

1-1 By: Smithee (Senate Sponsor - Fraser) H.B. No. 4291  
1-2 (In the Senate - Received from the House April 16, 2009;  
1-3 April 27, 2009, read first time and referred to Committee on  
1-4 Business and Commerce; May 13, 2009, reported favorably by the  
1-5 following vote: Yeas 8, Nays 0; May 13, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to insurance charters and certificates of authority.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 801.001(2), Insurance Code, is amended  
1-11 to read as follows:

1-12 (2) "Insurer" means the issuer of an insurance policy  
1-13 that is issued to another in consideration of a premium and that  
1-14 insures against a loss that may be insured against under the law.  
1-15 The term includes a:

- 1-16 (A) fraternal benefit society;
- 1-17 (B) Lloyd's plan;
- 1-18 (C) mutual company of any kind, including a:
  - 1-19 (i) statewide mutual assessment
  - 1-20 association;
  - 1-21 (ii) local mutual aid association or burial
  - 1-22 association; and
  - 1-23 (iii) county or farm mutual insurance
  - 1-24 company;
- 1-25 (D) reciprocal or interinsurance exchange; ~~and~~
- 1-26 (E) group hospital service corporation;
- 1-27 (F) health maintenance organization;
- 1-28 (G) nonprofit legal services corporation; and
- 1-29 (H) stock company.

1-30 SECTION 2. Section 801.051, Insurance Code, is amended to  
1-31 read as follows:

1-32 Sec. 801.051. APPROVAL, DENIAL, OR DISAPPROVAL OF  
1-33 APPLICATION FOR [ISSUANCE OF] CERTIFICATE; ELIGIBILITY; HEARING.

1-34 (a) The department shall approve, deny, or disapprove an  
1-35 application for a certificate of authority to act as an insurer.

1-36 (b) If the department determines that the applicant has  
1-37 complied with the law, the department shall approve the application  
1-38 and issue under the department's seal a certificate of authority to  
1-39 act as an insurer [to an applicant applying for the certificate if  
1-40 the department determines that the applicant has complied with the  
1-41 law].

1-42 (c) On the applicant's request, the commissioner shall hold  
1-43 a hearing on a denial. Not later than the 30th day after the date of  
1-44 the applicant's request for a hearing, the commissioner shall  
1-45 request a hearing date.

1-46 SECTION 3. Section 801.102, Insurance Code, is amended to  
1-47 read as follows:

1-48 Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF  
1-49 CERTIFICATE. (a) If after conducting an inquiry under Section  
1-50 801.101 the department determines that [~~based on substantial~~  
1-51 evidence, the person who is the subject of the inquiry is not  
1-52 worthy of the public confidence, the department shall [~~after~~  
1-53 written notice and hearing]:

1-54 (1) deny the application for a certificate of  
1-55 authority; or

1-56 (2) revoke the insurer's certificate of authority.

1-57 (b) On the applicant's request, the commissioner shall hold  
1-58 a hearing on a denial or revocation. Not later than the 30th day  
1-59 after the date of the applicant's request for a hearing, the  
1-60 commissioner shall request a hearing date.

1-61 SECTION 4. Section 822.057(b), Insurance Code, is amended  
1-62 to read as follows:

1-63 (b) If the commissioner is not satisfied with the affidavit  
1-64 filed under Subsection (a)(3), the commissioner may require that

2-1 the incorporators provide at their expense additional evidence of a  
2-2 matter required in the affidavit before the commissioner:

2-3 (1) receives the proposed articles of incorporation or  
2-4 the application for charter; or

2-5 (2) [~~provides notice of a hearing on the application~~  
2-6 ~~for charter or holds a hearing, or~~

2-7 [~~(3)~~] issues a certificate of authority to the  
2-8 company.

2-9 SECTION 5. Section 822.058(b), Insurance Code, is amended  
2-10 to read as follows:

2-11 (b) After the items required for a charter under Sections  
2-12 822.057(a)(1) and (2) are filed with the department and the  
2-13 proposed insurance company has complied with all legal requirements  
2-14 [~~and before any hearing~~], the commissioner shall conduct an  
2-15 examination of the company to determine whether:

2-16 (1) the minimum capital stock and surplus requirements  
2-17 of Section 822.054 are satisfied;

2-18 (2) the capital stock and surplus is the bona fide  
2-19 property of the company; and

2-20 (3) the insurance company has fully complied with  
2-21 insurance laws.

2-22 SECTION 6. Section 822.060, Insurance Code, is amended to  
2-23 read as follows:

2-24 Sec. 822.060. ACTION ON APPLICATION. (a) In considering  
2-25 the application, the commissioner [~~, not later than the 30th day~~  
2-26 ~~after the date on which a hearing under Section 822.057 is~~  
2-27 ~~completed,~~] shall determine if:

2-28 (1) the proposed capital structure of the company  
2-29 meets the requirements of this code;

2-30 (2) the proposed officers, directors, attorney in  
2-31 fact, or managing head of the company have sufficient insurance  
2-32 experience, ability, standing, and good record to make success of  
2-33 the proposed company probable; and

2-34 (3) the applicants are acting in good faith.

2-35 (b) If the commissioner determines that the applicant has  
2-36 not met the standards set out by [an affirmative finding any of the  
2-37 issues under] Subsection (a) [adversely to the applicants], the  
2-38 commissioner shall deny [reject] the application in writing, giving  
2-39 the reason for the denial [rejection].

2-40 (c) If the commissioner does not deny [reject] the  
2-41 application under Subsection (b), the commissioner shall approve  
2-42 the application. On approval of an application, the articles of  
2-43 incorporation of the company shall be filed with the department.

2-44 (d) On the applicant's request, the commissioner shall hold  
2-45 a hearing on a denial. Not later than the 30th day after the date of  
2-46 the applicant's request for a hearing, the commissioner shall  
2-47 request a hearing date.

2-48 SECTION 7. Sections 822.158(b) and (c), Insurance Code, are  
2-49 amended to read as follows:

2-50 (b) If the commissioner determines that the applicant has  
2-51 not met the requirements [by an affirmative finding any of the  
2-52 issues] set out by Subsection (a) [adversely to the applicants],  
2-53 the commissioner shall deny [reject] the application. On the  
2-54 applicant's request, the commissioner shall hold a hearing on a  
2-55 denial. Not later than the 30th day after the date of the  
2-56 applicant's request for a hearing, the commissioner shall request a  
2-57 hearing date.

2-58 (c) If the commissioner does not deny [reject] the  
2-59 application under Subsection (b), the commissioner shall approve  
2-60 the application and the amendment shall be filed with the  
2-61 department.

2-62 SECTION 8. Section 841.059(a), Insurance Code, is amended  
2-63 to read as follows:

2-64 (a) After the charter fee is paid and all items required for  
2-65 a charter under Section 841.058 are filed with the department, [~~+~~

2-66 [~~(1) the commissioner may set a date for a hearing on~~  
2-67 ~~the application, and~~

2-68 [~~(2)~~] the department shall make or cause to be made a  
2-69 full and thorough examination of the domestic insurance company

3-1 ~~[before the hearing].~~

3-2 SECTION 9. Section 841.061, Insurance Code, is amended by  
3-3 amending Subsections (a) and (b) and adding Subsections (b-1) and  
3-4 (b-2) to read as follows:

3-5 (a) In considering the application, the commissioner ~~[, not~~  
3-6 ~~later than the 30th day after the date a hearing under Section~~  
3-7 ~~841.060 is completed,]~~ shall determine if:

3-8 (1) the minimum capital and surplus required by  
3-9 Section 841.054 are the bona fide property of the domestic  
3-10 insurance company;

3-11 (2) the proposed officers, directors, and managing  
3-12 executive of the company have sufficient insurance experience,  
3-13 ability, and standing to make success of the proposed company  
3-14 probable; and

3-15 (3) the applicants are acting in good faith.

3-16 (b) If the commissioner determines that the applicant has  
3-17 not met the standards set out by [an affirmative finding any of the  
3-18 issues under] Subsection (a) [adversely to the applicants], the  
3-19 commissioner shall deny [reject] the application in writing, giving  
3-20 the reason for the denial [rejection]. An application may not be  
3-21 granted unless it is adequately supported by competent evidence.

