

1-1 By: Carona S.B. No. 1431
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1431 By: Carona

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

1-10 relating to the functions of insurance holding company systems.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 823.002, Insurance Code, is amended by
1-13 adding Subdivisions (3-a), (3-b), and (4-a) and amending
1-14 Subdivision (6) to read as follows:
1-15 (3-a) "Divesting person" means a person who has
1-16 control of a domestic insurer and who intends to divest control of
1-17 the domestic insurer.
1-18 (3-b) "Divestiture" means an abandonment of control of
1-19 a domestic insurer by a divesting person that does not result in the
1-20 transfer of control to another person.
1-21 (4-a) "Enterprise risk" means any activity,
1-22 circumstance, event, or series of events involving one or more
1-23 affiliates of an insurer that, if not remedied promptly, is likely
1-24 to have a material adverse effect on the financial condition or
1-25 liquidity of the insurer or its insurance holding company system as
1-26 a whole, including anything:
1-27 (A) that would cause the insurer's risk-based
1-28 capital to fall into company action level; or
1-29 (B) that would cause the insurer to be in
1-30 hazardous financial condition.
1-31 (6) "Insurer" means any insurance company organized
1-32 under the laws of this state, a commercially domiciled insurer, or
1-33 an insurer authorized to engage in the business of insurance in this
1-34 state. The term includes a capital stock company, mutual company,
1-35 farm mutual insurance company, title insurance company, fraternal
1-36 benefit society, local mutual aid association, statewide mutual
1-37 assessment company, county mutual insurance company, Lloyd's plan,
1-38 reciprocal or interinsurance exchange, stipulated premium
1-39 insurance company, and group hospital service corporation. The
1-40 term does not include an agency, authority, or instrumentality of
1-41 the United States, its possessions and territories, the
1-42 Commonwealth of Puerto Rico, the District of Columbia, or a state,
1-43 or an agency, authority, instrumentality, or political
1-44 subdivision of a state.
1-45 SECTION 2. Section 823.010, Insurance Code, is amended by
1-46 amending Subsections (c) and (d) and adding Subsections (e) and (f)
1-47 to read as follows:
1-48 (c) Except as provided by Subsection (d), [After] the
1-49 disclaimer shall be deemed to have been allowed unless, not later
1-50 than 60 days after the receipt of a complete disclaimer, [is filed.
1-51 [(1) the insurer is not required to register or report
1-52 under Subchapter B because of a duty that arises out of the
1-53 insurer's relationship with the person unless] the commissioner
1-54 notifies the filing party that [disallows] the disclaimer is
1-55 disallowed[, in which event the duty to register or report begins on
1-56 the date of the disallowance, and
1-57 [(2) the person is not required to comply with
1-58 Sections 823.154, 823.155, 823.159, and 823.160 unless the
1-59 commissioner disallows the disclaimer].
1-60 (d) Notwithstanding Subsection (c), if the commissioner at
1-61 any time determines that the information disclosed in the
1-62 disclaimer is incomplete or inaccurate or is no longer accurate,
1-63 the [The] commissioner may disallow the disclaimer [only after.

2-1 ~~[(1) providing to each party in interest notice of and~~
2-2 ~~the opportunity to be heard on the disallowance; and~~
2-3 ~~[(2) making specific findings of fact to support the~~
2-4 ~~disallowance].~~

2-5 (e) If the commissioner disallows a disclaimer, the party
2-6 who filed the disclaimer may request an administrative hearing.
2-7 The commissioner shall grant the request for the hearing.

2-8 (f) If the commissioner allows a disclaimer, the party who
2-9 filed the disclaimer is not required to register under Subchapter B
2-10 or comply with Section 823.154, 823.155, 823.159, or 823.160 unless
2-11 the commissioner determines that the disclaimer should be
2-12 disallowed under Subsection (d).

2-13 SECTION 3. Section 823.011, Insurance Code, is amended by
2-14 amending Subsections (b) and (d) and adding Subsections (e) through
2-15 (i) to read as follows:

2-16 (b) The information shall be confidential and privileged
2-17 for all purposes [treated confidentially and is not subject to
2-18 subpoena]. Except as provided by Subsections (c) and (d), the
2-19 information may not be disclosed without the prior written consent
2-20 of the insurer to which it pertains.

