

**CHAPTER 6. CAPTIVE INSURANCE.**

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**§6.302 and §6.303**

**SUBCHAPTER E. FINANCIAL INFORMATION and REPORTING.**

**§§6.401, 6.409, and 6.411**

**INTRODUCTION.** The Texas Department of Insurance proposes amendments to 28 TAC §§6.1, 6.2, 6.202, 6.203, 6.302, 6.303, 6.401, and 6.409 and new 28 TAC §6.411 concerning captive insurance under Insurance Code Chapter 964. The amendments and new section are necessary to implement changes made by House Bill 1944, 85th Legislature, Regular Session (2017), which enacted provisions allowing a captive insurance company to be formed as a captive exchange; authorizing the Secretary of State to form a captive insurance company prior to receiving department approval of the captive insurance company's formation documents; allowing the Commissioner to waive the actuarial opinion required with the annual report for a captive insurance company that has less than \$1 million of net written premium or reinsurance assumed or has been in operation for less than six months; allowing the department to approve distributions to policyholders of the captive insurance company; and providing a procedure for determining acceptable qualified jurisdictions and rating agencies for reinsurance transactions under Insurance Code §964.052(f). The amendments to §6.409 are also necessary to implement SB 667, 84th Legislature, Regular Session (2015), which allows the department to approve dividends and distributions to holders of an equity interest in a captive insurance company. The amendments also adopt by reference changes to the annual report and amend the sections to reflect current department style guidelines.

**EXPLANATION.**

## **SUBCHAPTER A. GENERAL MATTERS.**

### **Section 6.1.**

Amendments to §6.1 add and remove definitions, revise existing definitions, and make changes to conform to the department's style guidelines. The terms "captive exchange" and "attorney in fact" are defined in the HB 1944 amendments to Insurance Code §964.001, and apply in Chapter 6 as provided in §6.1(a). Insurance Code §964.001 defines the term "captive insurance company" to include a captive exchange. References in the rules to a captive insurance company apply equally to a captive exchange, unless stated otherwise.

The definition for "governing body" is amended to incorporate the term "attorney in fact," which will operate as the governing body of a captive exchange.

The definition for "generally accepted accounting principles" is removed because the term is used only in §6.402, and that section repeats the definition.

The amendments to §6.1 also add definitions for the frequently used terms "Commissioner" and "department" to avoid repetitive restatements in various sections and to conform to the department's style guidelines.

Because of the changes to §6.1, the paragraphs in subsection (b) have been renumbered as appropriate.

### **Section 6.2.**

Amendments to §6.2 add §6.2(2) state that the department will provide address information for submissions on the department's website. The amendments also update the department's mail-code references, renumber existing paragraph (2) as paragraph (3), and make changes to conform to the department's style guidelines.

## **SUBCHAPTER C. CAPTIVE INSURANCE COMPANY APPLICATION PROCESS.**

### **Section 6.202.**

Amendments to §6.202 implement procedural changes in HB 1944 related to when a captive insurance company, other than a captive exchange, is created by the Secretary of State; the application procedure for a captive insurance exchange; and make changes for style.

HB 1944 amended Insurance Code §964.057(a) to provide that a captive insurance company, other than a captive exchange, would apply to the department for a certificate of authority after the captive insurance company's formation by the Secretary of State. Prior law required that the department approve the captive insurance company's formation documents prior to formation of the company by the Secretary of State. Under that process, the department would issue a certificate of general good to indicate the department's approval of the formation documents. The proposal implements the new process and eliminates the certificate of general good.

Because of the change in timing of the corporate formation, the requirement to submit corporate formation documents under §6.202(f) of the existing rules has been relocated to §6.202(a)(7). Existing §6.202(f) has been removed. The department - also removed §6.202(e) of the existing rules that addressed the certificate of general good.

New §6.202(d) is added to provide filing requirements for captive exchanges that are formed by the department. As required under Insurance Code §964.104, the attorney in fact for a captive exchange must be organized in Texas by the Secretary of State as a corporation or limited liability company. To comply with the application requirements in §6.202(d), the attorney in fact must be organized prior to submission of the captive exchange application.

The department has redesignated existing §6.202(d) and (g) as §6.202(e) and (f), because of the addition of new §6.202(d). The department has also made changes in §6.202 to conform to the department's style guidelines.

### **Section 6.203.**

Amendments to §6.203(a) remove a reference to the certificate of general good. Amendments to §6.203(b) update the existing reference to §6.202(g) to §6.202(f) based on changes in this proposal. Changes are also made in the section to conform to the department's style guidelines.

## **SUBCHAPTER D. MAINTENANCE OF A CAPTIVE INSURANCE COMPANY'S CERTIFICATE OF AUTHORITY.**

### **Section 6.302.**

Amendments to §6.302 add references to the attorney in fact, which will manage the operations of the captive exchange as provided in Insurance Code §964.105. The attorney in fact is operated through its governing body as provided in Insurance Code §964.104(4). The functions of the attorney in fact, and its governing body, are the equivalent of the functions of the captive insurance company and its governing body.

### **Section 6.303.**

Amendments to §6.303 require biographical information for certain employees of the attorney in fact in the same manner that is required for employees of a captive insurance company performing the same functions. Section 6.303 does not require a captive insurance company or an attorney in fact to directly employ persons to perform the functions listed in §6.303(a)(1).

