

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) through  
15 (h) 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) Except as provided by Subsection (h), if the  
13 commissioner allows a disclaimer:

14                   (1) the insurer is not required to register or report  
15 under Subchapter B due to a duty arising from the insurer's  
16 relationship with the party who filed the disclaimer; and

17                   (2) the party who filed the disclaimer is not required  
18 to comply with Section 823.154, 823.155, 823.159, or 823.160.

19           (g) If the commissioner allows a disclaimer, the  
20 commissioner at the same time may also waive another provision of  
21 this chapter with relation to the party who filed the disclaimer.  
22 The commissioner may require reasonable controls and safeguards  
23 that are consistent with the purposes of this chapter in granting a  
24 waiver under this subsection.

25           (h) If the commissioner disallows a disclaimer under  
26 Subsection (d):

27                   (1) effective on the date of the disallowance, the

1 insurer shall register and report as required by Subchapter B; and  
2 (2) the party who filed the disclaimer shall comply  
3 with Sections 823.154, 823.155, 823.159, and 823.160.

4 SECTION 3. Section 823.011, Insurance Code, is amended by  
5 amending Subsections (a), (b), and (d) and adding Subsections (e)  
6 through (i) to read as follows:

7 (a) This section applies only to information, including  
8 documents and copies of documents, that is:

- 9 (1) reported under Subchapter B; ~~or~~  
10 (2) disclosed to the commissioner under Section  
11 823.010; or  
12 (3) obtained by or disclosed to the commissioner or  
13 another person in the course of an examination or investigation  
14 under Subchapter H.

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

20 (d) Except as provided by Subsection (e), if the recipient  
21 of documents or other information agrees in writing to maintain the  
22 confidential and privileged status of the documents or other  
23 information, and verifies in writing the legal authority to  
24 maintain the confidential and privileged status of the documents or  
25 information, the [~~The~~] commissioner or another person may disclose  
26 the information to any of the following entities functioning in an  
27 official capacity:

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

3           (2) an authorized law enforcement official;

4           (3) a district attorney of this state;

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

6           (5) a grand jury;

7           (6) members of a supervisory college described by  
8 Section 823.0145; or

9           (7) the National Association of Insurance  
10 Commissioners and its affiliates and subsidiaries.

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

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

20           (1) Chapter 552, Government Code;

21           (2) a response to a subpoena; or

22           (3) discovery or admissibility in evidence in a civil  
23 action.

24           (g) The commissioner shall enter into written agreements  
25 with the National Association of Insurance Commissioners that  
26 comply with the requirements of Subsection (d) regarding the  
27 sharing and use of information provided under this chapter. An

1 agreement entered into under this subsection must:

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

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

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

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

1 subsidiaries under this chapter.

2 (h) This section may not be construed to prevent the  
3 commissioner from using information described by Subsection (a) in  
4 the furtherance of a legal or regulatory action relating to the  
5 administration of this code.

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

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

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

18 (1) initiate the establishment of a supervisory  
19 college;

20 (2) clarify the membership and participation of other  
21 entities in the supervisory college;

22 (3) clarify the functions of the supervisory college  
23 and the role of other entities in the supervisory college;

24 (4) establish a group-wide supervisor;

25 (5) coordinate the ongoing activities of the  
26 supervisory college, including meetings, regulatory activities,  
27 and processes for information sharing; and

1           (6) establish a crisis management plan.

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

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

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

25           (b) The registration statement must be in a format  
26 prescribed by the National Association of Insurance Commissioners  
27 or adopted by rule of the commissioner and contain current



1 information about:

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

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

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

12 (c) The registration statement must also contain  
13 information about:

14 (1) each outstanding loan the insurer makes to an  
15 affiliate of the insurer or an affiliate makes to the insurer;

16 (2) each purchase, sale, or exchange of securities or  
17 other investment between the insurer and an affiliate of the  
18 insurer;

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

21 (4) each management and service contract or  
22 cost-sharing arrangement between the insurer and an affiliate of  
23 the insurer;

24 (5) each reinsurance agreement between the insurer and  
25 an affiliate of the insurer that covers one or more lines of  
26 insurance of the ceding company;

27 (6) each agreement between the insurer and an

1 affiliate of the insurer to consolidate federal income tax returns;

2 (7) each transaction between the insurer and an  
3 affiliated financial institution;

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

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

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

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

17 (12) the corporate governance and internal control  
18 responsibilities of the insurer's board of directors, including a  
19 statement that:

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

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

25 (13) any other information that the commissioner  
26 requires by rule.

