

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

CHAPTER 823. INSURANCE HOLDING COMPANY SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 823.001. FINDINGS AND PURPOSE. (a) It is consistent with the public interest and the interest of policyholders to permit insurers to:

(1) engage in activities that would enable the insurers to make better use of management skills and facilities;

(2) have free access to capital markets that could provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) The public interest and the interests of policyholders are adversely affected if:

(1) control of an insurer is sought by persons who would use the control adversely to the interest of policyholders;

(2) acquisition of control of an insurer substantially lessens competition or creates a monopoly in the insurance business in this state;

(3) an insurer that is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms that are not fair and reasonable; or

(4) an insurer pays dividends to shareholders that jeopardize the financial condition of the insurer.

(c) The purpose of this chapter is to promote the public interest by:

(1) facilitating the achievement of the objectives described by Subsection (a);

(2) requiring disclosure of pertinent information

relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and the insurer's affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and the insurer's affiliates.

(d) It is desirable to prevent unnecessary multiple and conflicting regulation of insurers. In accordance with this purpose and except as provided by this chapter, this state shall exercise regulatory authority under this chapter only with respect to domestic insurers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.010, eff. April 1, 2009.

Sec. 823.002. DEFINITIONS. In this chapter:

(1) "Acquiring person" means the person who is acquiring control of a domestic insurer or on whose behalf control of a domestic insurer is being acquired.

(2) "Controlled insurer" means an insurer that is controlled directly or indirectly by a holding company.

(3) "Controlled person" means a person, other than a controlled insurer, who is controlled directly or indirectly by a holding company.

(3-a) "Divesting person" means a person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(3-b) "Divestiture" means an abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(4) "Domestic insurer" includes a commercially domiciled insurer described by Section 823.004.

(4-a) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely

to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(4-b) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 823.0147 to have sufficient significant contacts with the internationally active insurance group.

(5) "Holding company" means a person who directly or indirectly controls an insurer. The term does not include the United States, a state or a political subdivision, agency, or other instrumentality of a state, or a corporation that is wholly owned directly or indirectly by the United States, a state, or an instrumentality of a state.

(6) "Insurer" means any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county mutual insurance company, Lloyd's plan, reciprocal or interinsurance exchange, stipulated premium insurance company, and group hospital service corporation. The term does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(6-a) "Internationally active insurance group" means an insurance holding company system that:

(A) includes an insurer registered under Subchapter B; and

(B) meets the following criteria:

(i) has premiums written in at least three countries;

(ii) has a percentage of gross premiums written outside the United States of at least 10 percent of the insurance holding company system's total gross written premiums; and

(iii) based on a three-year rolling average, has total assets of at least \$50 billion or total gross written premiums of at least \$10 billion.

(7) "Person" means an individual, corporation, partnership, association, joint stock company, trust, or unincorporated organization, or a similar entity or a combination of the listed entities acting in concert. The term does not include a securities broker while performing no more than a function that is usual and customary for a securities broker.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. [3220](#)), Sec. 1, eff. May 19, 2017.

Sec. 823.003. CLASSIFICATION AS AFFILIATE OR SUBSIDIARY.

(a) A person is an affiliate of another if the person directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the other person.

(b) A person is a subsidiary of another if the person is an affiliate of and is controlled by the other person directly or indirectly through one or more intermediaries.

(c) A subsidiary or holding company of a person is an affiliate of that person.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.004. CLASSIFICATION AS COMMERCIALY DOMICILED

INSURER. (a) For purposes of this chapter, a foreign or alien insurer authorized to engage in the business of insurance in this state is a commercially domiciled insurer if during the period

described by Subsection (b) the average of the gross premiums written by the insurer in this state is:

(1) more than the average of the gross premiums written by the insurer in its state of domicile; and

(2) 30 percent or more of the total gross premiums written by the insurer in the United States, as reported in its three most recent annual statements.

(b) The period applicable to Subsection (a) is:

(1) the three most recent fiscal years of the insurer that precede the fiscal year in which the determination under this section is made; or

(2) if the insurer has been authorized to engage in the business of insurance in this state for less than the period described by Subdivision (1), the period for which the insurer has been authorized to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.005. DESCRIPTION OF CONTROL; DETERMINATION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) For purposes of this chapter, a person controls another if the person possesses the power described by Subsection (a) with regard to the other person.

(c) After providing notice and opportunity for hearing to each person in interest, the commissioner may determine that, notwithstanding the absence of a presumption under Section [823.151](#), a person controls an authorized insurer if the person, directly or indirectly and alone or under an agreement with one or more other persons, exercises such a controlling influence over the management or policies of the insurer that it is necessary or appropriate in the public interest or for the protection of the insurer's

policyholders that the person be considered to control the insurer. The commissioner shall make specific findings of fact to support a determination under this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.006. DESCRIPTION OF INSURANCE HOLDING COMPANY SYSTEM. An insurance holding company system consists of two or more affiliates, at least one of which is an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.007. DESCRIPTION OF VOTING SECURITY. For purposes of this chapter, a voting security is a security or an instrument that:

(1) has the power at a meeting of shareholders of a person to vote for or against the election of directors of the person or any other matter involving the direction of the management and policies of the person; or

(2) under rules adopted by the commissioner in the public interest, the commissioner considers to be of similar nature to that described by Subdivision (1) and considers necessary or appropriate to treat as a voting security.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.008. STANDARD FOR DETERMINING SURPLUS REASONABLENESS AND ADEQUACY. (a) In determining whether an insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the different lines of insurance;

(3) the number and size of risks insured in each line of insurance;

(4) the extent of the geographical dispersion of the

insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's:

(A) policyholders' surplus; and

(B) investment portfolio;

(8) the policyholders' surplus maintained by comparable insurers;

(9) the adequacy of the insurer's reserves;

(10) the quality and liquidity of investments in subsidiaries made under Subchapter F; and

(11) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(b) The commissioner may treat an investment described by Subsection (a)(10) as a nonadmitted or disallowed asset for purposes of Subsection (a) if in the commissioner's judgment the investment justifies that treatment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.009. SITUS OF SECURITIES OF DOMESTIC INSURER. For purposes of this chapter, the situs of the ownership of securities of a domestic insurer is considered to be in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.010. DISCLAIMER OF AFFILIATION. (a) A disclaimer of affiliation with an authorized insurer may be filed with the commissioner by any person, including the authorized insurer or a member of an insurance holding company system.

(b) The disclaimer must fully disclose:

(1) all material relationships and bases for affiliation between the person and the insurer; and

(2) the basis for disclaiming the affiliation.

(c) Except as provided by Subsection (d), the disclaimer

shall be deemed to have been allowed unless, not later than 60 days after the receipt of a complete disclaimer, the commissioner notifies the filing party that the disclaimer is disallowed.

(d) Notwithstanding Subsection (c), if the commissioner at any time determines that the information disclosed in the disclaimer is incomplete or inaccurate or is no longer accurate, the commissioner may disallow the disclaimer.

(e) If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing. The commissioner shall grant the request for the hearing.

(f) Except as provided by Subsection (h), if the commissioner allows a disclaimer:

(1) the insurer is not required to register or report under Subchapter B due to a duty arising from the insurer's relationship with the party who filed the disclaimer; and

(2) the party who filed the disclaimer is not required to comply with Section [823.154](#), [823.155](#), [823.159](#), or [823.160](#).

(g) If the commissioner allows a disclaimer, the commissioner at the same time may also waive another provision of this chapter with relation to the party who filed the disclaimer. The commissioner may require reasonable controls and safeguards that are consistent with the purposes of this chapter in granting a waiver under this subsection.

(h) If the commissioner disallows a disclaimer under Subsection (d):

(1) effective on the date of the disallowance, the insurer shall register and report as required by Subchapter B; and

(2) the party who filed the disclaimer shall comply with Sections [823.154](#), [823.155](#), [823.159](#), and [823.160](#).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 2, eff. September 1, 2011.