## **SUBCHAPTER E. FINANCIAL INFORMATION AND REPORTING.**

### **Section 6.401.**

Amendments to §6.401 adopt by reference a revised Texas Captive Annual Report, including all forms, instructions, and requirements (Annual Report); amend §6.401(a) concerning forms adopted by reference and the use of bracketed information that will regularly change, such as dates; and establish requirements for a captive insurance company to request waiver of the actuarial opinion that must be submitted with its annual report.

Section 6.401(a) adopts by reference an amended annual report. Proposed changes to the annual report, including the instructions: (1) change the table of contents to a table of schedules and remove page numbers, which may change if the lines of business change; (2) update the lines of insurance in the annual report schedules to be consistent with department issued lines of authority and create Schedule P forms for the additional lines of authority; (3) address the waiver of the actuarial opinion under §6.401(c) and dividends and distributions under §6.409; (4) bracket dates and other information that is subject to regular and expected changes; (5) change the conflict-

of-interest policy question to include "key employees" in place of "any person that may be providing services;" (6) add a question concerning the statutory authorization if a credit for reinsurance is claimed; and (7) make changes to conform to the department's style guidelines. Because lines of business may be added or changed over time, they are also bracketed. Changes in the annual report are shown as underlines and strikeouts, except that existing underlined captions in the annual report have not been changed.

New §6.401(c) establishes a procedure for a captive insurance company to request waiver of the actuarial opinion that must be submitted with its annual report. The actuarial opinion waiver request is authorized under Insurance Code §964.060(d) and is limited to captive insurance companies that (1) have less than \$1 million of net written premium or reinsurance assumed or (2) have been in operation for less than six months as of the end of the previous calendar year. The request must be signed by an officer of the captive insurance company or the attorney in fact, and submitted to the department no later than 30 days prior to the end of the fiscal year subject to the waiver request. The department will notify the insurer in writing if the request is approved. The approved request must be attached to the annual report.

#### **Section 6.409.**

Amendments to §6.409 establish the procedures for requesting approval of dividends and distributions. The existing provision is amended to be §6.409(a) and changed to provide that distributions may be made to policyholders using the existing dividend notice procedure. Section 6.409(a) is also changed for style.

Section 6.409(b) is added to establish the procedures for requesting approval of dividends and distributions to the holders of an equity interest in the captive insurance company, as authorized under Insurance Code §964.063(b). The Commissioner must approve these dividends and distributions as required by statute. The rule requires the captive insurance company to notify the Commissioner of its intent to make such a payment at least 30 days prior to the payment date, and list the information that the captive insurance company must provide in the notice.

#### **Section 6.411.**

New §6.411 establishes requirements for determining an acceptable qualified jurisdiction and an acceptable national and international rating agency under Insurance Code §964.052(f). Qualified jurisdictions and national and international rating agencies are also addressed for reinsurance purposes in Insurance Code Chapter 493. The use of the same terminology in Insurance Code Chapter 493 and Insurance Code §964.052(f) indicates that the legislature was referring to the same jurisdictions and review agencies. The department determines qualified jurisdictions and rating agencies to be acceptable under insurance Code Chapter 493, in §§7.624, 7.622(a)(4)(C), and 7.627. Rather than administratively burdening captive insurance companies with different standards of review and requiring separate approvals, the department proposes the same process for determining qualified jurisdictions and rating agencies to be acceptable under Insurance Code §964.052(f).

Under §964.052(f)(1), a qualified jurisdiction must be on the National Association of Insurance Commissioner's (NAIC) list of qualified jurisdictions and the Commissioner must determine that the qualified jurisdiction is acceptable. Section 7.624 establishes a procedure for determining acceptable qualified jurisdictions that are on the NAIC list of qualified jurisdictions. As proposed, a qualified jurisdiction on the NAIC list of qualified jurisdictions and previously determined to be acceptable under §7.624 is acceptable under Insurance Code §6.411(a) and Insurance Code §964.052(f) without further action or approval. If a captive insurance company desires to cede to an assuming insurer that is domiciled in an NAIC listed qualified jurisdiction that has not been previously determined to be acceptable under §7.624, the jurisdiction would need to be determined to be acceptable as provided in §7.624.

Similarly, Insurance Code §964.052(f)(3) requires a national or international rating agency to be designated by the Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO). The department has determined five NRSROs to be acceptable under §7.622(a)(4)(C). As proposed, any of these five NRSROs are acceptable for purposes of reinsurance under §6.411(b) and Insurance Code §964.052(f). If a captive insurance company desires to cede to an assuming insurer that has been rated by an NRSRO that has not been previously determined to be acceptable, the NRSRO would need to be determined to be acceptable as provided in §7.627.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jeff Hunt, Director, Company Licensing & Registration Office, Financial Regulation Division, has determined that for each year of the first five years the proposed sections will be in effect, that there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Hunt also has determined that for each year of the first five years the proposed sections are in effect, public benefits and costs are expected as a result of enforcing the proposed amendments.

**Public Benefits.**

Public benefits resulting from the adoption of the rules will be the implementation of HB 1944 and SB 667. The benefits include providing a procedure: for the licensing and regulation of captive exchanges; for the formation of a captive insurance company by the Secretary of State prior to receiving department approval of the captive insurance company's formation documents; for requesting the waiver of the actuarial report if the captive insurance company has less than \$1 million of net written premium or reinsurance assumed or has been in operation for less than six months; for requesting the payment of dividends and distributions to captive insurance company policyholders and holders of an equity interest in the captive insurance company, and for determining acceptable qualified jurisdictions and rating agencies.

