HLS 22RS-437  REENGROSSED

2022 Regular Session

HOUSE BILL NO. 715

BY REPRESENTATIVE GREEN

INSURANCE: Makes various revisions in the Insurance Holding Company System Regulatory Law

AN ACT

To amend and reenact R.S. 22:691.2(introductory paragraph), 691.6(D), (M), and (N), and 691.10(A), (C)(1), (3), (4), and (F) and to enact R.S. 22:691.2(13) through (15), 691.6(O) and (P), 691.7(A)(1)(g) through (i) and (6), and 691.10(G), relative to the Insurance Holding Company System Regulatory Law; to provide for definitions; to provide for a group capital calculation; to provide for a liquidity stress test; to provide for the continuity of essential services and functions provided by affiliates; to provide for jurisdiction of the rehabilitation court; to provide for a bond or deposit requirement; to provide for the ownership of the records of an insurer; to provide for confidentiality; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:691.2(introductory paragraph), 691.6(D), (M), and (N), and 691.10(A), (C)(1), (3), (4), and (F) are hereby amended and reenacted and R.S. 22:691.2(13) through (15), 691.6(O) and (P), 691.7(A)(1)(g) through (i) and (6), and 691.10(G) are hereby enacted to read as follows:

§691.2. Definitions

As used in this Subpart, the following terms shall have these meanings unless the context shall otherwise require:

context clearly requires otherwise:

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(13) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC in accordance with the procedures adopted by the NAIC.

(14) "NAIC liquidity stress test framework" means the separate NAIC publication which includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions and reporting template being as adopted by the NAIC and amended by the NAIC in accordance with the procedures adopted by the NAIC.

(15) "Scope criteria" as detailed in the NAIC liquidity stress test framework means the designated exposure bases along with minimum magnitudes thereof for the specific data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year.

(16) "Federal reserve" means the Board of Governors of the Federal Reserve System, as provided in 12 U.S.C. 241.

(17) "NAIC" means the National Association of Insurance Commissioners.

§691.6. Registration of insurers

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B of this Section if the information is not material for the purposes of this Section. Unless the commissioner by rule, regulation, or order provides otherwise: sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this Section. The definition of materiality provided in this Subsection shall not apply for the purposes of the group capital calculation or the liquidity stress test framework.
M. (1) Group capital calculation. Except as provided in Paragraph (2) of this Subsection, the ultimate controlling person of every insurer subject to registration shall concurrently file, with the registration, an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC.

(2) The following insurance holding company systems are exempt from filing the group capital calculation:

(a) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only authorized in its domestic state, and assumes no business from any other insurer.

(b) An insurance holding company system that is required to perform a group capital calculation specified by the federal reserve. The lead state commissioner shall request the calculation from the federal reserve under the terms of information sharing agreements in effect. If the federal reserve cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.

(c) An insurance holding company system with a supervisor whose group-wide supervisor is not based in the United States and is located within a reciprocal jurisdiction as described in R.S. 22:651(F) that recognizes the U.S. state regulatory approach to group supervision and group capital.

(d) An insurance holding company system that meets all of the following criteria:

(i) It provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either
directly or indirectly through the group-wide supervisor, who has determined such
information is satisfactory to allow the lead state to comply with the NAIC group
supervision approach, as detailed in the NAIC Financial Analysis Handbook.

(ii) The group-wide supervisor not based in the United States, that is not in
a reciprocal jurisdiction, recognizes and accepts, as specified by the commissioner
in regulation, the group capital calculation as the world-wide group capital
assessment for United States insurance groups who operate in that jurisdiction.

(3) Notwithstanding the provisions of Subparagraphs (2)(c) and (d) of this
Subsection, a lead state commissioner shall require the group capital calculation for
United States operations of any insurance holding company system not based in the
United States if, after any necessary consultation with other supervisors or officials,
it is deemed appropriate by the lead state commissioner for prudential oversight and
solvency monitoring purposes or for ensuring the competitiveness of the insurance
marketplace.

(4) Notwithstanding the exemptions from filing the group capital calculation
in Subparagraphs (2)(c) and (d) of this Subsection, the lead state commissioner has
the discretion to exempt the ultimate controlling person from filing the annual group
capital calculation or to accept a limited group capital filing or report in accordance
with the criteria as specified by the commissioner through rules and regulations.

