

CHAPTER 813

H.B. No. 1911

AN ACT

relating to the acquisition of control of a domestic insurer and payment of dividends.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (l), Section 2, Article 21.49-1, Insurance Code, is amended to read as follows:

(l) **Voting Security.** The term "voting security" means any security or other instrument which has the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the State Board of Insurance deems to be of similar nature and considers necessary or appropriate, by which such rules and regulations as it may prescribe in the public interest deems to treat as a voting security [shall include any security convertible into or evidencing a right to acquire a voting security].

SECTION 2. Section 5, Article 21.49-1, Insurance Code, is amended to read as follows:

Sec. 5. **ACQUISITION OR RETENTION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER.** (a) **Filing Requirements [of Public Tenders or Offers].** (1) [Except as otherwise provided in Subsection (b) of this Section, no person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, from the shareholders, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner herein after prescribed.

(2) For purposes of this section a "domestic insurer" shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

[(b) **Filing Requirements of Negotiated Agreements.**] No person shall (i) [who has executed or entered into a privately negotiated agreement or contract directly with shareholders of a domestic insurer to] acquire in any manner any voting security of a domestic [such] insurer if such person is, or [by which,] after such acquisition [the consummation thereof, such person] would be, directly or indirectly, in control of a domestic insurer or (ii) otherwise acquire control of [or by conversion or by exercise of any right to acquire, be in control of such insurer, shall consummate or make effective any such agreement or control, or acquire any further right, title, or interest in such voting security,] or exercise any control over a domestic [such] insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (b) [(e)] of this section and such [agreement, contract, and] acquisition of control has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (a) [(b)] shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent by the acquiring party to the domestic insurer [but shall not be required to be sent to the insurer's shareholders].

(2) For purposes of this section, a "domestic insurer" includes any person controlling a domestic insurer unless such person is either directly or through its affiliates

primarily engaged in business other than the business of insurance. A person controlling a domestic insurer shall not be considered primarily engaged in the business of insurance if:

(i) the assets of all insurance subsidiaries constitute less than 20 percent of such person's consolidated assets;

(ii) the gross revenues including investment income of all insurance subsidiaries constitute less than 20 percent of such person's consolidated gross revenues; and

(iii) the stockholders' equity of all insurance subsidiaries constitutes less than 20 percent of such person's consolidated stockholders' equity.

(b) [(e)] Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of *the* [each] person by whom or on whose behalf the [merger or other] acquisition of control referred to in [either] Subsection (a) [or (b)] is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation or employment and all material occupations, employments, offices, and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof [shall] have been in existence; a [an informative] description, complete in all material respects, of any [the] business [intended to be done by] such person intends to commence [and such person's subsidiaries]; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of funds or other [the] consideration used or to be used in effecting the [merger or other] acquisition of control, a description of any transaction wherein funds or other consideration were or are to be obtained for [any] such purpose, and the identity of persons furnishing such funds or other consideration, provided, however, that where a source of such funds or other consideration is provided by a commercial lender in the [a loan made in the lender's] ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3)(i) fully audited financial information as to the earnings and financial condition of *the* [each] acquiring party for the preceding three [five] fiscal years [of each such acquiring party] (or for such lesser period as *the* [such] acquiring party and any predecessors thereof shall have been in existence), and similar unaudited financial information as of a date not earlier than 120 [90] days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the acquiring party that (A) such unaudited financial statement is true and correct, as of its date, and (B) there has been no material change in financial condition, as defined by Section 3 of this article, from the date of the financial statement to the date of the affidavit or certification. Provided, however, if [unless] such acquiring party is an individual person, such person [in which case he] shall provide such personal unaudited financial information as required by the commissioner;

(ii) if an acquiring party is an insurer actively engaged in the business of insurance and licensed to do business in this State, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state;

(iii) additional financial information in the form or substance as required by the commissioner which is material to the finding required by Subsection (c)(1)(iii); and

(iv) any financial information required under this Subsection (b)(3) may be waived by the commissioner if such information is not deemed material;

(4)(i) any plans or proposals which the [each] acquiring party may have to cause the insurer to pay dividends or make other distributions, to liquidate such insurer, to sell any of its assets, to [or] merge or consolidate it with any person, [or] to make any other material change in its business or corporate structure or management, or to cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party; and

(ii) any other arrangement or agreement, oral or written, entered into by an acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months;

(5) the number of shares of any voting security referred to in [either] Subsection (a) [or (b)], which the [each] acquiring party or any of its affiliates proposes to acquire, and the terms of the [offer, request, invitation, agreement, or] acquisition referred to in [either] Subsection (a) [or (b), and a statement as to the method by which the fairness of the proposal was arrived at];

