

By: Smithee

H.B. No. 2835

Substitute the following for H.B. No. 2835:

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C.S.H.B. No. 2835

A BILL TO BE ENTITLED

AN ACT

relating to the functions of insurance holding company systems.

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

SECTION 1. Section 823.002, Insurance Code, is amended by adding Subdivisions (3-a), (3-b), and (4-a) and amending Subdivision (6) to read as follows:

(3-a) "Divesting person" means a person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(3-b) "Divestiture" means an abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(4-a) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(6) "Insurer" means any insurance company organized under the laws of this state, a commercially domiciled insurer, or

1 an insurer authorized to engage in the business of insurance in this
2 state. The term includes a capital stock company, mutual company,
3 farm mutual insurance company, title insurance company, fraternal
4 benefit society, local mutual aid association, statewide mutual
5 assessment company, county mutual insurance company, Lloyd's plan,
6 reciprocal or interinsurance exchange, stipulated premium
7 insurance company, and group hospital service corporation. The
8 term does not include an agency, authority, or instrumentality of
9 the United States, its possessions and territories, the
10 Commonwealth of Puerto Rico, the District of Columbia, or a state~~,~~
11 ~~or an agency, authority, instrumentality,~~ or political
12 subdivision of a state.

13 SECTION 2. Section 823.010, Insurance Code, is amended by
14 amending Subsections (c) and (d) and adding Subsections (e) and (f)
15 to read as follows:

16 (c) Except as provided by Subsection (d), ~~[After]~~ the
17 disclaimer shall be deemed to have been allowed unless, not later
18 than 60 days after the receipt of a complete disclaimer, ~~[is filed.~~

19 ~~[(1) the insurer is not required to register or report~~
20 ~~under Subchapter B because of a duty that arises out of the~~
21 ~~insurer's relationship with the person unless]~~ the commissioner
22 notifies the filing party that ~~[disallows]~~ the disclaimer is
23 disallowed~~[, in which event the duty to register or report begins on~~
24 ~~the date of the disallowance, and~~

25 ~~[(2) the person is not required to comply with~~
26 ~~Sections 823.154, 823.155, 823.159, and 823.160 unless the~~
27 ~~commissioner disallows the disclaimer].~~

1 (d) Notwithstanding Subsection (c), if the commissioner at
2 any time determines that the information disclosed in the
3 disclaimer is incomplete or inaccurate or is no longer accurate,
4 the [The] commissioner may disallow the disclaimer [only after:
5 ~~[(1) providing to each party in interest notice of and~~
6 ~~the opportunity to be heard on the disallowance; and~~
7 ~~[(2) making specific findings of fact to support the~~
8 ~~disallowance].~~

9 (e) If the commissioner disallows a disclaimer, the party
10 who filed the disclaimer may request an administrative hearing.
11 The commissioner shall grant the request for the hearing.

12 (f) If the commissioner allows a disclaimer, the party who
13 filed the disclaimer is not required to register under Subchapter B
14 or comply with Section 823.154, 823.155, 823.159, or 823.160 unless
15 the commissioner determines that the disclaimer should be
16 disallowed under Subsection (d).

17 SECTION 3. Section 823.011, Insurance Code, is amended by
18 amending Subsections (b) and (d) and adding Subsections (e), (f),
19 (g), (h), and (i) to read as follows:

20 (b) The information shall be confidential and privileged
21 for all purposes [~~treated confidentially and is not subject to~~
22 ~~subpoena~~]. Except as provided by Subsections (c) and (d), the
23 information may not be disclosed without the prior written consent
24 of the insurer to which it pertains.

25 (d) Except as provided by Subsection (e), if the recipient
26 of documents or other information agrees in writing to maintain the
27 confidential and privileged status of the documents or other

1 information, and verifies in writing the legal authority to
2 maintain the confidential and privileged status of the documents or
3 information, the [~~The~~] commissioner or another person may disclose
4 the information to any of the following entities functioning in an
5 official capacity:

6 (1) a commissioner of insurance or an insurance
7 department of another state;

8 (2) an authorized law enforcement official;

9 (3) a district attorney of this state;

10 (4) the attorney general; [~~or~~]

11 (5) a grand jury; or

12 (6) members of a supervisory college described by
13 Section 823.0145.

