

By: Eiland

H.B. No. 3460

Substitute the following for H.B. No. 3460:

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C.S.H.B. No. 3460

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the requirement that certain information be reported to
3 the Texas Department of Insurance and the confidentiality of that
4 information.

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

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

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

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

13 (2) disclosed to the commissioner under Section
14 823.010; or

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

18 (d) Except as provided by Subsection (e), if the recipient
19 of documents or other information agrees in writing to maintain the
20 confidential and privileged status of the documents or other
21 information, and verifies in writing the legal authority to
22 maintain the confidential and privileged status of the documents or
23 information, the commissioner or another person may disclose the
24 information to any of the following entities functioning in an

1 official capacity:

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

4 (2) an authorized law enforcement official;

5 (3) a district attorney of this state;

6 (4) the attorney general;

7 (5) a grand jury;

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

10 (7) the National Association of Insurance
11 Commissioners and its affiliates and subsidiaries; or

12 (8) another state, federal, or international
13 regulatory agency.

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

22 SECTION 2. Section 823.052(c), Insurance Code, is amended
23 to read as follows:

24 (c) The registration statement must also contain
25 information about:

26 (1) each outstanding loan the insurer makes to an
27 affiliate of the insurer or an affiliate makes to the insurer;

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

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

6 (4) each management and service contract or
7 cost-sharing arrangement between the insurer and an affiliate of
8 the insurer;

9 (5) each reinsurance agreement between the insurer and
10 an affiliate of the insurer that covers one or more lines of
11 insurance of the ceding company;

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

14 (7) each transaction between the insurer and an
15 affiliated financial institution;

16 (8) each transaction between the insurer and an
17 affiliate of the insurer that is not in the ordinary course of
18 business;

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

24 (10) each dividend or distribution to the insurer's
25 shareholders;

26 (11) each transaction between the insurer and an
27 affiliate of the insurer not specified by this subsection that is

1 subject to Section [~~823.102,~~] 823.103[~~7~~] or 823.104;

2 (12) the corporate governance and internal control
3 responsibilities of the insurer's board of directors, including a
4 statement that:

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

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

10 (13) any other information that the commissioner
11 requires by rule.

12 SECTION 3. Section 823.053(e), Insurance Code, is amended
13 to read as follows:

14 (e) An insurer is not required to report under this section
15 a transaction that is approved under Section [~~823.102 or~~] 823.103.
16 That approval is considered to be an amendment of the registration
17 statement filed under Section 823.052 without being reported under
18 this section.

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

21 (a) This section applies only to:

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

1 (A) with respect to nonlife insurers, the lesser
2 of three [~~that involves more than the lesser of one-half of one~~]
3 percent of the insurer's admitted assets or 25 [~~five~~] percent of the
4 insurer's surplus as regards policyholders [~~7~~] as of December 31 of
5 the year preceding the year in which the transaction occurs; or
6 [~~and~~]

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

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

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

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

25 (3) a reinsurance agreement, including a reinsurance
26 treaty or pooling agreement, or an amendment or modification of an
27 agreement previously filed under this section, between a domestic

1 insurer and any person in the insurer's holding company system;

2 (4) [~~(3)~~] a rendering of services between a domestic
3 insurer and any person in the insurer's holding company system on a
4 regular or systematic basis, including a tax-allocation agreement,
5 or an amendment or modification of an agreement previously filed
6 under this section; or

7 (5) [~~(4)~~] any material transaction between a domestic
8 insurer and any person in the insurer's holding company system that
9 is specified by rule and that the commissioner determines may
10 adversely affect the interests of the insurer's policyholders or of
11 the public, including an amendment or modification of an agreement
12 previously filed under this section.

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

18 SECTION 5. Section 823.104, Insurance Code, is amended to
19 read as follows:

20 Sec. 823.104. PROHIBITION OF ACTION TO AVOID APPLICATION OF
21 SUBCHAPTER. (a) A domestic insurer may not enter into transactions
22 with persons in the insurer's insurance holding company system if:

23 (1) the transactions are part of a plan or series of
24 similar transactions; and

25 (2) the purpose of entering into the transactions is
26 to avoid a threshold amount provided by Section [~~823.102 or~~]
27 823.103.

1 (b) If the commissioner determines that over any 12-month
2 period a domestic insurer enters into transactions that violate
3 Subsection (a), the commissioner may:

4 (1) consider the cumulative effect of the
5 transactions; and

6 (2) apply:

7 (A) Section [~~823.102 or~~] 823.103; or

8 (B) sanctions under this code.

9 SECTION 6. Section 823.105, Insurance Code, is amended to
10 read as follows:

11 Sec. 823.105. TYPE OF AUTHORITY PROVIDED. Nothing in
12 Section [~~823.102~~] 823.103[~~7~~] or 823.104 authorizes a transaction
13 that would violate law that is applicable to an insurer that is not
14 subject to this subchapter.

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

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