

## **BILL ANALYSIS**

S.B. 1007  
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Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Department of Insurance (TDI) regulates insurance carriers and the relationships between insurance carriers and their affiliate companies. As part of its regulatory responsibility, TDI monitors the financial condition and risk profiles of affiliate companies due to risks posed by noninsurance operations conducted by the affiliate that could potentially affect the insurance carrier's solvency. The National Association of Insurance Commissioners (NAIC) recently adopted the Risk Management and Own Risk Solvency Assessment Model Act. Under that model act, certain insurance companies or insurance groups would be required to maintain a risk management framework, regularly perform an own risk and solvency assessment, and file an own risk and solvency assessment summary report with insurance regulators. Interested parties contend that enacting such requirements in Texas would help TDI improve its understanding of the financial status and needs of large insurers and their affiliate companies. These parties further contend that such requirements would also enhance TDI's ability to participate in the supervision of insurers and insurance groups domiciled in multiple jurisdictions and improve regulatory coordination at the national and international levels.

S.B. 1007 seeks to provide TDI with a necessary tool to evaluate the financial condition of the largest insurance companies and better protect Texas policyholders by establishing requirements for certain insurers relating to risk management and own risk and solvency assessments based on the model legislation adopted by the NAIC.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1007 amends the Insurance Code to require an insurer to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on the insurer's material and relevant risks. The bill specifies that the requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

S.B. 1007 requires an insurer, or the insurance group of which the insurer is a member, to regularly conduct, consistent with a process comparable to the Own Risk and Solvency Assessment Guidance Manual adopted by the National Association of Insurance Commissioners (NAIC), an own risk and solvency assessment, appropriate to the nature, scale, and complexity of the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks. The bill requires the insurer, or the insurance group of which the insurer is a member, to conduct the own risk and solvency assessment annually and at any other time there are significant changes to the risk profile of the insurer or the insurance group.

S.B. 1007 requires an insurer, on request of the commissioner of insurance, to submit to the commissioner a summary report or a combination of reports that together contain the information described in the NAIC guidance manual. The bill prohibits the commissioner from making such a request more than once each year. The bill requires an insurer that is a member of an insurance group to submit such reports to the commissioner without regard to whether the commissioner made a request if the commissioner is lead state commissioner of the insurance group. The bill requires the commissioner to consider the procedures adopted by the NAIC in determining the lead state commissioner for purposes of that requirement. The bill requires the reports to include a signature of the insurer's or insurance group's chief risk officer or other executive responsible for the oversight of the insurer's enterprise risk management process attesting to certain facts. The bill authorizes an insurer to comply with the reporting requirements by providing the most recent and substantially similar report that the insurer or another member of an insurance group of which the insurer is a member provided to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, under certain conditions.

S.B. 1007 exempts an insurer from the bill's provisions if the insurer has annual direct written and unaffiliated assumed premium of less than \$500 million and the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium of less than \$1 billion. The bill provides that if an insurer qualifies for such an exemption, but the insurance group of which the insurer is a member does not qualify for exemption, then the required summary report must include every insurer within the insurance group. The bill authorizes such an insurer to satisfy the reporting requirement by submitting more than one summary report for any combination of insurers if the combination of reports includes each insurer within the insurance group. The bill requires an insurer that does not qualify for exemption to submit a summary report that is applicable to that insurer if the insurance group of which it is a member qualifies for an exemption. The bill authorizes an insurer that does not qualify for an exemption to apply to the commissioner for a waiver from the bill's requirements based on unique circumstances and provides for the manner in which the commissioner considers whether to grant the insurer's request for a waiver.

S.B. 1007 sets out circumstances under which the commissioner is authorized to require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file a summary report regardless of whether the insurer qualifies for an exemption. The bill requires an insurer that qualifies for an exemption and subsequently ceases to qualify for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member to comply with the bill's provisions not later than December 31 of the calendar year following the calendar year the threshold is exceeded.

S.B. 1007 requires an insurer to prepare a summary report in accordance with the NAIC guidance manual, requires an insurer to maintain documentation and supporting information, and requires the insurer to make the documentation and supporting information available on examination or on request of the commissioner. The bill requires the Texas Department of Insurance, when reviewing the summary report or making requests for additional information, to use procedures similar to the procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

S.B. 1007 establishes that information obtained by, created by, or disclosed to the commissioner or any other person for the purposes of the bill's provisions, including information shared or received in order to assist in the performance of the commissioner's regulatory duties and information in the possession or control of the NAIC or a third-party consultant, are confidential and privileged for all purposes including for purposes of state public information law, a response to subpoena, or discovery or admissibility in evidence in any civil action. The bill provides that documents, materials, or other information, including a summary report prepared under the bill's provisions and additional information submitted in connection with the summary report, that is obtained by, created by, or disclosed to the commissioner or any other person is recognized by

Texas as being proprietary and to contain trade secrets.

S.B. 1007 authorizes the commissioner to use such information to further any regulatory or legal action brought as part of the commissioner's official duties and prohibits the commissioner from otherwise making the information public without the prior written consent of the insurer. The bill prohibits the commissioner and any other person who receives own risk and solvency assessment-related information from testifying or being required to testify in any civil action concerning such information.

S.B. 1007 authorizes the commissioner, on request and in order to assist in the performance of the commissioner's regulatory duties, to share documents, materials, or other own risk and solvency assessment-related information, including certain confidential and privileged information, as necessary, with other state, federal, and international financial regulatory agencies or insurance supervisors, members of certain supervisory colleges, the NAIC, or a third-party consultant designated by the commissioner. The bill requires the recipient of such information, before the commissioner may share the information, to agree in writing to maintain the confidential and privileged status of the information and verify in writing the recipient's legal authority to maintain the confidential and privileged status of that information.

S.B. 1007 authorizes the commissioner to receive documents, materials, or other own risk and solvency assessment-related information or any other relevant information, including otherwise confidential and privileged documents, materials, or information and proprietary and trade-secret information or documents, from a regulatory official of a foreign or domestic jurisdiction, including a member of a supervisory college, and the NAIC. The bill requires the commissioner to maintain as confidential or privileged any documents, materials, or information received from such an individual or entity with notice and understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

S.B. 1007 requires the commissioner to enter into a written agreement with the NAIC or a third-party consultant that governs the sharing and use of information provided under the bill's provisions. The bill establishes criteria for the agreement, including criteria relating to confidentiality and security procedures and protocols, criteria relating to maintaining the confidentiality of the information, criteria relating to the ownership of the information, criteria prohibiting permanent database storage of the information, criteria requiring certain notice of a request or subpoena for disclosure or production of the shared information, criteria requiring the NAIC or the consultant to consent to certain intervention in a case that may require disclosure of confidential information, and criteria requiring an insurer's written consent in the case of an agreement involving a third-party consultant.

S.B. 1007 clarifies that the commissioner's sharing of information and documents under the bill's provisions does not constitute a delegation of regulatory authority or rulemaking. The bill makes the commissioner solely responsible for the administration, execution, and enforcement of the bill's provisions. The bill provides that a waiver of an applicable privilege or claim of confidentiality in a document, proprietary and trade-secret materials, or other own risk and solvency assessment-related information does not occur as a result of disclosure of the information to the commissioner under the bill's provisions or as a result of authorized sharing of the information.

S.B. 1007 establishes that an insurer that fails to timely file a required summary report without good cause commits a violation subject to an administrative penalty. The bill makes each day the violation continues a separate violation and authorizes the commissioner to reduce the amount of the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

S.B. 1007 provides that an insurer is not required to submit a summary report before January 1, 2015.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.