**Costs.**

The department anticipates that additional costs under these rules will result from three additional filing requirements in the proposal: submission of information in the application related to the attorney in fact required under §6.202(d); requests to waive the actuarial report under §6.401; and requests to pay dividends and distributions to equity holders of the captive insurance company under §6.409. Each of these three activities is discretionary and the decision to perform any of these activities would result from a business decision and not a requirement of these rules.

Additional costs may also result under §6.411 related to the business decision to claim a credit for reinsurance under Insurance Code §964.052(f), if the qualified jurisdiction or NRSRO have not previously been determined to be acceptable.

**Section 6.202(d).**

Additional costs related to submitting information in the application related to the attorney in fact required under §6.202(d), will be clerical in nature. Cost components for an applicant seeking to form a captive exchange include the cost of gathering and copying the information for submission with the application. Cost of preparing the actual documents that will be submitted is not a cost resulting from these rules, because Insurance Code Chapter 964, Subchapter C, requires captive exchange applicants to have a corporate attorney in fact organized in Texas and have the information required under §6.202(d). One option for delivery is electronic delivery, which should have almost no identifiable cost. The actual means of delivery is a business decision and not a cost under these sections.

While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, the department estimates individual employee compensation of \$17.75 an hour for clerical staff within the classification of "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" based on the national mean hourly wages for that classification as reported in the Occupational Employment and Wages, May 2017, at [www.bls.gov/oes/current/oes436014.htm](http://www.bls.gov/oes/current/oes436014.htm). The method of compliance is a business decision, including a decision to employ staff or contract for some of these services. The department estimates that the total time to prepare and review the submission under §6.202(d) will be less than one hour.

Other costs related to the application, maintenance, and operation of a captive exchange resulting from compliance with the existing rules should not measurably differ from the cost already identified and published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8357). Those costs are not a result of this proposal.

**Section 6.401(a).**



Proposed changes to the annual report, including the instructions: (1) change the table of contents to a table of schedules and remove page numbers, which may change if the lines of business change; (2) update the lines of insurance in the annual report schedules to be consistent with department issued lines of authority and create Schedule P forms for the additional lines of authority; (3) address the waiver of the actuarial opinion under §6.401(c) and dividends and distributions under §6.409; (4) bracket dates and other information that is subject to regular and expected changes; (5) change the conflict-of-interest policy question to include "key employees" in place of "any person that may be providing services;" (6) add a question concerning the statutory authorization if a credit for reinsurance is claimed; and (7) make changes to conform to the department's style guidelines. Because captive insurance companies must report on the lines of business that they write, the amendments to the annual report do not add additional reporting requirements. The amendments relating to dividends and distributions and reinsurance do not require captive insurance companies to develop new information and should not result in measurable additional costs in preparing and submitting the annual report. The department identified the cost of preparing and submitting the annual report in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8357). Those costs are not a result of this proposal.

**Section 6.401(c).**

Cost components for captive insurance companies requesting the department waive the actuarial report under §6.401(c) include the cost of completing the form and submitting the form to the department, which will be clerical in nature. Because the information necessary to complete the form consists of the captive insurance company's estimated annual premium, the date the captive insurance company commenced operations, and the name and contact information for the captive insurance company, the information should be readily available to a person completing the form and require no additional cost to obtain. One option for delivery is electronic delivery, which should have almost no identifiable cost. The actual means of delivery is a business decision and not a cost under these sections.

The form requires a member of the governing committee to sign the form. While the form may be prepared for the member, the department expects that the member will review the form.

The actual procedure would be a business practice of the requestor and not a requirement of these rules.

While it is not feasible to determine the actual cost of any employees needed to comply with the requirement, the department estimates individual employee compensation of \$17.75 an hour for clerical staff within the classification of "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" based on the national mean hourly wages for that classification as reported in the Occupational Employment and Wages, May 2017, at [www.bls.gov/oes/current/oes436014.htm](http://www.bls.gov/oes/current/oes436014.htm). It is not feasible to determine the actual cost of executive compensation, particularly in the situation of a captive insurance company generating annual premium of less than \$1 million because the members of the governing committee are often owners of the captive insurance company's parent entity. Executive costs will be known to the captive insurance company and part of its business decision in evaluating whether or not to make the request. The department estimates that the total time to prepare and review the submission will be less than one hour.

#### **Section 6.409.**

Cost components for captive insurance companies requesting the department approve distributions or dividends to equity holders include the cost of determining a net writings to policyholders' surplus ratio both before and after payment of the dividend or distribution, determining a net reserves to policyholders' surplus ratio both before and after payment of the dividend, gathering the required information, preparing it for submission, and submitting it to the department. Determining the amount of net writings and net reserves is a fundamental insurance activity and not an additional calculation necessary to make the request.

Each captive insurance company's actual costs to make the request will depend on its organization, and may require the services of accountants and possibly clerical staff. One option for delivery is electronic delivery, which should have almost no identifiable cost. The actual means of delivery is a business decision and not a cost under these sections.