14 (e) Notwithstanding Subsection (d), the commissioner may
15 share confidential and privileged information reported under
16 Section 823.0595 only with the commissioner of insurance of a state
17 that has a statute or rule substantially similar to Subsection (d)
18 who agrees in writing not to disclose the information.

19 (f) Information described by Subsection (a), including
20 information in the possession of the National Association of
21 Insurance Commissioners under this section, is confidential and
22 privileged for all purposes, including for purposes of:

23 (1) Chapter 552, Government Code;

24 (2) a response to a subpoena; or

25 (3) discovery or admissibility in evidence in a civil
26 action.

27 (g) The commissioner shall enter into written agreements

1 with the National Association of Insurance Commissioners regarding
2 the sharing and use of information provided under this chapter. An
3 agreement entered into under this subsection must:

4 (1) specify procedures and protocols regarding the
5 confidentiality and security of information shared with the
6 National Association of Insurance Commissioners and its affiliates
7 and subsidiaries under this chapter, including procedures and
8 protocols for sharing by the National Association of Insurance
9 Commissioners with other state, federal, or international
10 regulators;

11 (2) specify that ownership of information shared with
12 the National Association of Insurance Commissioners and its
13 affiliates and subsidiaries under this chapter remains with the
14 commissioner, and that use of the information by the National
15 Association of Insurance Commissioners is subject to the direction
16 of the commissioner;

17 (3) require prompt notice to an insurer whose
18 confidential information is in the possession of the National
19 Association of Insurance Commissioners under this chapter that the
20 information is subject to a request or subpoena to the National
21 Association of Insurance Commissioners for disclosure or
22 production; and

23 (4) require the National Association of Insurance
24 Commissioners and its affiliates and subsidiaries to give consent
25 to intervention by an insurer in any judicial or administrative
26 action in which the National Association of Insurance Commissioners
27 and its affiliates and subsidiaries may be required to disclose

1 confidential information about the insurer shared with the National
2 Association of Insurance Commissioners and its affiliates and
3 subsidiaries under this chapter.

4 (h) This section may not be construed to prevent the
5 commissioner or the attorney general from using information
6 described by Subsection (a) for any purpose with respect to which
7 the commissioner or the attorney general is otherwise authorized to
8 act, including a regulatory or other legal action.

9 (i) The commissioner remains solely responsible for the
10 administration, execution, and enforcement of this chapter, and the
11 commissioner's sharing of information does not constitute a
12 delegation of regulatory or rulemaking authority.

13 SECTION 4. Subchapter A, Chapter 823, Insurance Code, is
14 amended by adding Section 823.0145 to read as follows:

15 Sec. 823.0145. SUPERVISORY COLLEGES. (a) With respect to
16 any insurer registered under Subchapter B, and in accordance with
17 Subsection (c), the commissioner may participate in a supervisory
18 college for a domestic insurer that is part of an insurance holding
19 company system with international operations in order to determine
20 the insurer's compliance with this chapter. The commissioner may:

21 (1) initiate the establishment of a supervisory
22 college;

23 (2) clarify the membership and participation of other
24 entities in the supervisory college;

25 (3) clarify the functions of the supervisory college
26 and the role of other entities in the supervisory college;

27 (4) establish a group-wide supervisor;

1 (5) coordinate the ongoing activities of the
2 supervisory college, including meetings, regulatory activities,
3 and processes for information sharing; and

4 (6) establish a crisis management plan.

5 (b) In order to assess the business strategy, financial
6 position, legal and regulatory position, risk exposure, risk
7 management and governance processes, and as part of the examination
8 of individual insurers under Subchapter H, the commissioner may
9 participate in a supervisory college with other entities that
10 regulate the insurer or its affiliates, including other state,
11 federal, and international regulatory entities. The commissioner
12 may enter into agreements under Section 823.011 to cooperate with
13 other regulatory entities. Nothing in this section shall be
14 construed as delegating to the supervisory college the
15 commissioner's authority to regulate the insurer or its affiliates.