Sec. 823.011. CONFIDENTIALITY OF INFORMATION. (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 Section 823.0147;

(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 or Chapter 401.

(b) The information shall be confidential and privileged for all purposes. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected affiliates notice and an opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

(d) Except as provided by Subsection (e), if the recipient of documents or other information described by Subsection (a) 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;

(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.

(e) Notwithstanding Subsection (d), the commissioner may share confidential and privileged information reported under Section 823.0595 only with the commissioner of insurance of a state that has a statute or rule substantially similar to Subsection (d) who agrees in writing not to disclose the information.

(f) Information described by Subsection (a), including information in the possession of the National Association of Insurance Commissioners under this section, is confidential and privileged for all purposes, including for purposes of:

- (1) Chapter 552, Government Code;
- (2) a response to a subpoena; or
- (3) discovery or admissibility in evidence in a civil action.

(g) The commissioner shall enter into written agreements with the National Association of Insurance Commissioners that comply with the requirements of Subsection (d) regarding the sharing and use of information provided under this chapter. An agreement entered into under this subsection must:

- (1) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

- (2) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter remains with the commissioner, and that use of the information by the National

Association of Insurance Commissioners is subject to the direction of the commissioner;

(3) require prompt notice to an insurer whose confidential information is in the possession of the National Association of Insurance Commissioners under this chapter that the information is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(4) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to give consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter.

(h) This section may not be construed to prevent the commissioner from using information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

(i) The commissioner remains solely responsible for the administration, execution, and enforcement of this chapter, and the commissioner's sharing of information does not constitute a delegation of regulatory or rulemaking authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. [3460](#)), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. [3220](#)), Sec. 2, eff. May 19, 2017.

Sec. 823.012. RULES; PROCEDURES FOR CONSIDERING CERTAIN DISTRIBUTIONS. (a) The commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of

business and proceedings under this chapter.

(b) The commissioner by rule shall establish procedures to:

(1) promptly consider the prepayment notices reported under Section 823.053(b);

(2) annually review each reported ordinary dividend paid within the 12 months preceding the date of the report; and

(3) take appropriate actions authorized by this code.

(c) A procedure established under Subsection (b)(1) must include consideration of the factors provided by Section 823.008.

(d) A rule or order under this section must be consistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.013. MANDAMUS. A person aggrieved by the failure of the commissioner to act, including making a determination, as required by this chapter may petition a district court of Travis County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to immediately act or make the determination.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.014. APPLICABILITY OF CHAPTER TO FOREIGN OR ALIEN INSURER. (a) A foreign insurer that is authorized to engage in the business of insurance in this state and that is domiciled in a jurisdiction that has not adopted, by statute or regulation, controls considered by the commissioner to be substantially similar to those provided by this chapter:

(1) is subject to this chapter to the same extent as a domestic insurer; and

(2) on failure to comply with this chapter, is subject to all remedies, penalties, and sanctions authorized by this code in the same manner as a domestic insurer, including, after notice and hearing, the suspension or revocation of the insurer's certificate of authority to engage in the business of insurance in this state.

(b) If a jurisdiction adopts controls considered by the commissioner to be substantially similar to those provided by this

chapter, the commissioner after that adoption may exempt an insurer domiciled in that jurisdiction from the application of this section.

(c) Notwithstanding Subsection (a), a foreign or alien insurer is not subject to this chapter if the commissioner has approved a withdrawal plan for the insurer under Chapter 827.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.0145. SUPERVISORY COLLEGES. (a) With respect to any insurer registered under Subchapter B, and in accordance with Subsection (c), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations in order to determine the insurer's compliance with this chapter. The commissioner may:

(1) initiate the establishment of a supervisory college;

(2) clarify the membership and participation of other entities in the supervisory college;

(3) clarify the functions of the supervisory college and the role of other entities in the supervisory college;

(4) establish a group-wide supervisor;

(5) coordinate the ongoing activities of the supervisory college, including meetings, regulatory activities, and processes for information sharing; and

(6) establish a crisis management plan.

(b) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers under Subchapter H, the commissioner may participate in a supervisory college with other entities that regulate the insurer or its affiliates, including other state, federal, and international regulatory entities. The commissioner may enter into agreements under Section 823.011 to cooperate with other regulatory entities. Nothing in this section shall be construed as delegating to the supervisory college the commissioner's authority to regulate the insurer or its affiliates.

(c) A registered insurer subject to this section shall pay

the reasonable expenses, including reasonable travel expenses, of the commissioner's participation in a supervisory college under Subsection (b). For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the entities that regulate the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of expenses related to the regulation of the insurer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 4, eff. September 1, 2011.

Sec. 823.0147. GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS. (a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group under the provisions of this section.

(b) The commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) does not have substantial insurance operations in the United States;

(2) has substantial insurance operations in the United States, but not in this state; or

(3) has substantial insurance operations in the United States and this state, but the commissioner has determined under the factors in Subsections (e) and (k) that the other regulatory official is the appropriate group-wide supervisor.

(c) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor under this section.

(d) In cooperation with other state, federal, and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. The commissioner

may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group.

(e) The commissioner shall consider the following factors when making a determination or acknowledgment under Subsection (d):

(1) the place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(2) the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;

(3) the location of the executive offices or largest operational offices of the internationally active insurance group;

(4) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(A) substantially similar to the system of regulation provided under the laws of this state; or

(B) otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

(f) A commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Subsection (e), and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(g) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor

of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor.

(h) The commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for an internationally active insurance group under Subsection (d) or (f) in the event of a material change in the internationally active insurance group that results in:

(1) the internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(2) this state being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.

(i) Under Subchapter H, the commissioner is authorized to collect from any insurer registered under Subchapter B all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered under Subchapter B and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner may publish on the department's website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(j) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) assess the enterprise risks within the internationally active insurance group to ensure that:

(A) the material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) reasonable and effective mitigation measures are in place;

(2) request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:

(A) governance, risk assessment, and management;

(B) capital adequacy; and

(C) material intercompany transactions;

(3) coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance;

(4) communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information, subject to the confidentiality provisions of Section [823.011](#), through supervisory colleges in Section [823.0145](#) or otherwise;

(5) enter into agreements with or obtain documentation from any insurer registered under Subchapter B, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials, provided that such agreements or documentation may not serve as evidence in any proceeding to show

that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(k) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) the commissioner's cooperation is in compliance with the laws of this state; and

(2) the regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable.

(1) Where recognition and cooperation are not reasonably reciprocal under Subsection (k)(2), the commissioner is authorized to refuse recognition and cooperation.

(m) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Subchapter B, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group that provides the basis for or otherwise clarifies a regulatory official's role as group-wide supervisor.

(n) The commissioner may adopt rules necessary for the administration of this section.

(o) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. [3220](#)), Sec. 3, eff. May 19, 2017.

Sec. 823.015. EXEMPTION FROM CHAPTER. The commissioner may exempt from the application of this chapter a commercially domiciled insurer that the commissioner determines has assets physically located in this state or an asset-to-liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 884 (S.B. [1283](#)), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. REGISTRATION

Sec. 823.051. REGISTRATION BY INSURER REQUIRED. (a) Each insurer authorized to engage in the business of insurance in this state that is a member of an insurance holding company system shall register with the commissioner. The insurer shall register not later than the 15th day after the date the insurer becomes subject to registration under this subchapter.

(b) The commissioner for good cause shown may extend the period for registration under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.052. REQUIRED INFORMATION; REGISTRATION STATEMENT. (a) To register as required by Section [823.051](#), an insurer must file a registration statement with the department.

(b) The registration statement must be in a format prescribed by the National Association of Insurance Commissioners or adopted by rule of the commissioner and contain current information about:

(1) the identity and relationship of each affiliate in the insurance holding company system of which the insurer is a part;

(2) the capital structure, general financial

condition, and ownership and management of the insurer, the insurer's holding company, the insurer's subsidiaries, and, if the commissioner considers the information necessary, any of the insurer's other affiliates; and

(3) any pledge of stock of the insurer or a subsidiary or controlling affiliate of the insurer for a loan made to a member of the insurer's insurance holding company system.

