

By: Smithee

H.B. No. 4291

A BILL TO BE ENTITLED

AN ACT

relating to insurance charters and certificates of authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 801.001(2), Insurance Code, is amended to read as follows:

(2) "Insurer" means the issuer of an insurance policy that is issued to another in consideration of a premium and that insures against a loss that may be insured against under the law.

The term includes a:

- (A) fraternal benefit society;
- (B) Lloyd's plan;
- (C) mutual company of any kind, including a:
  - (i) statewide mutual assessment association;
  - (ii) local mutual aid association or burial association; and
  - (iii) county or farm mutual insurance company;
- (D) reciprocal or interinsurance exchange; ~~and~~
- (E) group hospital service corporation;
- (F) health maintenance organization;
- (G) nonprofit legal services corporation; and
- (H) stock company.

SECTION 2. Section 801.051, Insurance Code, is amended to

1 read as follows:

2 Sec. 801.051. APPROVAL, DENIAL, OR DISAPPROVAL OF  
3 APPLICATION FOR [ISSUANCE OF] CERTIFICATE; ELIGIBILITY; HEARING.

4 (a) The department shall approve, deny, or disapprove an  
5 application for a certificate of authority to act as an insurer.

6 (b) If the department determines that the applicant has  
7 complied with the law, the department shall approve the application  
8 and issue under the department's seal a certificate of authority to  
9 act as an insurer [to an applicant applying for the certificate if  
10 the department determines that the applicant has complied with the  
11 law].

12 (c) On the applicant's request, the commissioner shall hold  
13 a hearing on a denial. Not later than the 30th day after the date of  
14 the applicant's request for a hearing, the commissioner shall  
15 request a hearing date.

16 SECTION 3. Section 801.102, Insurance Code, is amended to  
17 read as follows:

18 Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF  
19 CERTIFICATE. (a) If after conducting an inquiry under Section  
20 801.101 the department determines that [~~based on substantial~~  
21 ~~evidence,~~] the person who is the subject of the inquiry is not  
22 worthy of the public confidence, the department shall [~~after~~  
23 ~~written notice and hearing~~]:

24 (1) deny the application for a certificate of  
25 authority; or

26 (2) revoke the insurer's certificate of authority.

27 (b) On the applicant's request, the commissioner shall hold

1 a hearing on a denial or revocation. Not later than the 30th day  
2 after the date of the applicant's request for a hearing, the  
3 commissioner shall request a hearing date.

4 SECTION 4. Section 822.057(b), Insurance Code, is amended  
5 to read as follows:

6 (b) If the commissioner is not satisfied with the affidavit  
7 filed under Subsection (a)(3), the commissioner may require that  
8 the incorporators provide at their expense additional evidence of a  
9 matter required in the affidavit before the commissioner:

10 (1) receives the proposed articles of incorporation or  
11 the application for charter; or

12 (2) [~~provides notice of a hearing on the application~~  
13 ~~for charter or holds a hearing; or~~

14 [~~(3)~~] issues a certificate of authority to the  
15 company.

16 SECTION 5. Section 822.058(b), Insurance Code, is amended  
17 to read as follows:

18 (b) After the items required for a charter under Sections  
19 822.057(a)(1) and (2) are filed with the department and the  
20 proposed insurance company has complied with all legal requirements  
21 [~~and before any hearing~~], the commissioner shall conduct an  
22 examination of the company to determine whether:

23 (1) the minimum capital stock and surplus requirements  
24 of Section 822.054 are satisfied;

25 (2) the capital stock and surplus is the bona fide  
26 property of the company; and

27 (3) the insurance company has fully complied with

1 insurance laws.

2 SECTION 6. Section 822.060, Insurance Code, is amended to  
3 read as follows:

4 Sec. 822.060. ACTION ON APPLICATION. (a) In considering  
5 the application, the commissioner [~~, not later than the 30th day~~  
6 ~~after the date on which a hearing under Section 822.057 is~~  
7 ~~completed,~~] shall determine if:

8 (1) the proposed capital structure of the company  
9 meets the requirements of this code;

10 (2) the proposed officers, directors, attorney in  
11 fact, or managing head of the company have sufficient insurance  
12 experience, ability, standing, and good record to make success of  
13 the proposed company probable; and

14 (3) the applicants are acting in good faith.

15 (b) If the commissioner determines that the applicant has  
16 not met the standards set out by [~~an affirmative finding any of the~~  
17 ~~issues under~~] Subsection (a) [~~adversely to the applicants~~], the  
18 commissioner shall deny [~~reject~~] the application in writing, giving  
19 the reason for the denial [~~rejection~~].

20 (c) If the commissioner does not deny [~~reject~~] the  
21 application under Subsection (b), the commissioner shall approve  
22 the application. On approval of an application, the articles of  
23 incorporation of the company shall be filed with the department.

