

By: Van de Putte

S.B. No. 1735

A BILL TO BE ENTITLED

AN ACT

relating to limited purpose subsidiary life insurance companies.

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

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

SUBCHAPTER I. LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

Sec. 841.401. PURPOSE. The purpose of this subchapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies to enable those companies to support excess reserves for certain life insurance policies.

Sec. 841.402. DEFINITIONS. In this subchapter:

(1) "Affiliated companies" means domestic life insurance companies that are:

(A) directly or indirectly wholly owned subsidiaries of the same holding company; or

(B) controlled persons of the same holding company.

(2) "Appointed actuary" means the actuary who is appointed by a limited purpose subsidiary life insurance company to render the actuarial opinion required by Subchapter B, Chapter 425.

(3) "Ceding insurer" means a company that cedes risk to a limited purpose subsidiary life insurance company under a reinsurance contract and that is:

(A) a domestic life insurance company that is the

1 parent of a limited purpose subsidiary life insurance company; or

2 (B) an affiliated company of a limited purpose  
3 subsidiary life insurance company.

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

7 (5) "Excess reserves" means the amount of statutory  
8 reserves determined to be redundant by the appointed actuary for  
9 life insurance policies whose reserves are calculated under 28  
10 T.A.C. Subchapter EE, Chapter 3. Excess reserves may not be an  
11 amount greater than the difference between the reserves calculated  
12 using 28 T.A.C. Subchapter EE, Chapter 3 and the reserves  
13 calculated using generally accepted accounting principles.

14 (6) "Guarantor" means a holding company or an  
15 affiliated company under Section 841.417 of the limited purpose  
16 subsidiary life insurance company that is a party to a guaranty.

17 (7) "Guaranty" means a commissioner-approved  
18 agreement by a guarantor with sufficient equity and financial  
19 strength to pay, during the life of the guaranty, an amount equal to  
20 the specified obligations of a limited purpose subsidiary life  
21 insurance company, less the equity of all ceding insurers that are  
22 subsidiaries of the guarantor, to satisfy the agreement.

23 (8) "Holding company" means a person that directly or  
24 indirectly controls an insurer.

25 (9) "Insurer" means a domestic life insurance company  
26 organized under this chapter.

27 (10) "Letter of credit" means a clean, unconditional,

1 irrevocable letter of credit issued or confirmed by a qualified  
2 United States financial institution, as defined by Section  
3 492.104(b)(2)(C).

4 (11) "Limited purpose subsidiary life insurance  
5 company" means a limited purpose subsidiary life insurance company  
6 organized under this subchapter:

7 (A) that is wholly owned by a life insurance  
8 company or an affiliated company; and

9 (B) to which the commissioner issues a  
10 certificate of authority under this chapter.

11 (12) "Material transaction" means a transaction or  
12 series of transactions involving amounts equal to or exceeding  
13 three percent of a limited purpose subsidiary life insurance  
14 company's admitted assets.

15 (13) "Organizational document" means a limited  
16 purpose subsidiary life insurance company's articles of  
17 incorporation and the company's bylaws.

18 (14) "Organizing company" means the company that  
19 organizes a limited purpose subsidiary life insurance company under  
20 this subchapter.

21 (15) "Parent" means a person that directly or  
22 indirectly controls through one or more intermediaries, wholly  
23 owns, or is an affiliated company of a limited purpose subsidiary  
24 life insurance company.

25 (16) "Person" has the meaning assigned by Section  
26 823.002.

27 (17) "Reinsurance contract" means a contract between a

1 limited purpose subsidiary life insurance company and a ceding  
2 insurer under which the limited purpose subsidiary life insurance  
3 company agrees to provide reinsurance to the ceding insurer for  
4 certain risks.

5 (18) "Risk" means a risk associated with life  
6 insurance policies written on or after September 1, 2011, by a  
7 ceding insurer, or assumed by a ceding insurer from an affiliated  
8 company under life insurance policies written on or after September  
9 1, 2011, by the affiliated company and for which the ceding insurer  
10 calculates statutory reserves for those policies under 28 T.A.C.  
11 Subchapter EE, Chapter 3.

12 Sec. 841.403. ORGANIZATIONAL DOCUMENTS. (a) A wholly  
13 owned domestic insurer authorized to transact the business of  
14 insurance under this chapter or an affiliated company organized or  
15 authorized to conduct business under the laws of this state may  
16 organize a limited purpose subsidiary life insurance company under  
17 this subchapter.