27 (c-1) On request of the commissioner, an insurer shall

1 include with the statement a copy of all financial statements for  
2 the insurance holding company system and all affiliates of the  
3 holding company system, including annual audited financial  
4 statements filed with the United States Securities and Exchange  
5 Commission pursuant to the Securities Act of 1933 (15 U.S.C.  
6 Section 77a et seq.) or the Securities Exchange Act of 1934 (15  
7 U.S.C. Section 78a et seq.). An insurer may not be required to  
8 submit financial statements for an affiliate that is privately  
9 owned by not more than five security holders, each of whom is an  
10 individual, unless the commissioner determines that the operations  
11 of the affiliate may materially affect the operations, management,  
12 or financial condition of an insurer in a holding company system.  
13 An affiliate may seek judicial review of a request for financial  
14 statements under this subsection.

15 (c-2) An insurer required by the commissioner to submit  
16 financial statements under this section, Section 823.201, or  
17 Section 823.351 may satisfy the requirement by submitting to the  
18 commissioner:

19 (1) the financial statements that the insurer's parent  
20 corporation most recently filed with the United States Securities  
21 and Exchange Commission; and

22 (2) if the insurer is required to submit financial  
23 statements for an affiliate, the financial statements that the  
24 affiliate most recently filed with an agency that regulates the  
25 affiliate.

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

1       Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as  
2 provided by Subsections (d) and (f), the ultimate controlling  
3 person, as defined by Section 823.055, of each insurer required to  
4 file an annual registration shall file with the registration an  
5 annual enterprise risk report. The report must, to the best of the  
6 ultimate controlling person's knowledge, identify the material  
7 risks within the insurance holding company system that may pose  
8 enterprise risk to the insurer. The report must be filed with the  
9 lead state commissioner of the insurance holding company system, as  
10 determined by the commissioner. In determining the lead state  
11 commissioner, the commissioner shall consider the procedures  
12 adopted by the National Association of Insurance Commissioners.

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

16               (1) July 1, 2013, if the total direct or assumed annual  
17 premiums of the insurer were \$5 billion or more during the preceding  
18 12-month period;

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

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

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

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

3       (d) Except as provided by Subsection (e), the ultimate  
4 controlling person of an insurer with total direct or assumed  
5 annual premiums of less than \$300 million is not required to submit  
6 an enterprise risk report under Subsection (a).

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

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

24       (g) The ultimate controlling person of an insurance holding  
25 company system is not required to submit an enterprise risk report  
26 under Subsection (a) if:

27           (1) the ultimate controlling person:

1           (A) has owned a controlling interest in the  
2 voting securities of an insurer described by Subdivision (2) since  
3 September 1, 1991, or before;

4           (B) is a charitable foundation, trust, or both;  
5 and

6           (C) has not filed or received a disclaimer under  
7 Section 823.010; and

8           (2) the insurer in which the ultimate controlling  
9 person owns a controlling interest:

10           (A) was organized under the laws of this state  
11 before January 1, 1910;

12           (B) is registered under this subchapter;

13           (C) has issued equity shares of stock registered  
14 under Section 12, Securities Exchange Act of 1934 (15 U.S.C.  
15 Section 781);

16           (D) on September 1, 2011, owns or controls an  
17 insurance company subsidiary that is part of the same insurance  
18 holding company system as the insurer; and

19           (E) files with the commissioner all registration  
20 statements and information relating to material changes of the  
21 insurance holding company system required under this subchapter,  
22 including the financial statements of the ultimate controlling  
23 person described by Subdivision (1).

24           (h) An exemption under Subsection (g) applies only for the  
25 period during which the ultimate controlling person described by  
26 Subsection (g)(1) satisfies the requirements of Subsection (g) and  
27 expires on the date of a change in control of the insurer described

1 by Subsection (g)(2) involving at least 50 percent of the voting  
2 securities of the insurer. An insurance holding company system may  
3 reapply for an exemption under Subsection (g) after the change in  
4 control if the system continues to meet the requirements of  
5 Subsection (g).

6 (i) An ultimate controlling person described by Subsection  
7 (g)(1) and an insurer described by Subsection (g)(2) shall respond  
8 to reasonable inquiries from the department related to the  
9 administration of Chapter 404.

10 SECTION 7. Section 823.060, Insurance Code, is amended to  
11 read as follows:

12 Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file  
13 a registration statement or an amendment to a registration  
14 statement, or an enterprise risk report, within the time specified  
15 for filing the statement, ~~or~~ amendment, or report, as required by  
16 this subchapter, is a violation of this subchapter.

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

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

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

24 (a) This section applies only to a material transaction  
25 within an insurance holding company system to which an ~~[between a~~  
26 ~~registered insurer and an affiliate of the]~~ insurer subject to a  
27 registration under Section 823.052 is a party.