(6) the amount of each class of any voting security referred to in [either] Subsection (a) [or (b)] which is beneficially owned or of which the acquiring party or any of its affiliates has a right to acquire beneficial ownership [concerning which there is a right to acquire beneficial ownership by each acquiring party];

(7) a copy [full description] of any written or confirmed description of any oral agreements [contracts], arrangements, or understandings [understanding] with respect to any voting security referred to in [either] Subsection (a) [or (b)] in which the [any] acquiring party or any of its affiliates is involved, including without limitation any such agreement, arrangement, or understanding relating to [but not limited to] transfer of any of the voting securities, joint ventures, loan or option agreements [arrangements], puts or calls, guarantees of loans, guarantees against loss, [or] guarantees of profits, division of losses or profits, or the giving or withholding of proxies. [Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into];

(8) a description of the purchase of any voting security referred to in [either] Subsection (a) made [or (b)] during the 12 calendar months preceding the filing of the statement by the [any] acquiring party, any of its affiliates, or any of the acquiring party's directors or executive officers, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a copy [description] of any written or confirmed description of any oral recommendations to purchase any voting security referred to in [either] Subsection (a) [or (b)] made during the 12 calendar months preceding the filing of the statement[,] by the [any] acquiring party or any of its affiliates, or by anyone based upon interviews with or at the suggestion of the [such] acquiring party or any of its affiliates;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and [contracts or] agreements to acquire or exchange any voting securities referred to in [either] Subsection (a) [or (b)], and (if distributed) of additional soliciting material relating thereto;

(11) a copy [the terms] of any written or confirmed description of any oral agreement, arrangement, [contract] or understanding made with any broker-dealer as to the solicitation of voting securities referred to in [either] Subsection (a) [or (b)] for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate to [for] the protection of policyholders [and securityholders] of the insurer or in the public interest.

If the person required to file the statement referred to in [either] Subsection (a) [or (b)] is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) for an individual person shall be given with respect to each partner of such partnership or limited

partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in ~~either~~ Subsection (a) ~~or (b)~~ is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, *and the information for an individual person required therein with respect thereto of each executive officer and director of such corporation*, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to *the domestic* ~~such~~ insurer within two business days after the person learns of such change.

~~(d) Alternative Filing Materials. If any offer, request, invitation, contract, agreement, or acquisition referred to in either Subsection (a) or Subsection (b) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended, or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in either Subsection (a) or Subsection (b) may utilize such documents in furnishing the information called for by that statement.~~

(c) ~~(e)~~ Approval by Commissioner~~;~~ ~~Hearings~~. (1) The commissioner shall approve any ~~such~~ acquisition of control referred to in ~~either~~ Subsection (a) ~~or Subsection (b)~~ unless, after a public hearing thereon, he finds that:

(i) *immediately upon* ~~after~~ the change of control the domestic insurer referred to in ~~either~~ Subsection (a) ~~or Subsection (b)~~ would not be able to satisfy the requirements for the issuance of a *new certificate of authority or a license to write the line or lines of insurance for which it is presently licensed*;

(ii) the effect of such acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of *the* ~~any~~ acquiring party is such as might jeopardize the financial stability of the *domestic* insurer, or prejudice the interest of its policyholders ~~or the interest of any remaining securityholders who are unaffiliated with such acquiring party~~;

(iv) ~~the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;~~

~~(v)~~ the plans or proposals which the acquiring party has to liquidate the *domestic* insurer, *cause it to declare dividends or make other distributions*, sell *any* of its assets, ~~or~~ consolidate or merge it with any person, ~~or to~~ make any ~~other~~ material change in its business or corporate structure or management, *or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party*, are unfair, prejudicial, hazardous, or unreasonable to policyholders ~~or stockholders~~ of the insurer and not in the public interest;

(v) ~~(vi)~~ the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the *domestic* insurer are such that it would not be in the interest of policyholders of the *domestic* insurer and of the public to permit the merger or ~~other~~ acquisition of control; or

(vi) *the* ~~(vii) such~~ acquisition of control or merger would violate any law of this State, ~~or~~ any other state, or ~~of~~ the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by ~~either~~ Subsection (a) ~~or Subsection (b)~~ is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer *unless such person and the domestic insurer waive such notice. The* ~~Not less than 10 days' notice of such public hearing shall be given by the~~ person filing the statement *and the domestic insurer shall furnish notice of the public hearing* to such other persons as may be designated by the commissioner

within the time and manner specified by the commissioner. The acquiring party shall have the burden of providing sufficient competent evidence for the commissioner to make the determinations required under Subsection (c)(1). [The insurer shall give prompt notice of the hearing to its securityholders as prescribed in Subsection (f) hereof.] The commissioner shall make a determination within 30 days after the conclusion of such hearing. ~~[At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.]~~

