

By: Hancock

S.B. No. 1382

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of information obtained by or disclosed to the Texas Department of Insurance.

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

SECTION 1. Chapter 32, Insurance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. CONFIDENTIALITY OF INFORMATION

Sec. 32.201. CONFIDENTIALITY OF CERTAIN INFORMATION. (a)

This section applies to information, including documents and copies of documents, whether in written or electronic format, that is:

(1) included in a final or preliminary examination report or investigation under Chapter 401, 751, or 823;

(2) obtained by or disclosed to the commissioner or department in the course of an examination under Chapter 401 or 751;

(3) disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H, Chapter 823;

(4) reported under Subchapter B, Chapter 823;

(5) disclosed under Section 823.010;

(6) obtained through an enterprise risk report under Section 823.0595;

(7) obtained in response to a request for information from the department made under Section 38.001; or

(8) obtained by or disclosed to the department and

1 that is confidential and exempt from disclosure under Chapter 552,
2 Government Code.

3 (b) The information described by Subsection (a), including
4 information in the possession of the National Association of
5 Insurance Commissioners under this section, is confidential and
6 privileged for all purposes, including for purposes of:

7 (1) Chapter 552, Government Code;

8 (2) a response to a subpoena; or

9 (3) discovery or admissibility in evidence in a civil
10 action.

11 (c) Except as provided by Subsections (d) and (e),
12 confidential information may not be disclosed without the prior
13 written consent of the insurer, agent, or other individual or
14 entity to which it pertains.

15 (d) The commissioner may publish all or any part of a
16 preliminary or final examination report in the manner that the
17 commissioner considers appropriate if the commissioner, after
18 giving the insurer and its affected affiliates notice and an
19 opportunity to be heard, determines that the interests of
20 policyholders or the public will be served by the publication of the
21 preliminary or final examination report.

22 (e) Except as provided by Subsection (f), if the recipient
23 of documents or other information agrees in writing to maintain the
24 confidential and privileged status of the documents or other
25 information and verifies in writing the legal authority to maintain
26 the confidential and privileged status of the documents or
27 information, the commissioner or designated person in the

1 department may disclose the information to any of the following
2 individuals or entities functioning in an official capacity:

3 (1) a commissioner of insurance or an insurance
4 department of another state if:

5 (A) the other state has confidentiality laws
6 applicable to the requested information substantially similar to
7 the laws of this state;

8 (B) the commissioner or other similar officer of
9 the other state has a legal duty to obtain the information; and

10 (C) the information pertains to an insurer,
11 affiliated group of insurers, agent, or other individual or entity
12 that operates in the other state;

13 (2) an authorized law enforcement official of this
14 state, another state, or the United States;

15 (3) a prosecuting attorney of a municipality, county,
16 or judicial district of this state, another state, or the United
17 States;

18 (4) the attorney general;

19 (5) a grand jury;

20 (6) a member of a supervisory college described by
21 Section 823.0145 if:

22 (A) the member is an insurance regulatory
23 official of another country that has confidentiality laws
24 applicable to the requested information substantially similar to
25 the laws of this state;

26 (B) the member has a legal duty to obtain the
27 information;

1 (C) the information pertains to an insurer,
2 affiliated group of insurers, agent, or other individual or entity
3 that operates in the country of the member;

4 (D) the member is from a country that has
5 established relationships, by treaty or otherwise, with the United
6 States, including written agreements to maintain and protect the
7 confidential or privileged nature of any information shared;

8 (E) a written agreement described by Paragraph
9 (D) is enforceable in the United States or provides for sufficient
10 procedures in the foreign country of the member that permit the
11 individual or entity to receive prompt notice if any information
12 disclosed under this subsection is subject to a request for
13 disclosure or subpoena for disclosure or production; and

14 (F) the member agrees to give consent to
15 intervention by the individual or entity in any judicial or
16 administrative proceeding in which the member may be required to
17 disclose confidential information shared with the member in
18 accordance with this section; and

19 (7) the National Association of Insurance
20 Commissioners and its affiliates and subsidiaries, subject to
21 Subsection (g).

