

2022 Regular Session

HOUSE BILL NO. 715

BY REPRESENTATIVE GREEN

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

1 AN ACT

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

11 Be it enacted by the Legislature of Louisiana:

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

16 §691.2. Definitions

17 As used in this Subpart, the following terms ~~shall have these meanings unless~~
18 ~~the context shall otherwise require:~~ the meaning ascribed in this Section unless the
19 context clearly requires otherwise:

20 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 directed by the lead state commissioner. The report shall be completed in
2 accordance with the NAIC group capital calculation instructions, which may permit
3 the lead state commissioner to allow a controlling person that is not the ultimate
4 controlling person to file the group capital calculation. The report shall be filed with
5 the lead state commissioner of the insurance holding company system as determined
6 by the commissioner in accordance with the procedures within the Financial
7 Analysis Handbook adopted by the NAIC.

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

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

13 (b) An insurance holding company system that is required to perform a
14 group capital calculation specified by the United States Federal Reserve Board. The
15 lead state commissioner shall request the calculation from the federal reserve board
16 under the terms of information sharing agreements in effect. If the federal reserve
17 board cannot share the calculation with the lead state commissioner, the insurance
18 holding company system is not exempt from the group capital calculation filing.

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

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

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

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

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

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

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

22 N.(1) Liquidity stress test. The ultimate controlling person of every insurer
23 subject to registration and scoped into the NAIC liquidity stress test framework shall
24 file the results of its liquidity stress test. The filing shall be made to the lead state
25 insurance commissioner of the insurance holding company system as determined by
26 the procedures within the Financial Analysis Handbook adopted by the NAIC.

27 (2) The NAIC liquidity stress test framework includes scope criteria
28 applicable to a specific data year. These scope criteria are reviewed at least annually
29 by the financial stability task force or its successor. Any change to the NAIC

1 liquidity stress test framework or to the data year for which the scope criteria are to
2 be measured shall be effective on the first of January of the year following the
3 calendar year such changes are adopted. Insurers meeting at least one threshold of
4 the scope criteria are considered scoped into the NAIC liquidity stress test
5 framework for the specified data year, unless the lead state insurance commissioner,
6 in consultation with the NAIC Financial Stability Task Force or its successor,
7 determines the insurer should not be scoped into the framework for that data year.
8 Similarly, insurers that do not meet at least one threshold of the scope criteria are
9 considered scoped out of the NAIC liquidity stress test framework for the specified
10 data year, unless the lead state insurance commissioner, in consultation with the
11 NAIC Financial Stability Task Force or its successor, determines the insurer should
12 be scoped into the framework for that data year.

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

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

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

25 ~~N.~~ P.(1) Incorporation by reference. Any information contained in any
26 financial statement, annual report, proxy statement, statement filed with a
27 governmental authority, or any other document may be incorporated by reference,
28 provided the document is filed as an exhibit to the registration statement. Any
29 excerpt of a document may be filed as an exhibit if the document is extensive. Any

1 documents currently on file with the commissioner which were filed within three
2 years need not be attached as exhibits, but shall be referred to if not so attached. All
3 references to information contained in exhibits or in documents duly filed shall
4 clearly identify the material and specifically indicate that the material is to be
5 incorporated by reference to the item. No materials shall be incorporated by
6 reference in any instance that the incorporation would render the statement
7 incomplete, unclear, or confusing.

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

18 §691.7. Standards and management of an insurer within an insurance holding
19 company system

20 A.

21 * * *

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

24 * * *

25 (g)(i) If an insurer is deemed by the commissioner to be in a hazardous
26 financial condition, as defined in regulations promulgated by the commissioner, or
27 a condition that would be grounds for supervision, conservation, or a delinquency
28 proceeding, the commissioner may require the insurer to secure and maintain either
29 a deposit, held by the commissioner, or a bond, as determined by the insurer at the

1 insurer's discretion, for the duration of the contract or agreement or the existence of
2 the condition for which the commissioner required the deposit or the bond.

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

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

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

28 (i) Premiums or other funds belonging to the insurer that are collected by or
29 held by an affiliate are the exclusive property of the insurer and are subject to the

1 control of the insurer. Any right of offset in the event an insurer is placed into
2 receivership shall be subject to the provisions of Chapter 9 of this Title, R.S. 22:2001
3 et seq.