2-21 (d) Except as provided by Subsection (e), if the recipient
2-22 of documents or other information agrees in writing to maintain the
2-23 confidential and privileged status of the documents or other
2-24 information, and verifies in writing the legal authority to
2-25 maintain the confidential and privileged status of the documents or
2-26 information, the [The] commissioner or another person may disclose
2-27 the information to any of the following entities functioning in an
2-28 official capacity:

- 2-29 (1) a commissioner of insurance or an insurance
- 2-30 department of another state;
- 2-31 (2) an authorized law enforcement official;
- 2-32 (3) a district attorney of this state;
- 2-33 (4) the attorney general; [or]
- 2-34 (5) a grand jury; or
- 2-35 (6) members of a supervisory college described by
- 2-36 Section 823.0145.

2-37 (e) Notwithstanding Subsection (d), the commissioner may
2-38 share confidential and privileged information reported under
2-39 Section 823.0595 only with the commissioner of insurance of a state
2-40 that has a statute or rule substantially similar to Subsection (d)
2-41 who agrees in writing not to disclose the information.

2-42 (f) Information described by Subsection (a), including
2-43 information in the possession of the National Association of
2-44 Insurance Commissioners under this section, is confidential and
2-45 privileged for all purposes, including for purposes of:

- 2-46 (1) Chapter 552, Government Code;
- 2-47 (2) a response to a subpoena; or
- 2-48 (3) discovery or admissibility in evidence in a civil
- 2-49 action.

2-50 (g) The commissioner shall enter into written agreements
2-51 with the National Association of Insurance Commissioners regarding
2-52 the sharing and use of information provided under this chapter. An
2-53 agreement entered into under this subsection must:

2-54 (1) specify procedures and protocols regarding the
2-55 confidentiality and security of information shared with the
2-56 National Association of Insurance Commissioners and its affiliates
2-57 and subsidiaries under this chapter, including procedures and
2-58 protocols for sharing by the National Association of Insurance
2-59 Commissioners with other state, federal, or international
2-60 regulators;

2-61 (2) specify that ownership of information shared with
2-62 the National Association of Insurance Commissioners and its
2-63 affiliates and subsidiaries under this chapter remains with the
2-64 commissioner, and that use of the information by the National
2-65 Association of Insurance Commissioners is subject to the direction
2-66 of the commissioner;

2-67 (3) require prompt notice to an insurer whose
2-68 confidential information is in the possession of the National
2-69 Association of Insurance Commissioners under this chapter that the

3-1 information is subject to a request or subpoena to the National
 3-2 Association of Insurance Commissioners for disclosure or
 3-3 production; and

3-4 (4) require the National Association of Insurance
 3-5 Commissioners and its affiliates and subsidiaries to give consent
 3-6 to intervention by an insurer in any judicial or administrative
 3-7 action in which the National Association of Insurance Commissioners
 3-8 and its affiliates and subsidiaries may be required to disclose
 3-9 confidential information about the insurer shared with the National
 3-10 Association of Insurance Commissioners and its affiliates and
 3-11 subsidiaries under this chapter.

3-12 (h) This section may not be construed to prevent the
 3-13 commissioner or the attorney general from using information
 3-14 described by Subsection (a) for any purpose with respect to which
 3-15 the commissioner or the attorney general is otherwise authorized to
 3-16 act, including a regulatory or other legal action.

3-17 (i) The commissioner remains solely responsible for the
 3-18 administration, execution, and enforcement of this chapter, and the
 3-19 commissioner's sharing of information does not constitute a
 3-20 delegation of regulatory or rulemaking authority.

3-21 SECTION 4. Subchapter A, Chapter 823, Insurance Code, is
 3-22 amended by adding Section 823.0145 to read as follows:

3-23 Sec. 823.0145. SUPERVISORY COLLEGES. (a) With respect to
 3-24 any insurer registered under Subchapter B, and in accordance with
 3-25 Subsection (c), the commissioner may participate in a supervisory
 3-26 college for a domestic insurer that is part of an insurance holding
 3-27 company system with international operations in order to determine
 3-28 the insurer's compliance with this chapter. The commissioner may:

3-29 (1) initiate the establishment of a supervisory
 3-30 college;

3-31 (2) clarify the membership and participation of other
 3-32 entities in the supervisory college;

3-33 (3) clarify the functions of the supervisory college
 3-34 and the role of other entities in the supervisory college;

3-35 (4) establish a group-wide supervisor;

3-36 (5) coordinate the ongoing activities of the
 3-37 supervisory college, including meetings, regulatory activities,
 3-38 and processes for information sharing; and

3-39 (6) establish a crisis management plan.

