

By: _____

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A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of the corporate governance structure of an insurer or insurance group; confidential treatment of certain information within the disclosure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the Corporate Governance Annual Disclosure Act.

SECTION 2. Subtitle B, Title 6, Insurance Code, is amended by adding Chapter 831, beginning with Section 831.001, to read as follows: CHAPTER 831. CORPORATE GOVERNANCE ANNUAL DISCLOSURE

831.001. PURPOSE AND SCOPE. (a) The purpose of this chapter is to promote the public interest by:

(1) requiring annual disclosure of an insurer or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework; and

(2) providing for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and

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1 proprietary and trade secret information which, if made public,
2 could potentially cause the insurer or insurance group
3 competitive harm or disadvantage.

4 (b) Nothing in this chapter shall be construed to prescribe
5 or impose corporate governance standards and internal procedures
6 beyond that which is required under applicable state corporate
7 law. Notwithstanding the foregoing, nothing in this chapter
8 shall be construed to limit the commissioner's authority, or the
9 rights or obligations of third parties, under Chapter 401.

10 (c) This chapter applies to all insurers domiciled in this
11 state, with the exception of domestic insurers that are
12 authorized, admitted, or eligible to engage in the business of
13 insurance only in this state. For the purposes of this chapter,
14 an insurer is not considered to be authorized, admitted, or
15 eligible to engage in the business of insurance only in this
16 state if the insurer is a member of an insurance group that
17 directly or indirectly writes or assumes insurance in any manner
18 in another state.

19 Sec. 831.002. DEFINITIONS. In this chapter:

20 (1) "Corporate Governance Annual Disclosure
21 (disclosure)" means the confidential report filed by the insurer
22 or insurance group made in accordance with the requirements of
23 this Act.

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(2) "Insurance group" means the insurers and affiliates included within an insurance holding company system as described by Section 823.006.

(3) "Insurer" has the meaning assigned by Section 823.002(6) and also includes health maintenance organizations authorized to engage in business under Chapter 843.

(4) "Own Risk and Solvency Assessment Summary Report (summary report)" means the report filed in accordance with Section 830.005.

Sec. 831.003. DISCLOSURE REQUIREMENT. (a) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner a Corporate Governance Annual Disclosure (disclosure) that contains the information described in Section 831.004(b). Notwithstanding any request from the commissioner made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section 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.

(b) The disclosure must include a signature of the insurer or insurance group's chief executive officer or corporate

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1 secretary attesting to the best of that individual's belief and
2 knowledge that the insurer has implemented the corporate
3 governance practices described in the disclosure and that a copy
4 of the disclosure has been provided to the insurer's board of
5 directors or the appropriate committee thereof.

6 (c) An insurer not required to submit a disclosure under
7 this subsection shall do so upon the commissioner's request.

8 (d) For purposes of completing the disclosure, the insurer
9 or insurance group may provide information regarding corporate
10 governance at the ultimate controlling parent level, an
11 intermediate holding company level or the individual legal
12 entity level, depending upon how the insurer or insurance group
13 has structured its system of corporate governance. The insurer
14 or insurance group is encouraged to make the disclosure at the
15 level at which the insurer's or insurance group's risk appetite
16 is determined, or at which the earnings, capital, liquidity,
17 operations, and reputation of the insurer are overseen
18 collectively and at which the supervision of those factors are
19 coordinated and exercised, or the level at which legal liability
20 for failure of general corporate governance duties would be
21 placed. If the insurer or insurance group determines the level
22 of reporting based on these criteria, it shall indicate which of
23 the three criteria was used to determine the level of reporting

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and explain any subsequent changes in level of reporting.

(e) The review of the disclosure and any additional requests for information shall be made through the lead state as determined by the procedures adopted by the National Association of Insurance Commissioners referenced in subsection (a) of this Section.

(f) Insurers providing information substantially similar to the information required by this Act 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 department shall not be required to duplicate that information in the disclosure, but shall only be required to cross reference the document in which the information is included.

(g) The disclosure and any additional information requested by the commissioner and provided to the department is considered part of the process of examination of insurance companies under this code, including Chapter 401.