16 (c) A registered insurer subject to this section shall pay
17 the reasonable expenses, including reasonable travel expenses, of
18 the commissioner's participation in a supervisory college under
19 Subsection (b). For purposes of this section, a supervisory
20 college may be convened as either a temporary or permanent forum for
21 communication and cooperation between the entities that regulate
22 the insurer or its affiliates, and the commissioner may establish a
23 regular assessment to the insurer for the payment of expenses
24 related to the regulation of the insurer.

25 SECTION 5. Section 823.052, Insurance Code, is amended by
26 amending Subsections (b) and (c) and adding Subsections (c-1) and
27 (c-2) to read as follows:

1 (b) The registration statement must be in a format
2 prescribed by the National Association of Insurance Commissioners
3 or adopted by rule of the commissioner and contain current
4 information about:

5 (1) the identity and relationship of each affiliate in
6 the insurance holding company system of which the insurer is a part;

7 (2) the capital structure, general financial
8 condition, and ownership and management of the insurer, the
9 insurer's holding company, the insurer's subsidiaries, and, if the
10 commissioner considers the information necessary, any of the
11 insurer's other affiliates; and

12 (3) any pledge of stock of the insurer or a subsidiary
13 or controlling affiliate of the insurer for a loan made to a member
14 of the insurer's insurance holding company system.

15 (c) The registration statement must also contain
16 information about:

17 (1) each outstanding loan the insurer makes to an
18 affiliate of the insurer or an affiliate makes to the insurer;

19 (2) each purchase, sale, or exchange of securities or
20 other investment between the insurer and an affiliate of the
21 insurer;

22 (3) each purchase, sale, or exchange of assets between
23 the insurer and an affiliate of the insurer;

24 (4) each management and service contract or
25 cost-sharing arrangement between the insurer and an affiliate of
26 the insurer;

27 (5) each reinsurance agreement between the insurer and

1 an affiliate of the insurer that covers one or more lines of
2 insurance of the ceding company;

3 (6) each agreement between the insurer and an
4 affiliate of the insurer to consolidate federal income tax returns;

5 (7) each transaction between the insurer and an
6 affiliated financial institution;

7 (8) each transaction between the insurer and an
8 affiliate of the insurer that is not in the ordinary course of
9 business;

10 (9) each guarantee or undertaking, other than an
11 insurance contract entered into in the ordinary course of the
12 insurer's business, for the benefit of an affiliate of the insurer
13 that results in a contingent exposure of the insurer's assets to
14 liability;

15 (10) each dividend or distribution to the insurer's
16 shareholders; ~~and~~

17 (11) each transaction between the insurer and an
18 affiliate of the insurer not specified by this subsection that is
19 subject to Section 823.102, 823.103, or 823.104;

20 (12) the corporate governance and internal control
21 responsibilities of the insurer's board of directors, including a
22 statement that:

23 (A) the insurer's senior management or officers
24 have approved and implemented, and continue to maintain and
25 monitor, corporate governance and internal control procedures; and

26 (B) the insurer's board of directors oversees
27 corporate governance and internal controls; and

1 (13) any other information that the commissioner
2 requires by rule.

3 (c-1) On request of the commissioner, an insurer shall
4 include with the statement a copy of all financial statements for
5 the insurance holding company system and all affiliates of the
6 holding company system, including annual audited financial
7 statements filed with the United States Securities and Exchange
8 Commission pursuant to the Securities Act of 1933 (15 U.S.C.
9 Section 77a et seq.) or the Securities Exchange Act of 1934 (15
10 U.S.C. Section 78a et seq.).

