

- SUBJECT:** Own risk and solvency assessments by insurers and insurance groups
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman
0 nays
- WITNESSES:** For — (*Registered, but did not testify:* John Marlow, ACE Group; Jay Thompson, AFACT, Prudential, TALHI; Deborah Polan, AIG; Thomas Ratliff, American Insurance Association; Lee Ann Alexander, Liberty Mutual Insurance; Paul Martin, National Association of Mutual Insurance Companies; Joe Woods, Property Casualty Insurers Association of America; Randy Lee, Stewart Title Guaranty Company; Jennifer Cawley, Texas Association of Life and Health Insurers; Robert Gilbert, USAA; Miles Mathews, Voya Financial Services)

Against — (*Registered, but did not testify:* Kelley Shannon, Freedom of Information Foundation of Texas)

On — Doug Slape, Texas Department of Insurance
- BACKGROUND:** The National Association of Insurance Commissioners is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from 50 states, the District of Columbia, and five U.S. territories.

Insurance Code, sec. 823.002(6) defines an “insurer” to mean any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county mutual insurance company, Lloyd’s plan, reciprocal or interinsurance exchange, stipulated premium insurance

company, and group hospital service corporation. The term does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

DIGEST:

HB 1730 would require an insurer or an insurance group to which the insurer is a member to conduct an own risk and solvency assessment, to maintain a risk management framework, and to prepare a summary report of the own risk and solvency assessment. The bill would set criteria for when and how reports would be sent to the commissioner of the Texas Department of Insurance (TDI) and would set a penalty for failing to file a summary report with the TDI commissioner. The bill also would specify confidentiality requirements for reports provided to the TDI under the bill's provisions and the sharing of those reports.

Definitions. The bill would define an “insurer” as defined in Insurance Code, sec. 823.002(6) and would define an “insurance group” to mean the insurers and affiliates included within an insurance holding company system that consists of two or more affiliates, one of which is an insurer.

The bill would define an “own risk and solvency assessment” to mean a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.

Own risk and solvency assessment and risk management framework.

The bill would require an insurer, or the insurance group of which the insurer is a member, to regularly conduct an own risk and solvency assessment consistent with a process comparable to the guidance manual developed and adopted by the National Association of Insurance Commissioners. An insurer or insurance group would have to conduct the assessment annually and at any time there were significant changes to the insurer's or insurance group's risk profile. The bill also would require an insurer — or insurance group, if applicable — 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.

Summary report. The bill also would require insurers to prepare a summary report and to make the summary report, documentation and supporting information or a substantially similar report available on examination or on request of the TDI commissioner. A report submitted in a language other than English would have to be accompanied by an English translation of the report. The bill would require the report to be made in accordance with the version of the National Association of Insurance Commissioners' guidance manual in effect at the time a summary report was provided. The bill would define a "summary report" to mean a confidential, high-level summary of the own risk and solvency assessment of an insurer or insurance group.

The bill would require TDI to use procedures similar to the procedures currently used in the analysis and examination of multistate or global insurers and insurance groups when reviewing the summary report or making requests for additional information.

Signing of reports. The reports provided to the TDI commissioner would have to be signed by an insurance group's chief risk officer or a similar executive officer, attesting to the best of the officer's belief that certain criteria had been fulfilled. An insurer that is a member of an insurance group would have to submit reports to the TDI commissioner whether or not the TDI commissioner had requested them if the TDI commissioner was the lead state commissioner of the insurer's insurance group. The lead state commissioner would be determined for these purposes according to the procedures adopted by the National Association of Insurance Commissioners. The TDI commissioner could not request a summary report more than once a year.

Exemptions from the bill's provisions. An insurer would be exempt from the bill's provisions if:

- 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
- the insurance group of which the insurer is a member has annual direct written and unaffiliated 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.

If an insurer qualified for exemption but its insurance group did not, then the insurance group's summary report would have to include every insurer within the insurance group. An insurance group could submit more than one summary report for any combination of insurers to meet this requirement if the combination of reports includes each insurer within the insurance group. If an insurance group qualified for exemption but an insurer that is a member of the group did not, then the insurer would have to submit a summary report for itself.

A non-exempt insurer could apply to the TDI commissioner for a waiver from the provisions of the bill based on unique circumstances. The bill would define the criteria the TDI commissioner would have to consider in granting a waiver. The bill also would require the TDI commissioner to coordinate with the lead state commissioner and other domiciliary commissioners in considering whether to grant a request for a waiver from an insurer that was part of an insurance group with insurers domiciled in more than one state. The TDI commissioner still could require an insurer that would otherwise be exempt from the provisions of the bill to maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report if the insurer met certain criteria specified in the bill.

