

1-1 By: Eiland (Senate Sponsor - Carona) H.B. No. 3460
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 9, 2013, read first time and referred to Committee on Business
 1-4 and Commerce; May 16, 2013, reported favorably by the following
 1-5 vote: Yeas 8, Nays 0; May 16, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the requirement that certain information be reported to
 1-20 the Texas Department of Insurance and the confidentiality of that
 1-21 information.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 823.011, Insurance Code, is amended by
 1-24 amending Subsections (a) and (d) and adding Subsection (d-1) to
 1-25 read as follows:

1-26 (a) This section applies only to information, including
 1-27 documents and copies of documents, that is:

1-28 (1) reported or otherwise provided under Subchapter B
 1-29 or C or Section 823.201(d) or (e);

1-30 (2) disclosed to the commissioner under Section
 1-31 823.010; or

1-32 (3) obtained by or disclosed to the commissioner or
 1-33 another person in the course of an examination or investigation
 1-34 under Subchapter H.

1-35 (d) Except as provided by Subsection (e), if the recipient
 1-36 of documents or other information agrees in writing to maintain the
 1-37 confidential and privileged status of the documents or other
 1-38 information, and verifies in writing the legal authority to
 1-39 maintain the confidential and privileged status of the documents or
 1-40 information, the commissioner or another person may disclose the
 1-41 information to any of the following entities functioning in an
 1-42 official capacity:

1-43 (1) a commissioner of insurance or an insurance
 1-44 department of another state;

1-45 (2) an authorized law enforcement official;

1-46 (3) a district attorney of this state;

1-47 (4) the attorney general;

1-48 (5) a grand jury;

1-49 (6) members of a supervisory college described by
 1-50 Section 823.0145; ~~or~~

1-51 (7) the National Association of Insurance
 1-52 Commissioners and its affiliates and subsidiaries; or

1-53 (8) another state, federal, or international
 1-54 regulatory agency.

1-55 (d-1) The commissioner may receive documents or
 1-56 information, including otherwise confidential and privileged
 1-57 documents or information from the entities listed in Subsection
 1-58 (d), and shall maintain as confidential or privileged any document
 1-59 or information received by the commissioner with notice or an
 1-60 understanding that the document or information is confidential or
 1-61 privileged under the laws of the jurisdiction of the entity that

2-1 provides the document or information.

2-2 SECTION 2. Section 823.052(c), Insurance Code, is amended
2-3 to read as follows:

2-4 (c) The registration statement must also contain
2-5 information about:

2-6 (1) each outstanding loan the insurer makes to an
2-7 affiliate of the insurer or an affiliate makes to the insurer;

2-8 (2) each purchase, sale, or exchange of securities or
2-9 other investment between the insurer and an affiliate of the
2-10 insurer;

2-11 (3) each purchase, sale, or exchange of assets between
2-12 the insurer and an affiliate of the insurer;

2-13 (4) each management and service contract or
2-14 cost-sharing arrangement between the insurer and an affiliate of
2-15 the insurer;

2-16 (5) each reinsurance agreement between the insurer and
2-17 an affiliate of the insurer that covers one or more lines of
2-18 insurance of the ceding company;

2-19 (6) each agreement between the insurer and an
2-20 affiliate of the insurer to consolidate federal income tax returns;

2-21 (7) each transaction between the insurer and an
2-22 affiliated financial institution;

2-23 (8) each transaction between the insurer and an
2-24 affiliate of the insurer that is not in the ordinary course of
2-25 business;

2-26 (9) each guarantee or undertaking, other than an
2-27 insurance contract entered into in the ordinary course of the
2-28 insurer's business, for the benefit of an affiliate of the insurer
2-29 that results in a contingent exposure of the insurer's assets to
2-30 liability;

2-31 (10) each dividend or distribution to the insurer's
2-32 shareholders;

2-33 (11) each transaction between the insurer and an
2-34 affiliate of the insurer not specified by this subsection that is
2-35 subject to Section ~~[823.102]~~ 823.103~~[7]~~ or 823.104;

2-36 (12) the corporate governance and internal control
2-37 responsibilities of the insurer's board of directors, including a
2-38 statement that:

2-39 (A) the insurer's senior management or officers
2-40 have approved and implemented, and continue to maintain and
2-41 monitor, corporate governance and internal control procedures; and

2-42 (B) the insurer's board of directors oversees
2-43 corporate governance and internal controls; and

2-44 (13) any other information that the commissioner
2-45 requires by rule.

2-46 SECTION 3. Section 823.053(e), Insurance Code, is amended
2-47 to read as follows:

2-48 (e) An insurer is not required to report under this section
2-49 a transaction that is approved under Section ~~[823.102 or]~~ 823.103.
2-50 That approval is considered to be an amendment of the registration
2-51 statement filed under Section 823.052 without being reported under
2-52 this section.

2-53 SECTION 4. Sections 823.103(a) and (b), Insurance Code, are
2-54 amended to read as follows:

2-55 (a) This section applies only to:

2-56 (1) a sale, purchase, exchange, loan or other
2-57 extension of credit, or investment between a domestic insurer and
2-58 any person in the insurer's insurance holding company system,
2-59 including an amendment or modification of an affiliate agreement
2-60 previously filed under this section, provided the transaction is
2-61 not less than:

2-62 (A) with respect to nonlife insurers, the lesser
2-63 of three [that involves more than the lesser of one-half of one]
2-64 percent of the insurer's admitted assets or 25 [five] percent of the
2-65 insurer's surplus as regards policyholders [7] as of December 31 of
2-66 the year preceding the year in which the transaction occurs; or
2-67 [and]

2-68 (B) with respect to life insurers, three percent
2-69 of the insurer's admitted assets as of December 31 of the year

3-1 preceding the year in which the transaction occurs [~~the approval of~~
3-2 ~~which is not required under Section 823.102~~];

3-3 (2) a loan or other extension of credit to a person who
3-4 is not an affiliate if the insurer makes a loan or extension of
3-5 credit with the agreement or understanding that the proceeds of the
3-6 transaction, wholly or in substantial part, are to be used to make
3-7 loans or extensions of credit to, to purchase assets of, or to make
3-8 investment in, an affiliate of the insurer making the loan or
3-9 extension of credit, provided the transaction is not less than:

3-10 (A) with respect to nonlife insurers, the lesser
3-11 of three percent of the insurer's admitted assets or 25 percent of
3-12 the insurer's surplus as regards policyholders as of December 31 of
3-13 the year preceding the year in which the transaction occurs; or

3-14 (B) with respect to life insurers, three percent
3-15 of the insurer's admitted assets as of December 31 of the year
3-16 preceding the year in which the transaction occurs;

3-17 (3) a reinsurance agreement, including a reinsurance
3-18 treaty or pooling agreement, or an amendment or modification of an
3-19 agreement previously filed under this section, between a domestic
3-20 insurer and any person in the insurer's holding company system;

3-21 (4) [~~(3)~~] a rendering of services between a domestic
3-22 insurer and any person in the insurer's holding company system on a
3-23 regular or systematic basis, including a tax-allocation agreement,
3-24 or an amendment or modification of an agreement previously filed
3-25 under this section; or

3-26 (5) [~~(4)~~] any material transaction between a domestic
3-27 insurer and any person in the insurer's holding company system that
3-28 is specified by rule and that the commissioner determines may
3-29 adversely affect the interests of the insurer's policyholders or of
3-30 the public, including an amendment or modification of an agreement
3-31 previously filed under this section.

3-32 (b) Subsection (a)(3) [~~(a)(2)~~] includes a reinsurance
3-33 agreement that requires as consideration a transfer of assets from
3-34 an insurer to a nonaffiliate and in relation to which the insurer
3-35 and nonaffiliate agree that any part of the transferred assets are
3-36 to be transferred to one or more affiliates of the insurer.

3-37 SECTION 5. Section 823.104, Insurance Code, is amended to
3-38 read as follows:

3-39 Sec. 823.104. PROHIBITION OF ACTION TO AVOID APPLICATION OF
3-40 SUBCHAPTER. (a) A domestic insurer may not enter into transactions
3-41 with persons in the insurer's insurance holding company system if:

3-42 (1) the transactions are part of a plan or series of
3-43 similar transactions; and

3-44 (2) the purpose of entering into the transactions is
3-45 to avoid a threshold amount provided by Section [~~823.102 or~~
3-46 823.103].

3-47 (b) If the commissioner determines that over any 12-month
3-48 period a domestic insurer enters into transactions that violate
3-49 Subsection (a), the commissioner may:

3-50 (1) consider the cumulative effect of the
3-51 transactions; and

3-52 (2) apply:

3-53 (A) Section [~~823.102 or~~] 823.103; or

3-54 (B) sanctions under this code.

3-55 SECTION 6. Section 823.105, Insurance Code, is amended to
3-56 read as follows:

3-57 Sec. 823.105. TYPE OF AUTHORITY PROVIDED. Nothing in
3-58 Section [~~823.102~~] 823.103[~~7~~] or 823.104 authorizes a transaction
3-59 that would violate law that is applicable to an insurer that is not
3-60 subject to this subchapter.

3-61 SECTION 7. Section 823.102, Insurance Code, is repealed.

3-62 SECTION 8. This Act takes effect immediately if it receives
3-63 a vote of two-thirds of all the members elected to each house, as
3-64 provided by Section 39, Article III, Texas Constitution. If this
3-65 Act does not receive the vote necessary for immediate effect, this
3-66 Act takes effect September 1, 2013.

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