11 (c-2) An insurer required by the commissioner to submit
12 financial statements under Subsection (c-1) may satisfy the
13 requirement by submitting to the commissioner:

14 (1) the financial statements that the insurer's parent
15 corporation most recently filed with the Securities and Exchange
16 Commission; and

17 (2) if the insurer is required to submit financial
18 statements for an affiliate, the financial statements that the
19 affiliate most recently filed with an agency that regulates the
20 affiliate.

21 SECTION 6. Subchapter B, Chapter 823, Insurance Code, is
22 amended by adding Section 823.0595 to read as follows:

23 Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as
24 provided by Subsections (d) and (f), the ultimate controlling
25 person, as defined by Section 823.055, of each insurer required to
26 file an annual registration shall file with the registration an
27 annual enterprise risk report. The report must, to the best of the

1 ultimate controlling person's knowledge, identify the material
2 risks within the insurance holding company system that may pose
3 enterprise risk to the insurer. The report must be filed with the
4 lead state commissioner of the insurance holding company system, as
5 determined by the commissioner. In determining the lead state
6 commissioner, the commissioner shall consider the procedures
7 adopted by the National Association of Insurance Commissioners.

8 (b) The ultimate controlling person of an insurer shall file
9 the first enterprise risk report required by this section with the
10 first annual registration statement due after:

11 (1) January 1, 2013, if the total direct or assumed
12 annual premiums of the insurer were \$5 billion or more during the
13 preceding 12-month period;

14 (2) January 1, 2014, if the total direct or assumed
15 annual premiums of the insurer were more than \$1 billion but less
16 than \$5 billion during the preceding 12-month period;

17 (3) January 1, 2015, if the total direct or assumed
18 annual premiums of the insurer were more than \$500 million but less
19 than \$1 billion during the preceding 12-month period; or

20 (4) January 1, 2016, if the total direct or assumed
21 annual premiums of the insurer were \$300 million or more but less
22 than \$500 million during the preceding 12-month period.

23 (c) Subsection (b) and this subsection expire January 2,
24 2015.

25 (d) Except as provided by Subsection (e), the ultimate
26 controlling person of an insurer with total direct or assumed
27 annual premiums of less than \$300 million is not required to submit

1 an enterprise risk report under Subsection (a).

2 (e) Regardless of total direct or assumed annual premium,
3 the ultimate controlling person of an insurer that is not in
4 compliance with applicable risk-based capital standards or that is
5 otherwise in hazardous condition, as determined by the
6 commissioner, shall file an enterprise risk report required by
7 Subsection (a) as directed by the commissioner.

8 (f) An insurer or health maintenance organization that in
9 the preceding calendar year had direct written and assumed premiums
10 of more than \$300 million but less than \$500 million may request an
11 exemption from the reporting requirements of Subsection (a) by
12 filing with the commissioner a written statement describing the
13 undue financial or organizational hardship the insurer or health
14 maintenance organization would suffer as a result of complying with
15 Subsection (a). The commissioner may grant the exemption if the
16 commissioner finds that compliance with Subsection (a) would impose
17 an undue financial or organizational hardship on the insurer or
18 health maintenance organization.

19 SECTION 7. Section 823.060, Insurance Code, is amended to
20 read as follows:

21 Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file
22 a registration statement or an amendment to a registration
23 statement, or an enterprise risk report, within the time specified
24 for filing the statement, ~~or~~ amendment, or report, as required by
25 this subchapter, is a violation of this subchapter.

26 SECTION 8. The heading to Section 823.101, Insurance Code,
27 is amended to read as follows:

1 Sec. 823.101. STANDARDS FOR TRANSACTION WITHIN AN INSURANCE
2 HOLDING COMPANY SYSTEM [~~WITH AFFILIATE~~].

3 SECTION 9. Section 823.101, Insurance Code, is amended by
4 amending Subsection (a) and adding Subsection (b-1) to read as
5 follows:

6 (a) This section applies only to a material transaction
7 within an insurance holding company system to which an [~~between a~~
8 ~~registered insurer and an affiliate of the~~] insurer subject to a
9 registration under Section 843.052 is a party.

