

By: Zaffirini

S.B. No. 2122

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the disclosure of information concerning the corporate
3 governance structure of certain insurers and related entities;
4 providing an administrative penalty.

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

6 SECTION 1. Subtitle B, Title 6, Insurance Code, is amended
7 by adding Chapter 831 to read as follows:

8 CHAPTER 831. CORPORATE GOVERNANCE ANNUAL DISCLOSURE

9 Sec. 831.0001. APPLICABILITY AND PURPOSE. (a) The purpose
10 of this chapter is to promote the public interest by:

11 (1) requiring annual disclosure of an insurer or
12 insurance group's corporate governance structure, policies, and
13 practices to permit the commissioner to gain and maintain an
14 understanding of the insurer's corporate governance framework; and

15 (2) providing for the confidential treatment of the
16 corporate governance annual disclosure and related information as
17 the disclosure and related information will contain confidential
18 and sensitive information related to an insurer or insurance
19 group's internal operations and proprietary and trade-secret
20 information which, if made public, could potentially cause the
21 insurer or insurance group competitive harm or disadvantage.

22 (b) This chapter may not be construed to prescribe or impose
23 corporate governance standards and internal procedures beyond that
24 which is required under applicable state corporate law.

1 (c) Notwithstanding Subsection (b), this chapter may not be
2 construed to limit the commissioner's authority, or the rights or
3 obligations of third parties, under Chapter 401.

4 (d) This chapter applies to each insurer domiciled in this
5 state, except that this chapter does not apply to a domestic insurer
6 that is authorized, admitted, or eligible to engage in the business
7 of insurance only in this state. For the purposes of this chapter,
8 an insurer is not considered to be authorized, admitted, or
9 eligible to engage in the business of insurance only in this state
10 if the insurer is a member of an insurance group that writes or
11 assumes insurance in any manner in another state.

12 Sec. 831.0002. DEFINITIONS. In this chapter:

13 (1) "Disclosure" means the confidential corporate
14 governance annual disclosure filed by the insurer or insurance
15 group in accordance with the requirements of this chapter.

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

19 (3) "Insurer" has the meaning assigned by Section
20 823.002. The term includes a health maintenance organization
21 authorized to engage in business under Chapter 843.

22 Sec. 831.0003. DISCLOSURE REQUIRED. (a) Except as
23 provided by Subsection (b), an insurer, or the insurance group of
24 which the insurer is a member, shall, not later than June 1 of each
25 calendar year, submit to the commissioner a corporate governance
26 annual disclosure that contains the information described by
27 Section 831.0008(c).

1 (b) Notwithstanding any request from the commissioner under
2 Subsection (d), an insurer that is a member of an insurance group
3 shall submit the report required by Subsection (a) to the
4 commissioner of the lead state for the insurance group, in
5 accordance with the laws of the lead state, as determined by the
6 procedures adopted by the National Association of Insurance
7 Commissioners.

8 (c) The disclosure must include a signature of the insurer
9 or insurance group's chief executive officer or corporate secretary
10 attesting to the best of that individual's belief and knowledge
11 that the insurer has implemented the corporate governance practices
12 described in the disclosure and that a copy of the disclosure has
13 been provided to the insurer's board of directors or the
14 appropriate committee of the insurer's board of directors.

15 (d) An insurer not otherwise required to submit a disclosure
16 under this chapter shall submit a disclosure on the commissioner's
17 request.

18 Sec. 831.0004. LEVEL OF REPORTING. (a) For purposes of
19 completing the disclosure under Section 831.0003, an insurer or
20 insurance group may provide information regarding corporate
21 governance at the ultimate controlling parent level, an
22 intermediate holding company level, or the individual legal entity
23 level, depending on how the insurer or insurance group has
24 structured the insurer's or insurance group's system of corporate
25 governance.

26 (b) An insurer or insurance group is encouraged to make the
27 disclosure:

1 (1) at the level at which the insurer's or insurance
2 group's risk appetite is determined;

3 (2) at the level at which the earnings, capital,
4 liquidity, operations, and reputation of the insurer are overseen
5 collectively and at which the supervision of those factors are
6 coordinated and exercised; or

7 (3) at the level at which legal liability for failure
8 of general corporate governance duties would be placed.

9 (c) If an insurer or insurance group determines the level of
10 reporting based on the criteria described by Subsection (b), the
11 insurer or insurance group shall indicate which of the three
12 criteria was used to determine the level of reporting and explain
13 any subsequent changes in level of reporting.

