

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §7.209

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §7.209 concerning the Form A statement, the statement regarding the acquisition or change of control of a domestic insurer. The proposed amendments are necessary to clarify that information submitted to TDI as part of the Form A statement that is required by statute is subject to public inspection while information not required by statute that is requested by TDI to evaluate enterprise risk to the insurer is confidential.

EXPLANATION. TDI amended the holding company rules in May of 2013, to implement statutory changes to the Holding Company Systems Act, Insurance Code Chapter 823, by SB 1431, 82nd Legislature, Regular Session (2011), and to adopt rules consistent with the updated National Association of Insurance Commissioners (NAIC) model regulations. The intent of the statutory amendments was to strengthen TDI's regulatory tools to evaluate enterprise risk that may develop in insurance holding company systems. The statutory amendments improved TDI's access to information about the financial condition of insurance holding company systems in response to the nation's recent financial crisis and enhanced TDI's ability to protect the interests of the public and the state.

The proposed amendments are meant to clarify that sensitive, proprietary, or confidential supplemental information not required by the acquisition statutes but instead requested by the commissioner under Insurance Code §823.201(e) to evaluate enterprise risk to the insurer is not part of the Form A statement. Information provided in response to a request under Insurance Code §823.201(e) is separate from the Form A statement and is confidential under Insurance Code §823.011 and cannot be disclosed to the public except as provided for in Insurance Code §823.011. These changes do not

affect information required by the acquisition statutes and filed with TDI as part of the Form A statement, which is subject to public inspection under Insurance Code §823.154(c). Headings, certifications, and other information not required by the acquisition statutes that are not sensitive, proprietary, or confidential by nature will remain in the Form A statement.

The amendments to §7.209 are proposed to maintain confidentiality of enterprise risk information that is not required by the acquisition statutes as part of the acquisition process. These amendments will give TDI the regulatory tools necessary to assess acquisitions and protect insurance consumers without comprising the confidential information of applicants.

TDI proposes amendments to subsection (a) to address the separation of information an applicant must submit as part of the Form A statement from supplemental information an applicant must submit for TDI to evaluate enterprise risk to the insurer. As amended, only information required under subsections (b) – (p), including information concerning divestiture of control, is required as part of the Form A statement and subject to public inspection. Supplemental information required under proposed new subsections (r) – (z), which is required to evaluate enterprise risk to the insurer, is confidential and not part of the Form A statement. Also, an additional amendment to subsection (a) provides notice that an applicant may submit its application and supplemental information on a form made available by the department.

TDI proposes to delete Figure 28 TAC §7.209(a) and Figure 28 TAC §7.209(o), and replace the content of those figures with text in (b)(1) and (o)(1) respectively.

TDI proposes amendments to subsections (c)(2) and (3); (d); (e)(1) and (2); (f)(1); (g); (m)(1), (2), and (4); and (o)(3) and (4), and deletion of subsections (f)(2) and (4) and (m)(3)(B) and (5) to separate requirements regarding submission of sensitive, proprietary, or confidential information not required by the acquisition statutes from the information an applicant must submit as part of the Form A statement.

Requirements addressing submission of this information are deleted from these provisions and incorporated into new subsections (r)(1) and (2); (s)(1) and (2); (t)(1) and (2); (u)(1) – (3), (v); (w)(1) – (5); (y)(1) and (2); and (z), which provide for applicant submission of information to evaluate enterprise risk to the insurer.

TDI proposes amendments to subsection (d) and new subsection (s)(1) to clarify that both direct and indirect owners of 10 percent or more of the voting securities of an applicant must furnish information requested under Insurance Code §823.201(b).

TDI proposes amendments to subsection (e)(3) to renumber it as (e)(2) and add language to clarify that the applicant must specifically request that the identity of the lender be kept confidential and not include the identity of the lender with the information required by the section.

TDI proposes an amendment to delete subsection (f)(3) because this provision addresses determining whether a domestic insurer complies with 28 TAC Chapter 22, but this information is not necessary to assess an acquisition.

TDI proposes an amendment to delete language in subsection (i) that requires an applicant to identify persons with whom voting contracts, arrangements, or understandings have been made.

