

1-1 By: Hancock (Senate Sponsor - Van de Putte) H.B. No. 3161
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on State
1-4 Affairs; May 17, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 17, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3161 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to limited purpose subsidiary life insurance companies.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Chapter 841, Insurance Code, is amended by
1-13 adding Subchapter I to read as follows:
1-14 SUBCHAPTER I. LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES
1-15 Sec. 841.401. PURPOSE. The purpose of this subchapter is to
1-16 authorize the establishment of domestic limited purpose subsidiary
1-17 life insurance companies to enable those companies to support
1-18 excess reserves for certain life insurance policies.
1-19 Sec. 841.402. DEFINITIONS. In this subchapter:
1-20 (1) "Affiliated company" means:
1-21 (A) domestic life insurance companies that are
1-22 directly or indirectly wholly owned subsidiaries of the same
1-23 holding company; or
1-24 (B) controlled persons.
1-25 (2) "Appointed actuary" means the actuary who is
1-26 appointed by a limited purpose subsidiary life insurance company to
1-27 render the actuarial opinion required by Subchapter B, Chapter 425.
1-28 (3) "Ceding insurer" means a company that cedes risk
1-29 to a limited purpose subsidiary life insurance company under a
1-30 reinsurance contract and that is:
1-31 (A) a domestic life insurance company that is the
1-32 parent of a limited purpose subsidiary life insurance company; or
1-33 (B) an affiliated company of a limited purpose
1-34 subsidiary life insurance company.
1-35 (4) "Controlled person" means a person organized or
1-36 authorized to do business under the laws of this state that is
1-37 controlled directly or indirectly by a holding company.
1-38 (5) "Excess reserves" means the amount of statutory
1-39 reserves determined to be redundant by the appointed actuary for
1-40 life insurance policies whose reserves are calculated under 28
1-41 T.A.C. Chapter 3, Subchapter EE. Excess reserves may not be an
1-42 amount greater than the difference between the reserves calculated
1-43 using 28 T.A.C. Chapter 3, Subchapter EE, and the reserves
1-44 calculated using generally accepted accounting principles.
1-45 (6) "Guarantor" means a holding company or an
1-46 affiliated company under Section 841.417 of the limited purpose
1-47 subsidiary life insurance company that is a party to a guaranty.
1-48 (7) "Guaranty" means a commissioner-approved
1-49 agreement by a guarantor with sufficient equity and financial
1-50 strength to pay, during the life of the guaranty, an amount equal to
1-51 the specified obligations of a limited purpose subsidiary life
1-52 insurance company, less the equity of all ceding insurers that are
1-53 subsidiaries of the guarantor, to satisfy the agreement.
1-54 (8) "Holding company" means a person that directly or
1-55 indirectly controls an insurer.
1-56 (9) "Insurer" means a domestic life insurance company
1-57 organized under this chapter.
1-58 (10) "Letter of credit" means a clean, unconditional,
1-59 irrevocable letter of credit issued or confirmed by a qualified
1-60 United States financial institution, as defined by Section
1-61 492.104(b)(2)(C).
1-62 (11) "Limited purpose subsidiary life insurance
1-63 company" means a limited purpose subsidiary life insurance company

2-1 organized under this subchapter:

2-2 (A) that is wholly owned by a life insurance
2-3 company or an affiliated company; and

2-4 (B) to which the commissioner issues a
2-5 certificate of authority under this chapter.

2-6 (12) "Material transaction" means a transaction or
2-7 series of transactions involving amounts equal to or exceeding
2-8 three percent of a limited purpose subsidiary life insurance
2-9 company's admitted assets.

2-10 (13) "Organizational document" means a limited
2-11 purpose subsidiary life insurance company's articles of
2-12 incorporation and the company's bylaws.

2-13 (14) "Organizing company" means the company that
2-14 organizes a limited purpose subsidiary life insurance company under
2-15 this subchapter.

2-16 (15) "Parent" means a person that directly or
2-17 indirectly controls through one or more intermediaries, or wholly
2-18 owns, a limited purpose subsidiary life insurance company.

2-19 (16) "Person" has the meaning assigned by Section
2-20 823.002.

2-21 (17) "Reinsurance contract" means a contract between a
2-22 limited purpose subsidiary life insurance company and a ceding
2-23 insurer under which the limited purpose subsidiary life insurance
2-24 company agrees to provide reinsurance to the ceding insurer for
2-25 certain risks.