3-40 (b) In order to assess the business strategy, financial
 3-41 position, legal and regulatory position, risk exposure, and risk
 3-42 management and governance processes, and as part of the examination
 3-43 of individual insurers under Subchapter H, the commissioner may
 3-44 participate in a supervisory college with other entities that
 3-45 regulate the insurer or its affiliates, including other state,
 3-46 federal, and international regulatory entities. The commissioner
 3-47 may enter into agreements under Section 823.011 to cooperate with
 3-48 other regulatory entities. Nothing in this section shall be
 3-49 construed as delegating to the supervisory college the
 3-50 commissioner's authority to regulate the insurer or its affiliates.

3-51 (c) A registered insurer subject to this section shall pay
 3-52 the reasonable expenses, including reasonable travel expenses, of
 3-53 the commissioner's participation in a supervisory college under
 3-54 Subsection (b). For purposes of this section, a supervisory
 3-55 college may be convened as either a temporary or permanent forum for
 3-56 communication and cooperation between the entities that regulate
 3-57 the insurer or its affiliates, and the commissioner may establish a
 3-58 regular assessment to the insurer for the payment of expenses
 3-59 related to the regulation of the insurer.

3-60 SECTION 5. Section 823.052, Insurance Code, is amended by
 3-61 amending Subsections (b) and (c) and adding Subsections (c-1) and
 3-62 (c-2) to read as follows:

3-63 (b) The registration statement must be in a format
 3-64 prescribed by the National Association of Insurance Commissioners
 3-65 or adopted by rule of the commissioner and contain current
 3-66 information about:

3-67 (1) the identity and relationship of each affiliate in
 3-68 the insurance holding company system of which the insurer is a part;

3-69 (2) the capital structure, general financial

4-1 condition, and ownership and management of the insurer, the
 4-2 insurer's holding company, the insurer's subsidiaries, and, if the
 4-3 commissioner considers the information necessary, any of the
 4-4 insurer's other affiliates; and

4-5 (3) any pledge of stock of the insurer or a subsidiary
 4-6 or controlling affiliate of the insurer for a loan made to a member
 4-7 of the insurer's insurance holding company system.

4-8 (c) The registration statement must also contain
 4-9 information about:

4-10 (1) each outstanding loan the insurer makes to an
 4-11 affiliate of the insurer or an affiliate makes to the insurer;

4-12 (2) each purchase, sale, or exchange of securities or
 4-13 other investment between the insurer and an affiliate of the
 4-14 insurer;

4-15 (3) each purchase, sale, or exchange of assets between
 4-16 the insurer and an affiliate of the insurer;

4-17 (4) each management and service contract or
 4-18 cost-sharing arrangement between the insurer and an affiliate of
 4-19 the insurer;

4-20 (5) each reinsurance agreement between the insurer and
 4-21 an affiliate of the insurer that covers one or more lines of
 4-22 insurance of the ceding company;

4-23 (6) each agreement between the insurer and an
 4-24 affiliate of the insurer to consolidate federal income tax returns;

4-25 (7) each transaction between the insurer and an
 4-26 affiliated financial institution;

4-27 (8) each transaction between the insurer and an
 4-28 affiliate of the insurer that is not in the ordinary course of
 4-29 business;

4-30 (9) each guarantee or undertaking, other than an
 4-31 insurance contract entered into in the ordinary course of the
 4-32 insurer's business, for the benefit of an affiliate of the insurer
 4-33 that results in a contingent exposure of the insurer's assets to
 4-34 liability;

4-35 (10) each dividend or distribution to the insurer's
 4-36 shareholders; ~~and~~

4-37 (11) each transaction between the insurer and an
 4-38 affiliate of the insurer not specified by this subsection that is
 4-39 subject to Section 823.102, 823.103, or 823.104;

4-40 (12) the corporate governance and internal control
 4-41 responsibilities of the insurer's board of directors, including a
 4-42 statement that:

4-43 (A) the insurer's senior management or officers
 4-44 have approved and implemented, and continue to maintain and
 4-45 monitor, corporate governance and internal control procedures; and

4-46 (B) the insurer's board of directors oversees
 4-47 corporate governance and internal controls; and

4-48 (13) any other information that the commissioner
 4-49 requires by rule.