4 * * *

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

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

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

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

23 * * *

24 §691.10. Confidential treatment

25 A.(1) Documents, materials, or other information in the possession or control
26 of the ~~Department of Insurance~~ department that are obtained by or disclosed to the
27 commissioner or any other person in the course of an examination or investigation
28 made pursuant to R.S. 22:691.8 and all information reported or provided to the
29 commissioner pursuant to R.S. 22:691.4(B)(12) and (13), 691.6, 691.7, and 691.9.1

1 shall be recognized as proprietary information containing trade secrets, shall be
 2 confidential by law and privileged, shall not be subject to subpoena, and shall not be
 3 subject to discovery or admissible in evidence in any private civil action. However,
 4 the commissioner is authorized to use the documents, materials, or other information
 5 in the furtherance of any regulatory or legal action brought as a part of ~~the~~
 6 ~~commissioner's~~ his official duties. The commissioner shall not otherwise make the
 7 documents, materials, or other information public without the prior written consent
 8 of the insurer to which it pertains unless the commissioner, after giving the insurer
 9 and its affiliates who would be affected thereby notice and opportunity to be heard,
 10 determines that the interest of policyholders, shareholders, or the public will be
 11 served by the publication thereof, in which event the commissioner may publish all
 12 or any part in such manner as may be deemed appropriate.

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

19 (3) For purposes of the information reported and provided to the department
 20 pursuant to R.S. 22:691.6(N), the commissioner shall maintain the confidentiality of
 21 the liquidity stress test results, supporting disclosures, and any liquidity stress test
 22 information received from an insurance holding company supervised by the United
 23 States Federal Reserve Board and group-wide supervisors not based in the United
 24 States.

* * *

26 C. In order to assist in the performance of the commissioner's duties, the
 27 commissioner:

28 (1) May share documents, materials, or other information, including the
 29 confidential and privileged documents, materials, or information subject to

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

9 * * *

10 (3) May receive documents, materials, or information, including otherwise
 11 confidential and privileged documents, materials, or information, including
 12 proprietary and trade secret information, from the NAIC and its affiliates and
 13 subsidiaries and from regulatory and law enforcement officials of other foreign or
 14 domestic jurisdictions, and shall maintain as confidential or privileged any
 15 document, material, or information received with notice or the understanding that it
 16 is confidential or privileged under the laws of the jurisdiction that is the source of the
 17 document, material, or information.

18 (4) Shall enter into written agreements with the NAIC and any third-party
 19 consultant designated by the commissioner governing the sharing and use of
 20 information provided pursuant to this Subpart consistent with this Subsection that
 21 shall:

22 (a) Specify procedures and protocols regarding the confidentiality and
 23 security of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a
 24 third-party consultant designated by the commissioner pursuant to this Subpart,
 25 including procedures and protocols for sharing by the NAIC with other state, federal,
 26 or international regulators. The agreement shall provide that the recipient agrees in
 27 writing to maintain the confidentiality and privileged status of the documents,
 28 materials, and other information and has verified, in writing, the legal authority to
 29 maintain such confidentiality.

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

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

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

15 ~~(d)~~ (e) Require the NAIC ~~and its affiliates and subsidiaries~~ or a third-party
16 consultant, designated by the commissioner, to consent to intervention by an insurer
17 in any judicial or administrative action in which the NAIC ~~and its affiliates and~~
18 ~~subsidiaries~~ or a third-party consultant, designated by the commissioner, may be
19 required to disclose confidential information about the insurer shared with the NAIC
20 ~~and its affiliates and subsidiaries~~ or a third-party consultant, designated by the
21 commissioner, pursuant to this Subpart.

22 (f) For documents, materials, and information reporting, pursuant to R.S.
23 22:691.6(N), in the case of an agreement involving a third-party consultant, provide
24 for notification of the identity of the consultant to the applicable insurers.

25 * * *

26 F. Documents, materials, or other information in the possession or control
27 of the NAIC or a third-party consultant, designated by the commissioner, pursuant
28 to this Subpart shall be confidential by law and privileged, shall not be subject to

1 subpoena, and shall not be subject to discovery or admissible in evidence in any
2 private civil action.

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

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", and "scope criteria".

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, or receivership 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.

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

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Make technical changes.