

By: Ellis

S. B. No. 148

A BILL TO BE ENTITLED

1 AN ACT

2 relating to required community investment by certain insurers;
3 providing administrative and civil penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle B, Title 4, Insurance Code, is amended
6 by adding Chapter 428 to read as follows:

CHAPTER 428. COMMUNITY INVESTMENT BY INSURERS

SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 428.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The
10 legislature finds that insurers are a major source of investment
11 capital in this state. Many low-income communities in this state,
12 both rural and urban, need greater access to investment capital for
13 purposes such as small business and community economic development
14 and affordable housing rehabilitation and construction. Financial
15 institutions, another major source of investment capital in this
16 state, are required by the Community Reinvestment Act of 1977 (12
17 U.S.C. Sec. 2901 et seq.) to address the credit needs of low-income
18 communities in the areas they serve. Investments under that Act
19 have helped revitalize low-income communities.

1 requirement that a portion of insurers' investments be made in
2 low-income communities. Thus, insurers have not invested
3 sufficiently in low-income communities in this state. The lack of
4 investment in low-income communities has inhibited economic growth
5 and stability in this state and contributed to their overall
6 economic decline. Insurers that write a significant amount of
7 coverage in this state should be required to invest a part of their
8 total investable assets in low-income communities. Those insurers
9 that generate an average annual written premium of at least \$15
10 million in this state have significant investable assets and have a
11 continuing and affirmative obligation to invest in low-income
12 communities of this state in such a way that those communities will
13 be positively impacted. Investments authorized under this code or
14 by rules adopted under this code are available to insurers in
15 low-income communities. Those investments are overlooked business
16 opportunities that offer competitive rates of return and do not
17 compromise the financial interests of shareholders and
18 policyholders.

19 (c) The purpose of this chapter is to require insurers to
20 make safe and sound investments in low-income communities as an
21 appropriate condition of maintaining a certificate of authority to
22 engage in the business of insurance in this state.

23 Sec. 428.002. DEFINITIONS. In this chapter:

24 (1) "Area median income" means the area median income
25 determined for an area under Section 2306.123, Government Code.

26 (2) "Community development corporation" means a
27 private, nonprofit corporation organized to foster economic growth

1 and revitalization, create small businesses, or develop affordable
2 housing in a defined neighborhood or for a targeted population.

3 (3) "Community development credit union" means a
4 credit union whose basic purpose is the stimulation of economic
5 development activities and community revitalization efforts aimed
6 at benefiting the community it serves, a majority of which are
7 low-income or very low income residents.

8 (4) "Community development loan" means a line of
9 credit, commitment, or letter of credit for affordable housing and
10 economic development needs that are not being met by the private
11 market.

12 (5) "Community development financial institution"
13 means a person, other than an individual or a governmental entity,
14 that:

15 (A) has a primary mission of promoting community
16 development;

17 (B) serves an investment area or targeted
18 population;

19 (C) provides development services in conjunction
20 with equity investments or loans, directly or through a subsidiary
21 or affiliate; and

22 (D) maintains, through representation on its
23 governing board or otherwise, accountability to residents of its
24 investment area or targeted populations.

25 (6) "Direct written premiums" means the gross amount
26 of premiums paid by policyholders for issuance of policies of
27 insurance insuring risks located in this state. The term does not

1 include premiums for reinsurance.

2 (7) "Economically targeted investment" means an
3 investment made by an insurer in a low-income or very low income
4 community that benefits low-income or very low income individuals
5 and has a positive impact on that community. The term includes:

6 (A) equity or debt investments:

7 (i) made through financial intermediaries,
8 including community development financial institutions, community
9 development corporations, loan pools or consortia, microenterprise
10 development organizations, minority- and women-owned financial
11 institutions, and low-income or community development credit
12 unions that primarily lend or facilitate lending in low-income and
13 very low income areas or to low-income and very low income
14 individuals in order to promote community economic development or
15 affordable housing development;

16 (ii) made in businesses or farms with gross
17 annual revenues less than or equal to \$1 million;

18 (iii) made in organizations promoting small
19 and microenterprise businesses;

20 (iv) made in housing affordable to
21 low-income and very low income households and in community economic
22 development in low-income and very low income communities; or

23 (v) made in loan guaranty funds for
24 low-income or very low income housing;

25 (B) community development loans;

26 (C) investments in projects eligible for the
27 federal low-income housing tax credit;

(D) investments in state and municipal obligations that specifically support community economic development or affordable housing to benefit low-income and very low income individuals or communities;

(E) purchases of loans for multifamily affordable housing on the secondary market; and

(F) grants or deferred interest loans to nonprofit organizations engaging in any of the following activities:

(i) affordable rental housing
rehabilitation and new construction;

(ii) supporting or developing facilities that promote community economic development in low-income and very low income areas or for low-income and very low income individuals, such as day-care facilities;

(iii) activities essential to the capacity of low-income and very low income individuals or communities to utilize credit or sustain economic development; or

(iv) small business or microenterprise

(8) "Insurer" means any entity authorized to engage in the business of insurance in this state as an insurance company or authorized to provide insurance in this state, including:

(A) a capital stock insurance company;

(B) a mutual insurance company;

(C) a title insurance company;

(D) a fraternal benefit society;

- (E) a local mutual aid association;
- (F) a statewide mutual assessment company;
- (G) a county mutual insurance company;
- (H) a Lloyd's plan;
- (I) a reciprocal or interinsurance exchange;
- (J) a stipulated premium company;
- (K) a group hospital service company;
- (L) a health maintenance organization;
- (M) a farm mutual insurance company;
- (N) a risk retention group; and
- (O) an eligible surplus lines insurer.

