

## **BILL ANALYSIS**

S.B. 655  
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Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note that the National Association of Insurance Commissioners (NAIC) has recently adopted model own risk and solvency assessment legislation in response to the 2008 financial crisis. Such an assessment is intended to proactively and continually assess the overall solvency needs of large insurance carriers. S.B. 655 seeks to implement the NAIC's model legislation.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 655 amends the Insurance Code to require each domestic 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, which 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. The bill requires an insurer or the insurance group of which the insurer is a member to regularly conduct an own risk and solvency assessment 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 specifies that such an assessment be consistent with a process comparable to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners (NAIC) and appropriate to the nature, scale, and complexity of the insurer or insurance group. 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 of which the insurer is a member.

S.B. 655 requires an insurer, on the 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 and 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 the lead state commissioner of the insurance group and requires the commissioner to consider the procedures adopted by the NAIC in determining the lead state commissioner for purposes of summary report submissions. The bill requires the summary 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 the best of the officer's or executive's belief and knowledge that the insurer applies the enterprise risk management process described in the summary report and a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board of directors. The bill authorizes an insurer to comply with the summary report submission 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, contingent on that report providing information that is comparable to the information described in the NAIC guidance manual. The bill requires a summary report that is in a language other than English to be accompanied by an English translation of that report.

S.B. 655 exempts an insurer from the bill's provisions if the insurer and the insurance group of which the insurer is a member have annual direct written and unaffiliated assumed premiums of less than \$500 million and less than \$1 billion, respectively, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program. The bill requires an insurer's summary report to include every insurer within the insurance group if an insurer qualifies for such an exemption but the insurance group of which the insurer is a member does not qualify for exemption and authorizes an insurer to satisfy that 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 the exemption to submit a summary report that is applicable to that insurer even if the insurance group of which the insurer is a member qualifies for the exemption.

S.B. 655 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. The bill authorizes the commissioner, in deciding whether to grant the insurer's request for waiver, to consider the type and volume of business written, the ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. The bill requires the commissioner, if the insurer is part of an insurance group with insurers domiciled in more than one state, to coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

S.B. 655 authorizes the commissioner to require an insurer to maintain a risk management framework, conduct an own risk and solvency assessment, and file a summary report if there are unique circumstances, the insurer has risk-based capital for a company action level event as set forth in Texas Department of Insurance (TDI) rules, the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition under state law or TDI rule, or the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

S.B. 655 requires an insurer that qualifies for an exemption but 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 requirements not later than December 31 of the calendar year following the calendar year the threshold is exceeded.

S.B. 655 requires an insurer to prepare a summary report in accordance with the NAIC guidance manual, to maintain documentation and supporting information, and to make that information available on examination or on the commissioner's request. The bill requires TDI, 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. The bill establishes that documents, materials, or other information, including a summary report, in possession or control of TDI that is obtained by,

created by, or disclosed to the commissioner or any other person under the bill's provisions are confidential and privileged and not subject to state public information law, a response to subpoena, or discovery or admissibility in evidence in any civil action. The bill recognizes 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, in the possession or control of TDI that is obtained by, created by, or disclosed to the commissioner or any other person under the bill's provisions as being proprietary and containing trade secrets. The bill authorizes the commissioner to use such documents, materials, or information to further any regulatory or legal action brought as part of the commissioner's official duties but prohibits the commissioner from otherwise making such 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 under the bill's provisions, in an examination, or otherwise under any other law from testifying or being required to testify in any private civil action concerning information that is confidential or recognized as proprietary.

S.B. 655 authorizes the commissioner, on request, to share documents, materials, or other own risk and solvency assessment-related information, including certain confidential and privileged information, 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 to verify in writing the recipient's legal authority to maintain the confidential and privileged status of that information. The bill authorizes the commissioner to receive documents, materials, or other own risk and solvency assessment-related information or any other relevant information 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 such information as confidential or privileged 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. 655 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 and establishes the required criteria for such an agreement. The bill establishes that the commissioner's sharing of information and documents under the bill's provisions does not constitute a delegation of regulatory authority or rulemaking and that the commissioner is solely responsible for the administration, execution, and enforcement of the bill's provisions. The bill establishes 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 that information to the commissioner or as a result of authorized sharing of that information under the bill's provisions.

S.B. 655 establishes that an insurer that fails to timely file a required summary report without good cause commits a violation subject to an administrative penalty, 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. The bill specifies that an insurer is not required to submit an own risk and solvency assessment summary report before January 1, 2016.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.