(3) *The commissioner may retain any attorney, actuary, accountant, or other expert not otherwise a member of the commissioner's staff as may be reasonably necessary to assist in analyzing the financial matters involved with any merger or acquisition of control proposed under this section. All reasonable expenses incurred in connection herewith shall be borne by the acquiring party.*

(d) ~~Notices [(f) Mailings to Shareholders]; Payment of Expenses. [Except as provided in Subsection (b), all statements, amendments, or other material filed pursuant to Subsection (a), (b), or (c), and all notices of public hearings held pursuant to Subsection (e), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices.]~~ The expenses of mailing *any notices required by the commissioner* shall be borne by the person making the filing. As security for the payment of such expenses, such person shall *at the request of the commissioner or the domestic insurer* file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(e) ~~(g)~~ Exemptions. The provisions of this section shall not apply to:

(1) any *acquisition* ~~[offers, requests, invitations, agreements, or acquisitions]~~ by a ~~[the]~~ person ~~[referred to in Subsection (a)]~~ who is a broker-dealer under state or federal securities laws of any voting security ~~[referred to in Subsection (a)]~~ which, immediately prior to consummation of such ~~[offer, request, invitation, agreement, or]~~ acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in *an* acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the *domestic* insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (c) ~~[(e)]~~ of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if he finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; ~~[or]~~

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section;

(4) any *acquisition of a voting security of a domestic insurer by a person in control of such domestic insurer if, after such acquisition, such person, directly or indirectly, owns or controls less than 50 percent of the then issued and outstanding voting securities of such domestic insurer;*

(5) any acquisition of a voting security of a domestic insurer by a person that, directly or indirectly, owns or controls as much as 10 percent but less than 50 percent of the then issued and outstanding voting securities of such domestic insurer, and such person would, after such acquisition, directly or indirectly, own or control 50 percent or more of the then issued and outstanding voting securities of such domestic insurer, provided such person has made written application for such exemption and the commissioner by order has determined that such acquisition will not jeopardize the financial stability of the domestic insurer, prejudice the interests of its policyholders, or adversely affect the public interest; or

(6) any acquisition of a voting security of a domestic insurer by a person that, prior thereto, directly or indirectly, owns or controls more than 50 percent of the then issued and outstanding voting securities of such domestic insurer.

(f) ~~(h)~~ Retention of Control. (1) The following conditions affecting any controlled domestic insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the domestic insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended, or any other antitrust law of this State by the domestic insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the domestic insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the domestic insurer's stockholders.

(g) ~~(i)~~ Duty of Insurer. *Each insurer authorized to do business in this State shall, within 30 days after any event requiring notice pursuant to this section, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer. However, the provisions of this subsection shall not apply to any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article [Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition of its control is subject to Subsections (a), (b), (c), and (d) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer].*

(h) ~~(j)~~ Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(i) ~~(k)~~ Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting

an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

SECTION 3. Article 3.11, Insurance Code, is amended to read as follows:

Art. 3.11. DIVIDENDS; HOW PAID. No life insurance company shall declare or pay any dividends to its policyholders, except from the expense loading and profits made by such company; provided, however, any such company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from the expense loading shall not be discriminatory as between policyholders. This shall not prohibit the issuance of policies guaranteeing, by coupons or otherwise, definite payments or reductions in premiums, but any such guarantee contained in policies or coupons issued after the effective date of this Act shall be treated as a definite contract benefit and so valued according to the reserve requirements of this Chapter using in the case of policies or coupons issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) reserve valuation net premium for such benefits which is a uniform percentage of the gross premium, provided that any policy containing such a contract benefit may be valued on a basis which provides for not more than one (1) year preliminary term insurance, and using in the case of policies or coupons issued on or after the operative date of Article 3.44a the commissioner's reserve valuation method as defined in Article 3.28. No such company shall declare or pay any dividends to its stockholders, except from the *company's* earned surplus *as defined by the State Board of Insurance* [~~of said company, as defined in, and in the manner authorized or provided by the Texas Business Corporation Act~~]. Nothing in this Section with respect to reserves shall apply to any policy issued prior to September 7, 1955.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 20, 1987, by the following vote: Yeas 133, Nays 0, 2 present, not voting. Passed by the Senate on May 27, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective June 18, 1987.