(5) If the commissioner determines that an insurance holding company
system no longer meets one or more of the requirements for an exemption from
filing the group capital calculation pursuant to this Section, the insurance holding
company system shall file the group capital calculation at the next annual filing date,
unless given an extension by the commissioner based on reasonable grounds shown.

N.(1) Liquidity stress test. The ultimate controlling person of every insurer
subject to registration and scoped into the NAIC liquidity stress test framework shall
file the results of its liquidity stress test. The filing shall be made to the lead state
insurance commissioner of the insurance holding company system as determined by
the procedures within the Financial Analysis Handbook adopted by the NAIC.
(2) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the financial stability task force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on the first of January of the year following the calendar year such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not meet at least one threshold of the scope criteria are considered scopd out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the framework for that data year.

(3) The lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, shall address concerns regarding regulators wishing to avoid being scoped in and out of the NAIC liquidity stress test framework on a frequent basis.

(4) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC liquidity stress test framework instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the NAIC Financial Stability Task Force or its successor, provided within the framework.

O. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this Section within the time specified for filing shall be a violation of this Section.

P(1) Incorporation by reference. Any information contained in any financial statement, annual report, proxy statement, statement filed with a
governmental authority, or any other document may be incorporated by reference, provided the document is filed as an exhibit to the registration statement. Any excerpt of a document may be filed as an exhibit if the document is extensive. Any documents currently on file with the commissioner which were filed within three years need not be attached as exhibits, but shall be referred to if not so attached. All references to information contained in exhibits or in documents duly filed shall clearly identify the material and specifically indicate that the material is to be incorporated by reference to the item. No materials shall be incorporated by reference in any instance that the incorporation would render the statement incomplete, unclear, or confusing.

(2) If a filing requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the brief statement, the summary or outline may incorporate, by reference, particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be included in its entirety by the reference. In any case where if two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of one of the documents shall be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents filed.

§691.7. Standards and management of an insurer within an insurance holding company system

A.

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(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

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(g)(i) If an insurer is deemed by the commissioner to be in a hazardous financial condition, as defined in regulations promulgated by the commissioner, or
a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the duration of the contract or agreement or the existence of the condition for which the commissioner required the deposit or the bond.

(ii) In determining whether a deposit or a bond is required, the commissioner may consider whether concerns exist with respect to the affiliated person’s ability to fulfill the contract or agreement, if the insurer were to be put into liquidation.

(iii) Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, such that a deposit or bond is necessary, the commissioner may determine the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract with a specific person.

(h) All records and data of the insurer held by an affiliate are the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons’ records and data. This includes all records and data that are otherwise the property of the insurer in whatever form maintained, including but not limited to claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, and financial records or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business, obtain access to the operating systems on which the data is maintained, obtain the software that runs those systems either through assumption of licensing agreements or otherwise, and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other
encumbrance to give the insurer access to all records and data, if the affiliate defaults under a lease or other agreement.

(i) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into rehabilitation shall be subject to the provisions of Chapter 9 of this Title, R.S. 22:2001 et seq.

* * *

(6)(a) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to Subparagraph (2)(d) of this Subsection shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and shall be subject to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Subpart H of Part III of Chapter 2 of this Title, R.S. 22:731 et seq., and Chapter 9 of this Title, R.S. 22:2001 et seq., for the purpose of interpreting, enforcing, and overseeing the affiliate’s obligations under the agreement or contract to perform services for the insurer that are any of the following:

(i) An integral part of the insurer's operations, including but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions.

(ii) Essential to the insurer's ability to fulfill its obligations under insurance policies.

(b) The commissioner may require that an agreement or contract, pursuant to Subparagraph (2)(d) of this Subsection, for the provision of any services described in Items (a)(i) and (ii) of this Paragraph specify that the affiliate consents to the jurisdiction as set forth in this Paragraph.

* * *
§691.10. Confidential treatment

A.(1) Documents, materials, or other information in the possession or control of the Department of Insurance department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to R.S. 22:691.8 and all information reported or provided to the commissioner pursuant to R.S. 22:691.4(B)(12) and (13), 691.6, 691.7, and 691.9.1 shall be recognized as proprietary information containing trade secrets, shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) For purposes of the information reported and provided to the department pursuant to R.S. 22:691.6(M), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the United States Federal Reserve Board or any U.S. group-wide supervisor.

