

By: Hancock

H.B. No. 3161

A BILL TO BE ENTITLED

AN ACT

relating to limited purpose subsidiary life insurance companies.

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

SECTION 1. Chapter 841, Insurance Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

Sec. 841.801. PURPOSE. The purpose of this subchapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies ("limited purpose company" or "LPS") in order to allow that such limited purpose companies may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.

Sec. 841.802. DEFINITIONS. For purposes of this subchapter, the following definitions shall apply:

(1) "Affiliated companies" means:

(A) domestic life insurance companies that are directly or indirectly wholly owned subsidiaries of the same holding company; or

(B) controlled persons.

(2) "Ceding insurer" means either a domestic life insurance company that is the parent of the limited purpose subsidiary or an affiliated company of a limited purpose subsidiary and that cedes risk to the LPS pursuant to a reinsurance contract.

(3) "Commissioner" means the insurance commissioner.

1           (4) "Controlled person" means a person organized or  
2 authorized to do business under the laws of this state who is  
3 controlled directly or indirectly by a holding company.

4           (5) "Guaranty" means an agreement to pay specified  
5 obligations of the limited purpose subsidiary by a holding company  
6 or affiliated company of the limited purpose subsidiary approved by  
7 the commissioner that is not a ceding insurer and the guarantor has  
8 sufficient equity, less the equity of all ceding insurers that are  
9 subsidiaries of the guarantor, to satisfy the agreement during the  
10 life of the guaranty.

11           (6) "Holding company" means a person who directly or  
12 indirectly controls an insurer.

13           (7) "Insurance securitization" or "securitization"  
14 means a transaction or a group of related transactions, which may  
15 include capital market offerings, that are effected through related  
16 risk transfer instruments and facilitating administrative  
17 agreements where all or part of the result of such transactions is  
18 used to fund the LPS's obligations under a reinsurance contract  
19 with a ceding insurer and by which proceeds are:

20                   (A) obtained by an LPS, directly or indirectly,  
21 through the issuance of securities by the LPS or any other person;  
22 or

23                   (B) provided through one or more letters of  
24 credit or other assets for the benefit of the LPS, which the  
25 commissioner authorizes the LPS to treat as admitted assets for  
26 purposes of the LPS's annual statement where all or any part of such  
27 proceeds, letters of credit, or assets, as applicable, is used to

1 fund the LPS's obligations under a reinsurance contract with a  
2 ceding insurer.

3 (8) "Insurer" for purposes of this chapter, means a  
4 domestic life insurance company organized under Chapter 841.

5 (9) "Letters of credit" means clean, unconditional,  
6 irrevocable letters of credit issued or confirmed by a qualified  
7 United States financial institution as defined in Section  
8 492.104(b)(2)(C) of this code.

9 (10) "LPS" means a limited purpose subsidiary life  
10 insurance company organized pursuant to this subchapter, that is  
11 wholly owned by a life insurance company or an affiliated company  
12 and that is issued a certificate of authority by the commissioner  
13 pursuant to this chapter.

14 (11) "LPS security" means:

15 (A) a security issued by an LPS; or

16 (B) a security issued by a third party, the  
17 proceeds of which are obtained directly or indirectly by an LPS.

18 (12) "Management" means the board of directors,  
19 managing board, or other individual or individuals vested with  
20 overall responsibility for the management of the affairs of the  
21 LPS.

22 (13) "Material" means a transaction or series of  
23 transactions involving amounts equal to or exceeding three percent  
24 of the LPS's admitted assets less any letters of credit, guaranties  
25 and intangible assets included as an admitted asset of the LPS.

26 (14) "Organizational documents" means an LPS's  
27 articles of incorporation and bylaws.

1           (15) "Organizing company" means the company that  
2 organizes an LPS pursuant to this subchapter.

3           (16) "Parent" means a person, as defined in Section  
4 823.002(7) of this code, that directly or indirectly through one or  
5 more intermediaries wholly owns or is an affiliated company of an  
6 LPS.

7           (17) "Person" has the same meaning as defined in  
8 Section 823.002(7) of this code.

9           (18) "Reinsurance contract" means a contract between  
10 an LPS and a ceding insurer pursuant to which the LPS agrees to  
11 provide reinsurance to the ceding insurer for risks.

12           (19) "Risk" means risks associated with life insurance  
13 policies and annuity contracts written by the ceding insurer or  
14 assumed by the ceding insurer from an affiliated company which were  
15 written by the affiliated company and for which the ceding insurer  
16 holds statutory reserves for those policies.

17           (20) "Security" means the same as defined in Article  
18 581-4(a), Vernon' Civil Statutes, and shall also include any form  
19 of debt obligation, surplus note, derivative, or other financial  
20 instrument that the commissioner designates as a "security" for  
21 purposes of this chapter.

