

By: Eltife
(Smithee)

S.B. No. 655

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, including a summary report, in the possession
22 or control of the department that is obtained by, created by, or
23 disclosed to the commissioner or any other person under this
24 chapter, including documents, materials, and other information
25 shared or received under Subsection (e), and documents, materials,
26 or other information in the possession or control of the National
27 Association of Insurance Commissioners or third-party consultant

1 under this chapter, are confidential and privileged and not subject
2 to:

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

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

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

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

26 (e) In order to assist in the performance of the
27 commissioner's regulatory duties, the commissioner may, on

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

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

9 (2) members of a supervisory college described in
10 Section [823.0145](#);

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

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

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

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

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

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

1 (1) a regulatory official of a foreign or domestic
2 jurisdiction, including a member of a supervisory college described
3 in Section 823.0145; and

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

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

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

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

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

26 (1) agrees in writing to maintain the confidential and
27 privileged status of the own risk and solvency assessment-related

1 documents, materials, or other information; and

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 2. Notwithstanding Chapter 830, Insurance Code, as

1 added by this Act, an insurer is not required to submit a summary
2 report as required by that chapter before January 1, 2016.

3 SECTION 3. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2015.