

BILL ANALYSIS

C.S.H.B. 3460
By: Eiland
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently enacted state legislation conformed state law governing insurance company holding systems to the model legislation then being considered by the National Association of Insurance Commissioners (NAIC) through the federal Insurance Holding Company System Regulatory Act. Interested parties note that the changes to the NAIC model legislation were developed in response to the national financial crisis and were intended to provide insurance regulators with more information about potential risks to the insurer from within the holding company system. These parties assert that the revised model augments the power of regulators to supervise insurance holding company systems while also providing enhanced confidentiality protections for information the companies must now submit to regulators.

Following the recent enactment, the NAIC continued to update language for the model legislation, some of which was substantively different than what was adopted. Interested parties assert that the changes are warranted to level the playing field so that an insurer considering a move to Texas will not be dissuaded. C.S.H.B. 3460 seeks to conform existing Texas law to the final version of the NAIC model act, thereby ensuring that Texas domestic insurers are not disadvantaged due to the disparities in Texas' current language and the NAIC model act. The proposed legislation also seeks to include important model language relating to the insurance commissioner's ability to disclose to and receive from other insurance regulators certain filed confidential information concerning an insurer or holding company system.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3460 amends the Insurance Code to make statutory provisions regarding confidentiality of information applicable to information reported or otherwise provided to the commissioner of insurance under statutory provisions relating to transactions of a registered insurer in an insurance company holding system, the annual enterprise risk report of a person acquiring control of a domestic insurer, and the provision of certain information by an acquiring person for the commissioner's evaluation of enterprise risk. The bill includes any state, federal, or international regulatory agency functioning in an official capacity to the list of entities to which the commissioner or another person is authorized to disclose information if the recipient of documents or other information agrees in writing to maintain the confidential and privileged status of the documents or other information and verifies in writing the legal authority to do so. The bill authorizes the commissioner to receive documents or information and requires the commissioner to maintain as confidential or privileged any document or information received by the commissioner with notice or an understanding that the document or information is confidential or privileged under the laws of the jurisdiction of the entity that provides the document or information.

C.S.H.B. 3460 expands the applicability of statutory provisions regulating the notice of and the commissioner's decision on a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system to include a person who is not an affiliate if the insurer makes a loan or extension of credit with the agreement or understanding that the proceeds of the transaction, wholly or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investment in an affiliate of the insurer making the loan or extension of credit. The bill makes such statutory provisions applicable if such transactions, as of December 31 of the year preceding the year in which the transaction occurs, are not less than the lesser of three percent of a nonlife insurer's admitted assets or 25 percent of the nonlife insurer's surplus as regards policyholders or, with respect to life insurers, not less than three percent of the insurer's admitted assets.

C.S.H.B. 3460 repeals Section 823.102, Insurance Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3460 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 823.011(a), Insurance Code, is amended to read as follows:

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

(1) reported or otherwise provided under Subchapter B or C or Section 823.201(d) or (e); or

(2) ~~disclosed to the commissioner under Section 823.010; or~~

~~[(3)]~~ obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 823.011, Insurance Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:

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

(1) reported or otherwise provided under Subchapter B or C or Section 823.201(d) or (e);

(2) ~~disclosed to the commissioner under Section 823.010; or~~

(3) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

~~(d) Except as provided by Subsection (e), if the recipient of documents or other information agrees in writing to maintain the confidential and privileged status of the documents or other information, and verifies in writing the legal authority to maintain the confidential and privileged status of the documents or information, the commissioner or another person may disclose the information to any of the following entities~~

functioning in an official capacity;
(1) a commissioner of insurance or an insurance department of another state;
(2) an authorized law enforcement official;
(3) a district attorney of this state;
(4) the attorney general;
(5) a grand jury;
(6) members of a supervisory college described by Section 823.0145; [ø]
(7) the National Association of Insurance Commissioners and its affiliates and subsidiaries; or
(8) another state, federal, or international regulatory agency.

(d-1) The commissioner may receive documents or information, including otherwise confidential and privileged documents or information from the entities listed in Subsection (d), and shall maintain as confidential or privileged any document or information received by the commissioner with notice or an understanding that the document or information is confidential or privileged under the laws of the jurisdiction of the entity that provides the document or information.

SECTION 2. Section 823.052(c), Insurance Code, is amended.

SECTION 2. Same as introduced version.

SECTION 3. Section 823.053(e), Insurance Code, is amended.

SECTION 3. Same as introduced version.

SECTION 4. Section 823.103(a), Insurance Code, is amended to read as follows:

SECTION 4. Sections 823.103(a) and (b), Insurance Code, are amended to read as follows:

(a) This section applies only to:
(1) a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system, including an amendment or modification of an affiliate agreement previously filed under this section, or a person who is not an affiliate if the insurer makes a loan or extension of credit with the agreement or understanding that the proceeds of the transaction, wholly or in substantial part, are to be used to make loans or extensions of credit to purchase assets of, or to make investment in, an affiliate of the insurer, provided the transaction is not less than:

(a) This section applies only to:
(1) a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system, including an amendment or modification of an affiliate agreement previously filed under this section, provided the transaction is not less than:

(A) with respect to nonlife insurers, the

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~~lesser of three [that involves more than the lesser of one-half of one] percent of the insurer's admitted assets or 25 [five] percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs; or [and]~~

~~(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the year preceding the year in which the transaction occurs [the approval of which is not required under Section 823.102];~~

(2) a reinsurance agreement, including a reinsurance treaty or pooling agreement, or an amendment or modification of an agreement previously filed under this section, between a domestic insurer and any person in the insurer's holding company system;

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

(4) any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or

~~lesser of three [that involves more than the lesser of one-half of one] percent of the insurer's admitted assets or 25 [five] percent of the insurer's surplus as regards policyholders[;] as of December 31 of the year preceding the year in which the transaction occurs; or [and]~~

~~(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the year preceding the year in which the transaction occurs [the approval of which is not required under Section 823.102];~~

~~(2) a loan or other extension of credit to a person who is not an affiliate if the insurer makes a loan or extension of credit with the agreement or understanding that the proceeds of the transaction, wholly or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investment in, an affiliate of the insurer making the loan or extension of credit, provided the transaction is not less than:~~

~~(A) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of the insurer's surplus as regards policyholders as of December 31 of the year preceding the year in which the transaction occurs; or~~

~~(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the year preceding the year in which the transaction occurs;~~

(3) a reinsurance agreement, including a reinsurance treaty or pooling agreement, or an amendment or modification of an agreement previously filed under this section, between a domestic insurer and any person in the insurer's holding company system;

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

(5) [(4)] any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or

modification of an agreement previously filed under this section.

modification of an agreement previously filed under this section.

(b) Subsection (a)(3) [~~(a)(2)~~] includes a reinsurance agreement that requires as consideration a transfer of assets from an insurer to a nonaffiliate and in relation to which the insurer and nonaffiliate agree that any part of the transferred assets are to be transferred to one or more affiliates of the insurer.

SECTION 5. Section 823.104, Insurance Code, is amended.

SECTION 5. Same as introduced version.

SECTION 6. Section 823.105, Insurance Code, is amended.

SECTION 6. Same as introduced version.

SECTION 7. Section 823.102, Insurance Code, is repealed.

SECTION 7. Same as introduced version.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 8. Same as introduced version.