(3) For purposes of the information reported and provided to the department pursuant to R.S. 22:691.6(N), the commissioner shall maintain the confidentiality of the liquidity stress test results, supporting disclosures, and any liquidity stress test information received from an insurance holding company supervised by the United...
C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to Subsection A of this Section, including proprietary information and trade secret documents and materials, with other state, federal, and international regulatory agencies with the NAIC and its affiliates and subsidiaries and with state, federal, and international law enforcement authorities, including members of any supervisory college described in R.S. 22:691.9, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality.

(3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received 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.

(4) Shall enter into written agreements with the NAIC and any third-party consultant designated by the commissioner governing the sharing and use of information provided pursuant to this Subpart consistent with this Subsection that shall:
(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this Subpart, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, and other information and has verified, in writing, the legal authority to maintain such confidentiality.

(b) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant pursuant to this Subpart remains with the commissioner and the NAIC's use of the information by the NAIC or a third-party consultant, designated by the commissioner, is subject to the direction of the commissioner.

(c) Excluding documents, materials, and information reported pursuant to R.S. 22:691.6(N), prohibit the NAIC or a third-party consultant, designated by the commissioner from storing the information shared pursuant to this Section in a permanent database after the underlying analysis is completed.

(d) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant, designated by the commissioner, pursuant to this Subpart is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production.

(e) Require the NAIC and its affiliates and subsidiaries or a third-party consultant, designated by the commissioner, to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries or a third-party consultant, designated by the commissioner, may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries or a third-party consultant, designated by the commissioner, pursuant to this Subpart.
(f) For documents, materials, and information reporting, pursuant to R.S. 22:691.6(N), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.

F. Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant, designated by the commissioner, pursuant to this Subpart shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

G. Except as otherwise may be required under the provisions of this Subpart, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or broadcasted over any radio station, television station, or by any other electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business is prohibited. However, if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group’s liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner, with substantial proof, the falsity of such statement or its inappropriateness, the insurer may publish announcements in a
written publication, if the sole purpose thereof is to rebut the materially false

statement.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 715 Reengrossed 2022 Regular Session Green

Abstract: Provides for the Insurance Holding Company System Regulatory Law.

Proposed law defines "group capital calculation instructions", "NAIC liquidity stress test framework", "scope criteria", "federal reserve", and "NAIC".

Present law provides that certain information does not need to be disclosed on the registration statement filed pursuant to present law if the information is not material to the purposes of present law.

Proposed law provides that present law does not apply for the purposes of the group capital calculation or the liquidity stress test framework.

Proposed law provides that the ultimate controlling person of every insurer subject to registration shall file an annual group capital calculation.

Proposed law provides that certain insurance holding companies are exempt from filing the group capital calculation.

Proposed law provides that the ultimate controlling person of every insurer subject to registration and scoped into the NAIC liquidity stress test shall file the results of the test.

Proposed law provides that insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year.

Present law provides for violations of present law and incorporation by reference. Proposed law retains and redesignates present law.

Proposed law provides certain standards that must be met for transactions with an insurance holding company system to which an insurer subject to registration is a party to the transaction.

Proposed law provides that any affiliate that is party to an agreement or contract with a domestic insurer shall be subject to the jurisdiction of any supervision, seizure, conservatorship, rehabilitation proceedings against the insurer.

Proposed law provides that certain documents, materials, and other information in the possession of the La. Department of Insurance shall be recognized as proprietary information, containing trade secrets.

Proposed law provides that the commissioner of insurance shall maintain the confidentiality of the group capital calculation and the liquidity stress test results and its supporting documents received from insurers.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
Proposed law provides that the commissioner may share certain proprietary information and trade secret documents with other state, federal, and international law enforcement authorities.

Proposed law provides that the commissioner may receive proprietary and trade secret information from certain sources.

Proposed law provides that the commissioner may enter into written agreements with the NAIC, and any third-party consultants designated by the commissioner, governing the sharing and use of certain information.

Proposed law prohibits the disclosure of insurers' group capital calculation, group capital ratio, and liquidity stress test results, except as to rectify a misrepresentation of such data, if the sole purpose of the disclosure is to rebut a materially false statement regarding the data.

(Amends R.S. 22:691.2(intro. para.), 691.6(D), (M), and (N), and 691.10(A), (C)(1), (3), (4), and (F); Adds R.S. 22:691.2(13)-(15), 691.6(O) and (P), 691.7(A)(1)(g)-(i) and (6), and 691.10(G))

Summary of Amendments Adopted by House

1. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Define "federal reserve" and "NAIC".

2. Change the term "receivership" as used in proposed law to "rehabilitation"

3. Make technical changes.