1 [Sections 428.003-428.050 reserved for expansion]

2 SUBCHAPTER B. MANDATORY COMMUNITY INVESTMENT

3 Sec. 428.051. MINIMUM INVESTMENT PERCENTAGE. For purposes
4 of this subchapter, the minimum investment percentage for each
5 insurer admitted to engage in the business of insurance in this
6 state and authorized to write life, health, or accident insurance
7 in this state is one percent, and for each insurer admitted to
8 engage in the business of insurance in this state and authorized to
9 write insurance in this state other than life, health, or accident
10 policies is one-half of one percent.

11 Sec. 428.052. METHOD OF INVESTMENT. Economically targeted
12 investments may be made directly by insurers, through
13 intermediaries, or through partnerships, consortia, or other
14 entities organized by insurers or other financial institutions.

15 Sec. 428.053. ANNUAL REQUIRED INVESTMENT. (a) An admitted
16 insurer that wrote at least \$15 million of direct written premiums
17 in the 2009 calendar year shall invest in economically targeted
18 investments during the 2010 calendar year not less than an amount
19 equal to the applicable investment percentage prescribed by Section
20 428.051 multiplied by the total of its 2009 calendar year direct
21 written premiums.

22 (b) An admitted insurer that wrote an aggregate of at least
23 \$30 million of direct written premiums in the 2009 and 2010 calendar
24 years shall invest in economically targeted investments during the
25 2011 calendar year not less than an amount equal to the applicable
26 investment percentage prescribed by Section 428.051 multiplied by
27 the total of its aggregate 2009 and 2010 calendar years' direct

1 written premiums. Economically targeted investments made during
2 the 2010 calendar year under Subsection (a) may be counted toward
3 that requirement.

4 (c) An admitted insurer that has written an aggregate of at
5 least \$45 million of direct written premiums in the three preceding
6 calendar years shall have economically targeted investments during
7 the 2012 calendar year and each subsequent calendar year in an
8 amount equal to not less than the applicable investment percentage
9 prescribed by Section 428.051 multiplied by the total of its
10 aggregate direct written premiums for the preceding three calendar
11 years.

12 Sec. 428.054. REDUCTION IN REQUIRED INVESTMENT AMOUNT. The
13 amount that an insurer is required to invest under Section 428.053
14 shall be reduced by \$1 for each \$1 that the insurer invests in
15 economically targeted investments that are:

16 (1) loans to or equity investments in community
17 development corporations engaged in promoting small or
18 microenterprise business opportunities for low-income or very low
19 income individuals through loans or equity investments; or
20 (2) loans to or equity investments in small businesses
21 or farms with gross annual revenues of less than \$1 million.

22 Sec. 428.055. EXEMPTION; VALUATION OF INVESTMENTS. (a) An
23 insurer is not required to make economically targeted investments
24 that are:

25 (1) of medium investment grade; and
26 (2) rated below 3, P3, or PSF3 by the Securities
27 Valuation Office of the National Association of Insurance

1 Commissioners.

2 (b) For the purpose of this chapter, investments shall be
3 valued at actual cost.

4 Sec. 428.056. INSURER ANNUAL COMMUNITY INVESTMENT REPORT.

5 (a) Each insurer shall submit to the department an annual community
6 investment report that states:

7 (1) the type, number, and dollar amount of
8 economically targeted investments;

9 (2) the location by address and census tract of where
10 economically targeted investments are invested; and

11 (3) a computation of the value of the investments.

12 (b) The insurer shall provide the information required in
13 the community investment report both in the aggregate and
14 separately for low-income and very low income communities.

15 (c) The insurer may make the community investment report
16 separately or as part of another annual report required to be
17 submitted to the department.

18 (d) The commissioner may require additional information as
19 is necessary to evaluate the investment performance of insurers and
20 compliance with this chapter.

21 Sec. 428.057. COMMUNITY INVESTMENT PLAN. (a) The board of
22 directors or other governing body of each insurer subject to this
23 chapter shall:

24 (1) adopt an annual community investment plan; and

25 (2) file a copy of the plan with the department in the
26 manner prescribed by rules adopted by the commissioner.

27 (b) A community investment plan must contain, at a minimum:

1 (1) a description of the specific community
2 development needs to be addressed by the insurer's economically
3 targeted investments;
4 (2) a list of the geographic areas in which the
5 insurer intends to make economically targeted investments;
6 (3) a list of the specific types of economically
7 targeted investments the insurer intends to make;
8 (4) an assessment of the insurer's previous efforts in
9 making economically targeted investments;
10 (5) an identification of any obstacles to making
11 economically targeted investments;
12 (6) strategies for overcoming any identified
13 obstacles to making economically targeted investments that the
14 insurer intends to take; and
15 (7) a statement of the insurer's community investment
16 goals for the subsequent calendar year.

