

1-1 By: Carona S.B. No. 1007  
 1-2 (In the Senate - Filed March 1, 2013; March 12, 2013, read  
 1-3 first time and referred to Committee on Business and Commerce;  
 1-4 March 21, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 1; March 21, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Carona	X			
1-9 Taylor	X			
1-10 Eltife	X			
1-11 Estes		X		
1-12 Hancock	X			
1-13 Lucio	X			
1-14 Van de Putte	X			
1-15 Watson	X			
1-16 Whitmire	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1007 By: Carona

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to own risk and solvency assessment by insurers and  
 1-22 insurance groups; providing a penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle B, Title 6, Insurance Code, is amended  
 1-25 by adding Chapter 830 to read as follows:

1-26 CHAPTER 830. OWN RISK AND SOLVENCY ASSESSMENT

1-27 Sec. 830.001. APPLICABILITY AND PURPOSE. (a) This chapter  
 1-28 applies to each domestic insurer unless exempt under Section  
 1-29 830.006.

1-30 (b) The purpose of this chapter is to provide the  
 1-31 requirements for maintaining a risk management framework and  
 1-32 completing an own risk and solvency assessment and to provide  
 1-33 guidance and instructions for filing an own risk and solvency  
 1-34 assessment summary report with the commissioner.

1-35 (c) The own risk and solvency assessment summary report will  
 1-36 contain confidential and sensitive information related to an  
 1-37 insurer or insurance group's identification of risks material and  
 1-38 relevant to the insurer or insurance group filing the report. This  
 1-39 information will include proprietary and trade secret information  
 1-40 that has the potential for harm and competitive disadvantage to the  
 1-41 insurer or insurance group if the information is made public. The  
 1-42 summary report is a confidential document filed with the  
 1-43 commissioner, and the commissioner may share the summary report  
 1-44 only as stated in this chapter in order to assist the commissioner  
 1-45 in the performance of the commissioner's duties. An own risk and  
 1-46 solvency assessment summary report is not subject to public  
 1-47 disclosure in any event.

1-48 Sec. 830.002. DEFINITIONS. In this chapter:

1-49 (1) "Guidance manual" means the version of the Own  
 1-50 Risk and Solvency Assessment Guidance Manual developed and adopted  
 1-51 by the National Association of Insurance Commissioners that is in  
 1-52 effect at the time a summary report is provided. A change in the  
 1-53 guidance manual becomes effective on the January 1 following the  
 1-54 calendar year in which the changes are adopted by the National  
 1-55 Association of Insurance Commissioners.

1-56 (2) "Insurance group" means the insurers and  
 1-57 affiliates included within an insurance holding company system as  
 1-58 described by Section 823.006.

1-59 (3) "Insurer" has the meaning assigned by Section  
 1-60 823.002(6).

2-1 (4) "Own risk and solvency assessment" means a  
 2-2 confidential internal assessment, appropriate to the nature,  
 2-3 scale, and complexity of an insurer or insurance group, conducted  
 2-4 by that insurer or insurance group, of the material and relevant  
 2-5 risks associated with the insurer or insurance group's current  
 2-6 business plan and the sufficiency of capital resources to support  
 2-7 those risks.

2-8 (5) "Summary report" means a confidential, high-level  
 2-9 summary of an insurer's or insurance group's own risk and solvency  
 2-10 assessment.

2-11 Sec. 830.003. RISK MANAGEMENT FRAMEWORK. An insurer shall  
 2-12 maintain a risk management framework to assist the insurer with  
 2-13 identifying, assessing, monitoring, managing, and reporting on the  
 2-14 insurer's material and relevant risks. This requirement may be  
 2-15 satisfied if the insurance group of which the insurer is a member  
 2-16 maintains a risk management framework applicable to the operations  
 2-17 of the insurer.

2-18 Sec. 830.004. OWN RISK AND SOLVENCY ASSESSMENT REQUIREMENT.  
 2-19 (a) Subject to Section 830.006, an insurer, or the insurance group  
 2-20 of which the insurer is a member, shall regularly conduct,  
 2-21 consistent with a process comparable to the guidance manual, an own  
 2-22 risk and solvency assessment, appropriate to the nature, scale, and  
 2-23 complexity of the insurer or insurance group, of the material and  
 2-24 relevant risks associated with the insurer's or insurance group's  
 2-25 current business plan and the sufficiency of capital resources to  
 2-26 support those risks.

2-27 (b) The insurer, or the insurance group of which the insurer  
 2-28 is a member, shall conduct the own risk and solvency assessment  
 2-29 described by Subsection (a):

2-30 (1) annually; and

2-31 (2) at any other time there are significant changes to  
 2-32 the risk profile of the insurer or the insurance group of which the  
 2-33 insurer is a member.