14 Sec. 831.0005. REVIEW OF DISCLOSURE; REQUEST FOR ADDITIONAL
15 INFORMATION. The review of the disclosure and any additional
16 requests for information shall be made through the lead state as
17 determined by the procedures adopted by the National Association of
18 Insurance Commissioners described by Section 831.0003(b).

19 Sec. 831.0006. SUBSTANTIALLY SIMILAR INFORMATION. An
20 insurer that provides information substantially similar to the
21 information required by this chapter in other documents provided to
22 the commissioner, including proxy statements filed in conjunction
23 with Form B requirements or other state or federal filings provided
24 to the department, is not required to duplicate that information in
25 the disclosure but is required only to cross-reference the document
26 in which the information is included.

27 Sec. 831.0007. PART OF EXAMINATION PROCESS. The disclosure

1 and any additional information requested by the commissioner and
2 provided to the department as described by this chapter is
3 considered part of the process of examination of insurers under
4 this code, including Chapter 401.

5 Sec. 831.0008. CONTENTS OF DISCLOSURE. (a) An insurer or
6 insurance group has discretion over the responses to the disclosure
7 inquiries, provided the disclosure must contain the material
8 information necessary to permit the commissioner to gain an
9 understanding of the insurer's or insurance group's corporate
10 governance structure, policies, and practices.

11 (b) The commissioner may request additional information
12 that the commissioner considers material and necessary to provide
13 the commissioner with a clear understanding of:

- 14 (1) the corporate governance policies; and
15 (2) the reporting, information system, or controls
16 implementing those policies.

17 (c) Notwithstanding Subsections (a) and (b), the disclosure
18 shall be prepared consistent with rules adopted by the
19 commissioner. Documentation and supporting information must be
20 maintained and made available on examination or on request of the
21 commissioner.

22 Sec. 831.0009. CONFIDENTIALITY. (a) Documents, materials,
23 or other information, including a disclosure, in the possession or
24 control of the department that is obtained by, created by, or
25 disclosed to the commissioner or any other person under this
26 chapter is confidential and privileged and is:

- 27 (1) not subject to disclosure under Chapter 552,

1 Government Code;

2 (2) not subject to subpoena; and

3 (3) not subject to discovery or admissible in evidence
4 in any private civil action.

5 (b) Documents, materials, or other information, including a
6 disclosure, in the possession or control of the department that is
7 obtained by, created by, or disclosed to the commissioner or any
8 other person under this chapter is recognized by this state as being
9 proprietary and to contain trade secrets.

10 (c) The commissioner may use the documents, materials, or
11 other information described in this section to further any
12 regulatory or legal action brought as part of the commissioner's
13 official duties. The commissioner may not otherwise make the
14 documents, materials, or other information public without the prior
15 written consent of the insurer. Nothing in this section may be
16 construed to require written consent of the insurer before the
17 commissioner may share or receive documents, materials, or other
18 information under Subsection (e).

19 (d) The commissioner and any other person who receives
20 documents, materials, or other information under this chapter,
21 through examination, or otherwise under any other law, while acting
22 under the authority of the commissioner, or with whom the
23 documents, materials, or other information is shared under this
24 chapter may not testify or be required to testify in any private
25 civil action concerning any documents, materials, or other
26 information subject to Subsection (a) or (b).

27 (e) In order to assist in the performance of the

1 commissioner's regulatory duties, the commissioner may, on
2 request, share documents, materials, or other information,
3 including confidential and privileged documents, materials, or
4 information subject to Subsection (a) or (b) and proprietary and
5 trade-secret documents, materials, or information, with:

6 (1) other state, federal, and international financial
7 regulatory agencies, including members of a supervisory college
8 described by Section 823.0145;

9 (2) the National Association of Insurance
10 Commissioners; and

11 (3) a third-party consultant under Section 831.0012.

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

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

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

20 (g) In order to assist in the performance of the
21 commissioner's regulatory duties, the commissioner may receive
22 documents, materials, or other governance-related information,
23 including confidential and privileged documents, materials, or
24 information and proprietary and trade-secret documents, materials,
25 or information from:

26 (1) regulatory officials of other state, federal, and
27 international financial regulatory agencies, including members of

1 a supervisory college described by 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 or the 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. 831.0010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The
10 sharing of documents, materials, or other information by the
11 commissioner under this chapter does not constitute a delegation of
12 regulatory authority or rulemaking, and the commissioner is solely
13 responsible for the administration, execution, and enforcement of
14 the provisions of this chapter.

