

By: Carona

S.B. No. 1431

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 completed 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 inaccurate or is no longer accurate, the [The]  
4 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), and (h) 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  
26 private civil 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 Subchapter B. 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 section, 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 section 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 section 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 section.

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

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

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

16 (1) initiate the establishment of a supervisory  
17 college;

18 (2) clarify the membership and participation of other  
19 entities in the supervisory college;

20 (3) clarify the functions of the supervisory college  
21 and the role of other entities in the supervisory college;

22 (4) establish a group-wide supervisor;

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

26 (6) establish a crisis management plan.

27 (b) In order to assess the business strategy, financial

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

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

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

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

27 (1) the identity and relationship of each affiliate in

1 the insurance holding company system of which the insurer is a part;

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

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

10 (c) The registration statement must also contain  
11 information about:

12 (1) each outstanding loan the insurer makes to an  
13 affiliate of the insurer or an affiliate makes to the insurer;

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

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

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

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

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

27 (7) each transaction between the insurer and an

1 affiliated financial institution;

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

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

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

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

15 (12) the corporate governance and internal control  
16 responsibilities of the insurer's board of directors, including a  
17 statement that the insurer's senior management or officers have  
18 approved and implemented, and continue to maintain and monitor,  
19 corporate governance and internal control procedures; and

20 (13) any other information that the commissioner  
21 requires by rule.

22 (c-1) On request of the commissioner, an insurer shall  
23 include with the statement a copy of all financial statements for  
24 the insurance holding company system, including annual audited  
25 financial statements filed with the United States Securities and  
26 Exchange Commission pursuant to the Securities Act of 1933 (15  
27 U.S.C. Section 77a et seq.) or the Securities Act of 1934 (15 U.S.C.

1 Section 78a et seq.). An insurer required by the commissioner to  
2 submit financial statements under this subsection may satisfy the  
3 requirement by submitting to the commissioner the financial  
4 statements that the insurer's parent corporation most recently  
5 filed with the Securities and Exchange Commission.

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

8 Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as  
9 provided by Subsection (d), the ultimate controlling person, as  
10 defined by Section 823.055, of each insurer required to file an  
11 annual registration shall file with the registration an annual  
12 enterprise risk report. The report must, to the best of the  
13 ultimate controlling person's knowledge, identify the material  
14 risks within the insurance holding company system that may pose  
15 enterprise risk to the insurer. The report must be filed with the  
16 lead state commissioner of the insurance holding company system, as  
17 determined by the procedures adopted by the National Association of  
18 Insurance Commissioners.

19 (b) The ultimate controlling person of an insurer shall file  
20 the first enterprise risk report required by this section not later  
21 than:

22 (1) January 1, 2012, if the total direct or assumed  
23 annual premiums of the insurer were \$5 billion or more on September  
24 1, 2011;

25 (2) January 1, 2013, if the total direct or assumed  
26 annual premiums of the insurer were more than \$1 billion but less  
27 than \$5 billion on September 1, 2011;

1           (3) January 1, 2014, if the total direct or assumed  
2 annual premiums of the insurer were more than \$500 million but less  
3 than \$1 billion on September 1, 2011; or

4           (4) January 1, 2015, if the total direct or assumed  
5 annual premiums of the insurer were \$100 million or more but less  
6 than \$500 million on September 1, 2011.

7           (c) Subsection (b) and this subsection expire January 2,  
8 2015.

9           (d) Except as provided by Subsection (e), the ultimate  
10 controlling person of an insurer with total direct or assumed  
11 annual premiums of less than \$100 million is not required to submit  
12 an enterprise risk report under Subsection (a).

13           (e) Regardless of total direct or assumed annual premium,  
14 the ultimate controlling person of an insurer that is not in  
15 compliance with applicable risk-based capital standards or that is  
16 otherwise in hazardous condition, as determined by the  
17 commissioner, shall file an enterprise risk report required by  
18 Subsection (a) as directed by the commissioner.

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) If the acquiring person is also the ultimate controlling  
8 person, the acquiring person shall agree to provide the annual  
9 enterprise risk report required by Section 823.0595 for as long as  
10 the acquiring person maintains control of the insurer.

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

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

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

24 SECTION 16. Section 823.351, Insurance Code, is amended by  
25 amending Subsections (a) and (b) and adding Subsections (a-1),  
26 (a-2), and (b-1) to read as follows:

27 (a) Subject to Section 823.352, the commissioner may

1 examine [~~order~~] an insurer registered under Subchapter B and its  
2 affiliates [~~to produce records, books, or other information papers~~  
3 ~~in the possession of the insurer or an affiliate of the insurer that~~  
4 ~~are necessary~~] to ascertain the financial condition or legality of  
5 conduct of the insurer, including the enterprise risk to the  
6 insurer by the ultimate controlling party, or by any entity or  
7 combination of entities within the insurance holding company  
8 system, or by the insurance holding company system on a  
9 consolidated basis.

10 (a-1) The commissioner may order an insurer registered  
11 under Subchapter B to produce records, books, or other information  
12 in the possession of the insurer or its affiliates as are reasonably  
13 necessary to determine compliance with this chapter.

14 (a-2) To determine compliance with this chapter, the  
15 commissioner may order any insurer registered under Subchapter B to  
16 produce information not in the possession of the insurer if the  
17 insurer can obtain access to the information pursuant to  
18 contractual relationships, statutory obligations, or other  
19 methods. In the event that the insurer is unable to obtain the  
20 information requested by the commissioner, the insurer shall  
21 provide the commissioner with a detailed explanation of the reason  
22 why the insurer is unable to obtain the information, and the  
23 identity of the holder of information. If it appears to the  
24 commissioner that the insurer's explanation is without merit, the  
25 commissioner may after notice and hearing:

26 (1) require the insurer to pay a penalty of not less  
27 than \$100 for each day the insurer delays producing the

1 information; or

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

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

8 (1) the operations of that person may materially  
9 affect the operations, management, or financial condition of any  
10 controlled insurer in that system; and

11 (2) the commissioner is unable to obtain relevant  
12 information from the controlled insurer.

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

27 SECTION 17. Section 823.452, Insurance Code, is amended by

1 adding Subsection (a-1) to read as follows:

2 (a-1) If it appears to the commissioner that a person has  
3 committed a violation of Subchapter D that prevents the full  
4 understanding of the enterprise risk to the insurer by affiliates  
5 or by the insurance holding company system, the violation may serve  
6 as an independent basis for disapproving dividends or distributions  
7 and for issuing an order under Chapter 404 or Chapter 441.

8 SECTION 18. This Act takes effect September 1, 2011.