3-22 (b-1) On the applicant's request, the commissioner shall  
3-23 hold a hearing on a denial. Not later than the 30th day after the  
3-24 date of the applicant's request for a hearing, the commissioner  
3-25 shall request a hearing date.

3-26 (b-2) An interested party may participate fully and in all  
3-27 respects in any proceeding related to the application. An  
3-28 intervenor has the rights and privileges of a proper or necessary  
3-29 party in a civil suit in the courts of this state, including the  
3-30 right to be represented by counsel.

3-31 SECTION 10. Section 841.061(c), Insurance Code, as  
3-32 effective April 1, 2009, is amended to read as follows:

3-33 (c) If the commissioner does not deny [reject] the  
3-34 application under Subsection (b), the commissioner shall approve  
3-35 the application. On approval of an application, the department  
3-36 shall record the information required by Section 841.058 in records  
3-37 maintained for that purpose. On receipt of a fee in the amount  
3-38 determined under Chapter 202, the commissioner shall provide to the  
3-39 incorporators a certified copy of the application, articles of  
3-40 incorporation, and submitted affidavit.

3-41 SECTION 11. Section 846.054, Insurance Code, is amended by  
3-42 amending Subsection (a) and adding Subsection (a-1) to read as  
3-43 follows:

3-44 (a) The commissioner shall approve, deny, or disapprove an  
3-45 application for [issue] an initial certificate of authority [to a  
3-46 multiple employer welfare arrangement] that meets the requirements  
3-47 of Section 846.053 not later than the 60th day after the date on  
3-48 which the application is filed.

3-49 (a-1) On the applicant's request, the commissioner shall  
3-50 hold a hearing on a denial. Not later than the 30th day after the  
3-51 date of the applicant's request for a hearing, the commissioner  
3-52 shall request a hearing date.

3-53 SECTION 12. Section 882.057, Insurance Code, is amended to  
3-54 read as follows:

3-55 Sec. 882.057. APPLICATION PROCESS. (a) After the charter  
3-56 fee is paid and all items required for a charter under Section  
3-57 882.056 are filed with the department, the commissioner shall  
3-58 approve, deny, or disapprove [may set a date for a hearing on] the  
3-59 application.

3-60 (b) On the applicant's request, the commissioner shall hold  
3-61 a hearing on a denial. Not later than the 30th day after the date of  
3-62 the applicant's request for a hearing, the commissioner shall  
3-63 request a hearing date [The date for a hearing on an application may  
3-64 not be before the 11th or later than the 60th day after the date  
3-65 notice is provided under Subsection (c)].

3-66 (c) ~~[The commissioner shall:~~

3-67 ~~[(1) provide written notice of the date of a hearing~~

3-68 ~~to:~~

3-69 ~~[(A) the person or persons who filed the~~

4-1 application; and

4-2 [~~(B) any interested party, including any other~~  
4-3 ~~party who had previously requested a copy of the notice; and~~

4-4 [~~(2) publish, at the expense of the incorporators, a~~  
4-5 ~~copy of the notice in a newspaper of general circulation in the~~  
4-6 ~~county in which the mutual life insurance company's home office is~~  
4-7 ~~proposed to be located.~~

4-8 [~~(d) The department shall make a record of the proceedings~~  
4-9 ~~of a hearing under this section.~~

4-10 [~~(e)] An interested party [is entitled to oppose or support~~  
4-11 ~~the granting or denial of the application and] may [intervene and]~~  
4-12 ~~participate fully and in all respects in any [hearing or other]~~  
4-13 ~~proceeding related to [on] the application. An intervenor has the~~  
4-14 ~~rights and privileges of a proper or necessary party in a civil suit~~  
4-15 ~~in the courts of this state, including the right to be represented~~  
4-16 ~~by counsel.~~

4-17 SECTION 13. Sections 882.058(a) and (b), Insurance Code,  
4-18 are amended to read as follows:

4-19 (a) In considering the application, the commissioner [~~, not~~  
4-20 ~~later than the 30th day after the date a hearing under Section~~  
4-21 ~~882.057 is completed,~~] shall determine if:

4-22 (1) the minimum unencumbered surplus required by  
4-23 Section 882.055 is the bona fide property of the mutual life  
4-24 insurance company;

4-25 (2) the proposed officers, directors, and managing  
4-26 executives of the company have sufficient insurance experience,  
4-27 ability, and standing to make success of the proposed company  
4-28 probable; and

4-29 (3) the applicants are acting in good faith.