22 (f) Notwithstanding Subsection (e), the commissioner may
23 share confidential and privileged information reported under
24 Section 823.0595 or confidential information obtained during the
25 course of an examination with the commissioner of insurance or
26 other similar officer of another state only if:

27 (1) the other state has a statute or rule

1 substantially similar to Subsection (e); and

2 (2) the commissioner or other similar officer of the
3 other state agrees in writing not to disclose the information.

4 (g) The commissioner shall enter into written agreements
5 with the National Association of Insurance Commissioners that
6 comply with the requirements of Subsection (e) regarding the
7 sharing and use of information provided under this section. An
8 agreement entered into under this subsection must:

9 (1) specify procedures and protocols regarding the
10 confidentiality and security of information shared with the
11 National Association of Insurance Commissioners and its affiliates
12 and subsidiaries under this chapter, including:

13 (A) procedures and protocols for sharing by the
14 National Association of Insurance Commissioners with other states,
15 federal regulators, or international insurance regulatory
16 authorities; and

17 (B) requirements that procedures and protocols
18 for sharing information with international insurance regulatory
19 authorities comply with Section 32.202;

20 (2) specify that ownership of information shared with
21 the National Association of Insurance Commissioners and its
22 affiliates and subsidiaries under this chapter remains with the
23 commissioner and that use of the information by the National
24 Association of Insurance Commissioners is subject to the direction
25 of the commissioner;

26 (3) require prompt notice to an insurer, affiliated
27 group of insurers, agent, or other individual or entity whose

1 confidential information is in the possession of the National
2 Association of Insurance Commissioners under this chapter that the
3 information is subject to a request or subpoena to the National
4 Association of Insurance Commissioners for disclosure or
5 production; and

6 (4) require the National Association of Insurance
7 Commissioners and its affiliates and subsidiaries to give consent
8 to intervention by an insurer, affiliated group of insurers, agent,
9 or other individual or entity in a judicial or administrative
10 action in which the National Association of Insurance Commissioners
11 and its affiliates and subsidiaries may be required to disclose
12 confidential information about the insurer, affiliated group of
13 insurers, agent, or other individual or entity shared with the
14 National Association of Insurance Commissioners and its affiliates
15 and subsidiaries under this chapter.

16 (h) Confidential information obtained by the department
17 from another state, an agency of the United States, the National
18 Association of Insurance Commissioners, or a foreign country or
19 international insurance regulatory official must be maintained in
20 the same confidential and privileged status it had under the laws of
21 the jurisdiction that shared the information with the department.
22 The department may enter into information sharing agreements with
23 other states and jurisdictions provided that the requirements of
24 this section and Section 32.202, if applicable, are met.
25 Information obtained from another state, an agency of the United
26 States, or other jurisdiction or the National Association of
27 Insurance Commissioners is confidential and not subject to

1 disclosure under Chapter 552, Government Code.

2 (i) This section may not be construed to prevent the
3 commissioner from using information described by Subsection (a) in
4 the furtherance of a legal or regulatory action relating to the
5 administration of this code.

6 (j) The commissioner remains solely responsible for the
7 administration, execution, and enforcement of this chapter, and the
8 commissioner's sharing of information does not constitute a
9 delegation of regulatory or rulemaking authority.

10 Sec. 32.202. DISCLOSING CONFIDENTIAL INFORMATION TO
11 FOREIGN COUNTRIES AND INTERNATIONAL INSURANCE REGULATORY
12 AUTHORITIES. (a) Except as provided by Subsection (b), the
13 department may not disclose confidential information as described
14 by Section 32.201 to any foreign country or international insurance
15 regulatory authority without the prior written consent of the
16 insurer, affiliated group of insurers, agent, or other individual
17 or entity to which the information pertains.

18 (b) The commissioner may share information with a foreign
19 country or international insurance regulatory authority without
20 the prior notice described by Subsection (c) or the prior consent of
21 the insurer, affiliated group of insurers, agent, or other
22 individual or entity to which it pertains described by Subsection
23 (a) only if:

24 (1) the foreign country or international insurance
25 regulatory authority is a member of a supervisory college described
26 by Section 823.0145 and complies with the requirements in Section
27 32.201(e)(6); or

1 (2) the commissioner is required by a treaty of the
2 United States or federal law to provide the information.