Confidentiality. Documents, materials, or other information obtained by, created by, or disclosed to the commissioner or any person under the provisions of the bill, including those shared or received in the

performance of the commissioner's regulatory duties and those in the possession or control of the National Association of Insurance Commissioners or a third-party consultant, would be confidential and privileged for all purposes. This includes purposes of Government Code, ch. 552 related to public information, a response to a subpoena, or discovery of admissibility in evidence in any civil action.

The summary report under the bill as well as associated documents and materials would be recognized by the state as being proprietary and to contain trade secrets. The bill would allow the TDI commissioner to use the documents, materials, or related information to further any regulatory or legal action brought as part of the commissioner's official duties. The bill would prohibit the TDI commissioner from otherwise making these documents and materials public without the prior written consent of the insurer. The bill also would prohibit the TDI commissioner and any other person who received own risk and solvency assessment-related information under the provisions of the bill, in an examination, or otherwise under any other law from testifying in any civil action concerning these documents, materials, or information under the bill, including the summary report.

Sharing of information. To assist in the performance of their regulatory duties, the TDI commissioner could, on request, share documents, materials, or other own risk and solvency assessment-related information with certain entities specified in the bill. This information could include confidential and privileged documents, materials, or information under the bill or confidential or privileged documents, materials, or information subject to Insurance Code, ch. 401 related to audits and examinations, Chapter 404 related to a hazardous financial condition, or Chapter 823 related to insurance holding company systems, as necessary.

These entities would need to agree in writing to maintain the confidential and privileged status of the information and verify in writing the entity's legal authority to maintain that status before the TDI commissioner could share information with these entities.

The bill also would allow the TDI commissioner to receive documents, materials, other own risk and solvency assessment-related information, or other relevant information from certain entities specified in the bill. The bill would require the TDI commissioner to maintain these documents, materials, and information as confidential or privileged, with notice and understanding that they also would be confidential or privileged under the laws of the jurisdiction that was the source of the document, material, or information.

The bill also would require the TDI commissioner to enter into written agreement with the National Association of Insurance Commissioners or a third-party consultant that governs the sharing and use of information under the provisions of the bill. The agreement would have to comply with and contain certain requirements specified in the bill. The bill would specify that the TDI commissioner's sharing of information and documents under the provisions of the bill does not constitute a delegation of regulatory authority or rulemaking, and the TDI commissioner is solely responsible for the administration, execution, and enforcement of the provisions of the bill.

The bill would specify 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 the provisions of the bill or as a result of sharing information authorized under the bill.

Administrative penalty. An insurer that, without good cause, failed to timely file the summary report required by the bill would commit a violation subject to an administrative penalty under Insurance Code, ch. 84 which governs administrative penalties. Under Chapter 84, the penalty for a violation would not exceed \$25,000 unless a greater or lesser penalty was specified in the Insurance Code or in another Texas insurance law.

Each day the violation continued would be a separate violation. The TDI commissioner could reduce the amount of the assessed penalty if the

penalty constituted a financial hardship to the insurer.

An insurer would not be required to submit a summary report required by the bill until January 1, 2016.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 1730 would implement the National Association of Insurance Commissioners' model legislation for insurance risk and solvency assessments, which is needed to proactively and continually assess the overall solvency needs of large insurance carriers and guard against potential financial hazards. The bill would allow the Texas Department of Insurance (TDI) to have the information it needs to calculate risk and ensure that insurance groups are financially solvent and can pay claims.

The bill also would address concerns with these insurance groups that arose during the 2008 economic downturn. Specifically, the bill would provide TDI with access to information regarding insurance groups that have members that are not insurers, and could have a negative impact on the insurers in the holding groups.

Many Texas insurers already are subject to these reporting requirements in other states if they operate outside Texas. The bill would allow TDI to have the same information that is available to insurance departments in other states that have enacted this model legislation.

The bill appropriately would keep reported information confidential. If the state made insurers' proprietary information subject to public disclosure, it could discourage insurers from providing this information to TDI and could lead to lawsuits from insurers.

**OPPONENTS
SAY:**

HB 1730 requires reports that should not be kept confidential. The information that government holds is the people's information and should be made available to consumers and businesses so they can make better

decisions in choosing insurance carriers and also have access to information about insurer solvency. TDI could redact certain information if needed when providing information to the public, but the information should not be kept completely confidential.

NOTES: SB 655 by Eltife, the identical companion bill, was referred to the House Insurance Committee on April 27.