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

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

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

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

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

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

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

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

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

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

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

(11) each transaction between the insurer and an

affiliate of the insurer not specified by this subsection that is subject to Section [823.103](#) or [823.104](#);

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

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

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

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

(c-1) On request of the commissioner, an insurer shall include with the statement a copy of all financial statements for the insurance holding company system and all affiliates of the holding company system, including annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.). An insurer may not be required to submit financial statements for an affiliate that is privately owned by not more than five security holders, each of whom is an individual, unless the commissioner determines that the operations of the affiliate may materially affect the operations, management, or financial condition of an insurer in a holding company system. An affiliate may seek judicial review of a request for financial statements under this subsection.

(c-2) An insurer required by the commissioner to submit financial statements under this section, Section [823.201](#), or Section [823.351](#) may satisfy the requirement by submitting to the commissioner:

(1) the financial statements that the insurer's parent corporation most recently filed with the United States Securities and Exchange Commission; and

(2) if the insurer is required to submit financial statements for an affiliate, the financial statements that the affiliate most recently filed with an agency that regulates the

affiliate.

(d) The information required by Subsection (c) applies only to agreements in force, relationships subsisting, and transactions outstanding.

(e) The commissioner shall adopt the format of the registration statement. In adopting or revising the format, the commissioner may require information on other matters concerning transactions between a registered insurer and an affiliate of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 157 (S.B. 1542), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 2, eff. June 14, 2013.

Sec. 823.053. REPORTING MATERIAL CHANGES. (a) To keep the information required to be disclosed in a registration statement filed under Section 823.052 current, a registered insurer shall report each material change to the information, including the addition of information, not later than the 15th day after the last day of the month in which the insurer learns of the change.

(b) Subject to Section 823.107, each registered insurer shall report each dividend or distribution made to the shareholders not later than the earlier of:

(1) the second business day after the date the dividend or distribution is declared; or

(2) the 11th day before the date of payment.

(c) For purposes of this section, reports are considered to be made when received by the department.

(d) Reports made under this section are for informational purposes only.

(e) An insurer is not required to report under this section a transaction that is approved under Section 823.103. That approval is considered to be an amendment of the registration statement

filed under Section 823.052 without being reported under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 3, eff. June 14, 2013.

Sec. 823.054. MATERIAL INFORMATION. (a) Information about a transaction is not required to be disclosed on a registration statement filed under Section 823.052 or in a report under Section 823.053 unless the transaction is considered to be material under this section.

(b) If the amount of a single transaction or the total amount of all transactions involving sales, purchases, exchanges, loans or other extensions of credit, or investments is more than one-half of one percent of an insurer's admitted assets as of December 31 of the year preceding the date of the transaction or transactions, the transaction or transactions, respectively, are considered to be material for purposes of this section.

(c) Each dividend or distribution to shareholders is material for the purposes of this section.

(d) The commissioner, by rule or order, may provide a standard that is different from the standard provided by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. 3220), Sec. 4, eff. May 19, 2017.

Acts 2017, 85th Leg., R.S., Ch. 67 (S.B. 1073), Sec. 1, eff. May 22, 2017.

Sec. 823.055. ANNUAL REGISTRATION STATEMENT; SUMMARY OF MATERIAL CHANGES. (a) In this section, "ultimate controlling person" means the person in an insurance holding company system who is not controlled by another person.

(b) Not later than the 120th day after the last day of each fiscal year of the ultimate controlling person, each registered

insurer in the ultimate controlling person's insurance holding company system shall file an annual registration statement.

(c) An insurer required to file an annual registration statement shall also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 157 (S.B. [1542](#)), Sec. 2, eff. September 1, 2007.

Sec. 823.056. TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of an insurer that demonstrates that the insurer has ceased to be a member of an insurance holding company system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.057. CONSOLIDATED FILING. The commissioner may require or permit two or more insurers that are affiliates of each other and that are required to register under this chapter to file:

- (1) a consolidated registration statement; or
- (2) a consolidated report amending:
 - (A) the consolidated registration statement; or
 - (B) the individual registration statement of

each insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.058. ALTERNATIVE REGISTRATION. The commissioner may permit an insurer authorized to engage in the business of insurance in this state that is a part of an insurance holding company system to:

(1) register on behalf of another insurer that is an affiliate of the insurer and that is required to register under Section [823.051](#); and

(2) file on behalf of the affiliate all information and material required to be filed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.059. EXEMPTIONS. (a) The registration requirement under Section 823.051 does not apply to a foreign or nondomestic insurer, other than a commercially domiciled insurer, that is subject to disclosure requirements adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to the disclosure requirements provided by this chapter.

(b) The commissioner may require an insurer that is exempt from registration under Subsection (a) to provide a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(c) The commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as provided by Subsections (d) and (f), the ultimate controlling person, as defined by Section 823.055, of each insurer required to file an annual registration shall file with the registration an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge, identify the material risks within the insurance holding company system that may pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system, as determined by the commissioner. In determining the lead state commissioner, the commissioner shall consider the procedures adopted by the National Association of Insurance Commissioners.

(b) Expired.

(c) Expired.

(d) Except as provided by Subsection (e), the ultimate controlling person of a domestic insurer that is authorized, admitted, or eligible to engage in the business of insurance only in this state and has total direct or assumed annual premiums of less than \$300 million is not required to submit an enterprise risk

report under Subsection (a) unless the ultimate controlling person of the domestic insurer also controls other insurers that do not meet the requirements of this subsection. For the purposes of this subsection, an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in this state if the insurer directly or indirectly writes or assumes insurance in any manner in another state.

(e) Regardless of total direct or assumed annual premium, the ultimate controlling person of an insurer that is not in compliance with applicable risk-based capital standards or that is otherwise in hazardous condition, as determined by the commissioner, shall file an enterprise risk report required by Subsection (a) as directed by the commissioner.

(f) An insurer that in the preceding calendar year had direct written and assumed premiums of more than \$300 million but less than \$500 million and otherwise meets the requirements of Subsection (d) may request an exemption from the reporting requirements of Subsection (a) by filing with the commissioner a written statement describing the undue financial or organizational hardship the insurer would suffer as a result of complying with Subsection (a). The commissioner may grant the exemption if the commissioner finds that compliance with Subsection (a) would impose an undue financial or organizational hardship on the insurer.

(g) The ultimate controlling person of an insurance holding company system is not required to submit an enterprise risk report under Subsection (a) if:

(1) the ultimate controlling person:

(A) has owned a controlling interest in the voting securities of an insurer described by Subdivision (2) since September 1, 1991, or before;

(B) is a charitable foundation, trust, or both;
and

(C) has not filed or received a disclaimer under Section [823.010](#); and

(2) the insurer in which the ultimate controlling person owns a controlling interest:

(A) was organized under the laws of this state

before January 1, 1910;

(B) is registered under this subchapter;

(C) has issued equity shares of stock registered under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 781);

(D) on September 1, 2011, owns or controls an insurance company subsidiary that is part of the same insurance holding company system as the insurer; and

(E) files with the commissioner all registration statements and information relating to material changes of the insurance holding company system required under this subchapter, including the financial statements of the ultimate controlling person described by Subdivision (1).

(h) An exemption under Subsection (g) applies only for the period during which the ultimate controlling person described by Subsection (g)(1) satisfies the requirements of Subsection (g) and expires on the date of a change in control of the insurer described by Subsection (g)(2) involving at least 50 percent of the voting securities of the insurer. An insurance holding company system may reapply for an exemption under Subsection (g) after the change in control if the system continues to meet the requirements of Subsection (g).

(i) An ultimate controlling person described by Subsection (g)(1) and an insurer described by Subsection (g)(2) shall respond to reasonable inquiries from the department related to the administration of Chapter 404.

