

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

CHAPTER 824. MERGER AND CONSOLIDATION OF STOCK INSURANCE

CORPORATIONS

SUBCHAPTER A. AUTHORITY AND PROCEDURES

Sec. 824.001. AUTHORITY TO MERGE OR CONSOLIDATE. Two or more insurance corporations that engage in a similar line of the business of insurance may merge or consolidate under this chapter. Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.002. PROCEDURES; APPLICABILITY OF TEXAS BUSINESS CORPORATION ACT. (a) To the extent that the provisions of the Texas Business Corporation Act are not inconsistent with the provisions of this code, the Texas Business Corporation Act governs:

(1) the procedures for a merger or consolidation under this chapter;

(2) the effect of a merger or consolidation under this chapter; and

(3) the rights and duties of creditors, shareholders, and the corporations that are involved in a merger or consolidation under this chapter.

(b) To the extent that the Texas Business Corporation Act applies under this chapter to insurance corporations, the commissioner shall perform each duty, exercise each power, and perform each act vested in, required of, or to be performed by the secretary of state under the Texas Business Corporation Act.

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

Sec. 824.003. PROPOSED PLAN OF MERGER OR CONSOLIDATION; APPROVAL OF DIRECTORS AND SHAREHOLDERS. (a) A proposed plan of merger or consolidation must be approved by the boards of directors of the corporations that are parties to the merger or consolidation.

(b) After approval by the boards of directors, the proposed plan shall be submitted for approval to the shareholders of each corporation that is a party to the plan at a separate regular or special meeting of the shareholders called in the manner provided by the bylaws of the respective corporations.

(c) A plan is approved on the affirmative vote of the holders of two-thirds of the shares of the capital stock of each corporation that is a party to the plan.

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

Sec. 824.004. FILING OF PROPOSED PLAN WITH COMMISSIONER. After a proposed plan of merger or consolidation has been approved as provided by Section 824.003, the plan shall be filed with the commissioner.

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

Sec. 824.005. COMMISSIONER ACTION ON PLAN. (a) The commissioner shall hold a hearing on a proposed plan of merger or consolidation not later than the 15th day after the date on which the plan is filed with the commissioner as required by Section 824.004.

(b) Not later than the 15th day after the hearing date, the commissioner shall:

(1) give written approval of the plan to each insurance corporation that is a party to the proposed merger or consolidation; or

(2) disapprove the plan if the commissioner determines that the plan:

(A) is contrary to law; or

(B) would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the insurance corporation in this state or elsewhere.

(c) The commissioner may extend the period during which the commissioner may affirmatively approve or disapprove the proposed plan if representatives of the applicants for the proposed merger or consolidation concur in that extension.

(d) If the commissioner disapproves a proposed plan, the commissioner shall specify in detail the reasons for that disapproval.

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

SUBCHAPTER B. EFFECTIVE DATE OF MERGER OR CONSOLIDATION

Sec. 824.051. EFFECTIVE DATE OF MERGER. A merger takes effect on the date specified in the proposed plan of merger.

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

Sec. 824.052. EFFECTIVE DATE OF CONSOLIDATION. (a) A new insurance corporation resulting from a plan of consolidation shall be issued a charter and a certificate of authority on:

(1) submission of proper articles of incorporation to the commissioner;

(2) approval by the commissioner in accordance with the procedures required for the issuance of a new charter; and

(3) submission of proof that the new corporation has capital and surplus at least equal to that of the corporation that is a party to the consolidation and has the largest capital and surplus.

(b) A consolidation takes effect on the date of issuance of the charter and certificate of authority under Subsection (a).

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

Sec. 824.053. APPROVAL OF MERGER OR CONSOLIDATION AFFECTING FOREIGN CORPORATION; EFFECTIVE DATE. Notwithstanding Section [824.051](#) or [824.052](#), a merger or consolidation involving a corporation organized under the laws of another state does not take effect until the merger or consolidation is approved by the proper official of the domiciliary state, if that approval is required.

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

SUBCHAPTER C. EFFECT OF MERGER OR CONSOLIDATION

Sec. 824.101. EFFECT OF MERGER OR CONSOLIDATION ON

OUTSTANDING INSURANCE POLICIES. (a) A new or surviving corporation resulting from a merger or consolidation shall assume each insurance policy outstanding against each insurance corporation that merges or consolidates on the same terms and under the same conditions as if the policy had continued in force through the original corporation.

(b) The new or surviving insurance corporation shall implement the terms of the policy.

(c) The new or surviving insurance corporation is entitled to:

(1) all rights and privileges under the policy; and

(2) all reserves that accumulated on the policy before the merger or consolidation.

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

Sec. 824.102. EFFECT OF MERGER OR CONSOLIDATION ON CERTAIN INVESTMENTS. (a) This section applies to each investment of an affected corporation, including an investment in real property, that:

(1) was authorized as a proper asset, as of the date on which the investment was made and under the laws of the state in which the insurance corporation was organized, for investment of funds of an insurance corporation; and

(2) is taken over by the new or surviving corporation under the terms of the merger or consolidation.

(b) On the merger or consolidation of two or more insurance corporations under this chapter, an investment of the affected corporations described by Subsection (a) is a proper asset under the laws of this state of the new or surviving corporation if the investment is:

(1) approved by the commissioner; and

(2) taken over on terms satisfactory to the commissioner.

(c) A new or surviving corporation that acquires, under the terms of the merger or consolidation, real property that exceeds the amount of real property permitted by the applicable sections of this code relating to owning or holding real property must sell and

dispose of the excess real property:

(1) within the period specified by those sections; or

(2) within a longer period if the corporation obtains a certificate from the commissioner:

(A) stating that the interests of the corporation will materially suffer by the forced sale of the affected real property; and

(B) specifying the longer period for the sale of the excess real property.

(d) This section does not preclude the designation and use of the acquired excess real property as branch offices in accordance with this code.

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

Sec. 824.103. RETIREMENT AND CANCELLATION OF TREASURY SHARES. (a) After a merger or consolidation is completed, any shares of the new or surviving corporation acquired by that corporation as a result of distribution of shares to the shareholders of another corporation that is merged or consolidated or as a result of purchase of shares of dissenting shareholders, may be held as treasury shares until the first anniversary of the date on which the merger or consolidation takes effect.

(b) After the period during which shares described by Subsection (a) are held as treasury shares, the corporation shall retire and cancel those shares by proper amendments to its charter if the shares have not previously been reissued.

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

Sec. 824.104. EFFECT ON ANTITRUST LAWS. This chapter does not affect in any manner the antitrust laws of this state.

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

SUBCHAPTER D. MERGER OR CONSOLIDATION OF LIFE INSURANCE CORPORATIONS

Sec. 824.151. PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A life insurance corporation may

purchase or contract to purchase all or part of the outstanding shares of another life insurance corporation for purposes of merger or consolidation.

(b) Except as provided by Section 824.152, the provisions of Subchapter D, Chapter 425, that limit investments in the corporate stock of another corporation do not apply to a purchase made under this section.

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.013, eff. April 1, 2009.

Sec. 824.152. LIMITATIONS ON PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A purchase or contract to purchase under Section 824.151 is subject to this section.

(b) The intention to merge or consolidate must be evidenced by a resolution adopted by the board of directors of the purchasing corporation on or before the purchase of the shares or the execution of a contract to purchase the shares.

(c) The purchasing corporation shall obtain or seek to obtain at least the number of shares of the other insurance corporation necessary to vote an approval of the merger or consolidation under the laws of the state in which the other insurance corporation is organized, by one or more of the following means:

(1) initially purchasing or contracting to purchase the shares; or

(2) offering to purchase, making a tender offer for, requesting or inviting tenders of, or otherwise seeking to acquire the shares in the open market or otherwise.

(d) A purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase shares in excess of the limits imposed under Subchapter D, Chapter 425, may not be made until it is filed with and approved by the commissioner in accordance with Chapter 823.

(e) Following the earlier of the date of the contract to purchase the shares or the date of the commissioner's approval of

the purchase, offer to purchase, tender offer, or request or an invitation to purchase the shares, the corporation the shares of which are being purchased may not purchase or contract to purchase any of its own shares as treasury shares, issue or contract to issue any of its authorized but unissued shares, or make any investments in or loans to the purchasing corporation or any of its affiliates unless the investment or loan is otherwise authorized and approved in advance by the commissioner under Chapter 823.

(f) The merger or consolidation must take effect on or before December 31 of the second year after the earlier of the year in which the initial purchase of the shares is made or the year in which the initial contract to purchase is executed unless the commissioner for good cause shown extends that period.

(g) If the merger or consolidation does not take effect within the period finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of the purchased shares that exceed the investment limitations imposed under Subchapter D, Chapter 425, within six months of the final effective date.

(h) Amounts actually paid by the purchasing corporation for the purchase of shares acquired or obtained under this subchapter may not include the minimum capital, minimum surplus, and policy reserves required by law for the purchasing corporation.

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.014, eff. April 1, 2009.