2-26 (18) "Risk" means a risk associated with life
2-27 insurance policies written on or after the effective date of this
2-28 chapter by a ceding insurer, or assumed by a ceding insurer from an
2-29 affiliated company under life insurance policies which were written
2-30 on or after the effective date of this chapter, by the affiliated
2-31 company and for which the ceding insurer calculates statutory
2-32 reserves for those policies pursuant to 28 T.A.C. Chapter 3,
2-33 Subchapter EE.

2-34 Sec. 841.403. ORGANIZATIONAL DOCUMENTS. (a) A wholly
2-35 owned domestic insurer authorized to transact the business of
2-36 insurance under this chapter or an affiliated company organized or
2-37 authorized to conduct business under the laws of this state may
2-38 organize a limited purpose subsidiary life insurance company under
2-39 this subchapter.

2-40 (b) A limited purpose subsidiary life insurance company may
2-41 reinsure risks of the organizing company and of an affiliated
2-42 company.

2-43 (c) A limited purpose subsidiary life insurance company's
2-44 organizational documents must:

2-45 (1) limit the company's authority to transact the
2-46 business of insurance to reinsuring only the risks of a ceding
2-47 insurer;

2-48 (2) provide that the limited purpose subsidiary life
2-49 insurance company may not otherwise engage in the business of
2-50 insurance; and

2-51 (3) provide that the limited purpose subsidiary life
2-52 insurance company must always be wholly owned by a domestic insurer
2-53 authorized to transact the business of insurance under this chapter
2-54 or by an affiliated company organized or authorized to do business
2-55 under the laws of this state.

2-56 Sec. 841.404. CERTIFICATE OF AUTHORITY REQUIRED. A limited
2-57 purpose subsidiary life insurance company may not engage in the
2-58 business of reinsurance in this state unless the limited purpose
2-59 subsidiary life insurance company obtains from the commissioner a
2-60 certificate of authority under this subchapter.

2-61 Sec. 841.405. APPLICATION FOR CERTIFICATE OF AUTHORITY. To
2-62 obtain a charter for a limited purpose subsidiary life insurance
2-63 company, the incorporators of the company shall pay to the
2-64 department a charter fee in an amount determined under Chapter 202
2-65 and file with the department:

2-66 (1) an application for charter on the form prescribed
2-67 by, and containing the information prescribed by, the commissioner;

2-68 (2) the company's articles of incorporation;