Added by Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 67 (S.B. 1073), Sec. 2, eff. May 22, 2017.

Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file a registration statement or an amendment to a registration statement, or an enterprise risk report, within the time specified for filing the statement, amendment, or report, as required by this subchapter, is a violation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 7, eff. September 1, 2011.

SUBCHAPTER C. TRANSACTIONS OF REGISTERED INSURER

Sec. 823.101. STANDARDS FOR TRANSACTION WITHIN AN INSURANCE HOLDING COMPANY SYSTEM. (a) This section applies only to a material transaction within an insurance holding company system to which an insurer subject to a registration under Section 823.052 is a party.

(b) The terms of the transaction shall be fair and equitable.

(b-1) An agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner.

(c) The charges or fees for services performed shall be reasonable.

(d) The books, accounts, and records of each party to the transaction shall be maintained so that the precise nature and details of the transaction are clearly and accurately disclosed.

(e) The expenses incurred and payments received relating to the transaction shall be allocated to the registered insurer on an equitable basis in conformity with customary insurance accounting principles consistently applied.

(f) After a registered insurer pays a dividend or makes a distribution to a holding company or shareholder affiliate of the insurer, the insurer's policyholders' surplus shall be reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 9, eff. September 1, 2011.

Sec. 823.103. NOTICE OF AND COMMISSIONER'S DECISION ON SPECIFIED TRANSACTIONS. (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 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;

(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) 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) 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.

(b) Subsection (a)(3) 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.

(c) A domestic insurer shall give to the commissioner written notice of the insurer's intent to enter into a transaction to which this section applies before the 30th day preceding the date of the proposed transaction. The commissioner may authorize a shorter period of notice under this subsection.

(d) A domestic insurer may not enter into a transaction for which the insurer gives notice under Subsection (c) if the commissioner disapproves the proposed transaction during the period for notice.

(e) The notice described by Subsection (c) must include:

(1) the reasons for entering into or changing the transaction; and

(2) the financial impact of the transaction on the domestic insurer.

(f) Not later than the 30th day after the termination of a previously filed agreement, the domestic insurer shall give notice of the termination to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. [3460](#)), Sec. 4, eff. June 14, 2013.

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

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

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

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

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

(2) apply:

(A) Section 823.103; or

(B) sanctions under this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 5, eff. June 14, 2013.

Sec. 823.105. TYPE OF AUTHORITY PROVIDED. Nothing in Section 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.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 6, eff. June 14, 2013.

Sec. 823.106. STANDARDS OF REVIEW; REASONS FOR DISAPPROVAL. (a) In reviewing a transaction under this subchapter, the commissioner shall consider whether the transaction:

(1) complies with the standards provided by Section 823.101; and

(2) may adversely affect the interest of the insurer's

policyholders.

(b) The commissioner shall set forth the specific reasons for the disapproval of a transaction reviewed under Subsection (a).
Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.107. EXTRAORDINARY DIVIDENDS OR DISTRIBUTIONS.

(a) Except as provided by Subsection (b), for purposes of this section, an extraordinary dividend or distribution includes the payment of a dividend or distribution of cash or other property, the fair market value of which combined with the fair market value of each other dividend or distribution made in the preceding 12 months exceeds the greater of:

(1) 10 percent, or 20 percent if the insurer is a title insurer, of the insurer's policyholders' surplus, as of December 31 of the year preceding the year in which the fair market value is being determined; or

(2) the net gain from operations of the insurer, if the insurer is a life or title insurer, or the net income, if the insurer is another type of insurer, for the calendar year preceding the year in which the fair market value is being determined.

(b) For purposes of this section, an extraordinary dividend or distribution does not include pro rata distributions of any class of securities of the insurer.

(c) An insurer that is required to register under Subchapter B shall give the commissioner notice of the insurer's intent to make an extraordinary dividend or distribution to shareholders, before the 30th day preceding the date of the proposed dividend or distribution. The commissioner may authorize a shorter period of notice under this subsection.

(d) An insurer may not make an extraordinary dividend or distribution for which the insurer gives notice if the commissioner disapproves the dividend or distribution during the period for the notice.

(e) A registered insurer may declare an extraordinary dividend or distribution that is conditional on its approval by the commissioner. The declaration does not confer any rights on shareholders before the dividend or distribution may be made under

Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. CONTROL OF DOMESTIC INSURER; ACQUISITION OR MERGER

Sec. 823.151. PRESUMPTION OF CONTROL. (a) Control of an entity is presumed if:

(1) a person or a person and members of the person's immediate family, directly or indirectly, own, control, or hold with the power to vote 10 percent or more of the voting securities or authority of the entity; or

(2) a person who is not a corporate officer or director of the entity holds proxies representing 10 percent or more of the voting securities or authority of the entity.

(b) Control of a Lloyd's plan is presumed if a person is designated as an attorney-in-fact for the insurer under Chapter 941.

(c) Control of a reciprocal or interinsurance exchange is presumed if a person is designated as an attorney-in-fact for the exchange under Chapter 942.

(d) A presumption under this section may be rebutted by a showing made in the manner provided by Section 823.010 that control does not exist in fact and that the person rebutting the presumption is complying with Sections 823.154, 823.155, 823.159, and 823.160.

(e) For purposes of this section, the members of a person's immediate family are:

(1) the person's spouse, father, mother, children, brothers, sisters, and grandchildren;

(2) the father, mother, brothers, and sisters of the person's spouse; and

(3) the spouse of the person's child, brother, sister, mother, father, or grandparent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.152. EMPLOYMENT OF EXPERTS. (a) The commissioner may employ an attorney, actuary, accountant, or other expert who is not a member of the commissioner's staff and who is reasonably

necessary to assist in analyzing a merger or acquisition of control proposed under Section 823.154.

(b) The acquiring person shall pay all reasonable expenses incurred in connection with the employment of a person under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.153. CONTROLLER OF DOMESTIC INSURER CONSIDERED DOMESTIC INSURER. For purposes of this subchapter, any person who controls a domestic insurer is considered to be a domestic insurer unless:

(1) the assets of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated assets;

(2) the gross revenues, including investment income, of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated gross revenues; and

(3) the shareholders' equity of all insurance subsidiaries of the person is equal to less than 20 percent of the person's consolidated shareholders' equity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer:

(1) the acquiring person shall file with the commissioner a statement that satisfies the requirements of Subchapter E;

(2) the acquisition or divestiture of control must be approved by the commissioner in accordance with this subchapter; and

(3) if the person is initiating a divestiture of

control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule.

(b) The acquiring person or divesting person shall send a copy of the statement filed under this section to the domestic insurer.

(c) A statement or notice filed under this section must be filed not later than the 60th day before the proposed effective date of the acquisition or change of control or divestiture and is subject to public inspection at the office of the commissioner.

(d) Notwithstanding Subsection (a), a divesting person is not required to provide the commissioner with notice of divestiture required by Subsection (a)(3) if an acquiring person submits the statement required by Subsection (a)(1) and that acquisition is approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.202(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 12, eff. September 1, 2011.

Sec. 823.155. AMENDMENT OF STATEMENT. If a material change occurs in the facts contained in a statement filed under Section [823.154](#), the person required to file the statement shall, not later than the second business day after the date the person learns of the change, file with the commissioner and send to the domestic insurer an amendment stating the change and a copy of each document and other material relevant to the change.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.156. NOTICE EXPENSES. (a) A person who files a statement under Section [823.154](#) shall pay the expenses of mailing each related notice required by the commissioner.

(b) As security for the payment of the expenses, the person, at the request of the commissioner or the domestic insurer, shall file with the commissioner an acceptable bond or other deposit in an

amount determined by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR DIVESTITURE OF CONTROL. (a) The commissioner shall approve or deny an acquisition, change, or divestiture of control for which a statement or notice is filed under Section 823.154 not later than the 60th day after the date the statement required by that section is filed. The 60-day period may be waived by the person filing the statement or notice required by Section 823.154 and the domestic insurer. On the request of either the person filing the statement or notice required by Section 823.154, or the domestic insurer, the commissioner shall hold a hearing on a denial.