17 [Sections 428.058-428.100 reserved for expansion]

18 SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

19 Sec. 428.101. RULES. The commissioner shall adopt rules as
20 necessary to implement this chapter.

21 Sec. 428.102. INFORMATION AVAILABLE ON DEPARTMENT INTERNET
22 WEBSITE. (a) The commissioner shall biennially provide
23 information on the department's Internet website regarding the
24 aggregate insurer community investments made under this chapter.
25 The information shall identify insurers that make investments that
26 are innovative, responsive to community needs, not routinely
27 provided by insurers, or have a high degree of positive impact on

1 the economic welfare of low-income or very low income individuals,
2 families, or communities in urban or rural areas of this state.

3 (b) The department shall also biennially provide
4 information on the department's Internet website regarding:

5 (1) the aggregate amount of government obligations,
6 including all obligations issued by this state or a political
7 subdivision of this state, that is purchased by insurers as
8 reported to the department and the National Association of
9 Insurance Commissioners in the filing described by Section 802.056;
10 and

11 (2) the aggregate amount of identified investments
12 made in this state, as reported to the department and the National
13 Association of Insurance Commissioners in the filing described by
14 Section 802.056.

15 [Sections 428.103-428.150 reserved for expansion]

16 SUBCHAPTER D. ENFORCEMENT AND PENALTIES

17 Sec. 428.151. SHOW CAUSE ORDER. (a) If the commissioner
18 has reason to believe that an insurer has failed to adequately make
19 economically targeted investments in accordance with this chapter,
20 the commissioner shall issue an order to show cause that contains:

21 (1) a statement of the charges against the insurer;
22 (2) a statement of the insurer's potential liability
23 under Section 428.153; and

24 (3) a notice of a hearing, to be held at a time and
25 place fixed in the notice, to determine whether the commissioner is
26 to issue an order that the insurer pay any penalty assessed under
27 Section 428.153 and to cease and desist from further noncompliance

1 with this chapter.

2 (b) A hearing under Subsection (a) shall be conducted in
3 accordance with Chapter 2001, Government Code.

4 (c) If, after hearing, the commissioner determines that the
5 charges are justified, the commissioner shall issue an order
6 specifying:

7 (1) the penalty that the insurer shall pay under
8 Section 428.153;

9 (2) remedial actions as are appropriate to require
10 compliance; and

11 (3) that the insurer shall cease and desist from
12 engaging in investment practices that are found to be
13 discriminatory or not in compliance with this chapter.

14 (d) An insurer affected by the commissioner's order may
15 appeal the decision of the commissioner in the manner provided by
16 Subchapter D, Chapter 36.

17 Sec. 428.152. PETITION BY INTERESTED PERSON. Any
18 interested person may file a petition with the commissioner that
19 alleges that an insurer has failed to adequately make economically
20 targeted investments in accordance with this chapter to seek the
21 issuance under Section 428.151 of an order to show cause directed at
22 that insurer.

23 Sec. 428.153. ADMINISTRATIVE AND CIVIL PENALTIES. (a) An
24 insurer determined to have violated this chapter is subject to
25 administrative penalties in the manner provided by Chapter 84.
26 Notwithstanding Section 84.022:

27 (1) for the first violation, the commissioner may set

1 the penalty in an amount not to exceed \$50,000 for each year in each
2 three-year period during which the insurer was not in compliance;
3 and

4 (2) for the second or a subsequent violation, the
5 commissioner may set the penalty in an amount not to exceed \$100,000
6 for each year in each three-year period during which the insurer was
7 not in compliance.

8 (b) In addition to an administrative penalty assessed under
9 Subsection (a), an insurer who fails to comply with a final order of
10 the commissioner under this chapter is liable to the state for a
11 civil penalty in an amount not to exceed \$150,000.

12 (c) A penalty under this section may be assessed in addition
13 to any other penalties provided by law.

14 Sec. 428.154. SUSPENSION OR REVOCATION OF CERTIFICATE OF
15 AUTHORITY. In addition to other penalties provided by this
16 chapter, the commissioner may suspend or revoke the certificate of
17 authority of an insurer who fails to comply with an order issued
18 under Section 428.151 and may suspend or revoke, wholly or partly,
19 the certificate of authority of an insurer who receives more than
20 one order to comply with this chapter.

21 SECTION 2. Not later than December 31, 2009, the
22 commissioner of insurance shall issue bulletins adopting
23 guidelines for the implementation of Chapter 428, Insurance Code,
24 as added by this Act. The bulletins may specify or define
25 appropriate economically targeted investments.

26 SECTION 3. An insurer subject to Chapter 428, Insurance
27 Code, as added by this Act, is not required to make community

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1 investments as required by that chapter until the calendar year
2 beginning January 1, 2010.

3 SECTION 4. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2009.