10 (b-1) An agreement, including an agreement for
11 cost-sharing, services, or management, must include all provisions
12 required by rule of the commissioner.

13 SECTION 10. Section 823.102, Insurance Code, is amended by
14 amending Subsection (a) and adding Subsections (d) and (e) to read
15 as follows:

16 (a) This section applies only to a sale, purchase, exchange,
17 loan or other extension of credit, or investment between a domestic
18 insurer and any person in the insurer's insurance holding company
19 system, including an amendment or modification of an affiliate
20 agreement previously filed under this section, that involves more
21 than the lesser of 5 percent of the insurer's admitted assets or 25
22 percent of the insurer's surplus, as of December 31 of the year
23 preceding the year in which the transaction occurs.

24 (d) The notice described by Subsection (c) must include:

25 (1) the reasons for entering into or changing the
26 transaction; and

27 (2) the financial impact of the transaction on the

1 domestic insurer.

2 (e) Not later than the 30th day after the termination of a
3 previously filed agreement, the domestic insurer shall give notice
4 of the termination to the commissioner.

5 SECTION 11. Section 823.103, Insurance Code, is amended by
6 amending Subsection (a) and adding Subsections (e) and (f) to read
7 as follows:

8 (a) This section applies only to:

9 (1) a sale, purchase, exchange, loan or other
10 extension of credit, or investment between a domestic insurer and
11 any person in the insurer's insurance holding company system,
12 including an amendment or modification of an affiliate agreement
13 previously filed under this section:

14 (A) that involves more than the lesser of
15 one-half of one percent of the insurer's admitted assets or five
16 percent of the insurer's surplus, as of December 31 of the year
17 preceding the year in which the transaction occurs; and

18 (B) the approval of which is not required under
19 Section 823.102;

20 (2) a reinsurance agreement, including a reinsurance
21 treaty or pooling agreement, or an amendment or modification of an
22 agreement previously filed under this section, between a domestic
23 insurer and any person in the insurer's holding company system [~~or a~~
24 ~~modification of such an agreement~~];

25 (3) a rendering of services between a domestic insurer
26 and any person in the insurer's holding company system on a regular
27 or systematic basis, including a tax-allocation agreement, or an

1 amendment or modification of an agreement previously filed under
2 this section; or

3 (4) any material transaction between a domestic
4 insurer and any person in the insurer's holding company system that
5 is specified by rule and that the commissioner determines may
6 adversely affect the interests of the insurer's policyholders or of
7 the public, including an amendment or modification of an agreement
8 previously filed under this section.

9 (e) The notice described by Subsection (c) must include:

10 (1) the reasons for entering into or changing the
11 transaction; and

12 (2) the financial impact of the transaction on the
13 domestic insurer.

14 (f) Not later than the 30th day after the termination of a
15 previously filed agreement, the domestic insurer shall give notice
16 of the termination to the commissioner.

17 SECTION 12. Section 823.154, Insurance Code, is amended to
18 read as follows:

19 Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF
20 CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person
21 who directly or indirectly controls, or after the acquisition would
22 directly or indirectly control, a domestic insurer may in any
23 manner acquire a voting security of a domestic insurer or before a
24 person may otherwise acquire control of a domestic insurer or
25 exercise any control over a domestic insurer, or before a person may
26 initiate a divestiture of control of a domestic insurer:

27 (1) the acquiring person shall file with the

1 commissioner a statement that satisfies the requirements of
2 Subchapter E; ~~and~~

3 (2) the acquisition or divestiture of control must be
4 approved by the commissioner in accordance with this subchapter;
5 and

6 (3) if the person is initiating a divestiture of
7 control, the divesting person shall file with the commissioner a
8 notice of divestiture on a form adopted by the National Association
9 of Insurance Commissioners or adopted by the commissioner by rule.

10 (b) The acquiring person or divesting person shall send a
11 copy of the statement filed under this section to the domestic
12 insurer.

13 (c) A statement or notice filed under this section must be
14 filed not later than the 60th day before the proposed effective date
15 of the acquisition or change of control or divestiture and is
16 subject to public inspection at the office of the commissioner.