(b) In considering whether to approve or deny, the commissioner shall consider whether:

(1) immediately on the acquisition, change, or divestiture of control the domestic insurer would not be able to satisfy the requirements for the issuance of a new certificate of authority to write the line or lines of insurance for which the insurer holds a certificate of authority;

(2) the effect of the acquisition, change, or divestiture of control would be substantially to lessen competition in a line or subclassification lines of insurance in this state or tend to create a monopoly in a line or subclassification lines of insurance in this state;

(3) the financial condition of the acquiring person may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders;

(4) the acquiring person has a plan or proposal to liquidate the domestic insurer or cause the insurer to declare dividends or make distributions, sell any of its assets, consolidate or merge with any person, make a material change in its business or corporate structure or management, or enter into a material agreement, arrangement, or transaction of any kind with any person, and that the plan or proposal is unfair, prejudicial, hazardous, or unreasonable to the insurer's policyholders and not in the public interest;

(5) due to a lack of competence, trustworthiness, experience, and integrity of the persons who would control the operation of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public;

(5-a) the divestiture of control may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders and other claimants; or

(6) the acquisition, change, or divestiture of control would violate the law of this or another state or the United States.

(c) If a proposed acquisition, change, or divestiture of control will require the approval of more than one commissioner, the commissioner may participate in a public hearing referred to in this chapter held on a consolidated basis on request of the person filing the statement required by Section 823.154. The person filing the statement under Section 823.154 shall file the statement with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence at the hearing. The commissioner may attend the hearing in person or by telecommunication.

(d) This section does not require the commissioner to hold a hearing before approving or denying an acquisition, change, or divestiture of control.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.203(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 13, eff. September 1, 2011.

Sec. 823.159. HEARING; TIME OF DETERMINATION. (a) A hearing under Section 823.152, 823.157, or 823.160 shall be held not later than the 60th day after the date of the denial.

(b) Not later than the 21st day before the date of the hearing, the commissioner shall give notice of the hearing to the person who filed the statement and to the domestic insurer unless the person and the domestic insurer waive notice.

(c) The person who filed the statement and the domestic insurer shall provide notice of the hearing in the time and manner specified by the commissioner to each person designated by the commissioner.

(d) The acquiring person has the burden of providing sufficient competent evidence for the commissioner to make the findings required under Section 823.157.

(e) The commissioner shall make a determination on the acquisition of control not later than the 60th day after the date the record of the hearing is closed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.203(c), (d), eff. Sept. 1, 2003.

Sec. 823.160. DEADLINE FOR COMPLETION OF ACQUISITION. (a) An acquisition of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the acquisition unless the commissioner on a showing of good cause for the delay grants an extension in writing.

(b) An increase in a company's capital and surplus required under this code because of the change of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the change of control and before the insurance company writes any new insurance business.

(c) If a deadline under Subsection (a) or (b) is not met, the person seeking to acquire control of the domestic insurer shall resubmit the statement required by Section 823.154 and the commissioner may reconsider approval of acquisition of control under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.161. INSURER'S DUTY TO NOTIFY. (a) Not later than the 30th day after the date an event requiring notice under this

subchapter occurs, an insurer authorized to engage in the business of insurance in this state shall notify the commissioner in writing of the identity of any person who the insurer knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(b) This section does not apply to a foreign insurer that is subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of the insurer's domicile that are substantially similar to the requirements and standards provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.162. PROHIBITION ON CERTAIN ACTIONS RELATED TO ACQUISITION OF CONTROL OR MERGER. A person may not effect or attempt to effect an acquisition of control of or merger with a domestic insurer unless the commissioner has approved the acquisition or merger.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.163. RETENTION OF CONTROL. (a) This section applies only to a domestic insurer that is a controlled insurer, regardless of when that control was acquired.

(b) A person violates this section if:

(1) the person is a domestic insurer, a person who controls the domestic insurer, including the insurer's holding company, or an officer or director of the insurer or controlling person who violates this chapter or otherwise demonstrates untrustworthiness affecting the domestic insurer;

(2) the person is a domestic insurer that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state; or

(3) the person is a domestic insurer's affiliate that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state and whose violation affects the domestic insurer.

(c) If, after notice and an opportunity for a hearing, the commissioner determines that a person violates this section, the

commissioner shall issue written findings and an order based on those findings that directs the person to take appropriate action to cure the violation. The commissioner shall serve the order and findings on the person and the affected domestic insurer.

(d) In addition to this chapter, Subchapter C, Chapter 801, applies to a person who fails to comply with an order under this section.

(e) The commissioner may require the submission of any information the commissioner considers necessary to determine whether retention of control complies with this chapter and may require, as a condition of approval of the retention of control, that all or any part of that information be disclosed to the domestic insurer's shareholders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.164. EXEMPTIONS FROM SUBCHAPTER. (a) This subchapter does not apply to a transaction that is subject to:

- (1) Subchapter K or L, Chapter 882; or
- (2) Section 887.065 or Subchapter J or K, Chapter 887.

(b) This subchapter does not apply to a transaction that is subject to and complies with:

- (1) Chapter 828; or
- (2) Subchapter L, Chapter 884.

(c) This subchapter does not apply to a transaction that is subject to and complies with Sections 824.101 and 824.102 and Subchapters A and B, Chapter 824, relating to the merger or consolidation of two or more insurers, until the plan of merger or consolidation is filed by the domestic insurer with the commissioner under that chapter. After the plan is filed, the transaction is subject to this subchapter. The commissioner may exempt the transaction from this subchapter, other than the approval provisions of Sections 823.157-823.160, if the commissioner finds that the materials provided to shareholders and security holders in connection with the merger or consolidation, including the notice and proxy statement, contained reasonable and adequate information, including factual and financial disclosures and material, relating to that transaction.

(d) This subchapter does not apply to a transaction that is subject to Subchapter K, Chapter 884, if the agreement to which the transaction relates is a total direct reinsurance agreement.

(e) This subchapter does not apply to an acquisition of any voting security that, immediately before consummation of the acquisition, is not issued and outstanding by a person who is a broker-dealer under state or federal securities law if:

(1) the acquisition is solely for resale under a plan approved by the commissioner;

(2) the resale will not reasonably result in an acquisition of control; and

(3) before the resale a positive act of control relating to those shares is not committed.

(f) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who:

(1) controls the insurer if, after the acquisition, the person directly or indirectly owns or controls less than 50 percent of the issued and outstanding voting securities of the insurer; or

(2) before the acquisition, directly or indirectly owns or controls more than 50 percent of the issued and outstanding voting securities of the insurer.

(g) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who, before the acquisition, directly or indirectly owns or controls at least 10 percent but less than 50 percent of the issued and outstanding voting securities of the insurer and who, after the acquisition, directly or indirectly owns or controls 50 percent or more of the issued and outstanding voting securities of the insurer if:

(1) the person has applied in writing for the exemption; and

(2) the commissioner by order has determined that the acquisition:

(A) will not jeopardize the financial stability of the insurer;

(B) will not prejudice the interests of the insurer's policyholders; and

(C) will not adversely affect the public interest.

(h) The commissioner by order may exempt from the application of this subchapter an offer, request, invitation, agreement, or acquisition that:

(1) is not made or entered into to change or influence the control of a domestic insurer and does not have the effect of changing or influencing that control; or

(2) is not comprehended as within the purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.165. VIOLATION OF SUBCHAPTER. The failure to file a statement, amendment, or other material required to be filed under this subchapter is a violation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. ACQUISITION STATEMENT

Sec. 823.201. ACQUIRING PERSON. (a) A statement required under Section [823.154](#) must contain the name and address of the acquiring person.