While it is not feasible to determine the actual cost for all captive insurance companies, the department has considered the national mean hourly wages for these professions as reported in the

Occupational Employment and Wages, May 2017, are: \$17.75 an hour for clerical staff within the classification of "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" at [www.bls.gov/oes/current/oes436014.htm](http://www.bls.gov/oes/current/oes436014.htm); and \$37.46 for "Accountants and Auditors" at [www.bls.gov/oes/current/oes132011.htm#st](http://www.bls.gov/oes/current/oes132011.htm#st). The department estimates that the total time to perform the calculation and prepare and review the submission will be less than one hour.

Section 6.409 does not require captive insurance companies to hire professional staff. The captive insurance companies may contract with captive management companies for administrative services under this proposal. It is not feasible to estimate the cost of contracting for each service for all captive insurance companies. The method of compliance and ultimate cost of compliance is a business decision of the insurance company and not a requirement of this proposal.

#### **Section 6.411.**

Cost under §6.411 may result from the business decision to claim a credit for reinsurance under Insurance Code §964.052(f), if the qualified jurisdiction and NRSRO have not previously been determined to be acceptable. The department anticipates that §6.411(a) will not result in additional or different costs to those previously determined under §7.624 for the purposes of reduced collateral reinsurance under Insurance Code Chapter 493 and published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1942). Similarly, the department anticipates that §6.411(b) will not result in additional or different costs to those previously determined under §7.622(a)(4)(C) or §7.627 and published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1942).

#### **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.**

The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that the proposed §§6.202, 6.401, 6.409, and 6.411 may result in additional costs.

The department has determined that captive insurance companies, captive exchanges, and attorneys in fact, do not qualify as small or micro businesses as defined in Government Code §2006.001, because they are not independently owned or operated. A captive insurance company, captive exchange, and attorney in fact, is formed as a subsidiary affiliate of a parent entity, and

operates only to insure the risks of affiliates and the risks of controlled unaffiliated business. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis for captive insurance companies, captive exchanges, and attorneys in fact.

The department has considered that the parent of a captive insurance company may qualify as a small or micro business. The department believes that four captive insurance companies have parent and affiliate groups that have annual revenue of less than \$6 million. The department believes that seven captive insurance companies have parent and affiliate groups with less than 100 employees.

#### **Sections 6.202(d), 6.401(c), and 6.409.**

The department has tried to minimize cost to applicants and owners of captive insurance companies, including future captive exchanges and attorneys in fact, subject to the new submission requirements in proposed §§6.202(d), 6.401(c), and 6.409, through the use of information found in otherwise existing financial documents, and by allowing electronic filings.

The objective of each new submission requirement in proposed §§6.202(d), 6.401(c), and 6.409, is to implement HB 1944 and SB 667, relating, respectively, to a request to grant a certificate of authority for a captive exchange, a request to waive the actuarial report, or a request to allow a distribution or dividend to equity holders. Each requirement involves the gathering and submission of information to the department. Each is the result of a business decision to take advantage of the applicable statutory provision.

Because a small and micro business might apply to create a captive exchange or captive insurance company, the department considered the following other regulatory methods to accomplish the objectives of §§6.202(d), 6.401(c), and 6.409, while minimizing any adverse impact: (i) not adopting §§6.202(d), 6.401(c), and 6.409; (ii) not requiring the submission of information or a request for an applicant or captive insurance company wanting to take advantage of a request to grant a certificate of authority for a captive exchange, a request to waive the actuarial report, or a request to allow a distribution or dividend to equity holders; or (iii) adopting different requirements for applicant or captive insurance company wanting to take advantage of a request

to grant a certificate of authority for a captive exchange, a request to waive the actuarial report, or a request to allow a distribution or dividend to equity holders.

Not proposing §§6.202(d), 6.401(c), and 6.409. HB 1944 and SB 667 added Insurance Code Chapter 964, Subchapter C, and amended Insurance Code §§964.052, 964.060, and 964.063 to allow applicants and captive insurance companies to request to grant a certificate of authority for a captive exchange, a request to waive the actuarial report, or a request to allow a distribution or dividend to equity holders. Proposed §§6.202(d), 6.401(c), and 6.409, informs applicants and captive insurance companies of the information that the department will consider in evaluating these requests. If the department did not propose §§6.202(d), 6.401(c), and 6.409, applicants and captive insurance companies would still be required to make the request; however, they would lack information as to what information the department required. This would result in delay and additional costs. For these reasons, the department rejects this option.

Not requiring the submission of information or a request. The department rejects this option for the following reasons: (i) without the request, the department will not know that the applicant or captive insurance company seeks to take advantage of §§6.202(d), 6.401(c), and 6.409; and (ii) without the information, the department will not know that the applicant or captive insurance company qualifies under statute and rule. This option would deny the applicant the ability to take advantage of §§6.202(d), 6.401(c), and 6.409. For these reasons, the department rejects this option.

Adopting different requirements. It is necessary that the department have sufficient information to verify that an applicant or captive insurance company is qualified to take advantage of §§6.202(d), 6.401(c), and 6.409. In drafting §§6.202(d), 6.401(c), and 6.409, the department attempted to balance its need for information with the burden the requirement places on an applicant or captive insurance company in order to minimize costs. In addition, any changes to the required information would likely still result in the same costs to the applicant or captive insurance company. For these reasons, the department rejects this option.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed §§6.202(d), 6.401(c), and 6.409 for the applicant or captive insurance company that may be owned and operated by a small or micro business.

### **Section 6.411.**

The department has determined that costs associated with §6.411 will not result in additional or different costs to those previously determined under §7.624 or §7.627 and published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1942). As stated in the published analysis, the department determined any affected insurer meeting the \$250 million capital and surplus requirement under Insurance Code §964.052(f), or an NRSRO, is not a small or micro business. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address costs under §6.411 in its regulatory flexibility analysis.

The department has determined that the proposal will not have an adverse economic effect on rural communities. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that the proposed §§6.202(d), 6.401(c), 6.409, and 6.411 impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because proposed §§6.202(d), 6.401(c), 6.409, and 6.411 are necessary to implement amendments to HB 1944 and SB 667.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect:

- the proposed rule will not create or eliminate a government program;
- implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- the proposed rule does not require an increase or decrease in future legislative appropriations to the department;
- the proposed rule does not require an increase or decrease in fees paid to the department;
- the proposed rule expands regulations in §§6.1, 6.202, 6.203, 6.302, and 6.303 to allow captive insurance companies to be formed as captive exchanges as authorized under HB 1944; in

§6.401 to create a procedure to request waiver of the requirement to submit an actuarial opinion as authorized under HB 1944; in §6.409 to create a procedure to request dividend or distribution payments to policyholders as authorized under HB 1944 and SB 667; and in §6.409 to provide a procedure for determining acceptable qualified jurisdictions and rating agencies for reinsurance transactions under Insurance Code §964.052(f) as authorized under HB 1944;

-- the proposed rule limits regulation under §6.202 to reflect that HB 1944 eliminated the statutory requirement that the department must approve corporate formation documents prior to the submission of those documents to the Secretary of State;

-- the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

-- the proposed rule does not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** The department will consider any written comments on the proposal received by the department no later than 5 p.m., Central time, on October 22, 2018. Send one copy of your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The department will consider requests for a public hearing on the proposal received by the department no later than 5 p.m., Central time, on October 22, 2018. Submit the request separate from any comments, to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

**SUBCHAPTER A. GENERAL MATTERS.**

**STATUTORY AUTHORITY.** Amendments to §6.1 and §6.2 are proposed under Insurance Code §964.069 and §36.001.

Insurance Code §964.069 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes and provisions of Insurance Code Chapter 964.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.**

Amendments to §6.1 and §6.2 affect Insurance Code §§964.001, 964.053, 964.055, 964.059, 964.060, 964.065, 964.104, and 964.106.

**TEXT.**

**§6.1. Definitions.**

(a) The definitions in Insurance Code §964.001 apply to this chapter.

(b) The following words and terms when used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) Administrative services--Insurance-related services necessary for the operation of a captive insurance company, including: claims adjustment; underwriting; accounting; investment advice; risk management; regulatory compliance; compiling statistics and preparing premium, loss, and tax reports; maintaining books and records; handling reinsurance matters; and processing premiums.

(2) Annual report--The annual report includes the following information, as required in the Texas Captive Annual Report form and instructions adopted under §6.401 of this title [~~relating to Annual Report~~]:

(A) the captive insurance company's financial statements, including disclosures and supporting schedules;

(B) an actuarial opinion completed by a qualified actuary that provides an opinion relating to policy reserves and other actuarial items for risks insured; and



(C) financial projections every third year, as required under §6.406 of this title [~~(relating to Financial Projections)~~].

(3) Captive management company--A legal entity, not an individual, that has oversight responsibility for providing any administrative service to a captive insurance company.

(4) Certificate of filing--Evidence of the acceptance and filing of an instrument authorized to be filed with the Texas Secretary of State under the Business Organizations Code, Insurance Code Chapter 964, and this chapter.

(5) Commissioner--the Texas Commissioner of Insurance.

(6) Department--the Texas Department of Insurance.

(7) [(5)] General partnership--The term includes a general partnership designated as a limited liability partnership. The term does not include a limited partnership, including a limited partnership designated as a limited liability partnership.

~~[(6) Generally accepted accounting principles Current and future generally accepted accounting principles issued by the Financial Accounting Standards Board for use in the United States as provided in §6.402 of this title (relating to Basis of Accounting)].~~

(8) [(7)] Governing body--The individuals designated by the captive insurance company, or attorney in fact, who comprise the ultimate decision-making body of a captive insurance company, or attorney in fact, including a board of directors or officers of the captive insurance company, or attorney in fact. This definition applies to the use of the term in this chapter and the relationship of the captive insurance company, or attorney in fact, to the department. To the extent that the term has a different meaning under the Business Organizations Code related to the formation of entities and filings with the Texas Secretary of State, this definition does not apply.

(9) [(8)] Licensed attorney--A person licensed and eligible to practice law.

(10) [(9)] Qualified accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code §401.011.

(11) [(10)] Qualified actuary--A person who meets the basic education, experience, and continuing education requirements set forth in the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States, promulgated by the American

Academy of Actuaries, and is either:

(A) a member of the American Academy of Actuaries who has demonstrated actuarial competence to the satisfaction of the Commissioner [~~commissioner~~]; or

(B) a member of the Casualty Actuarial Society.

(12) [~~(11)~~] Qualified United States financial institution--An institution that:

(A) is organized under the laws of the United States or any state of the United States;

(B) is regulated, supervised, and examined by a federal or state authority that has regulatory authority over banks and trust companies; and

(C) is approved by the Commissioner [~~commissioner~~].

(13) [~~(12)~~] Service providers--Captive management companies that provide administrative services and individuals or entities providing legal, actuarial, or auditing services.