4-30 (b) If the commissioner determines that the applicant has  
4-31 not met the standards set out by [an affirmative finding any of the  
4-32 issues under] Subsection (a) [adversely to the applicants], the  
4-33 commissioner shall deny [reject] the application in writing, giving  
4-34 the reason for the denial [rejection]. An application may not be  
4-35 granted unless it is adequately supported by competent evidence.

4-36 SECTION 14. Section 884.057, Insurance Code, is amended to  
4-37 read as follows:

4-38 Sec. 884.057. ACTION BY COMMISSIONER AND DEPARTMENT AFTER  
4-39 FILING. (a) After the charter fee is paid and all items required  
4-40 for a charter under Section 884.056 are filed with the department,  
4-41 [+]

4-42 [~~(1)] the commissioner shall approve or deny [may set~~  
4-43 ~~a date for a hearing on] the charter application [+ and~~

4-44 [~~(2) the department shall make or cause to be made a~~  
4-45 ~~full and thorough examination of the company before a hearing].~~

4-46 (b) On the applicant's request, the commissioner shall hold  
4-47 a hearing on a denial. Not later than the 30th day after the date of  
4-48 the applicant's request for a hearing, the commissioner shall  
4-49 request a hearing date [The stipulated premium company shall pay  
4-50 for the examination required under Subsection (a)(2)].

4-51 (c) An interested party may participate fully and in all  
4-52 respects in any proceeding related to the application. An  
4-53 intervenor has the rights and privileges of a proper or necessary  
4-54 party in a civil suit in the courts of this state, including the  
4-55 right to be represented by counsel.

4-56 SECTION 15. Section 884.058, Insurance Code, is amended to  
4-57 read as follows:

4-58 Sec. 884.058. EXAMINATION AFTER DETERMINATION [APPLICATION  
4-59 PROCESS]. After making a determination [(a) The date for a  
4-60 hearing] on an application under Section 884.057, the [may not be  
4-61 before the 11th or later than the 30th day after the date notice is  
4-62 provided under Subsection (b)].

4-63 [(b) The] commissioner shall immediately make or cause to be  
4-64 made a full and thorough examination of the company. The company  
4-65 shall pay for the examination [+]

4-66 [(1) provide written notice of the date of a hearing  
4-67 to+]

4-68 [(A) the person or persons who filed the  
4-69 application; and]

5-1 ~~[(B) any interested party, including any other~~  
 5-2 ~~party who had previously requested a copy of the notice, and~~  
 5-3 ~~[(2) publish, at the expense of the incorporators, a~~  
 5-4 ~~copy of the notice in a newspaper of general circulation in the~~  
 5-5 ~~county in which the stipulated premium company's home office is~~  
 5-6 ~~proposed to be located.~~

5-7 ~~[(c) The department shall make a record of the proceedings~~  
 5-8 ~~of a hearing under this section.~~

5-9 ~~[(d) An interested party is entitled to oppose or support~~  
 5-10 ~~the granting or denial of the application and may intervene and~~  
 5-11 ~~participate fully and in all respects in any hearing or other~~  
 5-12 ~~proceeding on the application. An intervenor has the rights and~~  
 5-13 ~~privileges of a proper or necessary party in a civil suit in the~~  
 5-14 ~~courts of this state, including the right to be represented by~~  
 5-15 ~~counsel].~~

5-16 SECTION 16. Section 911.056, Insurance Code, is amended by  
 5-17 amending Subsection (a) and adding Subsection (a-1) to read as  
 5-18 follows:

5-19 (a) ~~The~~ [On receipt of an application for a permit to  
 5-20 solicit insurance under Section 911.055, the] department shall  
 5-21 approve or deny an ~~[examine the]~~ application for a permit to solicit  
 5-22 insurance under Section 911.055. If the department finds that the  
 5-23 application complies with this chapter, the department shall issue  
 5-24 to the applicants a permit to solicit insurance.