(b) If the acquiring person is an individual, the statement must contain:

(1) the acquiring person's principal occupation or employment;

(2) each material occupation, employment, office, or position held by the acquiring person during the preceding five-year period; and

(3) any criminal conviction of the acquiring person, other than a conviction of a minor traffic violation, during the preceding 10-year period.

(c) If the acquiring person is not an individual, the statement must contain:

(1) a report of the nature of the acquiring person's business operations during the preceding five-year period or, if the acquiring person and any predecessors of the acquiring person

have been in existence for less than five years, during that shorter period;

(2) a description, complete in all material respects, of any business the acquiring person intends to begin; and

(3) a list that contains:

(A) the name of each director or executive officer of the acquiring person, or individual who performs or who is to perform, functions appropriate to that position; and

(B) for each individual listed under Paragraph (A), the information required for an individual under Subsection (b).

(d) The acquiring person shall agree to provide the annual enterprise risk report required by Section [823.0595](#) for as long as the acquiring person maintains control of the insurer.

(e) The acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system shall provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 14, eff. September 1, 2011.

Sec. 823.202. CONSIDERATION FOR ACQUISITION. (a) A statement required under Section [823.154](#) must contain:

(1) the source, nature, and amount of consideration for the acquisition of control;

(2) a description of any transaction from which the consideration for the acquisition of control is obtained; and

(3) the identity of each person providing the consideration.

(b) On request of the person filing the statement, the identity of a commercial lender who in the ordinary course of business provides consideration for the acquisition is confidential.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.203. FINANCIAL INFORMATION ABOUT ACQUIRING PERSON. (a) A statement required under Section 823.154 must contain:

(1) fully audited financial information about the earnings and financial condition of the acquiring person for the preceding three fiscal years or, if the acquiring person and any predecessors of the acquiring person have been in existence for less than three fiscal years, for that shorter period; and

(2) similar unaudited financial information about the earnings and financial condition of the acquiring person as of a date not earlier than the 120th day preceding the date the statement is filed.

(b) The statement must be accompanied by an affidavit or certification of the chief financial officer of the acquiring person stating that:

(1) the unaudited financial information provided under Subsection (a) is true and correct, as of its date; and

(2) a material change in financial condition, as determined under Section 823.054, did not occur during the period beginning on the date of that information and ending on the date of the affidavit or certification.

(c) If an acquiring person is an individual, the acquiring person shall provide the personal unaudited financial information required by the commissioner.

(d) If an acquiring person is an insurer authorized to engage in the business of insurance in this state and actively engaging in the business of insurance, the acquiring person may provide financial statements that conform to the requirements of:

(1) the annual statements of the insurer filed with the insurance department of the insurer's state of domicile; and

(2) insurance or other accounting principles prescribed by or authorized under the law and regulations of the state of domicile.

(e) A statement required under Section 823.154 must contain additional financial information in the form or substance required by the commissioner that is material to a finding under Section

823.157(3).

(f) The commissioner may waive any financial information required under this section that the commissioner does not consider to be material.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.204. PLAN FOR FUTURE OF INSURER. A statement required under Section 823.154 must contain:

- (1) any plan or proposal of the acquiring person to:
 - (A) cause the insurer to pay dividends or make distributions;
 - (B) liquidate the insurer;
 - (C) sell any of the insurer's assets;
 - (D) merge or consolidate the insurer with any person;
 - (E) make any other material change in the insurer's business or corporate structure or management; or
 - (F) cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any person; and

- (2) any oral or written arrangement or agreement between the acquiring person or an affiliate of the acquiring person and the domestic insurer entered into during the 12 months preceding the date of the statement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.205. VOTING SECURITIES. (a) In this section, "voting security" means a voting security of a domestic insurer the acquisition of which requires the filing of a statement under Section 823.154 as a condition precedent.

(b) A statement required under Section 823.154 must contain:

- (1) the number of shares of a voting security that the acquiring person or an affiliate of the acquiring person proposes to acquire and the terms of the acquisition;

- (2) the amount of each class of a voting security that is beneficially owned by the acquiring person and by each affiliate

of the acquiring person;

(3) the amount of each class of a voting security the beneficial ownership of which the acquiring person or an affiliate of the acquiring person has a right to acquire;

(4) a copy of any written or confirmed description of any oral agreement, arrangement, or understanding relating to a voting security and in which the acquiring person or an affiliate of the acquiring person is involved, including an agreement, arrangement, or understanding relating to the transfer of any of the voting securities, joint ventures, loan or option agreements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies;

(5) a description of each purchase of a voting security, including the date of purchase, name of the purchaser, and consideration for the purchase, made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person; or

(B) an affiliate, director, or executive officer of the acquiring person;

(6) a copy of any written, or a confirmed description of any oral, recommendation to purchase a voting security made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person;

(B) an affiliate of the acquiring person; or

(C) a person based on an interview with, or at the suggestion of, the acquiring person or an affiliate of the acquiring person;

(7) a copy of each tender offer for, request or invitation for tender of, exchange offer for, or agreement to acquire or exchange a voting security and any additional distributed soliciting material relating to that offer, request, invitation, or agreement;

(8) a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with a broker-dealer relating to the solicitation of a voting security for

tender, and the amount of any compensation, including fees and commissions, to be paid to a broker-dealer with regard to the solicitation; and

(9) any additional information the commissioner by rule prescribes as necessary or appropriate to protect:

(A) policyholders of the insurer whose voting securities are to be acquired; or

(B) the public.

(c) An insurer required to file information under Section 823.154 may satisfy the requirement of Section 823.052(c-1) by providing the commissioner with the most recently filed parent corporation reports that have been filed with the United States Securities and Exchange Commission, if required by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 15, eff. September 1, 2011.

Sec. 823.206. ADDITIONAL INFORMATION ABOUT ACQUIRING ORGANIZATION. (a) If the person required to file the statement under Section 823.154 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required for an individual under this subchapter be given with respect to:

(1) each person who is a partner of the partnership or limited partnership or a member of the syndicate or group; and

(2) each person who controls a person described by Subdivision (1).

(b) If the person required to file the statement under Section 823.154 or the person with respect to whom information is required under Subsection (a) is a corporation, the commissioner may require that:

(1) the information required under this subchapter be given with respect to that corporation; and

(2) the information required for an individual under this subchapter be given with respect to:

(A) each executive officer and director of that corporation; and

(B) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of that corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.207. OATH OR AFFIRMATION REQUIRED. A statement required under Section 823.154 must be made under oath or affirmation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. INSURER'S LOANS TO OR INVESTMENT IN AFFILIATE

Sec. 823.251. DEFINITION. In this subchapter, "securities" includes common stock, preferred stock, and debt obligations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.252. GENERAL AUTHORITY RELATING TO AFFILIATES. A domestic insurer, by itself or in cooperation with one or more other persons, may organize, acquire, invest in, or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the provisions of this code governing investments.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.253. GENERAL STANDARD FOR INVESTMENT IN AFFILIATE.

(a) A domestic insurer may invest in the securities of one or more of the insurer's affiliates organized for any lawful purpose if:

(1) the amounts invested under this subsection in the aggregate do not exceed the lesser of:

(A) 10 percent of the insurer's assets; or

(B) 50 percent of the insurer's policyholders' surplus; and

(2) after investment under this subsection, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs.

(b) For purposes of computing the amount of the investments under this section:

(1) investments in domestic or foreign insurance subsidiaries are excluded; and

(2) the following amounts are included:

(A) the total net amount spent and the amount of obligations assumed to acquire or form a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary regardless of whether represented by the purchase of capital stock or issuance of other securities; and

(B) all amounts spent to acquire additional securities and all contributions to the capital or surplus of a subsidiary made after the acquisition or formation of the subsidiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.254. STANDARD FOR INVESTMENT IN AFFILIATE BY INSURER WITH LOW TOTAL LIABILITIES. If a domestic insurer's total liabilities, as computed for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of the insurer's assets, the insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if after the investment, treating the investment as if it were a nonadmitted asset, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.255. AGREEMENT OF AFFILIATE TO LIMIT CERTAIN INVESTMENTS. (a) A domestic insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if each affiliate agrees to limit its investments in any particular asset so that the investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in that asset.

(b) To compute the amount of the total investment of an insurer in an asset for purposes of Subsection (a), the following

amounts are included:

(1) any direct investment by the insurer in that asset; and

(2) the insurer's proportionate share of investment in that asset by any affiliate of the insurer.

(c) To compute the insurer's proportionate share of investment under Subsection (b)(2), the amount of the affiliate's investment in the asset is multiplied by the percentage of the insurer's ownership of that affiliate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.256. COMMISSIONER'S APPROVAL OF INVESTMENT. With the prior approval of the commissioner, a domestic insurer may invest any amount in the securities of one or more affiliates if after the investment the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.257. DETERMINATION REQUIRED BEFORE INVESTMENT.

(a) Whether an investment meets an applicable requirement of this subchapter shall be determined before the investment is made by applying that requirement as if the investment had been made.

(b) In making the determination under Subsection (a):

(1) the amount to be used for the total of previous investments in debt obligations is the principal balance outstanding on all of those obligations at the time of the determination;

(2) the amount to be used for previous investments in equity securities is the sum of values of each previous investment as of the day the previous investment was made; and

(3) any return of capital invested, not including dividends, shall be subtracted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.258. DISPOSITION OF INVESTMENT IN SUBSIDIARY AFTER CESSATION OF CONTROL. (a) An insurer that ceases to control a

subsidiary shall dispose of any investment in the subsidiary made under this subchapter before the third anniversary of the date the insurer ceases to control the subsidiary, unless:

(1) at any time after the investment is made the investment qualifies for investment under another provision of this code; and

(2) the insurer notifies the commissioner of that qualification.

(b) The commissioner may extend the period under Subsection (a) during which disposition is required.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.259. EXEMPTION FROM CERTAIN LIMITATIONS; INVESTMENT AUTHORITY CUMULATIVE OF OTHER LAW. (a) An investment made under this subchapter is not subject to the restrictions and prohibitions relating to investments contained in this code other than those provided by Subchapter C.

(b) Investments authorized by this subchapter are in addition to other investments permitted under this code for a domestic insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. VALUATION OF INVESTMENT FOR FINANCIAL STATEMENT

Sec. 823.301. SCOPE OF SUBCHAPTER. (a) This subchapter applies only to the determination of the valuation for a financial statement of an investment by an insurer in an affiliate that is not an insurer.

(b) This subchapter does not apply for determining the amount invested under Section [823.253](#).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.302. BASES FOR DETERMINING VALUATION. Subject to this subchapter, the valuation of an investment to which this subchapter applies is the greater of:

(1) the net shareholder equity value that the insurer owns in the affiliate adjusted, if the affiliate is a subsidiary, to

include the value of only those assets of the subsidiary that would constitute lawful investments for the insurer if the assets were acquired or held directly by the insurer; or

(2) the amount determined using one of the following methods that is applicable for the affiliate in which the investment is made:

(A) the net worth of the affiliate determined at the end of the affiliate's most recent fiscal year in accordance with generally accepted accounting principles and reported in the financial statements of the affiliate for that fiscal year that were audited by an independent certified public accountant in accordance with generally accepted auditing standards;

(B) the value equal to the cost of the stock of the affiliate, determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles;

(C) the market value of the stock of the affiliate, if the stock is listed on a national securities exchange;

(D) the value, if any, placed on the stock of the affiliate by the National Association of Insurance Commissioners; or

(E) an amount that the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value of that investment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.303. ADJUSTMENT TO DETERMINATION. If an affiliate is valued using a method other than the method provided by Section [823.302\(2\)\(C\)](#), the valuation of the investment is computed by subtracting from the determined value an amount equal to the value claimed for any of the affiliate's assets that would not be admitted assets for the insurer if held directly by the insurer and that:

(1) are held by the affiliate but are used, including use under a lease agreement, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or

use of the insurer by the affiliate under specific circumstances that, in the commissioner's opinion, support a reasonable finding that the primary purpose of the acquisition or purchase was to evade or avoid application of this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.304. USE OF DIFFERENT BASES. An insurer is not required to value the stock of all of its affiliates on the same basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.305. VALUATING ACQUIRED AFFILIATE. (a) Not later than the 30th day after the date an insurer acquires an affiliate that is not an insurer, the insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of the affiliate and the basis of valuation under Section [823.302](#) used for that affiliate.

(b) After filing the information under Subsection (a), the insurer shall use the specified basis of valuation for that affiliate unless a change is substantiated as reasonable to and is approved in writing by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.306. USE OF UNAUDITED INFORMATION. If an affiliate is valued using the basis provided by Section [823.302](#)(2)(A) and the books of the affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer, as soon as possible after an audit of those books, shall report and explain any difference between the value of the affiliate reported in the insurer's annual statement and the value determined by the audit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.307. MODIFICATION BY COMMISSIONER. After notice and opportunity for a hearing, the commissioner may:

(1) determine that the basis used for valuation of the stock of an affiliate does not, under the specific circumstances,

reflect the value of the affiliate; and

(2) order an adjustment in the valuation or the use of another basis of valuation provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. EXAMINATIONS

Sec. 823.351. EXAMINATION OF INSURER. (a) Subject to Section 823.352, the commissioner may order an insurer registered under Subchapter B to produce records, books, or other information papers in the possession of the insurer or an affiliate of the insurer that are necessary to ascertain the financial condition or legality of conduct of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(a-1) To determine compliance with this chapter, the commissioner may order any insurer registered under Subchapter B to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or other methods. In the event that the insurer is unable to obtain the information requested by the commissioner, the insurer shall provide the commissioner with a detailed explanation of the reason why the insurer is unable to obtain the information, and the identity of the holder of information. If it appears to the commissioner that the insurer's explanation is without merit, the commissioner may after notice and hearing:

(1) require the insurer to pay a penalty of not less than \$100 for each day the insurer delays producing the information; or

(2) suspend or revoke the insurer's license.

(b) If an insurer fails to comply with an order under this section, the commissioner by order may require the examination of each holding company of the insurer and each controlled person or affiliate in the insurer's insurance holding company system if the

commissioner has cause to believe that:

(1) the operations of that person may materially affect the operations, management, or financial condition of any controlled insurer in that system; and

(2) the commissioner is unable to obtain relevant information from the controlled insurer.

(b-1) The commissioner may issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. On the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and on proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. A person shall attend as a witness at the place specified in the subpoena, when subpoenaed, at any location in this state. The person is entitled to the same fees and mileage, if claimed, as a witness in district court. Fees, mileage, and actual expenses necessarily incurred in securing the attendance of a witness shall be itemized and charged against, and be paid by, the insurer being examined.

(c) The commissioner shall specify in an order under Subsection (b) the grounds for the examination. An examination under Subsection (b) shall be confined to matters specified in the order.

(d) Only the person sought to be examined under Subsection (b) is entitled to seek judicial review of an order under that subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. [1431](#)), Sec. 16, eff. September 1, 2011.

Sec. 823.352. LIMITATION ON POWER. The commissioner may exercise power under Section [823.351](#) only if:

(1) examination of the insurer under another provision of this code is inadequate; or

(2) the interests of the insurer's policyholders may

be adversely affected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.353. PAYMENT OF EXAMINATION COSTS. (a) Each registered insurer that complies with an order under Section 823.351(a) shall pay the expense of the examination in accordance with Sections 401.151, 401.152, 401.155, and 401.156.

(b) The commissioner shall assess the cost of an examination under Section 823.351(b) against the person examined. The controlled insurer may not directly or indirectly reimburse that person for any part of the cost.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.011, eff. April 1, 2009.

Sec. 823.354. USE OF ADVISORS. (a) The commissioner may employ at the registered insurer's expense attorneys, actuaries, accountants, and other experts that are not a part of the commissioner's staff and that are reasonably necessary to assist in the conduct of an examination under Section 823.351.