24 (d) On the applicant's request, the commissioner shall hold  
25 a hearing on a denial. Not later than the 30th day after the date of  
26 the applicant's request for a hearing, the commissioner shall  
27 request a hearing date.

1 SECTION 7. Sections 822.158(b) and (c), Insurance Code, are  
2 amended to read as follows:

3 (b) If the commissioner determines that the applicant has  
4 not met the requirements [~~by an affirmative finding any of the~~  
5 ~~issues~~] set out by Subsection (a) [~~adversely to the applicants~~],  
6 the commissioner shall deny [~~reject~~] the application. On the  
7 applicant's request, the commissioner shall hold a hearing on a  
8 denial. Not later than the 30th day after the date of the  
9 applicant's request for a hearing, the commissioner shall request a  
10 hearing date.

11 (c) If the commissioner does not deny [~~reject~~] the  
12 application under Subsection (b), the commissioner shall approve  
13 the application and the amendment shall be filed with the  
14 department.

15 SECTION 8. Section 841.059(a), Insurance Code, is amended  
16 to read as follows:

17 (a) After the charter fee is paid and all items required for  
18 a charter under Section 841.058 are filed with the department, [+

19 [~~(1) the commissioner may set a date for a hearing on~~  
20 ~~the application, and~~

21 [~~(2)~~] the department shall make or cause to be made a  
22 full and thorough examination of the domestic insurance company  
23 [~~before the hearing~~].

24 SECTION 9. Section 841.061, Insurance Code, is amended by  
25 amending Subsections (a) and (b) and adding Subsections (b-1) and  
26 (b-2) to read as follows:

27 (a) In considering the application, the commissioner [~~not~~

1 ~~later than the 30th day after the date a hearing under Section~~  
2 ~~841.060 is completed,~~] shall determine if:

3 (1) the minimum capital and surplus required by  
4 Section 841.054 are the bona fide property of the domestic  
5 insurance company;

6 (2) the proposed officers, directors, and managing  
7 executive of the company have sufficient insurance experience,  
8 ability, and standing to make success of the proposed company  
9 probable; and

10 (3) the applicants are acting in good faith.

11 (b) If the commissioner determines that the applicant has  
12 not met the standards set out by [~~an affirmative finding any of the~~  
13 ~~issues under~~] Subsection (a) [~~adversely to the applicants~~], the  
14 commissioner shall deny [~~reject~~] the application in writing, giving  
15 the reason for the denial [~~rejection~~]. An application may not be  
16 granted unless it is adequately supported by competent evidence.

17 (b-1) On the applicant's request, the commissioner shall  
18 hold a hearing on a denial. Not later than the 30th day after the  
19 date of the applicant's request for a hearing, the commissioner  
20 shall request a hearing date.

21 (b-2) An interested party may participate fully and in all  
22 respects in any proceeding related to the application. An  
23 intervenor has the rights and privileges of a proper or necessary  
24 party in a civil suit in the courts of this state, including the  
25 right to be represented by counsel.

26 SECTION 10. Section 841.061(c), Insurance Code, as  
27 effective April 1, 2009, is amended to read as follows:

1 (c) If the commissioner does not deny [~~reject~~] the  
2 application under Subsection (b), the commissioner shall approve  
3 the application. On approval of an application, the department  
4 shall record the information required by Section 841.058 in records  
5 maintained for that purpose. On receipt of a fee in the amount  
6 determined under Chapter 202, the commissioner shall provide to the  
7 incorporators a certified copy of the application, articles of  
8 incorporation, and submitted affidavit.

9 SECTION 11. Section 846.054, Insurance Code, is amended by  
10 amending Subsection (a) and adding Subsection (a-1) to read as  
11 follows:

12 (a) The commissioner shall approve, deny, or disapprove an  
13 application for [~~issue~~] an initial certificate of authority [~~to a~~  
14 ~~multiple employer welfare arrangement~~] that meets the requirements  
15 of Section 846.053 not later than the 60th day after the date on  
16 which the application is filed.

17 (a-1) On the applicant's request, the commissioner shall  
18 hold a hearing on a denial. Not later than the 30th day after the  
19 date of the applicant's request for a hearing, the commissioner  
20 shall request a hearing date.

21 SECTION 12. Section 882.057, Insurance Code, is amended to  
22 read as follows:

23 Sec. 882.057. APPLICATION PROCESS. (a) After the charter  
24 fee is paid and all items required for a charter under Section  
25 882.056 are filed with the department, the commissioner shall  
26 approve, deny, or disapprove [~~may set a date for a hearing on~~] the  
27 application.