2-69 (3) an affidavit made by the company's president, vice

3-1 president, treasurer, or chief financial officer stating that:
3-2 (A) the minimum capital and surplus requirements
3-3 of this subchapter are satisfied;
3-4 (B) the capital and surplus are the bona fide
3-5 property of the company;
3-6 (C) the information in the articles of
3-7 incorporation is true and correct;
3-8 (D) the proposed organization and operation of
3-9 the limited purpose subsidiary life insurance company comply with
3-10 all applicable provisions of this subchapter;
3-11 (E) the limited purpose subsidiary life
3-12 insurance company's investment policy reflects and takes into
3-13 account the liquidity of assets and the reasonable preservation,
3-14 administration, and management of those assets with respect to the
3-15 risks associated with the reinsurance contract; and
3-16 (F) any reinsurance contract and any arrangement
3-17 for securing the limited purpose subsidiary life insurance
3-18 company's obligations under the reinsurance contract, including
3-19 any agreements or other documentation to implement the arrangement;
3-20 (4) a business plan that includes pro forma financial
3-21 statement projections that demonstrate how the limited purpose
3-22 subsidiary life insurance company will comply with Section 841.412;
3-23 (5) a copy of any proposed guaranty that demonstrates
3-24 how compliance with Sections 841.412 and 841.417 will be achieved;
3-25 (6) an opinion of a qualified independent actuary
3-26 acceptable to the commissioner that the methodology and assumptions
3-27 used to set and discount reserves make good and sufficient
3-28 provision for the risk assumed by the limited purpose subsidiary
3-29 life insurance company, including significant stress tests on key
3-30 assumptions; and
3-31 (7) any other statement or document required by the
3-32 commissioner to evaluate the limited purpose subsidiary life
3-33 insurance company's application for a certificate of authority.
3-34 Sec. 841.406. INVESTMENT OF CERTAIN SURPLUS BY ORGANIZING
3-35 COMPANY. If the company that organizes a limited purpose
3-36 subsidiary life insurance company is a domestic life insurance
3-37 company, the organizing company may invest funds from the
3-38 organizing company's surplus in the limited purpose subsidiary life
3-39 insurance company.
3-40 Sec. 841.407. OFFICERS AND DIRECTORS. The officers and
3-41 directors of a company that organizes a limited purpose subsidiary
3-42 life insurance company may serve as officers and directors of the
3-43 limited purpose subsidiary life insurance company.
3-44 Sec. 841.408. ISSUANCE OF CERTIFICATE OF AUTHORITY.
3-45 (a) The commissioner may issue a certificate of authority to a
3-46 limited purpose subsidiary life insurance company, authorizing the
3-47 company to transact reinsurance business in this state as a limited
3-48 purpose subsidiary life insurance company based on a finding that:
3-49 (1) the company's application meets the criteria
3-50 contained in this subsection;
3-51 (2) the proposed plan of the limited purpose
3-52 subsidiary life insurance company provides for viable operation of
3-53 the company, including a determination by the commissioner that the
3-54 limited purpose subsidiary life insurance company applicant has
3-55 sufficiently strong financial support;
3-56 (3) the guaranties meet the requirements of Section
3-57 841.417;
3-58 (4) the terms of any reinsurance arrangement,
3-59 including the reinsurance contract and related transactions,
3-60 comply with this subchapter and all applicable insurance laws and
3-61 rules;
3-62 (5) the proposed application and reinsurance
3-63 arrangement is not hazardous to any ceding insurer; and
3-64 (6) the proposed application and reinsurance contract
3-65 will always fund authorized investments that comply with Section
3-66 841.412, including statutory reserves for life insurance with
3-67 invested assets at least equal to the amount of reserves required
3-68 under generally accepted accounting principles.
3-69 (b) In conjunction with the issuance of a certificate of

4-1 authority under this section, the commissioner may issue an order
 4-2 that includes any provisions, terms, and conditions regarding the
 4-3 organization, licensing, and operation of the limited purpose
 4-4 subsidiary life insurance company that the commissioner deems
 4-5 appropriate and that are not inconsistent with this chapter,
 4-6 including requesting from the company information to monitor the
 4-7 financial strength of guarantors and requiring the periodic
 4-8 reporting and monitoring of assets behind any guaranties issued.

4-9 Sec. 841.409. SCOPE OF CERTIFICATE OF AUTHORITY. (a) A
 4-10 limited purpose subsidiary life insurance company that has been
 4-11 issued a certificate of authority may reinsure only the risks of a
 4-12 ceding insurer. A limited purpose subsidiary life insurance
 4-13 company may not otherwise engage in the business of insurance.

4-14 (b) A limited purpose subsidiary life insurance company may
 4-15 purchase reinsurance to cede the risks assumed under a reinsurance
 4-16 contract.

4-17 (c) A limited purpose subsidiary life insurance company
 4-18 organized under this subchapter is considered to be licensed to
 4-19 transact the business of reinsurance for the purposes of Section
 4-20 492.051, but may only reinsure risks of the company's affiliated
 4-21 companies.

4-22 (d) A limited purpose subsidiary life insurance company
 4-23 shall provide the commissioner with notice of any change in the
 4-24 company's business plan required by Section 841.405, including any
 4-25 material change in the methods used to comply with Section 841.413.

4-26 Sec. 841.410. CAPITAL AND SURPLUS. (a) The commissioner
 4-27 may not issue a certificate of authority to a limited purpose
 4-28 subsidiary life insurance company unless the company possesses and
 4-29 maintains unimpaired paid-in capital and surplus of not less than
 4-30 \$10 million.

4-31 (b) A limited purpose subsidiary life insurance company
 4-32 shall comply with the risk-based capital requirements adopted by
 4-33 the commissioner by rule.

4-34 (c) A limited purpose subsidiary life insurance company
 4-35 shall maintain risk-based capital in an amount that is at least
 4-36 equal to 300 percent of the authorized control level of risk-based
 4-37 capital adopted by the commissioner.

4-38 Sec. 841.411. FORECLOSURE ON COLLATERAL. A limited purpose
 4-39 subsidiary life insurance company shall immediately notify the
 4-40 commissioner of any action by a ceding insurer or any other person
 4-41 to foreclose on, or otherwise take possession of, collateral
 4-42 provided by the limited purpose subsidiary life insurance company
 4-43 to secure an obligation of the company.