2-34 Sec. 830.005. SUMMARY REPORT REQUIRED. (a) On the  
 2-35 commissioner's request, an insurer shall submit to the commissioner  
 2-36 a summary report or a combination of reports that together contain  
 2-37 the information described in the guidance manual. The commissioner  
 2-38 may not make a request under this subsection more than once each  
 2-39 year.

2-40 (b) Without regard to whether the commissioner has made a  
 2-41 request under Subsection (a), if the insurer is a member of an  
 2-42 insurance group, the insurer shall submit to the commissioner the  
 2-43 reports required by Subsection (a) if the commissioner is the lead  
 2-44 state commissioner of the insurance group.

2-45 (c) In determining the lead state commissioner for purposes  
 2-46 of this section, the commissioner shall consider the procedures  
 2-47 adopted by the National Association of Insurance Commissioners.

2-48 (d) The reports must include a signature of the insurer's or  
 2-49 insurance group's chief risk officer or other executive responsible  
 2-50 for the oversight of the insurer's enterprise risk management  
 2-51 process attesting to the best of the officer's or executive's belief  
 2-52 and knowledge that:

2-53 (1) the insurer applies the enterprise risk management  
 2-54 process described in the summary report; and

2-55 (2) a copy of the report has been provided to the  
 2-56 insurer's board of directors or the appropriate committee of the  
 2-57 board of directors.

2-58 (e) An insurer may comply with Subsection (a) or (b) by  
 2-59 providing the most recent and substantially similar report that the  
 2-60 insurer or another member of an insurance group of which the insurer  
 2-61 is a member provided to the commissioner of another state or to a  
 2-62 supervisor or regulator of a foreign jurisdiction, if that report  
 2-63 provides information that is comparable to the information  
 2-64 described in the guidance manual. A report in a language other than  
 2-65 English must be accompanied by a translation of that report into the  
 2-66 English language.

2-67 Sec. 830.006. EXEMPTION. (a) An insurer is exempt from  
 2-68 the requirements of this chapter if:

2-69 (1) the insurer has annual direct written and

3-1 unaffiliated assumed premium, including international direct and  
 3-2 assumed premium but excluding premiums reinsured with the Federal  
 3-3 Crop Insurance Corporation and Federal Flood Program, of less than  
 3-4 \$500 million; and

3-5 (2) the insurance group of which the insurer is a  
 3-6 member has annual direct written and unaffiliated assumed premium,  
 3-7 including international direct and assumed premium but excluding  
 3-8 premiums reinsured with the Federal Crop Insurance Corporation and  
 3-9 Federal Flood Program, of less than \$1 billion.

3-10 (b) If an insurer qualifies for exemption under Subsection  
 3-11 (a)(1), but the insurance group of which the insurer is a member  
 3-12 does not qualify for exemption under Subsection (a)(2), then the  
 3-13 summary report required under Section 830.005 must include every  
 3-14 insurer within the insurance group.

3-15 (c) An insurer may satisfy the requirement under Subsection  
 3-16 (b) by submitting more than one summary report for any combination  
 3-17 of insurers if the combination of reports includes each insurer  
 3-18 within the insurance group.

3-19 (d) If an insurer does not qualify for exemption under  
 3-20 Subsection (a)(1), but the insurance group of which it is a member  
 3-21 qualifies for exemption under Subsection (a)(2), then the insurer  
 3-22 must submit a summary report under Section 830.005 that is  
 3-23 applicable to that insurer.

3-24 (e) An insurer that does not qualify for exemption under  
 3-25 Subsection (a) may apply to the commissioner for a waiver from the  
 3-26 requirements of this chapter based on unique circumstances. In  
 3-27 deciding whether to grant the insurer's request for waiver, the  
 3-28 commissioner may consider the type and volume of business written,  
 3-29 the ownership and organizational structure, and any other factor  
 3-30 the commissioner considers relevant to the insurer or insurance  
 3-31 group of which the insurer is a member. If the insurer is part of an  
 3-32 insurance group with insurers domiciled in more than one state, the  
 3-33 commissioner shall coordinate with the lead state commissioner and  
 3-34 with the other domiciliary commissioners in considering whether to  
 3-35 grant the insurer's request for a waiver.

3-36 (f) Notwithstanding the exemptions stated in this section,  
 3-37 the commissioner may require that an insurer maintain a risk  
 3-38 management framework, conduct an own risk and solvency assessment,  
 3-39 and file a summary report if:

3-40 (1) there are unique circumstances, including the type  
 3-41 and volume of business written, the ownership and organizational  
 3-42 structure, federal agency requests, and international supervisor  
 3-43 requests;

3-44 (2) the insurer has risk-based capital for a company  
 3-45 action level event as set forth in department rules;

3-46 (3) the insurer meets one or more of the standards of  
 3-47 an insurer considered to be in hazardous financial condition under  
 3-48 Chapter 404 or department rule; or

3-49 (4) the insurer otherwise exhibits qualities of a  
 3-50 troubled insurer as determined by the commissioner.