(b) A person employed under this section is under the direction and control of the commissioner and may act only as an advisor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.355. CUMULATIVE AUTHORITY. The authority provided by this subchapter is in addition to other powers relating to the examination of insurers given to the commissioner under this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. LIMITATIONS RELATING TO CONTROLLED INSURERS

Sec. 823.401. PROHIBITION OF INDIRECT ACTION FOR CONTROLLED INSURER. (a) A holding company or controlled person may not directly or indirectly do or cause to be done for or on behalf of a controlled insurer any act intended to affect, influence, change,

or alter the insurance operations of the insurer that would violate this code if done by the insurer alone.

(b) This section does not limit or prohibit a holding company or a person in the insurance holding company system from conducting on behalf of the person any type of business that would be normal and natural to the person if the person were not in the holding company system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.402. PROHIBITION ON VOTING CERTAIN SECURITIES.

(a) A security that is the subject of an agreement or arrangement regarding an acquisition or that is acquired or to be acquired in violation of this chapter or a rule or order under this chapter may not be voted at a shareholders' meeting or counted for quorum purposes. An action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the security was not outstanding.

(b) An action taken at a shareholders' meeting is not invalidated by the voting of a security to which Subsection (a) applies unless:

(1) the action would materially affect control of the insurer; or

(2) a court of this state invalidates the action.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.403. MANAGEMENT OF CONTROLLED INSURER. (a) The control of an authorized insurer by another person does not relieve an officer or director of the insurer of any obligation or liability to which the officer or director is subject by law. The insurer shall be managed to assure the insurer's separate operating identity consistent with this code.

(b) This section does not preclude an authorized insurer from having a common management or joint use of personnel, property, or services with one or more other persons under an arrangement that meets the standards of Section [823.101\(e\)](#).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. CIVIL REMEDIES AND SANCTIONS

Sec. 823.451. RECEIVERSHIP. If it appears to the commissioner that a person's violation of this chapter so impairs the financial condition of a domestic insurer as to threaten the insurer's insolvency or make the further transaction of the insurer's business hazardous to the insurer's policyholders or creditors or the public, the commissioner may proceed under Chapters 441 and 443 to take possession of the insurer's property and conduct the business of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.012, eff. April 1, 2009.

Sec. 823.452. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S AUTHORITY. (a) If it appears to the commissioner that a person's violation of this chapter makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner, after notice and opportunity for a hearing, may suspend, revoke, or refuse to renew the insurer's certificate of authority to engage in the business of insurance in this state for the period the commissioner finds is required for the protection of policyholders or the public.

(a-1) If the commissioner determines that a person has committed a violation of Subchapter D that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for issuing an order under Chapter 404 or Chapter 441.

(b) The commissioner shall provide specific findings of fact and conclusions of law to accompany a determination under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 17, eff. September 1, 2011.

Sec. 823.453. VOIDING UNAUTHORIZED ACTION. If it appears to the commissioner that a person has entered into a transaction or performed an act before complying with the applicable provisions of this chapter or has obtained the commissioner's approval of or acquiescence in a transaction or act that is subject to this chapter based on a material fraudulent misrepresentation, misstatement, or omission, the commissioner, after notice and opportunity for a hearing, by order may void the transaction or act and return the parties to the position they would have occupied if the transaction or act had not occurred.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.454. ADMINISTRATIVE PENALTY. (a) A director or officer of an insurer or insurance holding company system that is subject to this chapter is subject to an administrative penalty under Chapter 84 if the director or officer knowingly and wilfully:

(1) participates in or assents to a transaction or an investment that has not been properly reported or submitted under this chapter;

(2) permits an officer, agent, or employee of the insurer or holding company system, as appropriate, to engage in a transaction or make an investment that has not been properly reported or submitted under this chapter; or

(3) violates this chapter.

(b) The amount of an administrative penalty under this section may not exceed \$10,000 for each violation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.455. EQUITABLE RELIEF. (a) If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has committed or is about to commit a violation of this chapter or a rule or order under this chapter, the commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief that the nature of the case and the interest of the insurer's policyholders or creditors or the public requires.

(b) If an insurer or the commissioner has reason to believe that a security of the insurer was or is about to be acquired in violation of this chapter or a rule or order under this chapter, the insurer or the commissioner may apply to a district court of Travis County or of the county in which the insurer has its principal place of business to:

(1) enjoin any offer, request, invitation, agreement, or acquisition made in violation of Subchapter D or a rule or order under that subchapter;

(2) enjoin the voting of a security acquired in violation of Subchapter D or a rule or order under that subchapter; or

(3) void a vote of the security that was cast at any shareholders' meeting.

(c) In a suit filed under Subsection (b), the insurer or the commissioner may also apply for other equitable relief that the nature of the case and the interests of the insurer's policyholders or creditors or the public requires.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.456. SEIZURE OR SEQUESTRATION OF VOTING SECURITIES. If a person acquires or is proposing to acquire a voting security in violation of this chapter or a rule or order under this chapter, a district court of Travis County or of the county in which the insurer has its principal place of business, on application of the insurer or the commissioner and notice that the court considers appropriate, may seize or sequester any voting securities of the insurer that are owned directly or indirectly by that person and may issue an order relating to those securities that is appropriate to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.457. LONG ARM JURISDICTION; SERVICE OF PROCESS.

(a) The courts of this state have jurisdiction over a person who is not a resident of, domiciled in, or authorized to engage in business in this state and files a statement with the commissioner under Subchapter D, and over the actions involving that person that arise

out of a violation of this chapter.

(b) A person described by Subsection (a) is considered to have appointed the commissioner as the person's agent for service of process in any action, suit, or proceeding arising out of a violation of this chapter.

(c) The commissioner shall forward by registered or certified mail to the person's last known address copies of all processes that are served on the commissioner under Subsection (b).

(d) Additional procedures and fees for service of process are provided by Subchapter C, Chapter 804.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.458. SANCTIONS. An entity that holds a certificate of authority issued by the department and that violates this code is subject to sanctions under Chapter 82.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. CRIMINAL PENALTIES

Sec. 823.501. OFFENSE OF VIOLATING CHAPTER. (a) A person commits an offense if the person is an insurer or individual and wilfully violates this chapter.

(b) If the person is an insurer, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed \$50,000 for each violation.

(c) If the person is an individual, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed \$10,000 for each violation except as provided by Subsection (d) and Section 823.502.

(d) An offense under Subsection (a) is a felony if the person is an individual and the violation involves the deliberate perpetration of a fraud on the department, an insurer, an insurer's subsidiary, or policyholders. The felony is punishable by:

- (1) imprisonment for a term not to exceed five years;
- (2) a fine not to exceed \$10,000 for each violation;

or

- (3) both fine and imprisonment under this subsection.

(e) A fine under this section is in addition to any civil or administrative penalty.

(f) An individual on whom a fine is imposed under this section shall pay the fine in that person's individual capacity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.502. OFFENSE OF SUBSCRIBING TO OR MAKING FALSE STATEMENT. (a) A person commits an offense if the person is an officer, director, or employee of a domestic insurer or the insurer's insurance holding company system and wilfully and knowingly subscribes to or makes or causes to be made a false statement on a written instrument required to be filed with the commissioner.

(b) An offense under Subsection (a) is a felony punishable by:

- (1) imprisonment for a term of not less than two years;
- (2) a fine not to exceed \$10,000 for each violation;

or

- (3) both fine and imprisonment under this subsection.

(c) A person on whom a fine is imposed under this section shall pay the fine in that person's individual capacity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.503. BEGINNING CRIMINAL PROCEEDINGS. If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has wilfully violated this chapter, the commissioner may cause criminal proceedings to be instituted against that person by the district attorney for the county in which the principal office of the insurer is located or, if the insurer does not have a principal office in this state, the district attorney of Travis County.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.