4-44 Sec. 841.412. MINIMUM AUTHORIZED INVESTMENT REQUIREMENT
 4-45 AFTER CREDIT FOR REINSURANCE; LETTERS OF CREDIT; GUARANTIES.
 4-46 (a) A limited purpose subsidiary life insurance company shall hold
 4-47 investments authorized under Subchapters C and D, Chapter 425,
 4-48 exclusive of investments in affiliates, in an amount that at least
 4-49 equals the sum of:

4-50 (1) the minimum capital and surplus requirements of
 4-51 Section 841.410;

4-52 (2) the risk-based capital requirements adopted by the
 4-53 commissioner; and

4-54 (3) reserves calculated using generally accepted
 4-55 accounting principles.

4-56 (b) Subject to compliance with Subsection (a) and
 4-57 notwithstanding Chapter 425, a limited purpose subsidiary life
 4-58 insurance company may reduce the amount of the company's excess
 4-59 reserves on account of:

4-60 (1) reinsurance that complies with Chapter 492;

4-61 (2) a letter of credit that complies with Section
 4-62 492.104(b)(2)(C); or

4-63 (3) guaranties from a holding company or an affiliated
 4-64 company as provided by Section 841.417.

4-65 (c) Notwithstanding Subsection (b), a limited purpose
 4-66 subsidiary life insurance company may hold guaranties from a
 4-67 holding company or an affiliated company as provided by Section
 4-68 841.417 as an admitted asset with an offsetting increase in special
 4-69 surplus funds to support excess reserves only.

5-1 Sec. 841.413. PERMITTED REINSURANCE. (a) A limited
 5-2 purpose subsidiary life insurance company may only reinsure the
 5-3 risks of a ceding insurer under a reinsurance contract.

5-4 (b) Unless otherwise approved in advance by the
 5-5 commissioner, a limited purpose subsidiary life insurance company
 5-6 may not assume or retain exposure to reinsurance losses for the
 5-7 company's own account that are not funded by:

5-8 (1) premium and other amounts payable by the ceding
 5-9 insurer to the limited purpose subsidiary life insurance company
 5-10 under the reinsurance contract, or any return on the investment of
 5-11 the premiums or other amounts;

5-12 (2) letters of credit that qualify under Section
 5-13 492.104(b)(2)(C); or

5-14 (3) guaranties of a holding company or an affiliated
 5-15 company as provided by Section 841.417.

5-16 (c) A limited purpose subsidiary life insurance company may
 5-17 cede risks assumed under a reinsurance contract to one or more
 5-18 reinsurers through the purchase of reinsurance, subject to the
 5-19 prior approval of the commissioner. The commissioner may approve a
 5-20 reinsurance contract under this subsection if the commissioner
 5-21 finds that:

5-22 (1) the proposed reinsurance complies with Chapter
 5-23 492;

5-24 (2) the proposed reinsurer has sufficient liquidity,
 5-25 admitted assets, and policyholder surplus to support the
 5-26 liabilities assumed under the reinsurance contract; and

5-27 (3) the proposed reinsurance contract would not result
 5-28 in a hazardous financial condition for the limited purpose
 5-29 subsidiary life insurance company.

5-30 (d) A limited purpose subsidiary life insurance company may
 5-31 enter into contracts and conduct other commercial activities
 5-32 related or incidental to, and necessary to fulfill the purposes of,
 5-33 a reinsurance contract.

5-34 Sec. 841.414. REPORTS ON RESERVES AND RISK-BASED CAPITAL.

5-35 (a) A limited purpose subsidiary life insurance company annually
 5-36 shall file an opinion of the appointed actuary acceptable to the
 5-37 commissioner concerning the methods and assumptions used to set
 5-38 reserves. The opinion must demonstrate that the limited purpose
 5-39 subsidiary life insurance company holds risk-based capital and
 5-40 invested admitted assets that are at least equal to reserves
 5-41 specified by generally accepted accounting principles.

5-42 (b) The commissioner may reject the opinion of the appointed
 5-43 actuary if the commissioner determines that accepting the opinion
 5-44 would be hazardous to policyholders, enrollees, creditors, or the
 5-45 public.