3-51 (g) If an insurer that qualifies for an exemption under  
 3-52 Subsection (a) subsequently ceases to qualify for that exemption  
 3-53 due to changes in premium as reflected in the insurer's most recent  
 3-54 annual statement or in the most recent annual statements of the  
 3-55 insurers within the insurance group of which the insurer is a  
 3-56 member, the insurer must comply with the requirements of this  
 3-57 chapter not later than December 31 of the calendar year following  
 3-58 the calendar year the threshold is exceeded.

3-59 Sec. 830.007. CONTENTS OF SUMMARY REPORT. (a) An insurer  
 3-60 shall prepare a summary report in accordance with the guidance  
 3-61 manual and subject to the requirements of Subsection (b). An  
 3-62 insurer shall maintain documentation and supporting information  
 3-63 and shall make the documentation and supporting information  
 3-64 available on examination or on request of the commissioner.

3-65 (b) When reviewing the summary report or making requests for  
 3-66 additional information, the department shall use procedures  
 3-67 similar to the procedures currently used in the analysis and  
 3-68 examination of multistate or global insurers and insurance groups.

3-69 Sec. 830.008. CONFIDENTIALITY. (a) Documents, materials,

4-1 or other information obtained by, created by, or disclosed to the  
4-2 commissioner or any other person under this chapter, including  
4-3 documents, materials, and other information shared or received  
4-4 under Subsection (e) and documents, materials, or other information  
4-5 in the possession or control of the National Association of  
4-6 Insurance Commissioners or third-party consultant under this  
4-7 chapter, are confidential and privileged for all purposes including  
4-8 for purposes of:

- 4-9 (1) Chapter 552, Government Code;
- 4-10 (2) a response to subpoena; or
- 4-11 (3) discovery or admissibility in evidence in any  
4-12 civil action.

4-13 (b) Documents, materials, or other information, including a  
4-14 summary report prepared under this chapter and additional  
4-15 information submitted under Section 830.007, that is obtained by,  
4-16 created by, or disclosed to the commissioner or any other person  
4-17 under this chapter is recognized by this state as being proprietary  
4-18 and to contain trade secrets.

4-19 (c) The commissioner may use the documents, materials, or  
4-20 other information described in this section to further any  
4-21 regulatory or legal action brought as part of the commissioner's  
4-22 official duties. The commissioner shall not otherwise make the  
4-23 documents, materials, or other information public without the prior  
4-24 written consent of the insurer.

4-25 (d) The commissioner and any other person who receives own  
4-26 risk and solvency assessment-related information under this  
4-27 chapter, in an examination, or otherwise under any other law may not  
4-28 testify or be required to testify in any civil action concerning any  
4-29 documents, materials, or information subject to Subsection (a) or  
4-30 (b).

4-31 (e) In order to assist in the performance of the  
4-32 commissioner's regulatory duties, the commissioner may, on  
4-33 request, share documents, materials, or other own risk and solvency  
4-34 assessment-related information, including confidential and  
4-35 privileged documents, materials, or information subject to  
4-36 Subsection (a) or (b) or confidential or privileged documents,  
4-37 materials, or information subject to Chapter 401, 404, or 823, as  
4-38 necessary, with:

- 4-39 (1) other state, federal, and international financial  
4-40 regulatory agencies or insurance supervisors;
- 4-41 (2) members of a supervisory college described in  
4-42 Section 823.0145;
- 4-43 (3) the National Association of Insurance  
4-44 Commissioners; or
- 4-45 (4) a third-party consultant designated by the  
4-46 commissioner.

4-47 (f) Before the commissioner may share information under  
4-48 this section, the recipient of the information shall:

- 4-49 (1) agree in writing to maintain the confidential and  
4-50 privileged status of the documents, materials, or other information  
4-51 shared under this section; and
- 4-52 (2) verify in writing the recipient's legal authority  
4-53 to maintain the confidential and privileged status of that  
4-54 information.

4-55 (g) The commissioner may receive documents, materials, or  
4-56 other own risk and solvency assessment-related information or any  
4-57 other relevant information, including otherwise confidential and  
4-58 privileged documents, materials, or information and proprietary  
4-59 and trade-secret information or documents, from:

- 4-60 (1) a regulatory official of a foreign or domestic  
4-61 jurisdiction, including a member of a supervisory college described  
4-62 in Section 823.0145; and
- 4-63 (2) the National Association of Insurance  
4-64 Commissioners.

