

By: Smithee

H.B. No. 2786

A BILL TO BE ENTITLED

AN ACT

relating to own risk and solvency assessment by insurers and insurance groups; providing a penalty.

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

SECTION 1. Subtitle B, Title 6, Insurance Code, is amended by adding Chapter 830 to read as follows:

CHAPTER 830. OWN RISK AND SOLVENCY ASSESSMENT

Sec. 830.001. APPLICABILITY. This chapter applies to each domestic insurer unless exempt under Section 830.006.

Sec. 830.002. DEFINITIONS. In this chapter:

(1) "Guidance manual" means the version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners that is in effect at the time a summary report is provided. A change in the guidance manual becomes effective on the January 1 following the calendar year in which the changes are adopted by the National Association of Insurance Commissioners.

(2) "Insurance group" means the insurers and affiliates included within an insurance holding company system as described by Section 823.006.

(3) "Insurer" has the meaning assigned by Section 823.002.

(4) "Own risk and solvency assessment" means an assessment described by Section 830.004(a).

1           (5) "Summary report" means a confidential, high-level  
2 summary of an insurer's or insurance group's own risk and solvency  
3 assessment.

4           Sec. 830.003. RISK MANAGEMENT FRAMEWORK. An insurer shall  
5 maintain a risk management framework to assist the insurer with  
6 identifying, assessing, monitoring, managing, and reporting on the  
7 insurer's material and relevant risks. This requirement is  
8 satisfied if the insurance group of which the insurer is a member  
9 maintains a risk management framework applicable to the operations  
10 of the insurer.

11           Sec. 830.004. OWN RISK AND SOLVENCY ASSESSMENT REQUIREMENT.

12 (a) Subject to Section 830.006, an insurer, or the insurance group  
13 of which the insurer is a member, shall regularly conduct,  
14 consistent with a process comparable to the guidance manual, a  
15 confidential internal assessment, appropriate to the nature,  
16 scale, and complexity of the insurer or insurance group, of the  
17 material and relevant risks associated with the insurer's or  
18 insurance group's business plan and the sufficiency of capital  
19 resources to support those risks.

20           (b) The insurer, or the insurance group of which the insurer  
21 is a member, shall conduct the own risk and solvency assessment  
22 described by Subsection (a):

23                   (1) annually; and

24                   (2) at any other time there are significant changes to  
25 the risk profile of the insurer or the insurance group of which the  
26 insurer is a member.

27           Sec. 830.005. SUMMARY REPORT REQUIRED. (a) On the

1 commissioner's request, an insurer shall submit to the commissioner  
2 a summary report or a combination of reports that together contain  
3 the information described in the guidance manual. The commissioner  
4 may not make a request under this subsection more than once each  
5 year.

6 (b) Without regard to whether the commissioner has made a  
7 request under Subsection (a), if the insurer is a member of an  
8 insurance group, the insurer shall submit to the commissioner the  
9 reports required by Subsection (a) if the commissioner is the lead  
10 state commissioner of the insurance group.

11 (c) In determining the lead state commissioner for purposes  
12 of this section, the commissioner shall consider the procedures  
13 adopted by the National Association of Insurance Commissioners.

14 (d) The reports must include a signature of the insurer's or  
15 insurance group's chief risk officer or other executive responsible  
16 for the oversight of the insurer's enterprise risk management  
17 process attesting to the best of the officer's or executive's belief  
18 and knowledge that:

19 (1) the insurer applies the enterprise risk management  
20 process described in the summary report; and

21 (2) a copy of the report has been provided to the  
22 insurer's board of directors or the appropriate committee of the  
23 board of directors.

24 (e) An insurer may comply with Subsection (a) or (b) by  
25 providing the most recent and substantially similar report that the  
26 insurer or another member of an insurance group of which the insurer  
27 is a member provided to the commissioner of another state or to a

1 supervisor or regulator of a foreign jurisdiction, if that report  
2 provides information that is comparable to the information  
3 described in the guidance manual. A report in a language other than  
4 English must be accompanied by a translation of that report into the  
5 English language.

6 Sec. 830.006. EXEMPTION. (a) An insurer is exempt from the  
7 requirements of this chapter if:

8 (1) the insurer has annual direct written and  
9 unaffiliated assumed premium, including international direct and  
10 assumed premium but excluding premiums reinsured with the Federal  
11 Crop Insurance Corporation and Federal Flood Program, of less than  
12 \$500 million; and

13 (2) the insurance group of which the insurer is a  
14 member has annual direct written and unaffiliated assumed premium,  
15 including international direct and assumed premium but excluding  
16 premiums reinsured with the Federal Crop Insurance Corporation and  
17 Federal Flood Program, of less than \$1 billion.