3 (c) The commissioner may share information with a foreign
4 country or international insurance regulatory authority if the
5 commissioner, after giving the individual or entity to which the
6 information pertains prior notice and an opportunity to be heard,
7 determines that the interests of policyholders or the public will
8 be served by disclosure of information. The commissioner shall
9 establish in a written agreement before disclosure that:

10 (1) the foreign country or international insurance
11 regulatory authority of the other country has confidentiality laws
12 applicable to the requested information substantially similar to
13 the laws of this state;

14 (2) the international insurance regulatory authority
15 or the commissioner or other similar officer of the other country
16 has a legal duty to obtain the information;

17 (3) the insurer, affiliated group of insurers, agent,
18 or other individual or entity to which the information pertains
19 operates in the foreign country or the country of the international
20 insurance regulatory authority requesting disclosure of the
21 information;

22 (4) the foreign country or international insurance
23 regulatory authority has established relationships, by treaty or
24 otherwise, with the United States, including written agreements to
25 maintain and protect the confidential or privileged nature of any
26 information shared;

27 (5) the written agreement is enforceable in the United

1 States or provides for sufficient procedures in the foreign country
2 that permit the individual or entity to which the information
3 pertains to receive prompt notice if any information disclosed
4 under this subsection is subject to a request for disclosure or
5 subpoena for disclosure or production; and

6 (6) the foreign country or international insurance
7 regulatory authority agrees to give consent to intervention by the
8 individual or entity to which the information pertains in a
9 judicial or administrative proceeding in which the foreign country
10 or international insurance regulatory authority may be required to
11 disclose confidential information shared with the country or
12 authority under this section.

13 (d) A copy of any agreement with a foreign country or
14 international insurance regulatory authority disclosing
15 confidential information must be provided to an affected insurer,
16 affiliated group of insurers, agent, or other affected individual
17 or entity before disclosure of any confidential or privileged
18 information. The department may include the individual or entity
19 as a party to the written agreement.

20 Sec. 32.203. CONFLICT WITH OTHER LAW. To the extent of any
21 conflict, this subchapter controls over another provision of this
22 code.

23 SECTION 2. Section 32.023, Insurance Code, is amended to
24 read as follows:

25 Sec. 32.023. REPORTS TO OTHER STATES. Subject to the
26 requirements of Section 32.201 [On request], the department shall
27 provide to the insurance commissioner or other similar officer of

1 another state information relating to a company of this state that
2 does business in the other state if:

3 (1) the other state has enacted the substantial
4 provisions of the insurance laws of this state; ~~and~~

5 (2) the commissioner or other similar officer has a
6 legal duty to obtain the information; and

7 (3) a request has been made for such information.

8 SECTION 3. Section 751.207(b), Insurance Code, is amended
9 to read as follows:

10 (b) This chapter does not prevent the commissioner from
11 disclosing ~~[at any time]~~ the contents of a final market conduct
12 examination report to the department, the insurance department of
13 any other state, or an agency of the federal government, if the
14 requirements of Section 32.201 have been met ~~[department or agency~~
15 ~~receiving the report agrees in writing to maintain the information~~
16 ~~as confidential and in a manner consistent with this chapter]~~.

17 SECTION 4. Sections 751.252(a) and (c), Insurance Code, are
18 amended to read as follows:

19 (a) The commissioner may share documents, materials, or
20 other information obtained by or disclosed to the commissioner
21 under this chapter with other state, federal, and international
22 regulatory agencies and law enforcement authorities only as
23 provided by Sections 32.201 and 32.202 ~~[if the recipient agrees to~~
24 ~~and has the legal authority to maintain the confidentiality and~~
25 ~~privileged status of the document, material, or other information]~~.

26 (c) Consistent with this section and Sections 32.201 and
27 32.202, the commissioner may enter into agreements governing the

1 sharing and use of information.

2 SECTION 5. The following laws are repealed:

3 (1) Section 751.207(c), Insurance Code; and

4 (2) Section 823.011, Insurance Code.

5 SECTION 6. This Act takes effect September 1, 2013.