18 (b) A limited purpose subsidiary life insurance company may  
19 reinsure risks of the organizing company and of an affiliated  
20 company.

21 (c) A limited purpose subsidiary life insurance company's  
22 organizational documents must:

23 (1) limit the company's authority to transact the  
24 business of insurance to reinsuring only the risks of a ceding  
25 insurer;

26 (2) provide that the limited purpose subsidiary life  
27 insurance company may not otherwise engage in the business of

1 insurance; and

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

7 Sec. 841.404. CERTIFICATE OF AUTHORITY REQUIRED. A limited  
8 purpose subsidiary life insurance company may not engage in the  
9 business of reinsurance in this state unless the limited purpose  
10 subsidiary life insurance company obtains from the commissioner a  
11 certificate of authority under this subchapter.

12 Sec. 841.405. APPLICATION FOR CERTIFICATE OF AUTHORITY. To  
13 obtain a charter for a limited purpose subsidiary life insurance  
14 company, the incorporators of the company shall pay to the  
15 department a charter fee in an amount determined under Chapter 202  
16 and file with the department:

17 (1) an application for charter on the form prescribed  
18 by, and containing the information prescribed by, the commissioner;

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

20 (3) an affidavit made by the company's president, vice  
21 president, treasurer, or chief financial officer stating that:

22 (A) the minimum capital and surplus requirements  
23 of this subchapter are satisfied;

24 (B) the capital and surplus are the bona fide  
25 property of the company;

26 (C) the information in the articles of  
27 incorporation is true and correct;

1           (D) the proposed organization and operation of  
2 the limited purpose subsidiary life insurance company comply with  
3 all applicable provisions of this subchapter;

4           (E) the limited purpose subsidiary life  
5 insurance company's investment policy reflects and takes into  
6 account the liquidity of assets and the reasonable preservation,  
7 administration, and management of those assets with respect to the  
8 risks associated with the reinsurance contract; and

9           (F) any reinsurance contract and any arrangement  
10 for securing the limited purpose subsidiary life insurance  
11 company's obligations under the reinsurance contract, including  
12 any agreements or other documentation to implement the arrangement;

13           (4) a business plan that includes pro forma financial  
14 statement projections that demonstrate how the limited purpose  
15 subsidiary life insurance company will comply with Section 841.412;

16           (5) a copy of any proposed guaranty that demonstrates  
17 how compliance with Sections 841.412 and 841.417 will be achieved;

18           (6) an opinion of a qualified independent actuary  
19 acceptable to the commissioner that the methodology and assumptions  
20 used to set and discount reserves make good and sufficient  
21 provision for the risk assumed by the limited purpose subsidiary  
22 life insurance company, including significant stress tests on key  
23 assumptions; and

24           (7) any other statement or document required by the  
25 commissioner to evaluate the limited purpose subsidiary life  
26 insurance company's application for a certificate of authority.

27           Sec. 841.406. INVESTMENT OF CERTAIN SURPLUS BY ORGANIZING

1 COMPANY. If the company that organizes a limited purpose  
2 subsidiary life insurance company is a domestic life insurance  
3 company, the organizing company may invest funds from the  
4 organizing company's surplus in the limited purpose subsidiary life  
5 insurance company.

6 Sec. 841.407. OFFICERS AND DIRECTORS. The officers and  
7 directors of a company that organizes a limited purpose subsidiary  
8 life insurance company may serve as officers and directors of the  
9 limited purpose subsidiary life insurance company.

10 Sec. 841.408. ISSUANCE OF CERTIFICATE OF AUTHORITY.  
11 (a) The commissioner may issue a certificate of authority to a  
12 limited purpose subsidiary life insurance company, authorizing the  
13 company to transact reinsurance business in this state as a limited  
14 purpose subsidiary life insurance company based on a finding that:

15 (1) the company's application meets the criteria  
16 described by Section 841.061(a);

17 (2) the proposed plan of the limited purpose  
18 subsidiary life insurance company provides for viable operation of  
19 the company, including a determination by the commissioner that the  
20 limited purpose subsidiary life insurance company applicant has  
21 sufficiently strong financial support;

22 (3) the guaranties meet the requirements of Section  
23 841.417;

24 (4) the terms of any reinsurance arrangement,  
25 including the reinsurance contract and related transactions,  
26 comply with this subchapter and all applicable insurance laws and  
27 rules;

1           (5) the proposed application and reinsurance  
2 arrangement is not hazardous to any ceding insurer; and

3           (6) the proposed application and reinsurance contract  
4 will always fund authorized investments that comply with Section  
5 841.412, including statutory reserves for life insurance with  
6 invested assets at least equal to the amount of reserves required  
7 under generally accepted accounting principles.