1           (b) On the applicant's request, the commissioner shall hold  
2 a hearing on a denial. Not later than the 30th day after the date of  
3 the applicant's request for a hearing, the commissioner shall  
4 request a hearing date [~~The date for a hearing on an application may~~  
5 ~~not be before the 11th or later than the 60th day after the date~~  
6 ~~notice is provided under Subsection (c)] .~~

7           (c) [~~The commissioner shall:~~  
8                ~~(1) provide written notice of the date of a hearing~~  
9 ~~to:~~

10                       ~~[(A) the person or persons who filed the~~  
11 ~~application; and~~

12                       ~~[(B) any interested party, including any other~~  
13 ~~party who had previously requested a copy of the notice; and~~

14                       ~~[(2) publish, at the expense of the incorporators, a~~  
15 ~~copy of the notice in a newspaper of general circulation in the~~  
16 ~~county in which the mutual life insurance company's home office is~~  
17 ~~proposed to be located.~~

18           ~~[(d) The department shall make a record of the proceedings~~  
19 ~~of a hearing under this section.~~

20           ~~[(e)]~~ An interested party [~~is entitled to oppose or support~~  
21 ~~the granting or denial of the application and]~~ may [~~intervene and]~~  
22 participate fully and in all respects in any [~~hearing or other]~~  
23 proceeding related to [~~on~~] the application. An intervenor has the  
24 rights and privileges of a proper or necessary party in a civil suit  
25 in the courts of this state, including the right to be represented  
26 by counsel.

27           SECTION 13. Sections 882.058(a) and (b), Insurance Code,



1 are amended to read as follows:

2 (a) In considering the application, the commissioner [~~, not~~  
3 ~~later than the 30th day after the date a hearing under Section~~  
4 ~~882.057 is completed,~~] shall determine if:

5 (1) the minimum unencumbered surplus required by  
6 Section 882.055 is the bona fide property of the mutual life  
7 insurance company;

8 (2) the proposed officers, directors, and managing  
9 executives of the company have sufficient insurance experience,  
10 ability, and standing to make success of the proposed company  
11 probable; and

12 (3) the applicants are acting in good faith.

13 (b) If the commissioner determines that the applicant has  
14 not met the standards set out by [~~an affirmative finding any of the~~  
15 ~~issues under~~] Subsection (a) [~~adversely to the applicants~~], the  
16 commissioner shall deny [~~reject~~] the application in writing, giving  
17 the reason for the denial [~~rejection~~]. An application may not be  
18 granted unless it is adequately supported by competent evidence.

19 SECTION 14. Section 884.057, Insurance Code, is amended to  
20 read as follows:

21 Sec. 884.057. ACTION BY COMMISSIONER AND DEPARTMENT AFTER  
22 FILING. (a) After the charter fee is paid and all items required  
23 for a charter under Section 884.056 are filed with the department,  
24 [~~+~~

25 [~~(1)~~] the commissioner shall approve or deny [~~may set~~  
26 ~~a date for a hearing on~~] the charter application [~~, and~~

27 [~~(2) the department shall make or cause to be made a~~

1 ~~full and thorough examination of the company before a hearing]~~.

2       (b) On the applicant's request, the commissioner shall hold  
3 a hearing on a denial. Not later than the 30th day after the date of  
4 the applicant's request for a hearing, the commissioner shall  
5 request a hearing date [~~The stipulated premium company shall pay~~  
6 ~~for the examination required under Subsection (a)(2)]].~~

7       (c) An interested party may participate fully and in all  
8 respects in any proceeding related to the application. An  
9 intervenor has the rights and privileges of a proper or necessary  
10 party in a civil suit in the courts of this state, including the  
11 right to be represented by counsel.

12       SECTION 15. Section 884.058, Insurance Code, is amended to  
13 read as follows:

14       Sec. 884.058. EXAMINATION AFTER DETERMINATION [~~APPLICATION~~  
15 ~~PROCESS~~]. After making a determination [~~(a) The date for a~~  
16 ~~hearing] on an application under Section 884.057, the [~~may not be~~  
17 ~~before the 11th or later than the 30th day after the date notice is~~  
18 ~~provided under Subsection (b).~~~~

19       [~~(b) The~~] commissioner shall immediately make or cause to be  
20 made a full and thorough examination of the company. The company  
21 shall pay for the examination [+

22       [~~(1) provide written notice of the date of a hearing~~  
23 ~~to:~~

24               [~~(A) the person or persons who filed the~~  
25 ~~application, and~~

26               [~~(B) any interested party, including any other~~  
27 ~~party who had previously requested a copy of the notice, and~~

1           ~~[(2) publish, at the expense of the incorporators, a~~  
2 ~~copy of the notice in a newspaper of general circulation in the~~  
3 ~~county in which the stipulated premium company's home office is~~  
4 ~~proposed to be located.~~

