

## **BILL ANALYSIS**

Senate Research Center

S.B. 655  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Insurance (TDI) regulates insurance carriers and the relationships between insurance companies and their affiliates. TDI also strives to monitor the financial condition and risk profiles of holding company systems, which refers to a group of affiliated insurance carriers or other entities under common ownership or control. As an illustration, a single group of affiliates may be engaged in a variety of activities including insurance, banking, real estate, and securities. In fact, a holding company has become the most common business structure through which an entity owns an insurance company.

TDI monitors the financial condition and risk profiles of holding company systems because risks posed by noninsurance operations can potentially spread within a group and negatively impact the financial condition of affiliated insurance companies. For example, financial harm caused by a group's banking, real estate, or securities activities may negatively impact the financial health of its affiliated insurers.

An Own Risk Solvency Assessment (ORSA) is an internal assessment by the insurer of the risks associated with the current business plan of an insurer or an insurance group as well as the amount of capital resources available to support that risk. An ORSA is meant to proactively and continually assess the overall solvency needs of large carriers. The insurance commissioners of 50 states, through the National Association of Insurance Commissioners (NAIC), recently adopted the ORSA Model Act in response to the 2008 financial crises that devastated the global market. Under the Model Act, insurers are required to supply a summary of the ORSA report to a state insurance department, which provides the department with a better understanding of the financial status and needs of large insurers and their affiliate companies.

S.B. 655 adds a new chapter to the Insurance Code based on NAIC's ORSA Model Act.

S.B. 655 amends current law relating to own risk and solvency assessment by insurers and insurance groups and provides a penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 6, Insurance Code, by adding Chapter 830, as follows:

#### **CHAPTER 830. OWN RISK AND SOLVENCY ASSESSMENT**

Sec. 830.001. **APPLICABILITY AND PURPOSE.** (a) Provides that this chapter applies to each domestic insurer unless exempt under Section 830.006.

(b) Provides that 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 of insurance (commissioner).

(c) Provides that 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. Provides that 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. Provides that the summary report is a confidential document filed with the commissioner, and provides that the commissioner may share the summary report only as stated in this chapter in order to assist the commissioner in the performance of the commissioner's duties. Provides that an own risk and solvency assessment summary report is not subject to public disclosure in any event.

Sec. 830.002. DEFINITIONS. Defines "guidance manual," "insurance group," "insurer," "own risk and solvency assessment," and "summary report."

Sec. 830.003. RISK MANAGEMENT FRAMEWORK. Requires an 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. Provides that this requirement 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.

Sec. 830.004. OWN RISK AND SOLVENCY ASSESSMENT REQUIREMENT. (a) Requires an insurer, or the insurance group of which the insurer is a member, subject to Section 830.006, to regularly conduct, consistent with a process comparable to the guidance manual, an own risk and solvency assessment, appropriate to the nature, scale, and complexity of the insurer or insurance group, 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.

(b) Requires the insurer, or the insurance group of which the insurer is a member, to conduct the own risk and solvency assessment described by Subsection (a):

(1) annually; and

(2) 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.

Sec. 830.005. SUMMARY REPORT REQUIRED. (a) Requires an insurer, on the commissioner's request, to submit to the commissioner a summary report or a combination of reports that together contain the information described in the guidance manual. Prohibits the commissioner from making a request under this subsection more than once each year.

(b) Requires the insurer, without regard to whether the commissioner has made a request under Subsection (a), if the insurer is a member of an insurance group, to submit to the commissioner the reports required by Subsection (a) if the commissioner is the lead state commissioner of the insurance group.

(c) Requires the commissioner, in determining the lead state commissioner for purposes of this section, to consider the procedures adopted by the National Association of Insurance Commissioners.

(d) Requires that the reports 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:

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

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

(e) Provides that an insurer may comply with Subsection (a) or (b) 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, if that report provides information that is comparable to the information described in the guidance manual. Requires that a report in a language other than English be accompanied by a translation of that report into the English language.

Sec. 830.006. EXEMPTION. (a) Provides that an insurer is exempt from the requirements of this chapter if:

(1) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million; and

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

(b) Requires that if an insurer qualifies for exemption under Subsection (a)(1), but the insurance group of which the insurer is a member does not qualify for exemption under Subsection (a)(2), then the summary report required under Section 830.005 must include every insurer within the insurance group.

(c) Provides that an insurer may satisfy the requirement under Subsection (b) by submitting more than one summary report for any combination of insurers if the combination of reports includes each insurer within the insurance group.

(d) Requires the insurer, if an insurer does not qualify for exemption under Subsection (a)(1), but the insurance group of which it is a member qualifies for exemption under Subsection (a)(2), to submit a summary report under Section 830.005 that is applicable to that insurer.

(e) Provides that an insurer that does not qualify for exemption under Subsection (a) may apply to the commissioner for a waiver from the requirements of this chapter based on unique circumstances. Provides that, in deciding whether to grant the insurer's request for waiver, the commissioner may 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. 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.