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

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

7       (a) This section applies only to a sale, purchase, exchange,  
8 loan or other extension of credit, or investment between a domestic  
9 insurer and any person in the insurer's insurance holding company  
10 system, including an amendment or modification of an affiliate  
11 agreement previously filed under this section, that involves more  
12 than the lesser of 5 percent of the insurer's admitted assets or 25  
13 percent of the insurer's surplus, as of December 31 of the year  
14 preceding the year in which the transaction occurs.

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

16               (1) the reasons for entering into or changing the  
17 transaction; and

18               (2) the financial impact of the transaction on the  
19 domestic insurer.

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

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

26       (a) This section applies only to:

27               (1) a sale, purchase, exchange, loan or other



1 extension of credit, or investment between a domestic insurer and  
2 any person in the insurer's insurance holding company system,  
3 including an amendment or modification of an affiliate agreement  
4 previously filed under this section:

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

9 (B) the approval of which is not required under  
10 Section 823.102;

11 (2) a reinsurance agreement, including a reinsurance  
12 treaty or pooling agreement, or an amendment or modification of an  
13 agreement previously filed under this section, between a domestic  
14 insurer and any person in the insurer's holding company system [~~or a~~  
15 ~~modification of such an agreement~~];

16 (3) a rendering of services between a domestic insurer  
17 and any person in the insurer's holding company system on a regular  
18 or systematic basis, including a tax-allocation agreement, or an  
19 amendment or modification of an agreement previously filed under  
20 this section; or

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

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

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

3           (2) the financial impact of the transaction on the  
4 domestic insurer.

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

8           SECTION 12. Section 823.154, Insurance Code, is amended to  
9 read as follows:

10           Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF  
11 CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person  
12 who directly or indirectly controls, or after the acquisition would  
13 directly or indirectly control, a domestic insurer may in any  
14 manner acquire a voting security of a domestic insurer or before a  
15 person may otherwise acquire control of a domestic insurer or  
16 exercise any control over a domestic insurer, or before a person may  
17 initiate a divestiture of control of a domestic insurer:

18           (1) the acquiring person shall file with the  
19 commissioner a statement that satisfies the requirements of  
20 Subchapter E; ~~and~~

21           (2) the acquisition or divestiture of control must be  
22 approved by the commissioner in accordance with this subchapter;  
23 and

24           (3) if the person is initiating a divestiture of  
25 control, the divesting person shall file with the commissioner a  
26 notice of divestiture on a form adopted by the National Association  
27 of Insurance Commissioners or adopted by the commissioner by rule.

1 (b) The acquiring person or divesting person shall send a  
2 copy of the statement filed under this section to the domestic  
3 insurer.

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

8 (d) Notwithstanding Subsection (a), a divesting person is  
9 not required to provide the commissioner with notice of divestiture  
10 required by Subsection (a)(3) if an acquiring person submits the  
11 statement required by Subsection (a)(1) and that acquisition is  
12 approved by the commissioner.

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

15 Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR  
16 DIVESTITURE OF CONTROL. (a) The commissioner shall approve or  
17 deny an acquisition, ~~or~~ change, or divestiture of control for  
18 which a statement or notice is filed under Section 823.154 not later  
19 than the 60th day after the date the statement required by that  
20 section is filed. The 60-day period may be waived by the person  
21 filing the statement or notice required by Section 823.154 and the  
22 domestic insurer. On the request of either the person filing the  
23 statement or notice required by Section 823.154, or the domestic  
24 insurer, the commissioner shall hold a hearing on a denial.

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

27 (1) immediately on the acquisition, ~~or~~ change, or

1 divestiture of control the domestic insurer would not be able to  
2 satisfy the requirements for the issuance of a new certificate of  
3 authority to write the line or lines of insurance for which the  
4 insurer holds a certificate of authority;

5 (2) the effect of the acquisition, ~~or~~ change, or  
6 divestiture of control would be substantially to lessen competition  
7 in a line or subclassification lines of insurance in this state or  
8 tend to create a monopoly in a line or subclassification lines of  
9 insurance in this state;

10 (3) the financial condition of the acquiring person  
11 may jeopardize the financial stability of the domestic insurer or  
12 prejudice the interest of the domestic insurer's policyholders;

13 (4) the acquiring person has a plan or proposal to  
14 liquidate the domestic insurer or cause the insurer to declare  
15 dividends or make distributions, sell any of its assets,  
16 consolidate or merge with any person, make a material change in its  
17 business or corporate structure or management, or enter into a  
18 material agreement, arrangement, or transaction of any kind with  
19 any person, and that the plan or proposal is unfair, prejudicial,  
20 hazardous, or unreasonable to the insurer's policyholders and not  
21 in the public interest;