17 (d) Notwithstanding Subsection (a), a divesting person is
18 not required to provide the commissioner with notice of divestiture
19 required by Subsection (a)(3) if an acquiring person submits the
20 statement required by Subsection (a)(1) and that acquisition is
21 approved by the commissioner.

22 SECTION 13. Section 823.157, Insurance Code, is amended to
23 read as follows:

24 Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR
25 DIVESTITURE OF CONTROL. (a) The commissioner shall approve or deny
26 an acquisition, ~~or~~ change, or divestiture of control for which a
27 statement or notice is filed under Section 823.154 not later than

1 the 60th day after the date the statement required by that section
2 is filed. The 60-day period may be waived by the person filing the
3 statement or notice required by Section 823.154 and the domestic
4 insurer. On the request of either the person filing the statement
5 or notice required by Section 823.154, or the domestic insurer, the
6 commissioner shall hold a hearing on a denial.

7 (b) In considering whether to approve or deny, the
8 commissioner shall consider whether:

9 (1) immediately on the acquisition, ~~or~~ change, or
10 divestiture of control the domestic insurer would not be able to
11 satisfy the requirements for the issuance of a new certificate of
12 authority to write the line or lines of insurance for which the
13 insurer holds a certificate of authority;

14 (2) the effect of the acquisition, ~~or~~ change, or
15 divestiture of control would be substantially to lessen competition
16 in a line or subclassification lines of insurance in this state or
17 tend to create a monopoly in a line or subclassification lines of
18 insurance in this state;

19 (3) the financial condition of the acquiring person
20 may jeopardize the financial stability of the domestic insurer or
21 prejudice the interest of the domestic insurer's policyholders;

22 (4) the acquiring person has a plan or proposal to
23 liquidate the domestic insurer or cause the insurer to declare
24 dividends or make distributions, sell any of its assets,
25 consolidate or merge with any person, make a material change in its
26 business or corporate structure or management, or enter into a
27 material agreement, arrangement, or transaction of any kind with

1 any person, and that the plan or proposal is unfair, prejudicial,
2 hazardous, or unreasonable to the insurer's policyholders and not
3 in the public interest;

4 (5) due to a lack of competence, trustworthiness,
5 experience, and integrity of the persons who would control the
6 operation of the domestic insurer, the acquisition or change of
7 control would not be in the interest of the insurer's policyholders
8 and the public;

9 (5-a) the divestiture of control may jeopardize the
10 financial stability of the domestic insurer or prejudice the
11 interest of the domestic insurer's policyholders and other
12 claimants; or

13 (6) the acquisition, ~~[or]~~ change, or divestiture of
14 control would violate the law of this or another state or the United
15 States.

16 (c) If a proposed acquisition, change, or divestiture of
17 control will require the approval of more than one commissioner,
18 the commissioner may participate in a public hearing referred to in
19 this chapter held on a consolidated basis on request of the person
20 filing the statement required by Section 823.154. The person
21 filing the statement under Section 823.154 shall file the statement
22 with the National Association of Insurance Commissioners within
23 five days of making the request for a public hearing. A hearing
24 conducted on a consolidated basis shall be public and shall be held
25 within the United States before the commissioners of the states in
26 which the insurers are domiciled. The commissioners shall hear and
27 receive evidence at the hearing. The commissioner may attend the

1 hearing in person or by telecommunication.

2 (d) This section does not require the commissioner to hold a
3 hearing before approving or denying an acquisition, change, or
4 divestiture of control.

5 SECTION 14. Section 823.201, Insurance Code, is amended by
6 adding Subsections (d) and (e) to read as follows:

7 (d) The acquiring person shall agree to provide the annual
8 enterprise risk report required by Section 823.0595 for as long as
9 the acquiring person maintains control of the insurer.

10 (e) The acquiring person and all subsidiaries within the
11 acquiring person's control in the insurance holding company system
12 shall provide information to the commissioner on request of the
13 commissioner as the commissioner deems necessary to evaluate
14 enterprise risk to the insurer.