15 Sec. 831.0011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A
16 waiver of an applicable privilege or claim of confidentiality in
17 documents, materials, or other information, including proprietary
18 and trade-secret materials, does not occur as a result of
19 disclosure of the document, materials, or information to the
20 commissioner under this chapter or as a result of sharing as
21 authorized by this chapter.

22 Sec. 831.0012. NATIONAL ASSOCIATION OF INSURANCE
23 COMMISSIONERS AND THIRD-PARTY CONSULTANTS. (a) The commissioner
24 may retain, at the insurer's expense, third-party consultants,
25 including attorneys, actuaries, accountants, and other experts not
26 otherwise part of the commissioner's staff as may be reasonably
27 necessary to assist the commissioner in reviewing the disclosure

1 and related information or the insurer's compliance with this
2 chapter.

3 (b) A person retained under Subsection (a) is under the
4 direction and control of the commissioner and acts in a purely
5 advisory capacity.

6 (c) The National Association of Insurance Commissioners and
7 a third-party consultant are subject to the same confidentiality
8 standards and requirements as the commissioner.

9 (d) As part of the retention process, a third-party
10 consultant shall verify to the commissioner, with notice to the
11 insurer, that the consultant:

12 (1) is free of a conflict of interest; and

13 (2) has internal procedures in place to:

14 (A) monitor compliance with a conflict; and

15 (B) comply with the confidentiality standards
16 and requirements of this chapter.

17 (e) A written agreement with the National Association of
18 Insurance Commissioners or a third-party consultant governing
19 sharing and use of information provided under this chapter must
20 expressly require the written consent of the insurer before
21 information provided under this chapter is made public and contain:

22 (1) specific procedures and protocols for maintaining
23 the confidentiality and security of disclosure-related information
24 shared with the National Association of Insurance Commissioners or
25 the third-party consultant under this chapter;

26 (2) procedures and protocols for the sharing by the
27 National Association of Insurance Commissioners of

1 disclosure-related documents, materials, or other information only
2 with other state regulators from states in which an affected
3 insurance group has domiciled insurers, including a requirement
4 that the recipient agrees in writing to maintain the confidential
5 and privileged status of the shared documents, materials, or other
6 information and has verified in writing the recipient's legal
7 authority to maintain the confidential and privileged status of
8 that information;

9 (3) a provision specifying that ownership of
10 disclosure-related documents, materials, or other information
11 shared with the National Association of Insurance Commissioners or
12 a third-party consultant remains with the department and the use of
13 the information by the National Association of Insurance
14 Commissioners or third-party consultant is subject to the direction
15 of the commissioner;

16 (4) a provision that prohibits the National
17 Association of Insurance Commissioners or third-party consultant
18 from storing disclosure-related documents, materials, or other
19 information shared under this chapter in a permanent database after
20 the underlying analysis is completed;

21 (5) a provision requiring the National Association of
22 Insurance Commissioners or third-party consultant to provide
23 prompt notice to the commissioner and to the insurer or insurance
24 group regarding any subpoena, request for disclosure, or request
25 for production of the insurer's disclosure-related documents,
26 materials, or other information; and

27 (6) a requirement that the National Association of

1 Insurance Commissioners or third-party consultant consents to
2 intervention by an insurer in any judicial or administrative action
3 in which the National Association of Insurance Commissioners or
4 third-party consultant may be required to disclose confidential
5 information about the insurer shared with the National Association
6 of Insurance Commissioners or third-party consultant under this
7 chapter.

8 Sec. 831.0013. ADMINISTRATIVE PENALTY. (a) An insurer
9 that, without good cause, fails to timely file the disclosure as
10 required by this chapter commits a violation subject to an
11 administrative penalty under Chapter 84.

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

14 (c) The commissioner may reduce the amount of the penalty
15 assessed under this section if the insurer demonstrates to the
16 commissioner that the imposition of the penalty would constitute a
17 financial hardship to the insurer.

18 Sec. 831.0014. RULES. (a) The commissioner shall adopt
19 rules as necessary to enforce this chapter.

20 (b) A rule adopted under Subsection (a) is not subject to
21 Section 2001.0045, Government Code.

22 SECTION 2. An insurer is not required to file a corporate
23 governance annual disclosure under Chapter 831, Insurance Code, as
24 added by this Act, before June 1, 2020.

25 SECTION 3. This Act takes effect September 1, 2019.