Subchapter A. General Matters
28 TAC §6.1 and §6.2

Subchapter D. Maintenance of a Captive Insurance Company's Certificate of Authority
28 TAC §6.301

Subchapter E. Financial Information and Reporting
28 TAC §6.408

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§6.1, 6.2, 6.301, and 6.408, concerning captive insurance. The proposal makes nonsubstantive amendments to update mailing and email addresses, statutory citations, and to conform the sections to current agency drafting standards.

EXPLANATION. The amendments to §§6.1, 6.2, 6.301, and 6.408 are necessary to update addresses and statutory citations. Because TDI moved from its previous location in the William P. Hobby Building at 333 Guadalupe Street in Austin, Texas 78701 to the Barbara Jordan State Office Building at 1601 Congress Avenue in Austin, Texas 78701, references to TDI's mailing address and physical address need to be updated. As part of this update, TDI also proposes amendments to revise email addresses and other contact information to ensure that the rules have TDI's current information. The amendments also update former article citations to reference current Insurance Code citations, delete duplicative citations, and add titles to Insurance Code chapter citations to provide additional clarity. These amendments promote efficiency and effectiveness within TDI's processes, in line with the goals of its upcoming review under the Texas Sunset Act, Government Code Chapter 325.

Descriptions of the sections' proposed amendments follow.

Section 6.1. The amendment to §6.1 removes paragraph (b)(3), containing the definition of "captive management company," because it is duplicative of Insurance Code 964.001(3), which is already incorporated by subsection (a). Every subsequent definition is renumbered. The titles of cited regulations are added to existing citations throughout. "Commissioner" is lowercased in §6.1(b) to reflect current drafting standards.

Section 6.2. Amendments to §6.2 delete paragraph (3) because it is duplicative of the information that we have on the department's form or website. "Commissioner" is lowercased to reflect current drafting standards. Section 6.2(3)(B) is removed because hand delivery is a dated method that the rule does not need to address. Other nonsubstantive amendments include changes to formatting and plain language modifications to improve readability and clarify the methods by which the applications may be submitted.

Section 6.301. Amendments to §6.301 add Insurance Code Chapter 964's title and add a reference to Insurance Code Chapter 804. The amendments remove paragraphs (1) and (3) – (6) because they unnecessarily repeat statutory requirements. The existing paragraph (2) is renumbered to paragraph (1); the existing reference to §6.304 is added to paragraph (2); the existing paragraph (7) is renumbered to paragraph (3); and existing paragraph (9) is renumbered to paragraph (4).

Section 6.408. An amendment to §6.408 updates the reference to the title of 28 TAC §7.610 in subsection (b). The amendment also removes an outdated reference to Insurance Code Article 5.75-1, §(d)(3). Also, the title "Audits and Examinations" is added to the existing Insurance Code Chapter 401 citation in §6.408(a)(3)(D). An amendment in §6.408(a)(3)(G) lowercases "State."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David McElroy, financial analysis manager of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by statute. Mr. McElroy made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. McElroy does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. McElroy expects that administering them will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapters 964, 401, and 803. Updating Insurance Code §§6.1, 6.2, 6.301, and 6.408 to plainly reflect appropriate contact information, accurate citations, and agency standards also benefits the public.

Mr. McElroy expects that the proposed amendments will not increase the cost of compliance because they do not impose requirements beyond those in statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. There are no changes in the proposal that impose new requirements beyond the statutes. As a result, and in accordance with

Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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.

As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 6, 2027. Consistent with Government Code §2001.024(a)(8), TDI requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2872 at 2:00 pm, central time, on December 11, 2026. TDI will hold the public hearing both remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701 in Room 2.035. Details of how to view and participate virtually in the public hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/index.html.

Subchapter A. General Matters
28 TAC §6.1 and §6.2

STATUTORY AUTHORITY. TDI proposes amendments to §6.1 and §6.2 and 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 powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 6.1 and 6.2 implement Insurance Code §§964.052, 964.055, 964.057, 964.060, 946.067, and 964.106.

TEXT.

§6.1. Definitions.

(a) The definitions in Insurance Code §964.001, concerning Definitions, 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.~~]

(3) [~~(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, concerning Captive Insurance Companies, and this chapter.

(4) [~~(5)~~] Commissioner--The Texas Commissioner of Insurance.

(5) [~~(6)~~] Department--The Texas Department of Insurance.

(6) [~~(7)~~] 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.

(7) [~~(8)~~] 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.

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

(9) [~~(10)~~] Qualified accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code §401.011, concerning Qualifications of Accountant; Acceptance of Audited Financial Report.

(10) [~~(11)~~] 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.

(11) [~~(12)~~] 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~~].

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

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

(14) [~~(15)~~] 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 according to the information listed on [~~to the address and by the means specified on:~~]

[~~(1)~~] 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, Austin, Texas 78701; or~~]

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

Subchapter D. Maintenance of a Captive Insurance Company's Certificate of Authority
28 TAC §6.301

STATUTORY AUTHORITY. TDI proposes amendments to §6.301 under Insurance Code §§803.008, 964.069, and 36.001.

Insurance Code §803.008 authorizes the commissioner to adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Insurance Code §804.002 provides that the commissioner may adopt rules that are essential for the effective implementation of Insurance Code Chapter 804.