TDI proposes an amendment to subsection (m)(2) to allow an applicant to submit statements already filed with TDI, NAIC, or another regulatory agency that easily can be accessed by electronic link as an alternative to submission of hard copy or electronic attachments.

TDI proposes amendments to delete the current subsection (m)(5), which contains language stating that certain annual reports are not part of the required material submitted to TDI, but are subject to public inspection during the pendency of the application, because the reports are confidential as requested to evaluate enterprise risk.

TDI proposes amendments to subsection (o)(1) to delete the request for email addresses, because email addresses for members of the public communicating electronically with a government agency are confidential under Government Code §552.137 and not subject to public inspection.

TDI proposes an amendment to subsection (o)(4) to add a provision stating that supplemental information concerning divestitures under subsection (y) is required to evaluate enterprise risk to the insurer and must be submitted separately.

TDI proposes an amendment to subsection (p) and language in new subsection (z) to add an exception for alien applicants, which must submit a certification acceptable in their jurisdiction.

TDI proposes new subsection (q) to reflect that information required to evaluate enterprise risk to the insurer under subsections (r) – (z) is confidential and not part of the Form A statement.

TDI proposes provisions in new subsections (r)(2), (s), and (w)(1) and (2) to add requirements for the submission of the ultimate controlling person's organizational chart, biographical data, fingerprints, and financial projections and statements, respectively, and to clarify that an affiliate or owner of 10 percent or more of the voting securities includes the ultimate controlling person.

TDI proposes provisions in new subsection (s)(2) to add requirements that the applicant and other persons listed in the subsection provide an independent third party background investigation report from a list of vendors furnished by the NAIC or as acceptable to the commissioner. The report gives TDI more data to make an informed decision about the applicant and other persons in addition to fingerprinting. A current version of the report is necessary because there is no system in place to verify an event subsequent to the date of the report.

TDI proposes new subsection (u)(2) to add a requirement that the applicant must describe its business plans for the insurer and the ultimate controlling person's business plans for the holding company system; increase the length of time from 24 months, as required by subsection (f)(2) of the

current rule, to three years or time of debt service to be consistent with the financial statement requirement; allow the applicant to file its business plan on the NAIC Uniform Certificate of Authority Application; and replace the word “increase” with “change” to clarify any change in capital or surplus.

TDI proposes a provision in new subsection (w)(1) to clarify that financial projections are not required for individuals, and the commissioner may provide for a lesser time requirement for publicly-traded companies.

TDI proposes a provision in new subsection (w)(2) to clarify that financial statements of the ultimate controlling person are only confidential if the person is not a publicly-traded company.

TDI proposes new subsection (x) to add a requirement that the applicant describe the applicant and ultimate controlling person's cybersecurity plans and the future cybersecurity plans for the insurer, to evaluate enterprise risk to the insurer.

TDI proposes new Figure 28 TAC §7.209(z) to add a separate certification for the supplemental information submitted to the commissioner to evaluate enterprise risk to the insurer.

TDI proposes amendments to renumber subsections where appropriate. Finally, TDI proposes amendments that are nonsubstantive in nature to conform with TDI's writing style guides.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Doug Slape, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Mr. Slape does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Slape has also determined that for each year of the first five years the proposed amendments will be in effect, there will be public benefits resulting from the proposal. The public benefit of the proposed amendments will be to foster robust disclosures to better protect the public, because acquiring parties will be more likely to provide confidential information that TDI can use to accurately assess acquisitions if they know that the information they provide to TDI to evaluate enterprise risk to the insurer will remain confidential. There is no anticipated costs to persons required to comply with this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small or micro businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. This proposal does not have any economic impact on small or micro businesses, so no economic impact statement or regulatory flexibility analysis is required.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would

otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal, your written comments must be postmarked no later than 5 p.m., Central time, on May 31, 2016. Please send comments either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov. Please simultaneously submit an additional copy of the comments by mail to Mike Arendall, Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to Mike.Arendall@tdi.texas.gov. If you wish to request a public hearing on this proposal, you must submit a separate request by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments to §7.209 are proposed under Insurance Code §§823.001(c)(2), 823.011(a)(1), 823.012(a), 823.154(a) and (c), 823.201(e), 823.205(b)(9), and 36.001.