18 (b) If an insurer qualifies for exemption under Subsection  
19 (a)(1), but the insurance group of which the insurer is a member  
20 does not qualify for exemption under Subsection (a)(2), then the  
21 summary report required under Section 830.005 must include every  
22 insurer within the insurance group.

23 (c) An insurer may satisfy the requirement under Subsection  
24 (b) by submitting more than one summary report for any combination  
25 of insurers if the combination of reports includes each insurer  
26 within the insurance group.

27 (d) If an insurer does not qualify for exemption under

1 Subsection (a)(1), but the insurance group of which it is a member  
2 qualifies for exemption under Subsection (a)(2), then the insurer  
3 must submit a summary report under Section 830.005 that is  
4 applicable to that insurer.

5 (e) An insurer that does not qualify for exemption under  
6 Subsection (a) may apply to the commissioner for a waiver from the  
7 requirements of this chapter based on unique circumstances. In  
8 deciding whether to grant the insurer's request for waiver, the  
9 commissioner may consider the type and volume of business written,  
10 the ownership and organizational structure, and any other factor  
11 the commissioner considers relevant to the insurer or insurance  
12 group of which the insurer is a member. If the insurer is part of an  
13 insurance group with insurers domiciled in more than one state, the  
14 commissioner shall coordinate with the lead state commissioner and  
15 with the other domiciliary commissioners in considering whether to  
16 grant the insurer's request for a waiver.

17 (f) Notwithstanding the exemptions stated in this section,  
18 the commissioner may require that an insurer maintain a risk  
19 management framework, conduct an own risk and solvency assessment,  
20 and file a summary report if:

21 (1) there are unique circumstances, including the type  
22 and volume of business written, the ownership and organizational  
23 structure, federal agency requests, and international supervisor  
24 requests;

25 (2) the insurer has risk-based capital for a company  
26 action level event as set forth in department rules;

27 (3) the insurer meets one or more of the standards of

1 an insurer considered to be in hazardous financial condition under  
2 Chapter 404 or department rule; or

3 (4) the insurer otherwise exhibits qualities of a  
4 troubled insurer as determined by the commissioner.

5 (g) If an insurer that qualifies for an exemption under  
6 Subsection (a) subsequently ceases to qualify for that exemption  
7 due to changes in premium as reflected in the insurer's most recent  
8 annual statement or in the most recent annual statements of the  
9 insurers within the insurance group of which the insurer is a  
10 member, the insurer must comply with the requirements of this  
11 chapter not later than December 31 of the calendar year following  
12 the calendar year the threshold is exceeded.

13 Sec. 830.007. CONTENTS OF SUMMARY REPORT. (a) An insurer  
14 shall prepare a summary report in accordance with the guidance  
15 manual and subject to the requirements of Subsection (b). An  
16 insurer shall maintain documentation and supporting information  
17 and shall make the documentation and supporting information  
18 available on examination or on request of the commissioner.

19 (b) When reviewing the summary report or making requests for  
20 additional information, the department shall use procedures  
21 similar to the procedures currently used in the analysis and  
22 examination of multistate or global insurers and insurance groups.

23 Sec. 830.008. CONFIDENTIALITY. (a) Documents, materials,  
24 or other information obtained by, created by, or disclosed to the  
25 commissioner or any other person under this chapter, including  
26 documents, materials, and other information shared or received  
27 under Subsection (e) and documents, materials, or other information

1 in the possession or control of the National Association of  
2 Insurance Commissioners or third-party consultant under this  
3 chapter, are confidential and privileged for all purposes including  
4 for purposes of:

- 5           (1) Chapter 552, Government Code;  
6           (2) a response to subpoena; or  
7           (3) discovery or admissibility in evidence in any  
8 civil action.

9           (b) A summary report prepared under this chapter and  
10 additional information submitted under Section 830.007 are  
11 recognized by this state as being proprietary and to contain trade  
12 secrets.

13           (c) The commissioner may use the documents, materials, or  
14 other information described in this section to further any  
15 regulatory or legal action brought as part of the commissioner's  
16 official duties. The commissioner may not otherwise make the  
17 documents, materials, or other information public without the prior  
18 written consent of the insurer.

19           (d) The commissioner and any other person who receives own  
20 risk and solvency assessment-related information under this  
21 chapter, in an examination, or otherwise under any other law may not  
22 testify or be required to testify in any civil action concerning any  
23 documents, materials, or information subject to Subsection (a) or  
24 (b).

25           (e) In order to assist in the performance of the  
26 commissioner's regulatory duties, the commissioner may, on  
27 request, share documents, materials, or other own risk and solvency

1 assessment-related information, including confidential and  
2 privileged documents, materials, or information subject to  
3 Subsection (a) or (b) or confidential or privileged documents,  
4 materials, or information subject to Chapter 401, 404, or 823, as  
5 necessary, with:

6 (1) other state, federal, and international financial  
7 regulatory agencies or insurance supervisors;

8 (2) members of a supervisory college described in  
9 Section 823.0145;

10 (3) the National Association of Insurance  
11 Commissioners; or

12 (4) a third-party consultant designated by the  
13 commissioner.