22           (21) "Surplus note" means an unsecured subordinated  
23 debt obligation.

24           Sec. 841.803. ORGANIZATIONAL DOCUMENTS OF AN LPS. (a)  
25 Either a wholly owned domestic insurer authorized to transact the  
26 business of insurance pursuant to Chapter 841 or an affiliated  
27 company organized or authorized to conduct business under the laws

1 of this state may organize a domestic limited purpose subsidiary  
2 life insurance company pursuant to the provisions of this chapter.

3 (b) The limited purpose subsidiary life insurance company  
4 may reinsure risks of the organizing company, reinsure risks of  
5 affiliated companies, and access alternative forms of financing.

6 (c) An LPS's organizational documents shall limit the LPS's  
7 authority to transact the business of reinsurance to reinsure only  
8 the risks of a ceding insurer and shall state that the LPS shall not  
9 otherwise engage in the business of insurance.

10 (d) An LPS's organizational documents shall provide that  
11 the LPS shall always be either wholly owned by a domestic insurer  
12 authorized to transact the business of insurance pursuant to  
13 Chapter 841 or an affiliated company organized or authorized to do  
14 business under the laws of this state.

15 Sec. 841.804. CERTIFICATE OF AUTHORITY REQUIRED. No LPS  
16 shall do any reinsurance business in this state unless it obtains  
17 from the commissioner a certificate of authority pursuant to this  
18 rule.

19 Sec. 841.805. APPLICATION FOR CERTIFICATE OF AUTHORITY.

20 (a) To obtain a charter for a domestic LPS, the incorporators must  
21 pay to the department the charter fee in an amount determined under  
22 Chapter 202 and file with the department:

23 (1) an application for charter on the form and  
24 containing the information prescribed by the commissioner;

25 (2) the company's articles of incorporation;

26 (3) an affidavit made by two or more of the  
27 incorporators that states that:

1           (A) the minimum capital and surplus requirements  
2 of this subchapter are satisfied;

3           (B) the capital and surplus are the bona fide  
4 property of the company;

5           (C) the information in the articles of  
6 incorporation is true and correct;

7           (4) submit any other statements or documents required  
8 by the commissioner to evaluate the LPS's application for a  
9 certificate of authority.

10         Sec. 841.806. INVESTMENT BY ORGANIZING COMPANY. If the  
11 organizing company is a domestic life insurance company, it may  
12 invest funds from its surplus in a limited purpose subsidiary life  
13 insurance company organized pursuant to this section.

14         Sec. 841.807. OFFICERS AND DIRECTORS. The organizing  
15 company's officers and directors may serve as officers and  
16 directors of a limited purpose subsidiary life insurance company  
17 organized pursuant to this section.

18         Sec. 841.808. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a)  
19 The commissioner may issue a certificate of authority to an LPS,  
20 authorizing the LPS to transact reinsurance business as an LPS in  
21 this state based on the findings required in Section 841.061 of this  
22 code.

23         (b) In conjunction with the issuance of a certificate of  
24 authority to an LPS, the commissioner may issue an order that  
25 includes any provisions, terms, and conditions regarding the  
26 organization, licensing, and operation of the LPS that the  
27 commissioner deems appropriate and that are not inconsistent with

1 the provisions of this chapter.

2 Sec. 841.809. SCOPE OF CERTIFICATE OF AUTHORITY. (a) An  
3 LPS that has been issued a certificate of authority may reinsure  
4 only the risks of a ceding insurer.

5 (b) An LPS shall not otherwise engage in the business of  
6 insurance.

7 (c) An LPS may purchase reinsurance to cede the risks  
8 assumed under a reinsurance contract.

9 (d) A limited purpose subsidiary life insurance company  
10 organized pursuant to this section shall be deemed to be licensed to  
11 transact the business of reinsurance for the purposes of Section  
12 492.051, but may only reinsure risks of its affiliated companies.

13 Sec. 841.810. CAPITAL AND SURPLUS. (a) An LPS shall not be  
14 issued a certificate of authority unless it possesses and  
15 thereafter maintains unimpaired paid-in capital and surplus of not  
16 less than the amounts required by Section 841.054(a) of this code.

17 Sec. 841.811. DIVIDENDS AND DISTRIBUTIONS. An LPS may pay  
18 dividends and distributions that do not decrease the capital of the  
19 LPS below the minimum capital and surplus amount required by  
20 Section 841.810.

21 Sec. 841.812. REPORTS OF SECURITIZATIONS. An LPS shall  
22 provide the commissioner with a copy of a complete set of executed  
23 documentation of an insurance securitization no later than 45 days  
24 after the closing on the transactions for such securitization.

25 Sec. 841.813. FORECLOSURE ON COLLATERAL. An LPS shall  
26 notify the commissioner immediately of any action by a ceding  
27 insurer or any other person to foreclose on or otherwise take

1 possession of collateral provided by the LPS to secure any  
2 obligation of the LPS.

3 Sec. 841.814. FILING REPORTS WITH THE NATIONAL ASSOCIATION  
4 OF INSURANCE COMMISSIONERS. Notwithstanding Section 802.051 of  
5 this code, or any other law, an LPS shall not be required to file any  
6 report, notice, or other document with the National Association of  
7 Insurance Commissioners unless required by the commissioner.

8 Sec. 841.815. SECURITIZATION AGREEMENTS. The LPS  
9 securitization, the security-offering memorandum or other document  
10 issued to prospective investors regarding the offer and sale of a  
11 surplus note or other security shall include a disclosure that all  
12 or part of the proceeds of such insurance securitization will be  
13 used to fund the LPS's obligations to the ceding insurer.

14 Sec. 841.816. ADMITTED ASSETS. (a) Admitted assets of a  
15 limited purpose subsidiary life insurance company shall include  
16 assets approved by the commissioner which shall be deemed to be, and  
17 reported as, admitted assets of the LPS.

18 (b) In addition to the investments authorized under  
19 Subchapters C, and D of Chapter 425 of this code and notwithstanding  
20 any other law, admitted assets of the LPS shall include proceeds  
21 from a securitization, premium and other amounts payable by a  
22 ceding insurer to the LPS, letters of credit, guaranties of a  
23 holding company, guaranties of an affiliated company, and any other  
24 assets approved by the commissioner, which shall be deemed to be,  
25 and reported as, admitted assets of the LPS.

26 Sec. 841.817. SECURITIES. (a) An LPS security shall not be  
27 subject to regulation as an insurance or reinsurance contract.



1       (b) An investor in such a security or a holder of such a  
2 security shall not be considered to be transacting the business of  
3 insurance in this state solely by reason of having an interest in  
4 the security.

5       (c) The underwriter's placement or selling agents and their  
6 partners, commissioners, officers, members, managers, employees,  
7 agents, representatives, and advisors involved in an insurance  
8 securitization by an LPS shall not be considered to be insurance  
9 producers or brokers or to be conducting business as an insurance or  
10 reinsurance company or as an insurance agency, brokerage,  
11 intermediary, advisory, or consulting business solely by virtue of  
12 their underwriting activities in connection with such  
13 securitization.

14       Sec. 841.818. PERMITTED REINSURANCE. (a) An LPS may  
15 reinsure, pursuant to a reinsurance contract, only the risks of a  
16 ceding insurer.

17       (b) Unless otherwise approved in advance by the  
18 commissioner, an LPS may not assume or retain exposure to  
19 reinsurance losses for its own account that are not funded by one or  
20 more of the following:

21               (1) proceeds from a securitization;  
22               (2) premium and other amounts payable by the ceding  
23 insurer to the LPS pursuant to the reinsurance contract;

24               (3) letters of credit;

25               (4) guaranties of a holding or affiliated company; or

26               (5) any return on investment of the items in

27 Subsections (1) or (2).

1       (c) An LPS may cede risks assumed through a reinsurance  
2 contract to one or more reinsurers through the purchase of  
3 reinsurance, subject to the prior approval of the commissioner.

4       (d) An LPS may enter into contracts and conduct other  
5 commercial activities related or incidental to and necessary to  
6 fulfill the purposes of a reinsurance contract, an insurance  
7 securitization, and this chapter. Such contracts and activities  
8 may include but are not limited to:

9               (1) entering into reinsurance contracts;

10              (2) issuing LPS securities;

11              (3) complying with the terms of these contracts or  
12 securities;

13              (4) entering into trust, guaranteed investment  
14 contract, swap, or other derivative, tax, administration, services  
15 reimbursement, or fiscal agent transactions;

16              (5) complying with trust indenture, reinsurance, or  
17 retrocession; or

18              (6) entering into other agreements necessary or  
19 incidental to effect a reinsurance contract or an insurance  
20 securitization in compliance with this chapter.

21       (e) Unless otherwise approved in advance by the  
22 commissioner, a reinsurance contract shall not contain any  
23 provision for payment by the LPS in discharge of its obligations  
24 under the reinsurance contract to any person other than the ceding  
25 insurer or any receiver of the ceding insurer.

26       Sec. 841.825. OTHER LAWS NOT APPLICABLE. The deposit  
27 requirements in Subchapter H of this chapter shall not apply to an

1 LPS.

2 SECTION 2. This Act shall be effective January 1, 2012.