Sec. 831.004. CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE. (a) The insurer or insurance group shall have discretion over the responses to the disclosure inquiries, provided the disclosure shall contain the material information necessary to permit the commissioner to gain an understanding of

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1 the insurer's or insurance group's corporate governance
2 structure, policies, and practices. The commissioner may request
3 additional information that he or she deems material and
4 necessary to provide the commissioner with a clear understanding
5 of

6 (1) the corporate governance policies, or

7 (2) the reporting, information system, or controls,
8 implementing those policies.

9 (b) Notwithstanding subsection (a) of this section, the
10 disclosure shall be prepared consistent with rules adopted by
11 the commissioner. Documentation and supporting information shall
12 be maintained and made available upon examination or upon
13 request of the commissioner.

14 Sec. 831.005. CONFIDENTIALITY. (a) Documents, materials, or
15 other information including the disclosure, in the possession of
16 or control of the department that are obtained by, created by,
17 or disclosed to the commissioner or any other person under this
18 chapter, are recognized by this state as being proprietary and
19 to contain trade secrets. All such documents, materials, or
20 other information shall be confidential by law and privileged,
21 shall not be subject to disclosure under Chapter 552 of the
22 Government Code, shall not be subject to subpoena, and shall not
23 be subject to discovery or admissible in evidence in any private

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1 civil action. However, the commissioner is authorized to use the
2 documents, materials, or other information in the furtherance of
3 any regulatory or legal action brought as a part of the
4 commissioner's official duties. The commissioner shall not
5 otherwise make the documents, materials, or other information
6 public without the prior written consent of the insurer. Nothing
7 in this section shall be construed to require written consent of
8 the insurer before the commissioner may share or receive
9 confidential documents, materials or other governance-related
10 information pursuant to subsection (c) of this section to assist
11 in the performance of the commissioner's regular duties.

12 (b) Neither the commissioner nor any person who received
13 documents, materials or other governance-related information,
14 through examination or otherwise, while acting under the
15 authority of the commissioner, or with whom such documents,
16 materials or other information are shared pursuant to this
17 chapter shall be permitted or required to testify in any private
18 civil action concerning any confidential documents, materials,
19 or information subject to subsection (a) of this section.

20 (c) In order to assist in the performance of the
21 commissioner's regulatory duties, the commissioner:

22 (1) May, upon request, share documents, materials or
23 other governance-related information including the confidential

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1 and privileged documents, materials or information subject to
2 subsection (a) of this section, including proprietary and trade
3 secret documents and materials with other state, federal and
4 international financial regulatory agencies, including members
5 of any supervisory college as defined in Section 823.0147, with
6 the National Association of Insurance Commissioners, and with
7 third party consultants pursuant to Section 831.006, provided
8 that the recipient agrees in writing to maintain the
9 confidentiality and privileged status of the governance-related
10 documents, material or other information and has verified in
11 writing the legal authority to maintain confidentiality; and

12 (2) May receive documents, materials or other
13 governance-related information, including otherwise confidential
14 and privileged documents, materials or information, including
15 proprietary and trade-secret information or documents, from
16 regulatory officials of other state, federal and international
17 financial regulatory agencies, including members of any
18 supervisory college as defined in 823.0147, and from the
19 National Association of Insurance Commissioners, and shall
20 maintain as confidential or privileged any documents, materials
21 or information received with notice or the understanding that it
22 is confidential or privileged under the laws of the jurisdiction
23 that is the source of the document, material or information.

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1 (d) The sharing of information and documents by the
2 commissioner pursuant to this chapter shall not constitute a
3 delegation of regulatory authority or rulemaking, and the
4 commissioner is solely responsible for the administration,
5 execution and enforcement of the provisions of this Act.

6 (e) No waiver of any applicable privilege or claim of
7 confidentiality in the documents, proprietary and trade-secret
8 materials or other governance-related information shall occur as
9 a result of disclosure of such governance-related information or
10 documents to the commissioner under this section or as a result
11 of sharing as authorized in this chapter.

