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(Smithee)

S.B. No. 1007

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 AND PURPOSE. (a) This chapter applies to each domestic insurer unless exempt under Section 830.006.

(b) The purpose of this chapter is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the commissioner.

(c) The own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. The summary report is a confidential document filed with the commissioner, and the commissioner may share the summary report

1 only as stated in this chapter in order to assist the commissioner  
2 in the performance of the commissioner's duties. An own risk and  
3 solvency assessment summary report is not subject to public  
4 disclosure in any event.

5 Sec. 830.002. DEFINITIONS. In this chapter:

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

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

16 (3) "Insurer" has the meaning assigned by Section  
17 823.002(6).

18 (4) "Own risk and solvency assessment" means a  
19 confidential internal assessment, appropriate to the nature,  
20 scale, and complexity of an insurer or insurance group, conducted  
21 by that insurer or insurance group, of the material and relevant  
22 risks associated with the insurer or insurance group's current  
23 business plan and the sufficiency of capital resources to support  
24 those risks.

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

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

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

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

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

20               (1) annually; and

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

24       Sec. 830.005. SUMMARY REPORT REQUIRED. (a) On the  
25 commissioner's request, an insurer shall submit to the commissioner  
26 a summary report or a combination of reports that together contain  
27 the information described in the guidance manual. The commissioner

1 may not make a request under this subsection more than once each  
2 year.

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

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

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

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

18 (2) a copy of the report has been provided to the  
19 insurer's board of directors or the appropriate committee of the  
20 board of directors.

21 (e) An insurer may comply with Subsection (a) or (b) by  
22 providing the most recent and substantially similar report that the  
23 insurer or another member of an insurance group of which the insurer  
24 is a member provided to the commissioner of another state or to a  
25 supervisor or regulator of a foreign jurisdiction, if that report  
26 provides information that is comparable to the information  
27 described in the guidance manual. A report in a language other than

1 English must be accompanied by a translation of that report into the  
2 English language.

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

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

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

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

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

24 (d) If an insurer does not qualify for exemption under  
25 Subsection (a)(1), but the insurance group of which it is a member  
26 qualifies for exemption under Subsection (a)(2), then the insurer  
27 must submit a summary report under Section 830.005 that is

1 applicable to that insurer.

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

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

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

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

24 (3) the insurer meets one or more of the standards of  
25 an insurer considered to be in hazardous financial condition under  
26 Chapter 404 or department rule; or

27 (4) the insurer otherwise exhibits qualities of a

1 troubled insurer as determined by the commissioner.

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

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

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

20 Sec. 830.008. CONFIDENTIALITY. (a) Documents, materials,  
21 or other information obtained by, created by, or disclosed to the  
22 commissioner or any other person under this chapter, including  
23 documents, materials, and other information shared or received  
24 under Subsection (e) and documents, materials, or other information  
25 in the possession or control of the National Association of  
26 Insurance Commissioners or third-party consultant under this  
27 chapter, are confidential and privileged for all purposes including

1 for purposes of:

2 (1) Chapter 552, Government Code;

3 (2) a response to subpoena; or

4 (3) discovery or admissibility in evidence in any  
5 civil action.

6 (b) Documents, materials, or other information, including a  
7 summary report prepared under this chapter and additional  
8 information submitted under Section 830.007, that is obtained by,  
9 created by, or disclosed to the commissioner or any other person  
10 under this chapter is recognized by this state as being proprietary  
11 and to contain trade secrets.

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

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

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



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

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

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

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

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

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

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

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

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

26 (1) a regulatory official of a foreign or domestic  
27 jurisdiction, including a member of a supervisory college described

1 in Section 823.0145; and

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

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

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

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

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

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

27 (2) has verified in writing the legal authority to

1 maintain the confidential and privileged status of the information.

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

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

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

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

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

1 consultant.

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

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

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

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

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

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

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