Section 823.001(c)(2) provides that the purpose of Insurance Code Chapter 823 is to promote the public interest by requiring disclosure of pertinent information relating to and approval of changes in control of an insurer.

Section 823.011(a)(1) provides that confidentiality of information includes documents and copies of documents that are reported or otherwise provided under Insurance Code Chapter 823, Subchapter B or C; or §823.201(d) or (e).

Section 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Section 823.154(a) provides that 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, the acquiring person must file with the commissioner a statement that satisfies the requirements of Insurance Code Chapter 823, Subchapter E; the acquisition or divestiture of control must be approved by the commissioner in accordance with Insurance Code Chapter 823, Subchapter D; and if a person is initiating a divestiture of control, the divesting person must file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule.

Section 823.154(c) provides that a statement or notice filed under the 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.

Section 823.201(e) provides that the acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system must provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

Section 823.205(b)(9) provides that a statement required under Insurance Code §823.154 must contain any additional information the commissioner by rule prescribes as necessary or appropriate to protect policyholders of the insurer whose voting securities are to be acquired, or the public.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §7.209 affect the following statutes: Insurance Code §§823.001(c)(2), 823.011(a)(1), 823.012(a), 823.154(a) and (c), 823.201(e), and 823.205(b)(9).

TEXT.

§7.209. Form A.

(a) Statement regarding the acquisition or change of control of a domestic insurer. Submit information concerning the acquisition or change of control of a domestic insurer as specified in subsections (b) – (n) and (p) of this section. Provide the information required in subsections (o) and (p) of this section for a divestiture of control. Separately submit supplemental information, necessary to evaluate the enterprise risk to the insurer under Insurance Code §823.201(e), as specified in subsections (r) – (z) of this section. An applicant may submit its application and supplemental information on a form made available by the department.

[Figure: 28 TAC §7.209(a)]

[_____ by _____]
[Name of Domestic Insurer — Name of Acquiring Person (Applicant).]

[Filed with the Texas Department of Insurance, date: _____, 20__.]

~~[Name, title, address, [email,] and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:~~

(b) Insurers and method of acquisition.

(1) State the name of the acquiring person (applicant), the date the application is filed, and the name, title, address, and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

(c) Identity and background of the applicant.

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any predecessors have been in existence and fully describe any business the person intends ~~[and any of its affiliates intend]~~ to commence.

~~[(3) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is~~

~~maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.]~~

(d) Identity and background of individuals associated with the applicant.

~~[(1) Furnish only the information requested [biographical data] under Insurance Code §823.201(b) for the applicant if the person is an individual, or for all persons who are directors, executive officers, or direct or indirect owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual[, with the biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings)].~~

~~[(2) The applicant if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct)].~~

(e) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the

parties, the relationship, if any, between the borrower and the lender, and the amounts borrowed or to be borrowed [~~, and copies of all agreements, promissory notes, and security arrangements~~].

~~[(2) Explain the criteria used in determining the nature and amount of the consideration.]~~

~~[(3)]~~ (2) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant [~~he or she~~] must specifically request that the identity of the lender be kept confidential and not include the identity of the lender with the information required by this section.

(f) Future plans for insurer.

(1) Describe [~~Provide a business plan which describes~~] any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay dividends or make other distributions, liquidate the insurer, sell any of its assets, merge or consolidate it with any person or persons, make any other material change in its business operations or corporate structure or management, or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party [~~, and describe any financial or employment guarantees given to present and contemplated management~~].

~~[(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, including, but not limited to, change of location, change of name, increase in capital and/or surplus, reinsurance activity, type of business to be written, and anticipated premium volume.]~~

~~[(3) Provide:]~~

~~[(A) an affirmative statement of applicant's and the domestic insurer's compliance with Chapter 22 of this title (relating to Privacy); and]~~

~~[(B) if applicant proposes revisions to the domestic insurer's current privacy policy, the proposed revised privacy policy along with any revised notices required under §22.12 of this title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms applicant will be required to provide to maintain compliance with Chapter 22 of this title.]~~

~~[(4) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.]~~

~~(2)[(5)] Describe any other arrangement or agreement, oral or written, entered into by any acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months.~~

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant, its affiliates, and any person listed in subsection (d) of this section plan to acquire, and the terms of the offer,

request, invitation, agreement, or acquisition [~~and a statement of the method by which the fairness of the proposal was determined~~].