8           (b) In conjunction with the issuance of a certificate of  
9 authority under this section, the commissioner may issue an order  
10 that includes any provisions, terms, and conditions regarding the  
11 organization, licensing, and operation of the limited purpose  
12 subsidiary life insurance company that the commissioner deems  
13 appropriate and that are not inconsistent with this chapter,  
14 including requesting from the company information to monitor the  
15 financial strength of guarantors and requiring the periodic  
16 reporting and monitoring of assets behind any guaranties issued.

17           Sec. 841.409. SCOPE OF CERTIFICATE OF AUTHORITY. (a) A  
18 limited purpose subsidiary life insurance company that has been  
19 issued a certificate of authority may reinsure only the risks of a  
20 ceding insurer. A limited purpose subsidiary life insurance  
21 company may not otherwise engage in the business of insurance.

22           (b) A limited purpose subsidiary life insurance company may  
23 purchase reinsurance to cede the risks assumed under a reinsurance  
24 contract.

25           (c) A limited purpose subsidiary life insurance company  
26 organized under this subchapter is considered to be licensed to  
27 transact the business of reinsurance for the purposes of Section



1 492.051, but may only reinsure risks of the company's affiliated  
2 companies.

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

7 Sec. 841.410. CAPITAL AND SURPLUS. (a) The commissioner  
8 may not issue a certificate of authority to a limited purpose  
9 subsidiary life insurance company unless the company possesses and  
10 maintains unimpaired paid-in capital and surplus of not less than  
11 \$10 million.

12 (b) A limited purpose subsidiary life insurance company  
13 shall comply with the risk-based capital requirements adopted by  
14 the commissioner by rule.

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

19 Sec. 841.411. FORECLOSURE ON COLLATERAL. A limited purpose  
20 subsidiary life insurance company shall immediately notify the  
21 commissioner of any action by a ceding insurer or any other person  
22 to foreclose on, or otherwise take possession of, collateral  
23 provided by the limited purpose subsidiary life insurance company  
24 to secure an obligation of the company.

25 Sec. 841.412. MINIMUM AUTHORIZED INVESTMENT REQUIREMENT  
26 AFTER CREDIT FOR REINSURANCE; LETTERS OF CREDIT; GUARANTIES.

27 (a) A limited purpose subsidiary life insurance company shall hold

investments authorized under Subchapters C and D, Chapter 425,  
exclusive of investments in affiliates, in an amount that at least  
equals the sum of:

(1) the minimum capital and surplus requirements of  
Section 841.410;

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

(3) reserves calculated using generally accepted  
accounting principles.

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

(1) reinsurance that complies with Chapter 492;

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

(3) guaranties from a holding company or an affiliated  
company as provided by Section 841.417(b)(3).

(c) Notwithstanding Subsection (b), a limited purpose  
subsidiary life insurance company may hold guaranties from a  
holding company or an affiliated company as provided by Section  
841.417(b)(3) as an admitted asset with an offsetting increase in  
special surplus funds to support excess reserves only.

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

(b) Unless otherwise approved in advance by the

1 commissioner, a limited purpose subsidiary life insurance company  
2 may not assume or retain exposure to reinsurance losses for the  
3 company's own account that are not funded by:

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

8 (2) letters of credit that qualify under Section  
9 492.104(b)(2)(C); or

10 (3) guaranties of a holding company or an affiliated  
11 company as provided by Section 841.417(b)(3).

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

18 (1) the proposed reinsurance complies with Chapter  
19 492;

20 (2) the proposed reinsurer has sufficient liquidity,  
21 admitted assets, and policyholder surplus to support the  
22 liabilities assumed under the reinsurance contract; and

23 (3) the proposed reinsurance contract would not result  
24 in a hazardous financial condition for the limited purpose  
25 subsidiary life insurance company.

26 (d) A limited purpose subsidiary life insurance company may  
27 enter into contracts and conduct other commercial activities

1 related or incidental to, and necessary to fulfill the purposes of,  
2 a reinsurance contract.

3 Sec. 841.414. REPORTS ON RESERVES AND RISK-BASED CAPITAL.

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

11 (b) The commissioner may reject the opinion of the appointed  
12 actuary if the commissioner determines that accepting the opinion  
13 would be hazardous to policyholders, enrollees, creditors, or the  
14 public.

15 (c) A limited purpose subsidiary life insurance company  
16 annually shall file with the commissioner a report of the limited  
17 purpose subsidiary life insurance company's risk-based capital  
18 level as of the end of the preceding calendar year containing the  
19 information required by the risk-based capital instructions  
20 adopted by the commissioner.

21 Sec. 841.415. OTHER LAWS NOT APPLICABLE. The deposit  
22 requirements in Subchapter H do not apply to a limited purpose  
23 subsidiary life insurance company.

24 Sec. 841.416. APPLICABILITY OF OTHER LAW. Except as  
25 specifically provided by law, all provisions of this code apply to a  
26 limited purpose subsidiary life insurance company formed under this  
27 subchapter.

1       Sec. 841.417. GUARANTY REQUIREMENTS. (a) A guaranty may  
2 not be used to comply with this chapter without the prior written  
3 approval of the commissioner.

4       (b) Before approving a guaranty, the commissioner must find  
5 that:

6           (1) the guarantor has capital and surplus of \$100  
7 million, exclusive of investments in subsidiaries and affiliates;

8           (2) the guarantor has admitted assets backing capital  
9 and surplus in an amount sufficient to fulfill the guaranty, and the  
10 sufficiency on an ongoing basis is demonstrated to the satisfaction  
11 of the commissioner;

12           (3) the guarantor and all affiliates are in good  
13 standing with the department;

14           (4) the guarantor has provided all information  
15 requested by the commissioner; and

16           (5) the guarantor is otherwise acceptable to the  
17 commissioner.

18       (c) Notwithstanding Subsection (b)(3), the commissioner may  
19 allow, subject to the commissioner's prior approval, an affiliated  
20 company of the holding company to serve as guarantor. The  
21 commissioner may approve an affiliated company as a guarantor on a  
22 finding that the affiliated company possesses the independent  
23 financial means to discharge the guaranty using the affiliated  
24 company's own financial resources.

25       Sec. 841.418. SUNSET PROVISION. This subchapter is valid  
26 for business sold only until January 1 after the year in which  
27 principle-based reserve requirements become operative in Texas

1 under the adoption of the National Association of Insurance  
2 Commissioners' 2009 amendments to the NAIC Model Standard Valuation  
3 Law. After that January 1, the limited purpose subsidiary life  
4 insurance company may not assume new risks of a ceding insurer  
5 relating to business sold after that date.

6 Sec. 841.419. CERTIFICATION OF ACTUARIAL OFFICER. (a) At  
7 the time a limited purpose subsidiary life insurance company files  
8 an application for a certificate of authority under this  
9 subchapter, and not later than March 1 of each year that a limited  
10 purpose subsidiary life insurance company is in operation and is  
11 ceded new business from a ceding insurer, a senior actuarial  
12 officer of each ceding insurer shall file with the commissioner a  
13 certification that the ceding insurer's transactions with the  
14 limited purpose subsidiary life insurance company are not being  
15 used to gain an unfair advantage in the pricing of the ceding  
16 insurer's products.

17 (b) A ceding insurer may not be deemed to have an unfair  
18 advantage if the pricing of the policies and contracts reinsured by  
19 the limited purpose subsidiary life insurance company reflects, at  
20 the time the policies and contracts were issued, a reasonable  
21 long-term estimate of the cost to the ceding insurer of an  
22 alternative third-party transaction, and uses current pricing  
23 assumptions.

24 (c) The ceding insurer shall keep documentation between  
25 examinations that sets forth the manner in which a senior actuarial  
26 officer arrived at the conclusions in the certification.

27 Sec. 841.420. ACCOUNTING AND FINANCIAL REPORTING. The

1 commissioner shall prescribe accounting and financial reporting  
2 requirements with regard to the limited purpose subsidiary life  
3 insurance company and any insurer as defined by Section 841.402  
4 that organizes a limited purpose subsidiary life insurance company.

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