5-46 (c) A limited purpose subsidiary life insurance company
 5-47 annually shall file with the commissioner a report of the limited
 5-48 purpose subsidiary life insurance company's risk-based capital
 5-49 level as of the end of the preceding calendar year containing the
 5-50 information required by the risk-based capital instructions
 5-51 adopted by the commissioner.

5-52 Sec. 841.415. OTHER LAWS NOT APPLICABLE. The deposit
 5-53 requirements in Subchapter H do not apply to a limited purpose
 5-54 subsidiary life insurance company.

5-55 Sec. 841.416. APPLICABILITY OF OTHER LAW. Except as
 5-56 specifically provided by law, all provisions of this code apply to a
 5-57 limited purpose subsidiary life insurance company formed under this
 5-58 subchapter.

5-59 Sec. 841.417. GUARANTY REQUIREMENTS. (a) A guaranty may
 5-60 not be used to comply with this chapter without the prior written
 5-61 approval of the commissioner.

5-62 (b) Before approving a guaranty, the commissioner must find
 5-63 that:

5-64 (1) the guarantor has capital and surplus of \$100
 5-65 million, exclusive of investments in subsidiaries and affiliates;

5-66 (2) the guarantor has admitted assets backing capital
 5-67 and surplus in an amount sufficient to fulfill the guaranty, and the
 5-68 sufficiency on an ongoing basis is demonstrated to the satisfaction
 5-69 of the commissioner;

6-1 (3) the guarantor and all affiliates are in good
6-2 standing with the department;

6-3 (4) the guarantor has provided all information
6-4 requested by the commissioner; and

6-5 (5) the guarantor is otherwise acceptable to the
6-6 commissioner.

6-7 (c) Notwithstanding Subsection (b), the commissioner may
6-8 allow, subject to the commissioner's prior approval, an affiliated
6-9 company of the holding company to serve as guarantor. The
6-10 commissioner may approve an affiliated company as a guarantor on a
6-11 finding that the affiliated company possesses the independent
6-12 financial means to discharge the guaranty using the affiliated
6-13 company's own financial resources.

6-14 Sec. 841.418. SUNSET PROVISION. This subchapter is valid
6-15 for business sold only until January 1 of the year in which
6-16 principle-based reserve requirements become operative in Texas
6-17 under the adoption of the National Association of Insurance
6-18 Commissioners' 2009 amendments to the NAIC Model Standard Valuation
6-19 Law. After that January 1, the limited purpose subsidiary life
6-20 insurance company may not assume new risks of a ceding insurer
6-21 relating to business sold after that date.

6-22 Sec. 841.419. CERTIFICATION OF ACTUARIAL OFFICER. (a) At
6-23 the time a limited purpose subsidiary life insurance company files
6-24 an application for a certificate of authority under this
6-25 subchapter, and not later than March 1 of each year that a limited
6-26 purpose subsidiary life insurance company is in operation and is
6-27 ceded new business from a ceding insurer, a senior actuarial
6-28 officer of each ceding insurer shall file with the commissioner a
6-29 certification that the ceding insurer's transactions with the
6-30 limited purpose subsidiary life insurance company are not being
6-31 used to gain an unfair advantage in the pricing of the ceding
6-32 insurer's products.

6-33 (b) A ceding insurer may not be deemed to have an unfair
6-34 advantage if the pricing of the policies and contracts reinsured by
6-35 the limited purpose subsidiary life insurance company reflects, at
6-36 the time the policies and contracts were issued, a reasonable
6-37 long-term estimate of the cost to the ceding insurer of an
6-38 alternative third-party transaction, and uses current pricing
6-39 assumptions.

6-40 (c) The ceding insurer shall keep documentation between
6-41 examinations that sets forth the manner in which a senior actuarial
6-42 officer arrived at the conclusions in the certification.

6-43 Sec. 841.420. ACCOUNTING AND FINANCIAL REPORTING. The
6-44 commissioner shall prescribe accounting and financial reporting
6-45 requirements with regard to the limited purpose subsidiary life
6-46 insurance company and any insurer as defined by Section 841.402
6-47 that organizes a limited purpose subsidiary life insurance company.

6-48 SECTION 2. This Act takes effect immediately if it receives
6-49 a vote of two-thirds of all the members elected to each house, as
6-50 provided by Section 39, Article III, Texas Constitution. If this
6-51 Act does not receive the vote necessary for immediate effect, this
6-52 Act takes effect September 1, 2011.

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