4-50 (c-1) On request of the commissioner, an insurer shall
 4-51 include with the statement a copy of all financial statements for
 4-52 the insurance holding company system and all affiliates of the
 4-53 holding company system, including annual audited financial
 4-54 statements filed with the United States Securities and Exchange
 4-55 Commission pursuant to the Securities Act of 1933 (15 U.S.C.
 4-56 Section 77a et seq.) or the Securities Exchange Act of 1934 (15
 4-57 U.S.C. Section 78a et seq.).

4-58 (c-2) An insurer required by the commissioner to submit
 4-59 financial statements under Subsection (c-1) may satisfy the
 4-60 requirement by submitting to the commissioner:

4-61 (1) the financial statements that the insurer's parent
 4-62 corporation most recently filed with the Securities and Exchange
 4-63 Commission; and

4-64 (2) if the insurer is required to submit financial
 4-65 statements for an affiliate, the financial statements that the
 4-66 affiliate most recently filed with an agency that regulates the
 4-67 affiliate.

4-68 SECTION 6. Subchapter B, Chapter 823, Insurance Code, is
 4-69 amended by adding Section 823.0595 to read as follows:

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

5-13 (b) The ultimate controlling person of an insurer shall file
 5-14 the first enterprise risk report required by this section with the
 5-15 first annual registration statement due after:

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

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

5-22 (3) January 1, 2015, if the total direct or assumed
 5-23 annual premiums of the insurer were more than \$500 million but less
 5-24 than \$1 billion during the preceding 12-month period; or

5-25 (4) January 1, 2016, if the total direct or assumed
 5-26 annual premiums of the insurer were \$300 million or more but less
 5-27 than \$500 million during the preceding 12-month period.

5-28 (c) Subsection (b) and this subsection expire January 2,
 5-29 2015.

5-30 (d) Except as provided by Subsection (e), the ultimate
 5-31 controlling person of an insurer with total direct or assumed
 5-32 annual premiums of less than \$300 million is not required to submit
 5-33 an enterprise risk report under Subsection (a).

5-34 (e) Regardless of total direct or assumed annual premium,
 5-35 the ultimate controlling person of an insurer that is not in
 5-36 compliance with applicable risk-based capital standards or that is
 5-37 otherwise in hazardous condition, as determined by the
 5-38 commissioner, shall file an enterprise risk report required by
 5-39 Subsection (a) as directed by the commissioner.

5-40 (f) An insurer or health maintenance organization that in
 5-41 the preceding calendar year had direct written and assumed premiums
 5-42 of more than \$300 million but less than \$500 million may request an
 5-43 exemption from the reporting requirements of Subsection (a) by
 5-44 filing with the commissioner a written statement describing the
 5-45 undue financial or organizational hardship the insurer or health
 5-46 maintenance organization would suffer as a result of complying with
 5-47 Subsection (a). The commissioner may grant the exemption if the
 5-48 commissioner finds that compliance with Subsection (a) would impose
 5-49 an undue financial or organizational hardship on the insurer or
 5-50 health maintenance organization.

5-51 SECTION 7. Section 823.060, Insurance Code, is amended to
 5-52 read as follows:

5-53 Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file
 5-54 a registration statement or an amendment to a registration
 5-55 statement, or an enterprise risk report, within the time specified
 5-56 for filing the statement, ~~or~~ amendment, or report, as required by
 5-57 this subchapter, is a violation of this subchapter.

5-58 SECTION 8. The heading to Section 823.101, Insurance Code,
 5-59 is amended to read as follows:

5-60 Sec. 823.101. STANDARDS FOR TRANSACTION WITHIN AN INSURANCE
 5-61 HOLDING COMPANY SYSTEM ~~[WITH AFFILIATE]~~.

5-62 SECTION 9. Section 823.101, Insurance Code, is amended by
 5-63 amending Subsection (a) and adding Subsection (b-1) to read as
 5-64 follows:

5-65 (a) This section applies only to a material transaction
 5-66 within an insurance holding company system to which an ~~[between a~~
 5-67 ~~registered insurer and an affiliate of the]~~ insurer subject to a
 5-68 registration under Section 823.052 is a party.

5-69 (b-1) An agreement, including an agreement for

6-1 cost-sharing, services, or management, must include all provisions
6-2 required by rule of the commissioner.

6-3 SECTION 10. Section 823.102, Insurance Code, is amended by
6-4 amending Subsection (a) and adding Subsections (d) and (e) to read
6-5 as follows:

6-6 (a) This section applies only to a sale, purchase, exchange,
6-7 loan or other extension of credit, or investment between a domestic
6-8 insurer and any person in the insurer's insurance holding company
6-9 system, including an amendment or modification of an affiliate
6-10 agreement previously filed under this section, that involves more
6-11 than the lesser of 5 percent of the insurer's admitted assets or 25
6-12 percent of the insurer's surplus, as of December 31 of the year
6-13 preceding the year in which the transaction occurs.

6-14 (d) The notice described by Subsection (c) must include:

6-15 (1) the reasons for entering into or changing the
6-16 transaction; and

6-17 (2) the financial impact of the transaction on the
6-18 domestic insurer.

6-19 (e) Not later than the 30th day after the termination of a
6-20 previously filed agreement, the domestic insurer shall give notice
6-21 of the termination to the commissioner.

6-22 SECTION 11. Section 823.103, Insurance Code, is amended by
6-23 amending Subsection (a) and adding Subsections (e) and (f) to read
6-24 as follows:

6-25 (a) This section applies only to:

6-26 (1) a sale, purchase, exchange, loan or other
6-27 extension of credit, or investment between a domestic insurer and
6-28 any person in the insurer's insurance holding company system,
6-29 including an amendment or modification of an affiliate agreement
6-30 previously filed under this section:

6-31 (A) that involves more than the lesser of
6-32 one-half of one percent of the insurer's admitted assets or five
6-33 percent of the insurer's surplus, as of December 31 of the year
6-34 preceding the year in which the transaction occurs; and

6-35 (B) the approval of which is not required under
6-36 Section 823.102;

6-37 (2) a reinsurance agreement, including a reinsurance
6-38 treaty or pooling agreement, or an amendment or modification of an
6-39 agreement previously filed under this section, between a domestic
6-40 insurer and any person in the insurer's holding company system [~~or a~~
6-41 modification of such an agreement];

6-42 (3) a rendering of services between a domestic insurer
6-43 and any person in the insurer's holding company system on a regular
6-44 or systematic basis, including a tax-allocation agreement, or an
6-45 amendment or modification of an agreement previously filed under
6-46 this section; or

6-47 (4) any material transaction between a domestic
6-48 insurer and any person in the insurer's holding company system that
6-49 is specified by rule and that the commissioner determines may
6-50 adversely affect the interests of the insurer's policyholders or of
6-51 the public, including an amendment or modification of an agreement
6-52 previously filed under this section.

6-53 (e) The notice described by Subsection (c) must include:

6-54 (1) the reasons for entering into or changing the
6-55 transaction; and

6-56 (2) the financial impact of the transaction on the
6-57 domestic insurer.

6-58 (f) Not later than the 30th day after the termination of a
6-59 previously filed agreement, the domestic insurer shall give notice
6-60 of the termination to the commissioner.

6-61 SECTION 12. Section 823.154, Insurance Code, is amended to
6-62 read as follows:

6-63 Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF
6-64 CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person
6-65 who directly or indirectly controls, or after the acquisition would
6-66 directly or indirectly control, a domestic insurer may in any
6-67 manner acquire a voting security of a domestic insurer or before a
6-68 person may otherwise acquire control of a domestic insurer or
6-69 exercise any control over a domestic insurer, or before a person may

7-1 initiate a divestiture of control of a domestic insurer:

7-2 (1) the acquiring person shall file with the
7-3 commissioner a statement that satisfies the requirements of
7-4 Subchapter E; ~~and~~

7-5 (2) the acquisition or divestiture of control must be
7-6 approved by the commissioner in accordance with this subchapter;
7-7 and

7-8 (3) if the person is initiating a divestiture of
7-9 control, the divesting person shall file with the commissioner a
7-10 notice of divestiture on a form adopted by the National Association
7-11 of Insurance Commissioners or adopted by the commissioner by rule.

7-12 (b) The acquiring person or divesting person shall send a
7-13 copy of the statement filed under this section to the domestic
7-14 insurer.

7-15 (c) A statement or notice filed under this section must be
7-16 filed not later than the 60th day before the proposed effective date
7-17 of the acquisition or change of control or divestiture and is
7-18 subject to public inspection at the office of the commissioner.

7-19 (d) Notwithstanding Subsection (a), a divesting person is
7-20 not required to provide the commissioner with notice of divestiture
7-21 required by Subsection (a)(3) if an acquiring person submits the
7-22 statement required by Subsection (a)(1) and that acquisition is
7-23 approved by the commissioner.

7-24 SECTION 13. Section 823.157, Insurance Code, is amended to
7-25 read as follows:

7-26 Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR
7-27 DIVESTITURE OF CONTROL. (a) The commissioner shall approve or
7-28 deny an acquisition, ~~or~~ change, or divestiture of control for
7-29 which a statement or notice is filed under Section 823.154 not later
7-30 than the 60th day after the date the statement required by that
7-31 section is filed. The 60-day period may be waived by the person
7-32 filing the statement or notice required by Section 823.154 and the
7-33 domestic insurer. On the request of either the person filing the
7-34 statement or notice required by Section 823.154, or the domestic
7-35 insurer, the commissioner shall hold a hearing on a denial.

7-36 (b) In considering whether to approve or deny, the
7-37 commissioner shall consider whether:

7-38 (1) immediately on the acquisition, ~~or~~ change, or
7-39 divestiture of control the domestic insurer would not be able to
7-40 satisfy the requirements for the issuance of a new certificate of
7-41 authority to write the line or lines of insurance for which the
7-42 insurer holds a certificate of authority;

7-43 (2) the effect of the acquisition, ~~or~~ change, or
7-44 divestiture of control would be substantially to lessen competition
7-45 in a line or subclassification lines of insurance in this state or
7-46 tend to create a monopoly in a line or subclassification lines of
7-47 insurance in this state;

7-48 (3) the financial condition of the acquiring person
7-49 may jeopardize the financial stability of the domestic insurer or
7-50 prejudice the interest of the domestic insurer's policyholders;

7-51 (4) the acquiring person has a plan or proposal to
7-52 liquidate the domestic insurer or cause the insurer to declare
7-53 dividends or make distributions, sell any of its assets,
7-54 consolidate or merge with any person, make a material change in its
7-55 business or corporate structure or management, or enter into a
7-56 material agreement, arrangement, or transaction of any kind with
7-57 any person, and that the plan or proposal is unfair, prejudicial,
7-58 hazardous, or unreasonable to the insurer's policyholders and not
7-59 in the public interest;

7-60 (5) due to a lack of competence, trustworthiness,
7-61 experience, and integrity of the persons who would control the
7-62 operation of the domestic insurer, the acquisition or change of
7-63 control would not be in the interest of the insurer's policyholders
7-64 and the public;

7-65 (5-a) the divestiture of control may jeopardize the
7-66 financial stability of the domestic insurer or prejudice the
7-67 interest of the domestic insurer's policyholders and other
7-68 claimants; or

7-69 (6) the acquisition, ~~or~~ change, or divestiture of

8-1 control would violate the law of this or another state or the United
8-2 States.

8-3 (c) If a proposed acquisition, change, or divestiture of
8-4 control will require the approval of more than one commissioner,
8-5 the commissioner may participate in a public hearing referred to in
8-6 this chapter held on a consolidated basis on request of the person
8-7 filing the statement required by Section 823.154. The person
8-8 filing the statement under Section 823.154 shall file the statement
8-9 with the National Association of Insurance Commissioners within
8-10 five days of making the request for a public hearing. A hearing
8-11 conducted on a consolidated basis shall be public and shall be held
8-12 within the United States before the commissioners of the states in
8-13 which the insurers are domiciled. The commissioners shall hear and
8-14 receive evidence at the hearing. The commissioner may attend the
8-15 hearing in person or by telecommunication.

8-16 (d) This section does not require the commissioner to hold a
8-17 hearing before approving or denying an acquisition, change, or
8-18 divestiture of control.

8-19 SECTION 14. Section 823.201, Insurance Code, is amended by
8-20 adding Subsections (d) and (e) to read as follows:

8-21 (d) The acquiring person shall agree to provide the annual
8-22 enterprise risk report required by Section 823.0595 for as long as
8-23 the acquiring person maintains control of the insurer.

8-24 (e) The acquiring person and all subsidiaries within the
8-25 acquiring person's control in the insurance holding company system
8-26 shall provide information to the commissioner on request of the
8-27 commissioner as the commissioner deems necessary to evaluate
8-28 enterprise risk to the insurer.