22 (5) due to a lack of competence, trustworthiness,  
23 experience, and integrity of the persons who would control the  
24 operation of the domestic insurer, the acquisition or change of  
25 control would not be in the interest of the insurer's policyholders  
26 and the public;

27 (5-a) the divestiture of control may jeopardize the

1 financial stability of the domestic insurer or prejudice the  
2 interest of the domestic insurer's policyholders and other  
3 claimants; or

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

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

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

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

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

1       (e) The acquiring person and all subsidiaries within the  
2 acquiring person's control in the insurance holding company system  
3 shall provide information to the commissioner on request of the  
4 commissioner as the commissioner deems necessary to evaluate  
5 enterprise risk to the insurer.

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

8       (c) An insurer required to file information under Section  
9 823.154 may satisfy the requirement of Section 823.052(c-1) by  
10 providing the commissioner with the most recently filed parent  
11 corporation reports that have been filed with the United States  
12 Securities and Exchange Commission, if required by the  
13 commissioner.

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

17       (a) Subject to Section 823.352, the commissioner may order  
18 an insurer registered under Subchapter B to produce records, books,  
19 or other information papers in the possession of the insurer or an  
20 affiliate of the insurer that are necessary to ascertain the  
21 financial condition or legality of conduct of the insurer,  
22 including the enterprise risk to the insurer by the ultimate  
23 controlling party, or by any entity or combination of entities  
24 within the insurance holding company system, or by the insurance  
25 holding company system on a consolidated basis.

26       (a-1) To determine compliance with this chapter, the  
27 commissioner may order any insurer registered under Subchapter B to

1 produce information not in the possession of the insurer if the  
2 insurer can obtain access to the information pursuant to  
3 contractual relationships, statutory obligations, or other  
4 methods. In the event that the insurer is unable to obtain the  
5 information requested by the commissioner, the insurer shall  
6 provide the commissioner with a detailed explanation of the reason  
7 why the insurer is unable to obtain the information, and the  
8 identity of the holder of information. If it appears to the  
9 commissioner that the insurer's explanation is without merit, the  
10 commissioner may after notice and hearing:

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

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

15 (b) If an insurer fails to comply with an order under this  
16 section [~~Subsection (a)~~], the commissioner by order may require the  
17 examination of each holding company of the insurer and each  
18 controlled person or affiliate in the insurer's insurance holding  
19 company system if the commissioner has cause to believe that:

20 (1) the operations of that person may materially  
21 affect the operations, management, or financial condition of any  
22 controlled insurer in that system; and

23 (2) the commissioner is unable to obtain relevant  
24 information from the controlled insurer.

25 (b-1) The commissioner may issue subpoenas, administer  
26 oaths, and examine under oath any person for purposes of  
27 determining compliance with this section. On the failure or

1 refusal of a person to obey a subpoena, the commissioner may  
2 petition a court of competent jurisdiction, and on proper showing,  
3 the court may enter an order compelling the witness to appear and  
4 testify or produce documentary evidence. Failure to obey the court  
5 order is punishable as contempt of court. A person shall attend as  
6 a witness at the place specified in the subpoena, when subpoenaed,  
7 at any location in this state. The person is entitled to the same  
8 fees and mileage, if claimed, as a witness in district court. Fees,  
9 mileage, and actual expenses necessarily incurred in securing the  
10 attendance of a witness shall be itemized and charged against, and  
11 be paid by, the insurer being examined.

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

14 (a-1) If the commissioner determines that a person has  
15 committed a violation of Subchapter D that prevents the full  
16 understanding of the enterprise risk to the insurer by affiliates  
17 or by the insurance holding company system, the violation may serve  
18 as an independent basis for disapproving dividends or distributions  
19 and for issuing an order under Chapter 404 or Chapter 441.

20 SECTION 18. (a) Subject to Subsection (b) of this section,  
21 the Texas Department of Insurance may not implement Section  
22 823.0595, Insurance Code, as added by this Act, until the 180th day  
23 after the date the commissioner of insurance determines that the  
24 National Association of Insurance Commissioners has completed an  
25 enterprise risk form and has proposed a master confidentiality  
26 agreement and places notice of that determination in the Texas  
27 Register.



1 (b) An insurer is not required to file an enterprise risk  
2 report under Section 823.0595, Insurance Code, as added by this  
3 Act, until January 1, 2014.

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1431 passed the Senate on April 28, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 23, 2011, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1431 passed the House, with amendment, on May 13, 2011, by the following vote: Yeas 124, Nays 3, four present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor