

BILL ANALYSIS

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S.B. 1071
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Holding company systems, or groups, are now the most common form of ownership structure in the insurance industry. These groups encompass not only insurance companies, but also multiple types of affiliates, such as banks and securities firms. These multiple types of affiliates and their financial condition can impact the financial condition of affiliated insurance companies, which is a primary reason for the Holding Company Act and its solvency monitoring provisions.

If a holding company's practices begin to affect the financial solvency of its members, then the regulators assigned to the various entities within a holding company (such as Texas Department of Insurance (TDI) for insurance companies), step in and advise the holding company of the changes that need to be made to protect the financial security of the holding company, both as a whole and for its individual members.

This role, often referred to as group-wide supervisor, is an important financial solvency tool because it creates a comprehensive approach to solving holding company financial issues before they impact policyholders. The group-wide supervisor function, however, does not give TDI authority to directly regulate members of the holding company, other than insurers. TDI only has the ability to regulate the insurers over which the Texas Legislature has statutorily given TDI regulatory authority.

S.B. 1071 modifies the materiality threshold for reporting certain transactions between insurers and their affiliates in order to simplify the calculation of materiality.

S.B. 1071 amends Chapter 823, Insurance Code, Insurance Holding Company Systems (also known as the Holding Company Act), to clarify and codify existing TDI authority and business practices related to holding company systems that include an insurer.

As proposed, S.B. 1071 amends current law relating to the regulation of insurance holding company systems, including internationally active insurance groups, and authorizes a fee.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 823.011(a), (d), and (d-1), Insurance Code, as follows:

- (a) Provides that this section applies only to information, including documents and copies of documents, that is reported or otherwise provided under Subchapter I-1, B, or C, rather than B or C, or Section 823.201(d) or (e). Includes information obtained by or disclosed to the commissioner of insurance (commissioner) or another person in the course of an examination or investigation under Chapter 401 (Audits and Examinations) among certain types of information to which this section applies. Makes no further changes to this subsection.

(d) Authorizes the commissioner or another person to disclose information to certain entities if the recipient of documents or other information to which this section applies agrees in writing to maintain the confidential and privileged status of the documents or information.

(d-1) Makes nonsubstantive changes.

SECTION 2. Amends Section 823.054(b), Insurance Code, as follows:

(b) Provides that if the total amount of all transactions is more than one-half of one percent of an insurer's admitted assets, rather than the lesser of one-half of one percent of an insurer's admitted assets or five percent of an insurer's surplus, as of December 31 of the year preceding the date of the transactions, the transactions are considered to be material.

SECTION 3. Amends Chapter 823, Insurance Code, by adding Subchapter I-1, as follows:

SUBCHAPTER I-1. GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS

Sec. 823.421. DEFINITIONS. Defines "foreign regulatory official," "group-wide supervisor," and "internationally active insurance group."

Sec. 823.422. CLASSIFICATION AS INTERNATIONALLY ACTIVE INSURANCE GROUP. (a) Provides that for purposes of this subchapter and except as provided by Subsection (c), an insurance holding company system (system) is an internationally active insurance group if the insurance holding company system writes premiums in at least three countries; writes at least 10 percent of the system's total gross written premiums outside the United States; and for the period described by Subsection (b) has average total assets of at least \$50 billion or writes total gross premiums of an average of at least \$10 billion.

(b) Provides that the period applicable to Subsection (a)(3) is the three most recent fiscal years of the system that precede the fiscal year in which the determination under this section is made; or if the system has been in operation for less than that period, the period for which the system has been in operation.

(c) Authorizes the commissioner to waive a requirement described by Subsection (a) in determining a system to be an internationally active insurance group if the commissioner determines that the system substantially satisfies Subsection (a).

(d) Authorizes the commissioner to publish on the Texas Department of Insurance (TDI) Internet website a list of insurance holding company systems classified as internationally active insurance groups under this section.

Sec. 823.423. DESIGNATION OF GROUP-WIDE SUPERVISOR. (a) Requires the commissioner, in cooperation with other state, federal, and international regulatory agencies and in consultation with the internationally active insurance group, to designate a single group-wide supervisor for each group. Prohibits the commissioner from designating a group-wide supervisor before the period for additional information under Section 823.425 has expired.

(b) Requires the commissioner to designate the commissioner or a foreign regulatory official as the group-wide supervisor under Subsection (a).

(c) Authorizes the commissioner, at the request of a system registered under Subchapter B (Registration) that does not otherwise meet the requirements of an internationally active insurance group under Section 823.422, to designate a group-wide supervisor for the system.

Sec. 823.424. INFORMATION FOR DESIGNATION. Authorizes the commissioner to order the production of information in accordance with Subchapter H (Examinations) necessary to make a designation under Section 823.423 from an insurer registered under Subchapter B that is part of the internationally active insurance group.

Sec. 823.425. NOTICE OF DESIGNATION; ADDITIONAL INFORMATION FOR DESIGNATION. (a) Defines "ultimate controlling person."

(b) Requires the commissioner, before making a designation under Section 823.423, to provide written notice that the commissioner is making a designation under that section to each insurer registered under Subchapter B that is a member of the system to be designated an internationally active insurance group; and the ultimate controlling person of the system.

(c) Requires the system to be designated as an internationally active insurance group to provide any additional information to the commissioner for a designation under Section 823.423 not later than the 30th day after the date the group receives the notice described by Subsection (b).

Sec. 823.426. DESIGNATION OF COMMISSIONER. (a) Authorizes the commissioner to designate the commissioner as the group-wide supervisor for any internationally active insurance group under Section 823.423.

(b) Requires the commissioner, except as provided by Section 823.427, to designate the commissioner as the group-wide supervisor of an internationally active insurance group under Section 823.423 if the group conducts substantial insurance operations in this state.

Sec. 823.427. DESIGNATION OF FOREIGN REGULATORY OFFICIAL. (a) Requires the commissioner to designate a foreign regulatory official as the group-wide supervisor under Section 823.423 if the foreign regulatory official acts as the group-wide supervisor.

(b) Authorizes the commissioner to designate a foreign regulatory official as the group-wide supervisor if the foreign regulatory official consents to the designation and the internationally active insurance group meets certain conditions.

(c) Requires the commissioner to consider certain information relating to the foreign regulatory official and the system in determining whether a foreign regulatory official is a more appropriate group-wide supervisor under Subsection (b)(2)(B).

Sec. 823.428. CHANGE OF DESIGNATION. Authorizes the commissioner to change the designation of a foreign regulatory official as the group-wide supervisor under Section 823.423 in the event of certain material changes relating to the internationally active insurance group.

Sec. 823.429. POWERS OF COMMISSIONER AS GROUP-WIDE SUPERVISOR. (a) Provides that this section applies only to an internationally active insurance group for which the commissioner is designated as the group-wide supervisor.

(b) Authorizes the commissioner to assess the enterprise risks within the internationally active insurance group to ensure that the material financial condition and liquidity risks to the members of the group that are engaged in the business of insurance are identified by management and reasonable and effective mitigation measures are in place.

(c) Authorizes the commissioner to request from any member of the internationally active insurance group information necessary and appropriate to assess enterprise risk, including information about the members of the group

regarding governance, risk assessment, and management; capital adequacy; and material intercompany transactions.

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

(e) Authorizes the commissioner to communicate with other state, federal, and international regulatory agencies for members of the internationally active insurance group and share relevant information subject to Section 823.011 (Confidentiality of Information), through supervisory colleges described by Section 823.0145 (Supervisory Colleges) or otherwise.

(f) Authorizes the commissioner to enter into agreements, including an agreement for resolving disputes with other regulatory officials, with or obtain documentation related to the commissioner's role as group-wide supervisor from any insurer registered under Subchapter B, any member of the internationally active insurance group; and any other state, federal, or international agencies regulating members of the internationally active insurance group.

(g) Authorizes the commissioner to perform any other group-wide supervision activity consistent with this subchapter or considered necessary by the commissioner for the administration of this subchapter.

(h) Prohibits an agreement entered into or documentation obtained under Subsection (f) from being used as evidence in any proceeding to show that any foreign insurer or a person within a system is doing business in this state or is otherwise subject to this state's jurisdiction.

Sec. 823.430. POWERS OF COMMISSIONER WHEN FOREIGN REGULATORY OFFICIAL IS GROUP-WIDE SUPERVISOR. (a) Provides that this section applies only to an internationally active insurance group for which a foreign regulatory official is designated as the group-wide supervisor under Section 823.423.

(b) Authorizes the commissioner 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 to obtain information related to the foreign regulatory official's role as group-wide supervisor.

(c) Authorizes the commissioner, if the commissioner designates a foreign regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners as the group-wide supervisor, to reasonably cooperate with regulatory actions taken by the supervisor, through supervisory colleges described by Section 823.0145 or otherwise, if the commissioner's cooperation is in compliance with the laws of this state and where applicable, the foreign regulatory official also recognizes and cooperates with the commissioner's regulatory actions as a group-wide supervisor for other internationally active insurance groups.

(d) Authorizes the commissioner to refuse recognition of and cooperation with the foreign regulatory official's regulatory action where recognition and cooperation under Subsection (c)(2) is not reasonably reciprocal.

Sec. 823.431. EXPENSES OF COMMISSIONER. Requires a registered insurer subject to this subchapter to pay the reasonable expenses of the commissioner's participation in

the administration of this subchapter, including the engagement of attorneys, actuaries, and other professionals and reasonable travel expenses.

SECTION 4. (a) Makes application of Section 823.011, Insurance Code, as amended by this Act, prospective.

(b) Makes application of Section 823.054, Insurance Code, as amended by this Act, prospective.

SECTION 5. Effective date: upon passage or September 1, 2017.