15 SECTION 15. Section 823.205, Insurance Code, is amended by
16 adding Subsection (c) to read as follows:

17 (c) An insurer required to file information under Section
18 823.154 may satisfy the requirement of Section 823.052(c-1) by
19 providing the commissioner with the most recently filed parent
20 corporation reports that have been filed with the United States
21 Securities and Exchange Commission, if required by the
22 commissioner.

23 SECTION 16. Section 823.351, Insurance Code, is amended by
24 amending Subsections (a) and (b) and adding Subsections (a-1) and
25 (b-1) to read as follows:

26 (a) Subject to Section 823.352, the commissioner may order
27 an insurer registered under Subchapter B to produce records, books,

1 or other information papers in the possession of the insurer or an
2 affiliate of the insurer that are necessary to ascertain the
3 financial condition or legality of conduct of the insurer,
4 including the enterprise risk to the insurer by the ultimate
5 controlling party, or by any entity or combination of entities
6 within the insurance holding company system, or by the insurance
7 holding company system on a consolidated basis.

8 (a-1) To determine compliance with this chapter, the
9 commissioner may order any insurer registered under Subchapter B to
10 produce information not in the possession of the insurer if the
11 insurer can obtain access to the information pursuant to
12 contractual relationships, statutory obligations, or other
13 methods. In the event that the insurer is unable to obtain the
14 information requested by the commissioner, the insurer shall
15 provide the commissioner with a detailed explanation of the reason
16 why the insurer is unable to obtain the information, and the
17 identity of the holder of information. If it appears to the
18 commissioner that the insurer's explanation is without merit, the
19 commissioner may after notice and hearing:

20 (1) require the insurer to pay a penalty of not less
21 than \$100 for each day the insurer delays producing the
22 information; or

23 (2) suspend or revoke the insurer's license.

24 (b) If an insurer fails to comply with an order under this
25 section [~~Subsection (a)~~], the commissioner by order may require the
26 examination of each holding company of the insurer and each
27 controlled person or affiliate in the insurer's insurance holding

1 company system if the commissioner has cause to believe that:

2 (1) the operations of that person may materially
3 affect the operations, management, or financial condition of any
4 controlled insurer in that system; and

5 (2) the commissioner is unable to obtain relevant
6 information from the controlled insurer.

7 (b-1) The commissioner may issue subpoenas, administer
8 oaths, and examine under oath any person for purposes of
9 determining compliance with this section. On the failure or
10 refusal of a person to obey a subpoena, the commissioner may
11 petition a court of competent jurisdiction, and on proper showing,
12 the court may enter an order compelling the witness to appear and
13 testify or produce documentary evidence. Failure to obey the court
14 order is punishable as contempt of court. A person shall attend as
15 a witness at the place specified in the subpoena, when subpoenaed,
16 at any location in this state. The person is entitled to the same
17 fees and mileage, if claimed, as a witness in district court. Fees,
18 mileage, and actual expenses necessarily incurred in securing the
19 attendance of a witness shall be itemized and charged against, and
20 be paid by, the insurer being examined.

21 SECTION 17. Section 823.452, Insurance Code, is amended by
22 adding Subsection (a-1) to read as follows:

23 (a-1) If it appears to the commissioner that a person has
24 committed a violation of Subchapter D that prevents the full
25 understanding of the enterprise risk to the insurer by affiliates
26 or by the insurance holding company system, the violation may serve
27 as an independent basis for disapproving dividends or distributions

1 and for issuing an order under Chapter 404 or Chapter 441.

2 SECTION 18. The Texas Department of Insurance may not
3 implement Section 823.0595, Insurance Code, as added by this Act,
4 until the date that the commissioner determines that the National
5 Association of Insurance Commissioners has promulgated an
6 enterprise risk form and has proposed a master confidentiality
7 agreement and places notice of that determination in the Texas
8 Register.

9 SECTION 19. This Act takes effect September 1, 2011.