

BILL ANALYSIS

Senate Research Center
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H.B. 3306
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The National Association of Insurance Commissioners (NAIC) is the national standard-setting and regulatory support organization created and governed by the chief insurance regulators from all 50 states, the District of Columbia and five U.S. territories. NAIC has issued a new Corporate Governance Disclosure Model Law and Regulation that will be required to be codified by 2020 in order for a state to be recognized as an accredited state under the NAIC procedures for accreditation. This will affect insurance companies based in Texas that do business in other states.

The new requirements would apply to Texas property/casualty, life, and health insurance companies. Texas currently does not have a law similar to the new model law. If this remains the case, Texas domestic insurers may have to file corporate governance disclosures in each state in which it is licensed to do business—an onerous requirement, and one that may expose its information to a patchwork of varying confidentiality regimes.

H.B. 3306 would enact the model law in Texas, to provide that an insurer has to file a corporate governance disclosure only in its domiciliary state to satisfy disclosure requirements in other states that have adopted the model law. This would be far less burdensome than filing in every state in which a company does business. The bill would impose no new burdens on insurance groups doing business only in Texas.

H.B. 3306 amends current law relating to the disclosure of information concerning the corporate governance structure of certain insurers and related entities; and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 831.0014, Insurance Code) in of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 6, Insurance Code, by adding Chapter 831, as follows:

CHAPTER 831. CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Sec. 831.0001. APPLICABILITY AND PURPOSE. (a) Provides that the purpose of this chapter is to promote the public interest by requiring annual disclosure of an insurer or insurance group's corporate governance structure, policies, and practices to permit the commissioner of insurance (commissioner) to gain and maintain an understanding of the insurer's corporate governance framework and providing for the confidential treatment of the corporate governance annual disclosure and related information as the disclosure and related information will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade-secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(b) Prohibits this chapter from being construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law.

(c) Prohibits the chapter, notwithstanding Subsection (b), from being construed to limit the commissioner's authority, or the rights or obligations of third parties, under Chapter 401 (Audits and Examinations).

(d) Provides that this chapter applies to each insurer domiciled in this state, except that this chapter does not apply to a domestic insurer that is authorized, admitted, or eligible to engage in the business of insurance only in this state. Provides that, for the purposes of this chapter, an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in this state if the insurer is a member of an insurance group that writes or assumes insurance in any manner in another state.

Sec. 831.0002. DEFINITIONS. Defines "disclosure," "insurance group" and "insurer" for purposes of this chapter.

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

(b) Requires an insurer that is a member of an insurance group, notwithstanding any request from the commissioner under Subsection (d), to submit the report required by Subsection (a) to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures adopted by the National Association of Insurance Commissioners.

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

(d) Requires an insurer not otherwise required to submit a disclosure under this chapter to submit a disclosure on the commissioner's request.

Sec. 831.0004. LEVEL OF REPORTING. (a) Authorizes an insurer or insurance group, for purposes of completing the disclosure under Section 831.0003, to provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending on how the insurer or insurance group has structured the insurer's or insurance group's system of corporate governance.

(b) Provides that an insurer or insurance group is encouraged to make the disclosure:

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

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

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

(c) Requires an insurer or insurance group, if the insurer or insurance group determines the level of reporting based on the criteria described by Subsection (b), to indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

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

Sec. 831.0006. SUBSTANTIALLY SIMILAR INFORMATION. Provides that an insurer that provides information substantially similar to the information required by this chapter in other documents provided to the commissioner, including proxy statements filed in conjunction with Form B requirements or other state or federal filings provided to the Texas Department of Insurance (TDI), is not required to duplicate that information in the disclosure but is required only to cross-reference the document in which the information is included.

Sec. 831.0007. PART OF EXAMINATION PROCESS. Provides that the disclosure and any additional information requested by the commissioner and provided to TDI as described by this chapter is considered part of the process of examination of insurers under this code, including Chapter 401.

Sec. 831.0008. CONTENTS OF DISCLOSURE. (a) Provides that an insurer or insurance group has discretion over the responses to the disclosure inquiries, provided the disclosure is required to contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices.

(b) Authorizes the commissioner to request additional information that the commissioner considers material and necessary to provide the commissioner with a clear understanding of the corporate governance policies and the reporting, information system, or controls implementing those policies.

(c) Requires the disclosure, notwithstanding Subsections (a) and (b), to be prepared consistent with rules adopted by the commissioner. Requires documentation and supporting information to be maintained and made available on examination or on request of the commissioner.

Sec. 831.0009. CONFIDENTIALITY. (a) Provides that documents, materials, or other information, including a disclosure, 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 is confidential and privileged and is:

(1) not subject to disclosure under Chapter 552 (Public Information), Government Code;

(2) not subject to subpoena; and

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

(b) Provides that documents, materials, or other information, including a disclosure, 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 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. Provides that nothing in this section is authorized to be construed to require written consent of the insurer before the commissioner is authorized to share or receive documents, materials, or other information under Subsection (e).

(d) Prohibits the commissioner and any other person who receives documents, materials, or other information under this chapter, through examination, or otherwise under any other law, while acting under the authority of the commissioner, or with whom the documents, materials, or other information is shared under this chapter from testifying or being required to testify in any private civil action concerning any documents, materials, or other information subject to Subsection (a) or (b).

(e) Authorizes the commissioner, in order to assist in the performance of the commissioner's regulatory duties, on request, to share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to Subsection (a) or (b) and proprietary and trade-secret documents, materials, or information, with:

- (1) other state, federal, and international financial regulatory agencies, including members of a supervisory college described by Section 823.0145 (Supervisory Colleges);
- (2) the National Association of Insurance Commissioners; and
- (3) a third-party consultant under Section 831.0012.

(f) Requires the recipient, before the commissioner is authorized to 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, in order to assist in the performance of the commissioner's regulatory duties, to receive documents, materials, or other governance-related information, including confidential and privileged documents, materials, or information and proprietary and trade-secret documents, materials, or information from regulatory officials of other state, federal, and international financial regulatory agencies, including members of a supervisory college described by Section 823.0145 and 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 or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

Sec. 831.0010. **AUTHORITY OF COMMISSIONER NOT AFFECTED.** Provides that the sharing of documents, materials, or other information by the commissioner under this chapter 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 provisions of this chapter.

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

Sec. 831.0012. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THIRD-PARTY CONSULTANTS. (a) Authorizes the commissioner to retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the disclosure and related information or the insurer's compliance with this chapter.

(b) Provides that a person retained under Subsection (a) is under the direction and control of the commissioner and acts in a purely advisory capacity.

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

(d) Requires a third-party consultant, as part of the retention process, to verify to the commissioner, with notice to the insurer, that the consultant:

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

(2) has internal procedures in place to monitor compliance with a conflict and comply with the confidentiality standards and requirements of this chapter.

(e) Requires a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided under this chapter to expressly require the written consent of the insurer before information provided under this chapter is made public and to contain certain information.

Sec. 831.0013. ADMINISTRATIVE PENALTY. (a) Provides that an insurer that, without good cause, fails to timely file the disclosure 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.

Sec. 831.0014. RULES. (a) Requires the commissioner to adopt rules as necessary to enforce this chapter.

(b) Provides that a rule adopted under Subsection (a) is not subject to Section 2001.0045 (Requirement For Rule Increasing Costs to Regulated Persons), Government Code.

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

SECTION 3. Effective date: September 1, 2019.