5           ~~[(c) The department shall make a record of the proceedings~~  
6 ~~of a hearing under this section.~~

7           ~~[(d) An interested party is entitled to oppose or support~~  
8 ~~the granting or denial of the application and may intervene and~~  
9 ~~participate fully and in all respects in any hearing or other~~  
10 ~~proceeding on the application. An intervenor has the rights and~~  
11 ~~privileges of a proper or necessary party in a civil suit in the~~  
12 ~~courts of this state, including the right to be represented by~~  
13 ~~counsel].~~

14           SECTION 16. Section 911.056, Insurance Code, is amended by  
15 amending Subsection (a) and adding Subsection (a-1) to read as  
16 follows:

17           (a) The ~~[On receipt of an application for a permit to~~  
18 ~~solicit insurance under Section 911.055, the]~~ department shall  
19 approve or deny an ~~[examine the]~~ application for a permit to solicit  
20 insurance under Section 911.055. If the department finds that the  
21 application complies with this chapter, the department shall issue  
22 to the applicants a permit to solicit insurance.

23           (a-1) If the department finds that the application does not  
24 comply with this chapter, the department shall deny the  
25 application. On the applicant's request, the commissioner shall  
26 hold a hearing on a denial. Not later than the 30th day after the  
27 date of the applicant's request for a hearing, the commissioner

1 shall request a hearing date.

2 SECTION 17. Section 982.102, Insurance Code, is amended by  
3 amending Subsection (c) and adding Subsection (d) to read as  
4 follows:

5 (c) Before approving or denying the application of a foreign  
6 or alien insurance company for [issuing] a certificate of authority  
7 to engage in the business of insurance in this state [~~to a foreign~~  
8 ~~or alien insurance company~~], the commissioner shall:

9 (1) examine the company, at the company's expense, at  
10 its principal office in the United States; or

11 (2) accept a report of an examination made by the  
12 insurance department or other insurance supervisory official of  
13 another state or government of a foreign country.

14 (d) On the applicant's request, the commissioner shall hold  
15 a hearing on a denial. Not later than the 30th day after the date of  
16 the applicant's request for a hearing, the commissioner shall  
17 request a hearing date.

18 SECTION 18. Section 982.113, Insurance Code, is amended to  
19 read as follows:

20 Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE,  
21 HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) The commissioner shall  
22 file in the commissioner's office the documents delivered to the  
23 department under this subchapter and shall approve or deny an  
24 application for a certificate of authority.

25 (b) The commissioner shall issue to a foreign or alien life  
26 insurance company, accident insurance company, life and accident  
27 insurance company, health and accident insurance company, or life,

1 health, and accident insurance company a certificate of authority  
2 to engage in this state in the kind of business specified in the  
3 documents if:

4 (1) the company has complied with the requirements of  
5 this chapter and any other requirement imposed on the company by  
6 law; and

7 (2) the company's operational history demonstrates  
8 that the expanded operation of the company in this state or its  
9 operations outside this state will not create a condition that  
10 might be hazardous to the company's policyholders or creditors or  
11 to the public.

12 (c) [~~(b)~~] The operational history of a life insurance  
13 company, accident insurance company, life and accident insurance  
14 company, health and accident insurance company, or life, health,  
15 and accident insurance company under Subsection (b)(2) [~~(a)(2)~~]  
16 must be reviewed in conjunction with:

17 (1) the company's loss experience;

18 (2) the kinds and nature of risks insured by the  
19 company;

20 (3) the company's financial condition and its  
21 ownership;

22 (4) the company's proposed method of operation;

23 (5) the company's affiliations;

24 (6) the company's investments;

25 (7) the company's contracts, if any, leading to  
26 contingent liability or agreements in respect to guaranty and  
27 surety, other than insurance; and

1           (8) the ratio of total annual premium and net  
2 investment income to commission expenses, general insurance  
3 expenses, policy benefits paid, and required policy reserve  
4 increases.

5           (d) On the applicant's request, the commissioner shall hold  
6 a hearing on a denial. Not later than the 30th day after the date of  
7 the applicant's request for a hearing, the commissioner shall  
8 request a hearing date.

9           SECTION 19. The following provisions of the Insurance Code  
10 are repealed:

- 11           (1) Section 822.057(c);
- 12           (2) Section 822.058(a);
- 13           (3) Section 822.059;
- 14           (4) Section 841.060;
- 15           (5) Section 843.081; and
- 16           (6) Section 882.058(c).

17           SECTION 20. This Act takes effect immediately if it  
18 receives a vote of two-thirds of all the members elected to each  
19 house, as provided by Section 39, Article III, Texas Constitution.  
20 If this Act does not receive the vote necessary for immediate  
21 effect, this Act takes effect September 1, 2009.