(f) Authorizes the commissioner, notwithstanding the exemptions stated in this section, to require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file a summary report if:

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

(2) the insurer has risk-based capital for a company action level event as set forth in Texas Department of Insurance (TDI) rules;

(3) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition under Chapter 404 (Financial Condition) or TDI rule; or

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

(g) Requires the insurer, if an insurer that qualifies for an exemption under Subsection (a) 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 requirements of this chapter not later than December 31 of the calendar year following the calendar year the threshold is exceeded.

Sec. 830.007. CONTENTS OF SUMMARY REPORT. (a) Requires an insurer to prepare a summary report in accordance with the guidance manual and subject to the requirements of Subsection (b). Requires an insurer to maintain documentation and supporting information and to make the documentation and supporting information available on examination or on request of the commissioner.

(b) 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.

Sec. 830.008. CONFIDENTIALITY. (a) Provides that documents, materials, or other information, including a 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 this chapter, including documents, materials, and other information shared or received under Subsection (e) and documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or third-party consultant under this chapter, are confidential and privileged and not subject to:

(1) Chapter 552 (Public Information), Government Code;

(2) a response to subpoena; or

(3) discovery or admissibility in evidence in any civil action.

(b) Provides that documents, materials, or other information, including a summary report prepared under this chapter and additional information submitted under Section 830.007, in the possession or control of TDI that that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter is recognized by this state as being proprietary and to contain trade secrets.

(c) Authorizes the commissioner to use the documents, materials, or other information described in this section to further any regulatory or legal action brought as part of the commissioner's official duties. Prohibits the commissioner from otherwise making the documents, materials, or other information public without the prior written consent of the insurer.

(d) Prohibits the commissioner and any other person who receives own risk and solvency assessment-related information under this chapter, in an examination, or otherwise under any other law from testifying or being required to testify in any private civil action concerning any documents, materials, or information subject to Subsection (a) or (b).

(e) Authorizes the commissioner, in order to assist in the performance of the commissioner's regulatory duties, to, on request, share documents, materials, or other own risk and solvency assessment-related information, including confidential and privileged documents, materials, or information subject to Subsection (a) or (b) or confidential or privileged documents, materials, or information subject to Chapter 401 (Audits and Examinations), 404 (Financial Condition), or 823 (Insurance Holding Company Systems), as necessary, with:

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

(f) Requires the recipient of the information, before the commissioner may share information under this section, to:

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

(g) Authorizes the commissioner to receive documents, materials, or other own risk and solvency assessment-related information or any other relevant information, including otherwise confidential and privileged documents, materials, or information and proprietary and trade-secret information or documents, from:

- (1) a regulatory official of a foreign or domestic jurisdiction, including a member of a supervisory college described in Section 823.0145 (Supervisory Colleges); and
- (2) the National Association of Insurance Commissioners.

(h) Requires the commissioner to maintain as confidential or privileged any documents, materials, or information received under Subsection (g) 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.

**Sec. 830.009. AGREEMENT CONCERNING CONFIDENTIAL AND PRIVILEGED INFORMATION.** (a) Requires the commissioner to enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant that governs the sharing and use of information provided under this chapter. Requires that the agreement comply with and contain all the requirements listed in this section.

(b) Requires that the agreement specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or third-party consultant under this chapter,

including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers.

(c) Requires that the agreement provide that the recipient:

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

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

(d) Requires that the agreement specify that ownership of information shared with the National Association of Insurance Commissioners or third-party consultant under this chapter remains with the commissioner and that the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner.

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

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

(g) Requires that the agreement require the National Association of Insurance Commissioners or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or third-party consultant under this chapter.

(h) Requires that the agreement provide for the insurer's written consent in the case of an agreement involving a third-party consultant.

Sec. 830.010. **AUTHORITY OF COMMISSIONER NOT AFFECTED.** Provides that the commissioner's sharing of information and documents under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

Sec. 830.011. **PRIVILEGE AND CONFIDENTIALITY NOT WAIVED.** Provides 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 the document, materials, or other information to the commissioner under this chapter or as a result of sharing as authorized by this chapter.

Sec. 830.012. **ADMINISTRATIVE PENALTY.** (a) Provides that an insurer that, without good cause, fails to timely file the summary report as required by this chapter commits a violation subject to an administrative penalty under Chapter 84 (Administrative Penalties).

(b) Provides that each day the violation continues is a separate violation for purposes of this section.

(c) Authorizes the commissioner to reduce the amount of the penalty assessed under this section if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

SECTION 2. Provides that, notwithstanding Chapter 830, Insurance Code, as added by this Act, an insurer is not required to submit a summary report as required by that chapter before January 1, 2016.

SECTION 3. Effective date: upon passage or September 1, 2015.