8-29 SECTION 15. Section 823.205, Insurance Code, is amended by
8-30 adding Subsection (c) to read as follows:

8-31 (c) An insurer required to file information under Section
8-32 823.154 may satisfy the requirement of Section 823.052(c-1) by
8-33 providing the commissioner with the most recently filed parent
8-34 corporation reports that have been filed with the United States
8-35 Securities and Exchange Commission, if required by the
8-36 commissioner.

8-37 SECTION 16. Section 823.351, Insurance Code, is amended by
8-38 amending Subsections (a) and (b) and adding Subsections (a-1) and
8-39 (b-1) to read as follows:

8-40 (a) Subject to Section 823.352, the commissioner may order
8-41 an insurer registered under Subchapter B to produce records, books,
8-42 or other information papers in the possession of the insurer or an
8-43 affiliate of the insurer that are necessary to ascertain the
8-44 financial condition or legality of conduct of the insurer,
8-45 including the enterprise risk to the insurer by the ultimate
8-46 controlling party, or by any entity or combination of entities
8-47 within the insurance holding company system, or by the insurance
8-48 holding company system on a consolidated basis.

8-49 (a-1) To determine compliance with this chapter, the
8-50 commissioner may order any insurer registered under Subchapter B to
8-51 produce information not in the possession of the insurer if the
8-52 insurer can obtain access to the information pursuant to
8-53 contractual relationships, statutory obligations, or other
8-54 methods. In the event that the insurer is unable to obtain the
8-55 information requested by the commissioner, the insurer shall
8-56 provide the commissioner with a detailed explanation of the reason
8-57 why the insurer is unable to obtain the information and the identity
8-58 of the holder of information. If it appears to the commissioner
8-59 that the insurer's explanation is without merit, the commissioner
8-60 may after notice and hearing:

8-61 (1) require the insurer to pay a penalty of not less
8-62 than \$100 for each day the insurer delays producing the
8-63 information; or

8-64 (2) suspend or revoke the insurer's license.

8-65 (b) If an insurer fails to comply with an order under this
8-66 section [Subsection (a)], the commissioner by order may require the
8-67 examination of each holding company of the insurer and each
8-68 controlled person or affiliate in the insurer's insurance holding
8-69 company system if the commissioner has cause to believe that:

9-1 (1) the operations of that person may materially
9-2 affect the operations, management, or financial condition of any
9-3 controlled insurer in that system; and

9-4 (2) the commissioner is unable to obtain relevant
9-5 information from the controlled insurer.

9-6 (b-1) The commissioner may issue subpoenas, administer
9-7 oaths, and examine under oath any person for purposes of
9-8 determining compliance with this section. On the failure or
9-9 refusal of a person to obey a subpoena, the commissioner may
9-10 petition a court of competent jurisdiction, and on proper showing
9-11 the court may enter an order compelling the witness to appear and
9-12 testify or produce documentary evidence. Failure to obey the court
9-13 order is punishable as contempt of court. A person shall attend as
9-14 a witness at the place specified in the subpoena, when subpoenaed,
9-15 at any location in this state. The person is entitled to the same
9-16 fees and mileage, if claimed, as a witness in district court. Fees,
9-17 mileage, and actual expenses necessarily incurred in securing the
9-18 attendance of a witness shall be itemized and charged against, and
9-19 be paid by, the insurer being examined.

9-20 SECTION 17. Section 823.452, Insurance Code, is amended by
9-21 adding Subsection (a-1) to read as follows:

9-22 (a-1) If it appears to the commissioner that a person has
9-23 committed a violation of Subchapter D that prevents the full
9-24 understanding of the enterprise risk to the insurer by affiliates
9-25 or by the insurance holding company system, the violation may serve
9-26 as an independent basis for disapproving dividends or distributions
9-27 and for issuing an order under Chapter 404 or Chapter 441.

9-28 SECTION 18. The Texas Department of Insurance may not
9-29 implement Section 823.0595, Insurance Code, as added by this Act,
9-30 until the date that the commissioner determines that the National
9-31 Association of Insurance Commissioners has promulgated an
9-32 enterprise risk form and has proposed a master confidentiality
9-33 agreement and places notice of that determination in the Texas
9-34 Register.

9-35 SECTION 19. This Act takes effect September 1, 2011.

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