Insurance Code §964.069 authorizes the commissioner to adopt reasonable rules as 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 powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 6.408 implements Insurance Code §§964.052, 964.054, 964.057, and 964.065.

TEXT.

§6.301. Ongoing Requirements.

A captive insurance company must comply with Insurance Code Chapter 964, concerning Captive Insurance Companies; Insurance Code Chapter 804, concerning Service of Process; [~~,~~] the Business Organizations Code; [~~,~~] and this chapter, including:

[~~(1) providing biographical information as required under §6.303 of this title (relating to Captive Insurance Company Biographical Information);~~]

(1) [~~(2)~~] writing an annual premium amount of at least $100,000;

[~~(3) having an affiliate or ultimate controlling person with the financial wherewithal to continue placing the risk in the captive insurance company;~~]

[~~(4) complying with §6.306 and §7.1403 of this title (relating to Books and Records and Service on Domestic Insurance Companies Licensed by the State Board of Insurance and on Related Entities Authorized To Conduct Business in Texas);~~]

[~~(5) submitting annual reports and audited financial statements as described in §§6.401, 6.403, and 6.404 of this title (relating to Annual Report, Audited Financial Statements, and Captive Insurance Companies Using Other Than Calendar Year Fiscal Years);~~]

[~~(6) notifying the department of any material change in the captive insurance company's plan of operation, as described in §6.304 of this title (relating to Material Change in the Plan of Operations);~~]

(2) [~~(7)~~] maintaining minimum capital and surplus as established by the department;

(3) [~~(8)~~] except as provided in §6.304 of this title (relating to Material Change in the Plan of Operations) [~~paragraph (6) of this section~~], notifying the department of any change to the information provided in the application within 30 days following the change; and

(4) [~~(9)~~] timely payment of all required fees and registrations, including payments required by the Texas Secretary of State to maintain the captive insurance company in good standing.

Subchapter E. Financial Information and Reporting
28 TAC §6.408

STATUTORY AUTHORITY. TDI proposes amendments to §6.408 under Insurance Code §§493.003, 964.066, 964.069, and 36.001.

Insurance Code §493.003 provides that the commissioner may adopt necessary and reasonable rules under Insurance Code Chapter 493 to protect the public interest.

Insurance Code §964.066 provides that 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.

Insurance Code §964.069 authorizes the commissioner to adopt reasonable rules as 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 powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 6.408 implements Insurance Code §§493.104, 493.105, 964.056, and 964.057.

TEXT.

§6.408. Letters of Credit.

(a) A letter of credit must comply with this subsection to be reported as an asset of the captive insurance company.

(1) The letter of credit cannot be supported or collateralized by a guaranty of an affiliate.

(2) The beneficiary of the letter of credit must be the commissioner as beneficiary for the security of the captive insurance company's policyholders.

(3) The letter of credit must:

(A) be clean, irrevocable, and unconditional, and issued by a qualified United States financial institution;

(B) contain an issue date and stipulate that the beneficiary (the commissioner) need only draw a draft under the letter of credit and present it to obtain funds and that no other document need be presented;

(C) show only one amount on the letter of credit;

(D) be readily available for viewing by the department on request, including at any time to the department in conducting an examination under Insurance Code Chapter 401, concerning Audits and Examinations;

(E) indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself must not contain reference to any other agreements, documents, or entities;

(F) contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent on reimbursement; and

(G) state that it is subject to and governed by either the laws of the state [~~State~~] of Texas, or the laws of the state of domicile of the issuing bank, and in the event of any conflict must specify whether the laws of Texas or the laws of the state in which the issuing bank is domiciled will apply, and all drafts drawn on the letter of credit will be presentable at an office in the United States of a qualified United States financial institution;

(4) The letter of credit must not:

(A) have a schedule of periodic payments;

(B) name any beneficiary other than the commissioner; and

(C) in aggregate of all letters of credit issued to any one captive insurer by one financial institution, exceed 10% of the financial institution's total equity capital, as shown in its most recent report of condition as filed with the appropriate federal or state financial institution regulatory agency.

(5) The term of the letter of credit must be for at least one year and must contain an evergreen clause that prevents the expiration of the letter of credit without written notice from the issuer. The evergreen clause will provide for a period of no less than 30 days' written notice to the commissioner prior to expiry date or nonrenewal.

(6) In the event a letter of credit is not renewed or replaced, the commissioner must not be prevented from withdrawing the balance of the letter of credit and placing such sums in trust to secure continuing obligations until a renewal letter of credit or a substitution in lieu thereof has been received.

(7) In the event that a letter of credit is not renewed, replaced, or is suspended, the captive insurance company and the issuing bank must give immediate notice to the commissioner of such nonrenewal, replacement, or inactive status.

(b) A letter of credit used for reinsurance purposes must meet the requirements of §7.610 of this title (relating to Letter of Credit Requirements). [~~Qualified under Insurance Code, Article 3.10, §(d)(3), or Article 5.75-1, §(d)(3)).~~]

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

Issued in Austin, Texas, on November 13, 2026.

Signed by:
Jessica Barta
5DAC5618BBC74D4...

Jessica Barta, General Counsel
Texas Department of Insurance