14 (f) Before the commissioner may share information under  
15 this section, the recipient of the information shall:

16 (1) agree in writing to maintain the confidential and  
17 privileged status of the documents, materials, or other information  
18 shared under this section; and

19 (2) verify in writing the recipient's legal authority  
20 to maintain the confidential and privileged status of that  
21 information.

22 (g) The commissioner may receive documents, materials, or  
23 other own risk and solvency assessment-related information or any  
24 other relevant information, including otherwise confidential and  
25 privileged documents, materials, or information and proprietary  
26 and trade-secret information or documents, from:

27 (1) a regulatory official of a foreign or domestic



1 jurisdiction, including a member of a supervisory college described  
2 in Section 823.0145; and

3 (2) the National Association of Insurance  
4 Commissioners.

5 (h) The commissioner shall maintain as confidential or  
6 privileged any documents, materials, or information received under  
7 Subsection (g) that is confidential or privileged under the laws of  
8 the jurisdiction that is the source of the document, material, or  
9 information.

10 Sec. 830.009. AGREEMENT CONCERNING INFORMATION. (a) The  
11 commissioner shall enter into a written agreement with the National  
12 Association of Insurance Commissioners or a third-party consultant  
13 that governs the sharing and use of information provided under this  
14 chapter. The agreement must comply with this section.

15 (b) The agreement must specify procedures and protocols  
16 regarding the confidentiality and security of information shared  
17 with the National Association of Insurance Commissioners or  
18 third-party consultant under this chapter, including procedures  
19 and protocols for sharing by the National Association of Insurance  
20 Commissioners with other state regulators from states in which the  
21 insurance group has domiciled insurers.

22 (c) The agreement must provide that the recipient:

23 (1) agrees in writing to maintain the confidential and  
24 privileged status of the own risk and solvency assessment-related  
25 documents, materials, or other information; and

26 (2) has verified in writing the legal authority to  
27 maintain the confidential and privileged status of the information.

1       (d) The agreement must specify that ownership of  
2 information shared with the National Association of Insurance  
3 Commissioners or third-party consultant under this chapter remains  
4 with the commissioner and that the National Association of  
5 Insurance Commissioners' or third-party consultant's use of the  
6 information is subject to the direction of the commissioner.

7       (e) The agreement must prohibit the National Association of  
8 Insurance Commissioners or third-party consultant from storing the  
9 information shared under this chapter in a permanent database after  
10 the underlying analysis is completed.

11       (f) The agreement must require prompt notice to be given to  
12 an insurer whose confidential information in the possession of the  
13 National Association of Insurance Commissioners or third-party  
14 consultant under this chapter is subject to a request or subpoena to  
15 the National Association of Insurance Commissioners or third-party  
16 consultant for disclosure or production.

17       (g) The agreement must require the National Association of  
18 Insurance Commissioners or third-party consultant to consent to  
19 intervention by an insurer in any judicial or administrative action  
20 in which the National Association of Insurance Commissioners or  
21 third-party consultant may be required to disclose confidential  
22 information about the insurer shared with the National Association  
23 of Insurance Commissioners or third-party consultant under this  
24 chapter.

25       (h) The agreement must provide for the insurer's written  
26 consent in the case of an agreement involving a third-party  
27 consultant.

1       Sec. 830.010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The  
2 commissioner's sharing of information and documents under this  
3 chapter does not constitute a delegation of regulatory authority or  
4 rulemaking, and the commissioner is solely responsible for the  
5 administration, execution, and enforcement of the provisions of  
6 this chapter.

7       Sec. 830.011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A  
8 waiver of an applicable privilege or claim of confidentiality in a  
9 document, proprietary and trade-secret materials, or other own risk  
10 and solvency assessment-related information does not occur as a  
11 result of disclosure of the document, materials, or other  
12 information to the commissioner under this chapter or as a result of  
13 sharing as authorized by this chapter.

14       Sec. 830.012. ADMINISTRATIVE PENALTY. (a) An insurer  
15 that, without good cause, fails to timely file the summary report as  
16 required by this chapter commits a violation subject to an  
17 administrative penalty under Chapter 84.

18       (b) Each day the violation continues is a separate violation  
19 for purposes of this section.

20       (c) The commissioner may reduce the amount of the penalty  
21 assessed under this section if the insurer demonstrates to the  
22 commissioner that the imposition of the penalty would constitute a  
23 financial hardship to the insurer.

24       SECTION 2. Notwithstanding Chapter 830, Insurance Code, as  
25 added by this Act, an insurer is not required to submit a summary  
26 report as required by that chapter before January 1, 2015.

27       SECTION 3. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2013.