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in subsection (d) of this section.

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any persons listed in subsection (d) of this section is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. [~~The description must identify the persons with whom the contracts, arrangements, or understandings have been made.~~]

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

(k) Recent recommendations to purchase. Provide a copy of any written, or a confirmed description of any oral, recommendations to purchase any voting security of the insurer made by the applicant, any of its affiliates, or any person listed in subsection (d) of this section, or by anyone based on interviews with or at the suggestion of the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement.

(l) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers.

(m) Financial statements and exhibits.

(1) ~~[Financial statements, exhibits, and financial projections of the insurer and the applicant must be attached to this statement as an appendix, but list under] Under~~ this subsection provide only a list of the financial statements, financial projections, and exhibits [so attached] submitted under subsection (w) of this section. [Projections of the domestic insurer and the applicant must be for a period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control and any additional document or papers required by regulation].

(2) The financial statements must include the annual financial statements of the applicant [persons identified in subsection (c)(3) of this section] for the preceding three fiscal years (or for such lesser period as the applicant ~~[and its affiliates]~~ and any predecessors have been in existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that the unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, from the date of the financial statement to the date of the affidavit or certification. The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business. A link to where the information is located can be provided as an alternative to hard copy or electronic attachments with the Form A. This only pertains to files that

already have been filed with the department, the National Association of Insurance Commissioners, or another regulatory agency that easily can be accessed electronically.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must be made in accord with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the certificate is not available, then the financial statement must be sworn to by the applicant as correctly reflecting its financial condition, and in that case, the commissioner at the commissioner's discretion may require the financial statement to be certified by an independent public accountant.

~~(4)~~~~(A)~~ If the applicant is an insurer which is 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 which are in accord with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state.

~~[(B) If the applicant is an individual person, the person must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he or she is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles and must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance~~

~~sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.]~~

~~(5)[(4)] File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material[; and proposed employment, consultation, advisory, or management contracts concerning the insurer].~~

~~(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements--Filing Requirements) must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years. These reports are for review of the department, and are not a part of the material required to be submitted under the Act. However, the materials will be open for public inspection at the offices of the department during the pendency of the application.]~~

(n) Enterprise risk management. Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F under Insurance Code §823.0595, as applicable, within 15 days after the end of the month in which the acquisition of control occurs.

(o) Notice regarding divestiture of control [~~divestiture of control~~] under Insurance Code §823.154.

[Figure: 28 TAC §7.209(o)]

[_____ by _____]
[Name of Domestic Insurer — Name of Divesting Person (Applicant).]

[Filed with the Texas Department of Insurance, date: _____, 20__.]

~~[Name, title, address, [email,] and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:~~

(1) Provide the name of the domestic insurer and divesting person (applicant), the date the application is filed, and the name, title, address, [email,] and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) Provide notice that applicant is divesting control of the above named insurance companies [company(ies)] and describe how control is being divested and include the percentage of control being divested.

~~[(3) State the name and address of the recipient(s) of the divestiture of control.]~~

~~[(4) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.]~~

~~[(3)][(5)] Describe and state the name of the person in control of the insurer before and after the divestiture of control.~~

(4) Supplemental information required under Insurance Code §823.201(e) to evaluate the enterprise risk to the insurer must be submitted separately under subsection (y) of this section.

(p) Signature and certification. Signature and certification of the Form A in the following form, except for alien applicants, which must submit a certification acceptable in their jurisdiction:

Figure: 28 TAC §7.209(p)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823,

_____ has caused this application to
Name of Applicant

be signed on its behalf in the City of _____ and State of _____,

on _____, 20__ .

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____ of _____,
(Title) (Name of Applicant)

who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____, County, _____

(q) Supplemental information to evaluate enterprise risk. Separately submit supplemental information, necessary to evaluate the enterprise risk to the insurer under Insurance Code §823.201(e), as specified in subsections (r) – (z) of this section, which is confidential under Insurance Code §823.011.

