

BILL ANALYSIS

Senate Research Center
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H.B. 3460
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently enacted state legislation conformed state law governing insurance company holding systems to the National Association of Insurance Commissioner's (NAIC) model act, which was based on the federal Insurance Holding Company System Regulatory Act. 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. 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.

The 82nd Texas Legislature passed S.B. 1431 in anticipation of the NAIC's Model Holding Company Act being finalized. S.B. 1431 was intended to mirror the model act for purposes of conformity among the states. The NAIC model legislation was developed in response to the national financial crisis and was intended to provide insurance regulators with more information about potential risks to the insurer from within the holding company system. The subsequently revised model increases 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.

As a result of the NAIC's recent changes, Texas's law is no longer harmonious with the model act. H.B. 3460 conforms existing Texas law to the final version of the model act, thereby ensuring that Texas domestic insurers are not disadvantaged due to the disparities in Texas's current language. The proposed legislation also seeks to include important model language relating to the insurance commissioner's ability to disclose and receive certain filed confidential information concerning an insurer or holding company system from other insurance regulators.

H.B. 3460 amends current law relating to the requirement that certain information be reported to the Texas Department of Insurance and the confidentiality of that information.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

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

(1) reported or otherwise provided under Subchapter B (Registration) or C (Transactions of Registered Insurer) or Section 823.201(d) (relating to requiring the acquiring person to agree to provide a certain annual enterprise risk report for as long as the acquiring person maintains control of the insurer) or (e) (relating to requiring the acquiring person and all subsidiaries within the acquiring person's

control in the insurance holding company system to provide information to the commissioner of insurance on request to evaluate enterprise risk to the insurer); or

(2)-(3) Makes no change to these subdivisions.

(d) Authorizes the commissioner of insurance or another person, 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, except as provided by Subsection (e), to disclose the information to any of the following entities functioning in an official capacity:

(1)-(5) Makes no change to these subdivisions;

(6) Makes a nonsubstantive change;

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

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

(d-1) Authorizes the commissioner of insurance (commissioner) to receive documents or information, including otherwise confidential and privileged documents or information from the entities listed in Subsection (d), 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.

SECTION 2. Amends Section 823.052(c), Insurance Code, as follows:

(c) Requires that the registration statement also contain information about:

(1)-(10) Makes no change to these subdivisions;

(11) each transaction between the insurer and an affiliate of the insurer not specified by this subsection that is subject to Section 823.103 (Notice of and Commissioner's Decision on Specified Transactions) or 823.104 (Prohibition of Action to Avoid Application of Subchapter); and

(12)-(13) Makes no change to these subdivisions.

Deletes existing text requiring that the registration statement also contain information about each transaction between the insurer and an affiliate of the insurer not specified by this subsection that is subject to Section 823.102 (Notice of and Commissioner's Decision on Certain Large Transactions).

SECTION 3. Amends Section 823.053(e), Insurance Code, to provide that an insurer is not required to report under this section a transaction that is approved under Section 823.103, rather than 823.102 or 823.103.

SECTION 4. Amends Sections 823.103(a) and (b), Insurance Code, as follows:

(a) Provides that 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 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;

(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; or

(3)-(5) Redesignates existing Subdivisions (2)-(4) as Subdivisions (3)-(5) and makes no further change;

(4)-(5) Makes nonsubstantive changes.

Deletes existing text providing that this section applies only to 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 that involves more than the lesser of one-half of one percent of the insurer's admitted assets or five percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs, and the approval of which is not required under Section 823.102.

(b) Provides that Subsection (a)(3), rather than Subsection (a)(2), includes a reinsurance agreement that requires as consideration a transfer of assets from an insurer to an nonaffiliated 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. Amends Section 823.104, Insurance Code, as follows:

Sec. 823.104. PROHIBITION OF ACTION TO AVOID APPLICATION OF SUBCHAPTER. (a) Prohibits a domestic insurer from entering into transactions with persons in the insurer's insurance holding company system if:

(1) Makes no change to this subdivision; and

(2) the purpose of entering into the transactions is to avoid a threshold amount provided by Section 823.103, rather than 823.102 or 823.103.

(b) Authorizes the commissioner, if the commissioner determines that over any 12-month period a domestic insurer enters into transactions that violate Subsection (a), to consider the cumulative effect of the transactions and apply Section 823.103, rather than 823.102 or 823.103.

SECTION 6. Amends Section 823.105, Insurance Code, to provide that nothing in Section 823.103 or 823.104, rather than nothing in Section 823.102, 823.103, or 823.104, authorizes a transaction that would violate law that is applicable to an insurer that is not subject to this subchapter.

SECTION 7. Repealer: Section 823.102, Insurance Code.

SECTION 8. Effective date: upon passage or September 1, 2013.