5-25 (a-1) If the department finds that the application does not  
 5-26 comply with this chapter, the department shall deny the  
 5-27 application. On the applicant's request, the commissioner shall  
 5-28 hold a hearing on a denial. Not later than the 30th day after the  
 5-29 date of the applicant's request for a hearing, the commissioner  
 5-30 shall request a hearing date.

5-31 SECTION 17. Section 982.102, Insurance Code, is amended by  
 5-32 amending Subsection (c) and adding Subsection (d) to read as  
 5-33 follows:

5-34 (c) Before approving or denying the application of a foreign  
 5-35 or alien insurance company for ~~[issuing]~~ a certificate of authority  
 5-36 to engage in the business of insurance in this state ~~[to a foreign~~  
 5-37 ~~or alien insurance company]~~, the commissioner shall:

5-38 (1) examine the company, at the company's expense, at  
 5-39 its principal office in the United States; or

5-40 (2) accept a report of an examination made by the  
 5-41 insurance department or other insurance supervisory official of  
 5-42 another state or government of a foreign country.

5-43 (d) On the applicant's request, the commissioner shall hold  
 5-44 a hearing on a denial. Not later than the 30th day after the date of  
 5-45 the applicant's request for a hearing, the commissioner shall  
 5-46 request a hearing date.

5-47 SECTION 18. Section 982.113, Insurance Code, is amended to  
 5-48 read as follows:

5-49 Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE,  
 5-50 HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) The commissioner shall  
 5-51 file in the commissioner's office the documents delivered to the  
 5-52 department under this subchapter and shall approve or deny an  
 5-53 application for a certificate of authority.

5-54 (b) The commissioner shall issue to a foreign or alien life  
 5-55 insurance company, accident insurance company, life and accident  
 5-56 insurance company, health and accident insurance company, or life,  
 5-57 health, and accident insurance company a certificate of authority  
 5-58 to engage in this state in the kind of business specified in the  
 5-59 documents if:

5-60 (1) the company has complied with the requirements of  
 5-61 this chapter and any other requirement imposed on the company by  
 5-62 law; and

5-63 (2) the company's operational history demonstrates  
 5-64 that the expanded operation of the company in this state or its  
 5-65 operations outside this state will not create a condition that  
 5-66 might be hazardous to the company's policyholders or creditors or  
 5-67 to the public.

5-68 (c) ~~[(b)]~~ The operational history of a life insurance  
 5-69 company, accident insurance company, life and accident insurance

6-1 company, health and accident insurance company, or life, health,  
6-2 and accident insurance company under Subsection (b)(2) [~~(a)(2)~~]  
6-3 must be reviewed in conjunction with:

- 6-4 (1) the company's loss experience;
- 6-5 (2) the kinds and nature of risks insured by the  
6-6 company;
- 6-7 (3) the company's financial condition and its  
6-8 ownership;
- 6-9 (4) the company's proposed method of operation;
- 6-10 (5) the company's affiliations;
- 6-11 (6) the company's investments;
- 6-12 (7) the company's contracts, if any, leading to  
6-13 contingent liability or agreements in respect to guaranty and  
6-14 surety, other than insurance; and
- 6-15 (8) the ratio of total annual premium and net  
6-16 investment income to commission expenses, general insurance  
6-17 expenses, policy benefits paid, and required policy reserve  
6-18 increases.

6-19 (d) On the applicant's request, the commissioner shall hold  
6-20 a hearing on a denial. Not later than the 30th day after the date of  
6-21 the applicant's request for a hearing, the commissioner shall  
6-22 request a hearing date.

6-23 SECTION 19. The following provisions of the Insurance Code  
6-24 are repealed:

- 6-25 (1) Section 822.057(c);
- 6-26 (2) Section 822.058(a);
- 6-27 (3) Section 822.059;
- 6-28 (4) Section 841.060;
- 6-29 (5) Section 843.081; and
- 6-30 (6) Section 882.058(c).

6-31 SECTION 20. This Act takes effect immediately if it  
6-32 receives a vote of two-thirds of all the members elected to each  
6-33 house, as provided by Section 39, Article III, Texas Constitution.  
6-34 If this Act does not receive the vote necessary for immediate  
6-35 effect, this Act takes effect September 1, 2009.

6-36 \* \* \* \* \*