4-65 (h) The commissioner shall maintain as confidential or  
4-66 privileged any documents, materials, or information received under  
4-67 Subsection (g) with notice and understanding that it is  
4-68 confidential or privileged under the laws of the jurisdiction that  
4-69 is the source of the document, material, or information.

5-1 Sec. 830.009. AGREEMENT CONCERNING CONFIDENTIAL AND  
 5-2 PRIVILEGED INFORMATION. (a) The commissioner shall enter into a  
 5-3 written agreement with the National Association of Insurance  
 5-4 Commissioners or a third-party consultant that governs the sharing  
 5-5 and use of information provided under this chapter. The agreement  
 5-6 must comply with and contain all the requirements listed in this  
 5-7 section.

5-8 (b) The agreement must specify procedures and protocols  
 5-9 regarding the confidentiality and security of information shared  
 5-10 with the National Association of Insurance Commissioners or  
 5-11 third-party consultant under this chapter, including procedures  
 5-12 and protocols for sharing by the National Association of Insurance  
 5-13 Commissioners with other state regulators from states in which the  
 5-14 insurance group has domiciled insurers.

5-15 (c) The agreement must provide that the recipient:

5-16 (1) agrees in writing to maintain the confidential and  
 5-17 privileged status of the own risk and solvency assessment-related  
 5-18 documents, materials, or other information; and

5-19 (2) has verified in writing the legal authority to  
 5-20 maintain the confidential and privileged status of the information.

5-21 (d) The agreement must specify that ownership of  
 5-22 information shared with the National Association of Insurance  
 5-23 Commissioners or third-party consultant under this chapter remains  
 5-24 with the commissioner and that the National Association of  
 5-25 Insurance Commissioners' or third-party consultant's use of the  
 5-26 information is subject to the direction of the commissioner.

5-27 (e) The agreement must prohibit the National Association of  
 5-28 Insurance Commissioners or third-party consultant from storing the  
 5-29 information shared under this chapter in a permanent database after  
 5-30 the underlying analysis is completed.

5-31 (f) The agreement must require prompt notice to be given to  
 5-32 an insurer whose confidential information in the possession of the  
 5-33 National Association of Insurance Commissioners or third-party  
 5-34 consultant under this chapter is subject to a request or subpoena to  
 5-35 the National Association of Insurance Commissioners or third-party  
 5-36 consultant for disclosure or production.

5-37 (g) The agreement must require the National Association of  
 5-38 Insurance Commissioners or third-party consultant to consent to  
 5-39 intervention by an insurer in any judicial or administrative action  
 5-40 in which the National Association of Insurance Commissioners or  
 5-41 third-party consultant may be required to disclose confidential  
 5-42 information about the insurer shared with the National Association  
 5-43 of Insurance Commissioners or third-party consultant under this  
 5-44 chapter.

5-45 (h) The agreement must provide for the insurer's written  
 5-46 consent in the case of an agreement involving a third-party  
 5-47 consultant.

5-48 Sec. 830.010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The  
 5-49 commissioner's sharing of information and documents under this  
 5-50 chapter does not constitute a delegation of regulatory authority or  
 5-51 rulemaking, and the commissioner is solely responsible for the  
 5-52 administration, execution, and enforcement of the provisions of  
 5-53 this chapter.

5-54 Sec. 830.011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A  
 5-55 waiver of an applicable privilege or claim of confidentiality in a  
 5-56 document, proprietary and trade-secret materials, or other own risk  
 5-57 and solvency assessment-related information does not occur as a  
 5-58 result of disclosure of the document, materials, or other  
 5-59 information to the commissioner under this chapter or as a result of  
 5-60 sharing as authorized by this chapter.

5-61 Sec. 830.012. ADMINISTRATIVE PENALTY. (a) An insurer  
 5-62 that, without good cause, fails to timely file the summary report as  
 5-63 required by this chapter commits a violation subject to an  
 5-64 administrative penalty under Chapter 84.

5-65 (b) Each day the violation continues is a separate violation  
 5-66 for purposes of this section.

5-67 (c) The commissioner may reduce the amount of the penalty  
 5-68 assessed under this section if the insurer demonstrates to the  
 5-69 commissioner that the imposition of the penalty would constitute a

6-1 financial hardship to the insurer.

6-2 SECTION 2. Notwithstanding Chapter 830, Insurance Code, as  
6-3 added by this Act, an insurer is not required to submit a summary  
6-4 report as required by that chapter before January 1, 2015.

6-5 SECTION 3. This Act takes effect immediately if it receives  
6-6 a vote of two-thirds of all the members elected to each house, as  
6-7 provided by Section 39, Article III, Texas Constitution. If this  
6-8 Act does not receive the vote necessary for immediate effect, this  
6-9 Act takes effect September 1, 2013.

6-10

\* \* \* \* \*