12 Sec. 831.006. NATIONAL ASSOCIATION OF INSURANCE
13 COMMISSIONERS AND THIRD-PARTY CONSULTANTS. (a) The commissioner
14 may retain, at the insurer's expense, third-party consultants,
15 including attorneys, actuaries, accountants and other experts
16 not otherwise a part of the commissioner's staff as may be
17 reasonably necessary to assist the commissioner in reviewing the
18 disclosure and related information or the insurer's compliance
19 with this chapter.

20 (b) Any persons retained under subsection (a) of this
21 section shall be under the direction and control of the
22 commissioner and shall act in a purely advisory capacity.

23 (c) The National Association of Insurance Commissioners and

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1 third-party consultants shall be subject to the same
2 confidentiality standards and requirements as the commissioner.

3 (d) As part of the retention process, a third-party
4 consultant shall verify to the commissioner, with notice to the
5 insurer, that it is free of a conflict of interest and that it
6 has internal procedures in place to monitor compliance with a
7 conflict and to comply with the confidentiality standards and
8 requirements of this Act.

9 (e) A written agreement with the National Association of
10 Insurance Commissioners and/or a third-party consultant
11 governing sharing and use of information provided pursuant to
12 this chapter shall contain the following provisions and
13 expressly require the written consent of the insurer prior to
14 making public information provided under this chapter:

15 (1) Specific procedures and protocols for maintaining
16 the confidentiality and security of disclosure-related
17 information shared with the National Association of Insurance
18 Commissioners or a third-party consultant pursuant to this
19 chapter.

20 (2) Procedures and protocols for sharing by the
21 National Association of Insurance Commissioners only with other
22 state regulators from states in which the insurance group has
23 domiciled insurers. The agreement shall provide that the

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1 recipient agrees in writing to maintain the confidentiality and
2 privileged status of the disclosure-related documents, materials
3 or other information and has verified in writing the legal
4 authority to maintain confidentiality.

5 (3) A provision specifying that ownership of the
6 disclosure-related information shared with the National
7 Association of Insurance Commissioners or a third-party
8 consultant remains with the department and the use of the
9 information by the National Association of Insurance
10 Commissioners or third-party consultant is subject to the
11 direction of the commissioner;

12 (4) A provision that prohibits the National
13 Association of Insurance Commissioners or a third-party
14 consultant from storing the information shared pursuant to this
15 chapter in a permanent database after the underlying analysis is
16 completed;

17 (5) A provision requiring the National Association of
18 Insurance Commissioners or third-party consultant to provide
19 prompt notice to the commissioner and to the insurer or
20 insurance group regarding any subpoena, request for disclosure,
21 or request for production of the insurer's disclosure-related
22 information; and

23 (6) A requirement that the National Association of

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1 Insurance Commissioners or a third-party consultant consents to
2 intervention by an insurer in any judicial or administrative
3 action in which the National Association of Insurance
4 Commissioners or a third-party consultant may be required to
5 disclose confidential information about the insurer shared with
6 the National Association of Insurance Commissioners or a third-
7 party consultant pursuant to this chapter.

8 Sec. 831.007. SANCTIONS. (a) Any insurer that, without good
9 cause, fails to timely file the disclosure as required by this
10 chapter commits a violation subject to administrative penalty
11 under Chapter 84.

12 (b) Each day the violation continues is a separate
13 violation for purposes of this section.

14 (c) The commissioner may reduce the amount of the penalty
15 assessed under this section if the insurer demonstrates to the
16 commissioner that the imposition of the penalty would constitute
17 a financial hardship to the insurer.

18 Sec. 831.008. RULES. (a) The commissioner shall adopt rules
19 as necessary to enforce this chapter.

20 (b) The rules adopted under subsection (a) of this section
21 shall not be subject to Section 2001.0045 of the Government
22 Code.

23 SECTION 3. SEVERABILITY CLAUSE. If any provision of this

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1 Act other than Section 831.005, or the application thereof to
2 any person or circumstance, is held invalid, such determination
3 shall not affect the provisions or applications of this Act
4 which can be given effect without the invalid provision or
5 application, and to that end the provisions of this Act, with
6 the exception of Section 831.005, are severable.

7 SECTION 4. EFFECTIVE DATE. This Act takes effect September
8 1, 2019. The first filing of the disclosure shall be in 2020.