(14) [~~(13)~~] Texas Captive Annual Report--The forms, instructions, and requirements adopted by reference in §6.401 of this title that are necessary for completing the annual report and other submissions under this chapter.

(15) [~~(14)~~] Ultimate controlling person--Person or persons who control a captive insurance company and who are not controlled by another person.

## **§6.2. Submissions and Notifications to the Commissioner and Department.**

Except as otherwise provided in this chapter or the Texas Captive Annual Report, all submissions to the Commissioner [~~commissioner~~] or the department referenced in this chapter must be sent to the address and by the means specified on:

(1) [~~to the address and by the means specified in~~] the applicable department form;  
[~~or~~]

(2) the department's website; or

(3) if the address is not specified:

(A) electronically, to Captives@tdi.texas.gov;

(B) by hand delivery, to Captives, Texas Department of Insurance, 333 Guadalupe, Mail Code 103-CL [~~305-2C~~], Austin, Texas 78701; or

(C) by mail, to Captives, Texas Department of Insurance, P.O. Box 149104,  
Mail Code 103-CL [~~305-2C~~], Austin, Texas 78714-9104.

### **SUBCHAPTER C. CAPTIVE INSURANCE COMPANY APPLICATION PROCESS.**

**STATUTORY AUTHORITY.** Amendments to §6.202 and §6.203 are proposed under Insurance Code §964.069 and §36.001.

Insurance Code §964.069 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes and provisions of Insurance Code Chapter 964.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

### **CROSS REFERENCE TO STATUTE.**

Amendments to §6.202 and §6.203 affect Insurance Code §§964.053 - 964.059, and 964.102 - 964.106.

### **TEXT.**

#### **§6.202. Captive Insurance Company Certificate of Authority Application Contents and Process.**

(a) An applicant seeking to redomesticate an existing captive insurance company or to form a new captive insurance company must provide the following information to the department:

(1) the name of the entity, the entity's federal employer identification number, and the location and means of contacting the entity;

(2) the physical location of the books and records and means of maintaining the books and records;

(3) the registered agent for service;

(4) a list of the service providers that the captive insurance company will use,

including qualified accountants, qualified actuaries, and licensed attorneys;

(5) biographical affidavits for the individuals described in §6.303 of this title [~~relating to Captive Insurance Company Biographical Information~~] who provide necessary functions to operate and govern the captive insurance company;

(6) the name of the ultimate controlling person;

(7) the [proposed] organizational documents for the captive insurance company, other than a captive insurance company formed as a captive exchange, including:

(A) a certificate of filing from the Texas Secretary of State indicating that the entity has been formed or redomesticated to Texas as an entity under the Business Organizations Code, other than a risk retention group or general partnership, for the purpose of providing captive insurance;

(B) an affidavit satisfactory to the Commissioner from the incorporators, organizers, or officers of the captive insurance company stating that:

(i) the capital and surplus are the bona fide property of the company;

and

(ii) the certificate of filing is true and correct; and

(C) if necessary, an affidavit by the incorporators, organizers, or officers of the captive insurance company stating:

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

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

(8) a description of how the captive insurance company fits into the affiliated group's risk management plan and the group's significant operations in the State of Texas;

(9) if the application is for the redomestication of a captive insurance company, information listed in subsection (b) of this section;

(10) if the applicant proposes to insure controlled unaffiliated business, the information listed in subsection (c) of this section;

(11) a plan of operation, including:

(A) the asset page; liability, capital, and surplus page; income statement page; and cash flow page for the applicant from the Texas Captive Annual Report that are certified by two principal officers who have submitted biographical affidavits and:

(i) four years of financial projections, with a disclosure of the assumptions the applicant is using to develop the projected financial statements; and

(ii) if applicable, the most recent three years of operational results, in United States dollars; however, if the applicant has not been in operation for three or more years, the applicant must submit operational results, in United States dollars, for each year it has been in operation;

(B) a description of the lines of business and perils that the captive insurance company proposes to cover and the limits of coverage;

(C) a list of the affiliates that the applicant proposes to insure;

(D) a description of the reinsurance programs proposed including the lines of business that are affected, limits of reinsurance coverage, and the counterparties that will be involved;

(E) an organizational chart listing all affiliates of the applicant's affiliated group;

(F) agreements with any captive management companies the applicant proposes to use;

(G) a copy of the applicant's investment strategy;

(H) an explanation of how the applicant intends to handle profits, including a statement about how dividends will be evaluated;

(I) an independent actuarial report that evaluates the feasibility of the applicant's plan of operation;

(J) details of how the parent entity will maintain and support the captive insurance company, including ensuring compliance with Texas statutes and rules; and

(K) evidence of the financial wherewithal of the affiliate group, including affiliated persons, to retain the risk using the captive insurance company; and

(12) an affidavit by two principal officers or members of the governing committee

who have submitted biographical affidavits that the information provided in paragraphs (1) - (11) of this subsection is true and correct.

(b) An application for a redomestication must include:

(1) the applicant's current domicile jurisdiction;

(2) if the applicant has been examined:

(A) the date of the most recent examination; and

(B) a copy of the most recent examination report;

(3) information required in §6.407 and §6.408 of this title [~~(relating to Loans to Affiliates and Letters of Credit)~~] for existing loans to affiliates; and

(4) a letter of no objection or release from the captive insurance company's current domicile.

(c) If the applicant proposes to insure a controlled unaffiliated business, the following documentation must be provided with the application:

(1) copies of the agreement(s) that evidence an existing contractual relationship between the parties, one of which must be a captive insurance company affiliate;

(2) a description and any supporting documentation that evidences that the captive insurance company affiliate bears the risk of a potential financial loss associated with the contract beyond the affiliate having to pay a fee; and

(3) a description and any supporting policies that document that a captive insurance company affiliate controls the risk management function of the controlled unaffiliated business.

(d) If the applicant proposes to form as a captive exchange under Insurance Code Chapter 964, Subchapter C, the applicant must provide the following information:

(1) A copy of the power of attorney executed by each subscriber appointing the attorney in fact;

(2) A copy of the subscriber declaration meeting the requirements of Insurance Code §964.101(a)(2) and §964.106;

(3) A copy of the attorney in fact's articles of incorporation, or other governing document, that details the composition of the governing body and what constitutes a quorum;

(4) a certificate of filing from the Texas Secretary of State indicating that the

attorney in fact has been formed or redomesticated to Texas as an entity under the Business Organizations Code, other than a risk retention group or general partnership, for the purpose of providing captive insurance;

(e) ~~(d)~~ The department may accept similar information prepared in a similar format for a nonaffiliated third party, including a regulator, bank, or similar user, to the extent that the information satisfies one or more of the requirements in subsections (a) - ~~(d)~~ ~~[(e)]~~ of this section to the satisfaction of the Commissioner ~~[commissioner]~~.

~~[(e) The department will review the information submitted under subsections (a) — (d) of this section. The applicant may submit amended documents and information during the review process.]~~

~~[(1) If the department determines that the documents and information meet the standards required for a certificate of authority under Insurance Code §964.059 and this chapter, the department will issue a certificate of general good to the applicant. The certificate of general good does not bind the Texas Secretary of State to accept any subsequent filing by the applicant, nor does it bind the department to issue a certificate of authority.]~~

~~[(2) If the commissioner determines that the documents and information do not to meet the standards required for a certificate of authority under Insurance Code §964.059 and this chapter, the commissioner will deny the application. Following denial of the application, the applicant may proceed under Insurance Code §964.059(e).]~~

~~[(f) If the applicant receives a certificate of general good, the applicant must submit the following documentation to the department to proceed with the licensing process:]~~

~~[(1) a certificate of filing from the Texas Secretary of State indicating that the entity has been formed or redomesticated to Texas as an entity under the Business Organizations Code, other than a risk retention group or general partnership, for the purpose of providing captive insurance;]~~

~~[(2) an affidavit satisfactory to the commissioner from 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 filing is true and correct; and]~~

~~[(3) if necessary, an affidavit by the incorporators, organizers, or officers of the captive insurance company 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.]~~

(f) ~~[(g)]~~ The applicant may submit a written request for the Commissioner ~~[commissioner]~~ to waive or grant a conditional exception to any portion of the application or information required under this section. At the Commissioner's ~~[commissioner's]~~ sole discretion, the Commissioner ~~[commissioner]~~ may grant the waiver in writing, if the Commissioner ~~[commissioner]~~ determines the requirement or information is not applicable or provides no additional value in reviewing the application. At the Commissioner's ~~[commissioner's]~~ sole discretion, the Commissioner ~~[commissioner]~~ may grant a conditional exception that will be listed in the certificate of authority issued as described in §6.203(b) of this title. ~~[(relating to Issuance of Captive Insurance Company Certificate of Authority.)]~~

### **§6.203. Issuance of Captive Insurance Company Certificate of Authority.**

(a) Following submission of the information and documentation described under §6.202 of this title ~~[(relating to Captive Insurance Company Certificate of Authority Application Contents and Process)]~~ the Commissioner ~~[commissioner]~~ will review the information ~~[certificate of filing and the certificate of general good]~~ for compliance with Insurance Code Chapter 964 and this chapter. If requested, the applicant must provide the Commissioner ~~[commissioner]~~ with updated information during this review.

(b) If the Commissioner ~~[commissioner]~~ determines that the applicant meets the requirements for issuance of a certificate of authority, the Commissioner ~~[commissioner]~~ will issue the certificate as described in Insurance Code §964.059(d). If the department has granted conditional exceptions under §6.202(f) ~~[\$6.202(g)]~~ of this title, the certificate of authority will list the exceptions and be issued on a consent basis, requiring the written agreement of the captive insurance company.



(c) If the Commissioner [~~commissioner~~] determines that the applicant has not met the requirements for issuance of a certificate of authority under Insurance Code §964.059 and this chapter, the Commissioner [~~commissioner~~] will deny the application. Following denial of the application, the applicant may proceed under Insurance Code §964.059(c).

#### **SUBCHAPTER D. MAINTENANCE OF A CAPTIVE INSURANCE COMPANY'S CERTIFICATE OF AUTHORITY.**

**STATUTORY AUTHORITY.** Amendments to §6.302 and §6.303 are proposed under Insurance Code §964.069 and §36.001.

Insurance Code §964.069 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes and provisions of Insurance Code Chapter 964.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

#### **CROSS REFERENCE TO STATUTE.**

Amendments to §6.302 and §6.303 affect Insurance Code §§964.051 - 964.059, 964.061, 964.062, and 964.102 - 964.106.

#### **TEXT.**

##### **§6.302. Governing Body.**

(a) The captive insurance company, or attorney in fact, must designate individuals to form a governing body. Collectively, the members of the governing body must have the ability and experience necessary to oversee the captive insurance company's operations. The ability and experience needed will vary with the size and complexity of the captive insurance company's operations.

(b) The governing body is responsible for the following:

(1) establishing and documenting the internal control procedures used by the captive insurance company, or attorney in fact. If a captive insurance company, or attorney in fact, uses an affiliate's procedures, the governing body must review the procedures for appropriateness and modify where needed;

(2) documenting a conflict-of-interest policy and procedure, and monitoring it to verify compliance;

(3) overseeing all entities providing captive management services to the captive insurance company;

(4) monitoring counterparty risk, which could include banking institutions and reinsurers;

(5) setting the captive insurance company investment policy; and

(6) managerial control, insurance information, and compliance with the Insurance Code and department rules.

### **§6.303. Captive Insurance Company Biographical Information.**

(a) With the initial captive insurance company application, and within 30 days of employment, contract, or other association with the captive insurance company, or attorney in fact, the following individuals must complete a biographical affidavit and submit it to the department:

(1) with the exception of functions provided by a captive management company, individuals, including individual representatives of the attorney in fact, who oversee the management of the captive insurance company, including the following functions, must complete a biographical affidavit addressing:

(A) risk management;

(B) financial reporting;

(C) underwriting;

(D) claims; and

(E) investments;

(2) members of the governing body; and

(3) corporate officers.

(b) Biographical affidavits required of individuals under subsection (a) of this section must include the following information and disclosures:

(1) the affiant's current name and any names the individual may have used in the past, social security number, date of birth, and current mailing addresses, phone numbers, email addresses;

(2) the name and address of the captive insurance company;

(3) the affiant's position or title at the captive insurance company;

(4) information regarding the affiant's education, memberships in professional organizations, and any professional, occupational, or vocational licenses held;

(5) the affiant's employment history for the previous 10 years; and

(6) the affiant's fidelity bond coverage history, criminal history, and ownership or control of entities involved in the business of insurance.

#### **SUBCHAPTER E. FINANCIAL INFORMATION AND REPORTING.**

**STATUTORY AUTHORITY.** Amendments to §6.401 and §6.409 are proposed under Insurance Code §§964.063, 964.069, and 36.001.

Insurance Code §964.063(b) provides that the Commissioner will adopt rules to implement Insurance Code §964.063(b).

Insurance Code §964.069 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes and provisions of Insurance Code Chapter 964.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

#### **CROSS REFERENCE TO STATUTE.**

Amendments to §§6.401, 6.409, and 6.411 affect Insurance Code Chapter 401, Subchapter A, and Insurance Code §§964.052, 964.060, and 964.063.

#### **TEXT.**

### **§6.401. Annual Report.**

(a) The department adopts, by reference, the Texas Captive Annual Report, including all forms, instructions, and requirements [~~by reference~~]. The adopted forms and instructions will be available on the department's website. The adopted forms, instructions, and requirements, are for use by all captive insurance companies that are subject to the provisions of this chapter and Insurance Code Chapter 964. Bracketed information in the forms, including the department submission locations, submission formats and methods, and contact information, is subject to change and persons submitting the forms must confirm that they are using the most recent online version before submitting.

(b) Except as provided in §6.404 of this title [~~(relating to Captive Insurance Companies Using Other Than Calendar Year Fiscal Years)~~], on or before March 1 of each year, a captive insurance company must electronically submit its annual report of the captive insurance company's financial condition as of December 31 of the prior year using the adopted Texas Captive Annual Report form and instructions.

(c) A request to waive the actuarial opinion required to be filed with the annual report must be submitted to the department no later than 30 days prior to the end of the fiscal year subject to the waiver request. If approved, the approved actuarial opinion waiver must be submitted with the Texas Captive Annual Report. The request must include:

- (1) the name of the captive insurance company;
- (2) the name and contact information of a representative of the captive insurance company with knowledge of the information disclosed in the request;
- (3) the time period that the captive insurance company has been in operation;
- (4) the amount of net written premium or reinsurance assumed; and
- (5) the signature of an officer of the captive insurance company, or attorney if fact, certifying the information contained in the request is true and correct to the best of the signing individual's knowledge and belief.

### **§6.409. [~~Policyholder~~] Dividends and Distributions.**

(a) A captive insurance company must notify the Commissioner [~~commissioner~~] of a

policyholder dividend or distribution within 30 days of issuing the dividend.

(b) Dividends and distributions to holders of equity interests that are not policyholder dividends or distributions under subsection (a) of this section must be approved by the Commissioner before payment. The captive insurance company must notify the Commissioner of its intent to make such a payment at least 30 days prior to the payment date. The notice must include:

(1) The amount of the declared dividend or distribution;

(2) The declaration date;

(3) The proposed payment date;

(4) The net writings to policyholders' surplus ratio before and after the payment is made; and

(5) The net reserves to policyholders' surplus ratio before and after the payment is made.

**§6.411. Reinsurance under Insurance Code §964.052(f).**

(a) A qualified jurisdiction under Insurance Code §964.052(f)(1) is determined to be acceptable under §7.624 of this title.

(b) A nationally recognized statistical rating organization under Insurance Code §964.052(f)(3) is determined to be acceptable under §7.622(a)(4)(C) or §7.627 of this title.

**10. CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued at Austin, Texas on September 6, 2018.

/s/ Norma Garcia

Norma Garcia

General Counsel

Texas Department of Insurance