subject to this chapter; and Sections 942.051 (Appointment of Attorney in Fact; Approval by Department of Power of Attorney or Other Authorization Required), 942.053 (Subscriber Declaration), and 942.054 (Name of Exchange).

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

Sec. 964.103. STATUS OF CAPTIVE EXCHANGES. Provides that a captive exchange is formed as an exchange as provided by this subchapter and requires it, except as provided by this subchapter, to operate as a company as provided by this chapter.

Sec. 964.104. ATTORNEY IN FACT REQUIREMENTS. Requires a captive exchange's attorney in fact to be a corporation organized in this state in accordance with Section 942.051 or a limited liability company organized in this state; on the date of the captive exchange's formation, have an existing affiliation with all subscribers of the captive exchange regardless of any affiliation relationship created by the captive exchange; have its principal office in this state; and 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.

Sec. 964.105. ATTORNEY IN FACT POWERS AND DUTIES. (a) Requires a captive exchange's attorney in fact to supervise the finances of the captive exchange, 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 obtain, as necessary, an audit of the account and records of the attorney in fact at the expense of the captive exchange.

(b) Provides that 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.

Sec. 964.106. RELATIONSHIP REQUIREMENTS. (a) Requires that, on the date of the captive exchange's formation, each subscriber of a captive exchange have an existing affiliation with each other subscriber regardless of any affiliation relationship created by the captive exchange.

(b) Requires, on the date of the captive exchange's formation, a controlled unaffiliated business of the captive exchange to have an existing contractual relationship with an affiliate that qualifies as a subscriber.

Sec. 964.107. SUBSCRIBER DECLARATION. Requires a captive exchange to file with the Texas Department of Insurance a subscriber declaration that includes the information described by Section 942.053, the amount of the captive exchange's initial surplus, and 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.

SECTION 16. Effective date: September 1, 2017.