(r) Identity and background of the applicant to evaluate enterprise risk.

(1) Fully describe any business that affiliates of the applicant intend to commence.

(2) Furnish a chart or listing clearly identifying the interrelationships between the ultimate controlling party, applicant, and all other affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any

person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

(s) Identity and background of individuals associated with the applicant to evaluate enterprise risk.

(1) Provide biographical data of the applicant if the person is an individual, or for all persons who are directors, executive officers, or direct or indirect owners of 10 percent or more of the voting securities of the ultimate controlling person and applicant if the ultimate controlling person or applicant is not an individual, in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(2) The applicant, if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the ultimate controlling person and applicant if the ultimate controlling person and applicant are not individuals, must comply with the fingerprint requirements of Chapter 1, Subchapter D of this title, and provide an independent third party background investigation report from a list of vendors furnished by the National Association of Insurance Commissioners or as acceptable to the commissioner.

(t) Nature, source, and amount of funds or other consideration to evaluate enterprise risk.

(1) Provide copies of all agreements, promissory notes, and security arrangements as described in subsection (e)(1) of this section.

(2) Explain the criteria used in determining the nature and amount of the consideration.

(u) Future plans for insurer to evaluate enterprise risk.

(1) Describe any financial or employment guarantees given to present and contemplated management as part of the plans or proposals submitted under subsection (f)(1) of this section.

(2) Describe applicant's business plans for the domestic insurer and the ultimate controlling person's business plans for the holding company system covering the period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control including, but not limited to, change of location, change of name, change in capital or surplus, reinsurance activity, type of business to be written, and anticipated premium volume. Applicant may provide the business plan on the National Association of Insurance Commissioners Uniform Certificate of Authority Application.

(3) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(v) Voting securities to be acquired. Provide a statement of the method by which the fairness of the proposal to acquire the voting securities was determined under subsection (g) of this section to evaluate enterprise risk.

(w) Financial statements and exhibits to evaluate enterprise risk.

(1) Provide the financial projections for the ultimate controlling person, applicant, and domestic insurer for a period equal to the greater of three years or the length of time of debt service required by the applicant in its acquisition of control and any additional document or papers required by regulation, except that financial projections are not required for individuals and the commissioner may provide for a lesser period for publicly-traded companies.

(2) Provide the financial statements of the ultimate controlling person if the ultimate controlling person is not a publicly-traded company. The financial statements of the ultimate controlling person of the applicant as described in subsection (m)(2) and (3) of this section must include their annual financial statements.

(3) Unless exempted by the commissioner, if the applicant is an individual person, the applicant must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that the accountant is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles. Applicant must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

(4) File as exhibits copies of all proposed employment, consultation, advisory, or management contracts concerning the insurer.

(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years.

(x) Cybersecurity information to evaluate enterprise risk. Describe the cybersecurity plan, including systems, policies and procedures, reviews, incident responses, trainings, and strategies of the ultimate controlling person and applicant, and future cybersecurity plans for the insurer.

(y) Notice regarding *divestiture of control* to evaluate enterprise risk.

(1) State the name and address of the recipient(s) of the divestiture of control.

(2) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.

(z) Signature and certification. Signature and certification of the supplemental information in the following form, except for alien applicants, which must submit a certification acceptable in their jurisdiction:

Figure: 28 TAC §7.209(z)

SIGNATURE

Pursuant to the requirements of Insurance Code Chapter 823,

_____ has caused this application to
Name of Applicant

be signed on its behalf in the City of _____ and State of _____,

on _____, 20__.

(Name of Applicant)

(Seal)

By: _____
(Name)(Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

THE STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared

_____ known to me to be the

_____ of _____,
(Title) (Name of Applicant)

who, after being placed on his or her oath, stated that he or she has read the preceding application and that the answers, exhibits and attachments forming it are true and correct as to any factual statements contained.

(Signature)

Sworn to and subscribed before me on _____, 20____, to certify which witness my hand and seal of office.

Notary Public in and for

(Seal)

_____, County, _____

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on April 8, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance