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 rehabilitation 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	* * *

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1	(13) "Group capital calculation instructions" means the group capital
2	calculation instructions as adopted by the NAIC and as amended by the NAIC in
3	accordance with the procedures adopted by the NAIC.
4	(14) "NAIC liquidity stress test framework" means the separate NAIC
5	publication which includes a history of the NAIC's development of regulatory
6	liquidity stress testing, the scope criteria applicable for a specific data year, and the
7	liquidity stress test instructions and reporting templates for a specific data year, such
8	scope criteria, instructions and reporting template being as adopted by the NAIC and
9	amended by the NAIC in accordance with the procedures adopted by the NAIC.
10	(15) "Scope criteria" as detailed in the NAIC liquidity stress test framework
11	means the designated exposure bases along with minimum magnitudes thereof for
12	the specific data year, used to establish a preliminary list of insurers considered
13	scoped into the NAIC liquidity stress test framework for that data year.
14	(16) "Federal reserve" means the Board of Governors of the Federal Reserve
15	System, as provided in 12 U.S.C. 241.
16	(17) "NAIC" means the National Association of Insurance Commissioners.
17	* * *
18	§691.6. Registration of insurers
19	* * *
20	D. Materiality. No information need be disclosed on the registration
21	statement filed pursuant to Subsection B of this Section if the information is not
22	material for the purposes of this Section. Unless the commissioner by rule,
23	regulation, or order provides otherwise: sales, purchases, exchanges, loans, or
24	extensions of credit, investments, or guarantees involving one-half of one percent or
25	less of an insurer's admitted assets as of the thirty-first day of December next
26	preceding shall not be deemed material for purposes of this Section. The definition
27	of materiality provided in this Subsection shall not apply for the purposes of the
28	group capital calculation or the liquidity stress test framework.
29	* * *

1	M.(1) Group capital calculation. Except as provided in Paragraph (2) of this
2	Subsection, the ultimate controlling person of every insurer subject to registration
3	shall concurrently file, with the registration, an annual group capital calculation as
4	directed by the lead state commissioner. The report shall be completed in
5	accordance with the NAIC group capital calculation instructions, which may permit
6	the lead state commissioner to allow a controlling person that is not the ultimate
7	controlling person to file the group capital calculation. The report shall be filed with
8	the lead state commissioner of the insurance holding company system as determined
9	by the commissioner in accordance with the procedures within the Financial
10	Analysis Handbook adopted by the NAIC.
11	(2) The following insurance holding company systems are exempt from
12	filing the group capital calculation:
13	(a) An insurance holding company system that has only one insurer within
14	its holding company structure, that only writes business and is only authorized in its
15	domestic state, and assumes no business from any other insurer.
16	(b) An insurance holding company system that is required to perform a
17	group capital calculation specified by the federal reserve. The lead state
18	commissioner shall request the calculation from the federal reserve under the terms
19	of information sharing agreements in effect. If the federal reserve cannot share the
20	calculation with the lead state commissioner, the insurance holding company system
21	is not exempt from the group capital calculation filing.
22	(c) An insurance holding company system with a supervisor whose group-
23	wide supervisor is not based in the United States and is located within a reciprocal
24	jurisdiction as described in R.S. 22:651(F) that recognizes the U.S. state regulatory
25	approach to group supervision and group capital.
26	(d) An insurance holding company system that meets all of the following
27	criteria:
28	(i) It provides information to the lead state that meets the requirements for
29	accreditation under the NAIC financial standards and accreditation program, either

1	directly or indirectly through the group-wide supervisor, who has determined such
2	information is satisfactory to allow the lead state to comply with the NAIC group
3	supervision approach, as detailed in the NAIC Financial Analysis Handbook.
4	(ii) The group-wide supervisor not based in the United States, that is not in
5	a reciprocal jurisdiction, recognizes and accepts, as specified by the commissioner
6	in regulation, the group capital calculation as the world-wide group capital
7	assessment for United States insurance groups who operate in that jurisdiction.
8	(3) Notwithstanding the provisions of Subparagraphs (2)(c) and (d) of this
9	Subsection, a lead state commissioner shall require the group capital calculation for
10	United States operations of any insurance holding company system not based in the
11	United States if, after any necessary consultation with other supervisors or officials,
12	it is deemed appropriate by the lead state commissioner for prudential oversight and
13	solvency monitoring purposes or for ensuring the competitiveness of the insurance
14	marketplace.
15	(4) Notwithstanding the exemptions from filing the group capital calculation
16	in Subparagraphs (2)(c) and (d) of this Subsection, the lead state commissioner has
17	the discretion to exempt the ultimate controlling person from filing the annual group
18	capital calculation or to accept a limited group capital filing or report in accordance
19	with the criteria as specified by the commissioner through rules and regulations.
20	(5) If the commissioner determines that an insurance holding company $(5)$
21	system no longer meets one or more of the requirements for an exemption from
22	filing the group capital calculation pursuant to this Section, the insurance holding
23	company system shall file the group capital calculation at the next annual filing date,
24	unless given an extension by the commissioner based on reasonable grounds shown.
25	N.(1) Liquidity stress test. The ultimate controlling person of every insurer
26	subject to registration and scoped into the NAIC liquidity stress test framework shall
27	file the results of its liquidity stress test. The filing shall be made to the lead state
28	insurance commissioner of the insurance holding company system as determined by
29	the procedures within the Financial Analysis Handbook adopted by the NAIC.

1	(2) The NAIC liquidity stress test framework includes scope criteria
2	applicable to a specific data year. These scope criteria are reviewed at least annually
3	by the financial stability task force or its successor. Any change to the NAIC
4	liquidity stress test framework or to the data year for which the scope criteria are to
5	be measured shall be effective on the first of January of the year following the
6	calendar year such changes are adopted. Insurers meeting at least one threshold of
7	the scope criteria are considered scoped into the NAIC liquidity stress test
8	framework for the specified data year, unless the lead state insurance commissioner,
9	in consultation with the NAIC Financial Stability Task Force or its successor,
10	determines the insurer should not be scoped into the framework for that data year.
11	Similarly, insurers that do not meet at least one threshold of the scope criteria are
12	considered scoped out of the NAIC liquidity stress test framework for the specified
13	data year, unless the lead state insurance commissioner, in consultation with the
14	NAIC Financial Stability Task Force or its successor, determines the insurer should
15	be scoped into the framework for that data year.
16	(3) The lead state commissioner, in consultation with the NAIC Financial
17	Stability Task Force or its successor, shall address concerns regarding regulators
18	wishing to avoid being scoped in and out of the NAIC liquidity stress test framework
19	on a frequent basis.
20	(4) The performance of, and filing of the results from, a specific year's
21	liquidity stress test shall comply with the NAIC liquidity stress test framework
22	instructions and reporting templates for that year and any lead state insurance
23	commissioner determinations, in conjunction with the NAIC Financial Stability Task
24	Force or its successor, provided within the framework.
25	$\underline{O}$ . Violations. The failure to file a registration statement or any summary
26	of the registration statement or enterprise risk filing required by this Section within
27	the time specified for filing shall be a violation of this Section.
28	N: <u>P.(1)</u> Incorporation by reference. Any information contained in any
29	financial statement, annual report, proxy statement, statement filed with a

1 governmental authority, or any other document may be incorporated by reference, 2 provided the document is filed as an exhibit to the registration statement. Any 3 excerpt of a document may be filed as an exhibit if the document is extensive. Any 4 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 5 6 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 7 8 incorporated by reference to the item. No materials shall be incorporated by 9 reference in any instance that the incorporation would render the statement 10 incomplete, unclear, or confusing.

11 (2) If a filing requires a summary or outline of the provisions of any 12 document, only a brief statement shall be made as to the pertinent provisions of the 13 document. In addition to the brief statement, the summary or outline may 14 incorporate, by reference, particular parts of any exhibit or document currently on 15 file with the commissioner which was filed within three years and may be included 16 in its entirety by the reference. In any case where If two or more documents required 17 to be filed as exhibits are substantially identical in all material respects except as to 18 the parties, the dates of execution, or other details, a copy of one of the documents 19 shall be filed with a schedule identifying the omitted documents and setting forth the 20 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:
  \* \* \*
  (g)(i) If an insurer is deemed by the commissioner to be in a hazardous
- 29 financial condition, as defined in regulations promulgated by the commissioner, or

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1	a condition that would be grounds for supervision, conservation, or a delinquency
2	proceeding, the commissioner may require the insurer to secure and maintain either
3	a deposit, held by the commissioner, or a bond, as determined by the insurer at the
4	insurer's discretion, for the duration of the contract or agreement or the existence of
5	the condition for which the commissioner required the deposit or the bond.
6	(ii) In determining whether a deposit or a bond is required, the commissioner
7	may consider whether concerns exist with respect to the affiliated person's ability
8	to fulfill the contract or agreement, if the insurer were to be put into liquidation.
9	(iii) Once the insurer is deemed to be in a hazardous financial condition or
10	a condition that would be grounds for supervision, conservation, or a delinquency
11	proceeding, such that a deposit or bond is necessary, the commissioner may
12	determine the amount of the deposit or bond, not to exceed the value of the contract
13	or agreement in any one year, and whether such deposit or bond should be required
14	for a single contract, multiple contracts, or a contract with a specific person.
15	(h) All records and data of the insurer held by an affiliate are the property of
16	the insurer, are subject to control of the insurer, are identifiable, and are segregated
17	or readily capable of segregation, at no additional cost to the insurer, from all other
18	persons' records and data. This includes all records and data that are otherwise the
19	property of the insurer in whatever form maintained, including but not limited to
20	claims and claim files, policyholder lists, application files, litigation files, premium
21	records, rate books, underwriting manuals, personnel records, and financial records
22	or similar records within the possession, custody, or control of the affiliate. At the
23	request of the insurer, the affiliate shall provide that the receiver can obtain a
24	complete set of all records of any type that pertain to the insurer's business, obtain
25	access to the operating systems on which the data is maintained, obtain the software
26	that runs those systems either through assumption of licensing agreements or
27	otherwise, and restrict the use of the data by the affiliate if it is not operating the
28	insurer's business. The affiliate shall provide a waiver of any landlord lien or other

1	encumbrance to give the insurer access to all records and data, if the affiliate defaults
2	under a lease or other agreement.
3	(i) Premiums or other funds belonging to the insurer that are collected by or
4	held by an affiliate are the exclusive property of the insurer and are subject to the
5	control of the insurer. Any right of offset in the event an insurer is placed into
6	rehabilitation shall be subject to the provisions of Chapter 9 of this Title, R.S.
7	<u>22:2001 et seq.</u>
8	* * *
9	(6)(a) Any affiliate that is party to an agreement or contract with a domestic
10	insurer that is subject to Subparagraph (2)(d) of this Subsection shall be subject to
11	the jurisdiction of any supervision, seizure, conservatorship, or receivership
12	proceedings against the insurer and shall be subject to the authority of any
13	supervisor, conservator, rehabilitator, or liquidator for the insurer appointed
14	pursuant to Subpart H of Part III of Chapter 2 of this Title, R.S. 22:731 et seq., and
15	Chapter 9 of this Title, R.S. 22:2001 et seq., for the purpose of interpreting,
16	enforcing, and overseeing the affiliate's obligations under the agreement or contract
17	to perform services for the insurer that are any of the following:
18	(i) An integral part of the insurer's operations, including but not limited to
19	management, administrative, accounting, data processing, marketing, underwriting,
20	claims handling, investment, or any other similar functions.
21	(ii) Essential to the insurer's ability to fulfill its obligations under insurance
22	policies.
23	(b) The commissioner may require that an agreement or contract, pursuant
24	to Subparagraph (2)(d) of this Subsection, for the provision of any services described
25	in Items (a)(i) and (ii) of this Paragraph specify that the affiliate consents to the
26	jurisdiction as set forth in this Paragraph.
27	* * *

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#### §691.10. Confidential treatment

2 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 3 4 commissioner or any other person in the course of an examination or investigation 5 made pursuant to R.S. 22:691.8 and all information reported or provided to the 6 commissioner pursuant to R.S. 22:691.4(B)(12) and (13), 691.6, 691.7, and 691.9.1 7 shall be recognized as proprietary information containing trade secrets, shall be 8 confidential by law and privileged, shall not be subject to subpoena, and shall not be 9 subject to discovery or admissible in evidence in any private civil action. However, 10 the commissioner is authorized to use the documents, materials, or other information 11 in the furtherance of any regulatory or legal action brought as a part of the 12 commissioner's his official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent 13 14 of the insurer to which it pertains unless the commissioner, after giving the insurer 15 and its affiliates who would be affected thereby notice and opportunity to be heard, 16 determines that the interest of policyholders, shareholders, or the public will be 17 served by the publication thereof, in which event the commissioner may publish all 18 or any part in such manner as may be deemed appropriate.

19(2) For purposes of the information reported and provided to the department20pursuant to R.S. 22:691.6(M), the commissioner shall maintain the confidentiality21of the group capital calculation and group capital ratio produced within the22calculation and any group capital information received from an insurance holding23company supervised by the United States Federal Reserve Board or any U.S. group-24wide supervisor.

25 (3) For purposes of the information reported and provided to the department
 26 pursuant to R.S. 22:691.6(N), the commissioner shall maintain the confidentiality of
 27 the liquidity stress test results, supporting disclosures, and any liquidity stress test
 28 information received from an insurance holding company supervised by the United

1	States Federal Reserve Board and group-wide supervisors not based in the United
2	States.
3	* * *
4	C. In order to assist in the performance of the commissioner's duties, the
5	commissioner:
6	(1) May share documents, materials, or other information, including the
7	confidential and privileged documents, materials, or information subject to
8	Subsection A of this Section, including proprietary information and trade secret
9	documents and materials, with other state, federal, and international regulatory
10	agencies with the NAIC and its affiliates and subsidiaries and with state, federal, and
11	international law enforcement authorities, including members of any supervisory
12	college described in R.S. 22:691.9, provided that the recipient agrees in writing to
13	maintain the confidentiality and privileged status of the document, material, or other
14	information, and has verified in writing the legal authority to maintain
15	confidentiality.
16	* * *
17	(3) May receive documents, materials, or information, including otherwise
18	confidential and privileged documents, materials, or information, including
19	proprietary and trade secret information, from the NAIC and its affiliates and
20	subsidiaries and from regulatory and law enforcement officials of other foreign or
21	domestic jurisdictions, and shall maintain as confidential or privileged any
22	document, material, or information received with notice or the understanding that it
23	is confidential or privileged under the laws of the jurisdiction that is the source of the
24	document, material, or information.
25	(4) Shall enter into written agreements with the NAIC and any third-party
26	consultant designated by the commissioner governing the sharing and use of
27	information provided pursuant to this Subpart consistent with this Subsection that
28	shall:

1	(a) Specify procedures and protocols regarding the confidentiality and
2	security of information shared with the NAIC and its affiliates and subsidiaries or a
3	third-party consultant designated by the commissioner pursuant to this Subpart,
4	including procedures and protocols for sharing by the NAIC with other state, federal,
5	or international regulators. The agreement shall provide that the recipient agrees in
6	writing to maintain the confidentiality and privileged status of the documents,
7	materials, and other information and has verified, in writing, the legal authority to
8	maintain such confidentiality.
9	(b) Specify that ownership of information shared with the NAIC and its
10	affiliates and subsidiaries or a third-party consultant pursuant to this Subpart remains
11	with the commissioner and the NAIC's use of the information by the NAIC or a
12	third-party consultant, designated by the commissioner, is subject to the direction of
13	the commissioner.
14	(c) Excluding documents, materials, and information reported pursuant to
15	R.S. 22:691.6(N), prohibit the NAIC or a third-party consultant, designated by the
16	commissioner from storing the information shared pursuant to this Section in a
17	permanent database after the underlying analysis is completed.
18	(d) Require prompt notice to be given to an insurer whose confidential
19	information in the possession of the NAIC or a third-party consultant, designated by
20	the commissioner, pursuant to this Subpart is subject to a request or subpoena to the
21	NAIC or a third-party consultant designated by the commissioner for disclosure or
22	production.
23	(d) (e) Require the NAIC and its affiliates and subsidiaries or a third-party
24	consultant, designated by the commissioner, to consent to intervention by an insurer
25	in any judicial or administrative action in which the NAIC and its affiliates and
26	subsidiaries or a third-party consultant, designated by the commissioner, may be
27	required to disclose confidential information about the insurer shared with the NAIC
28	and its affiliates and subsidiaries or a third-party consultant, designated by the
29	commissioner, pursuant to this Subpart.

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1	(f) For documents, materials, and information reporting, pursuant to R.S.
2	22:691.6(N), in the case of an agreement involving a third-party consultant, provide
3	for notification of the identity of the consultant to the applicable insurers.
4	* * *
5	F. Documents, materials, or other information in the possession or control
6	of the NAIC or a third-party consultant, designated by the commissioner, pursuant
7	to this Subpart shall be confidential by law and privileged, shall not be subject to
8	subpoena, and shall not be subject to discovery or admissible in evidence in any
9	private civil action.
10	G. Except as otherwise may be required under the provisions of this Subpart,
11	the making, publishing, disseminating, circulating, or placing before the public, or
12	causing directly or indirectly to be made, published, disseminated, circulated, or
13	placed before the public in a newspaper, magazine, or other publication, or in the
14	form of a notice, circular, pamphlet, letter, or poster, or broadcasted over any radio
15	station, television station, or by any other electronic means of communication
16	available to the public, or in any other way as an advertisement, announcement, or
17	statement containing a representation or statement with regard to the group capital
18	calculation, group capital ratio, the liquidity stress test results, or supporting
19	disclosures for the liquidity stress test of any insurer or any insurer group, or of any
20	component derived in the calculation by any insurer, broker, or other person engaged
21	in any manner in the insurance business is prohibited. However, if any materially
22	false statement with respect to the group capital calculation, resulting group capital
23	ratio, an inappropriate comparison of any amount to an insurer's or insurance group's
24	group capital calculation or resulting group capital ratio, liquidity stress test result,
25	supporting disclosures for the liquidity stress test, or an inappropriate comparison of
26	any amount to an insurer's or insurance group's liquidity stress test result or
27	supporting disclosures is published in any written publication and the insurer is able
28	to demonstrate to the commissioner, with substantial proof, the falsity of such
29	statement or its inappropriateness, the insurer may publish announcements in a

## 1 written publication, if the sole purpose thereof is to rebut the materially false

statement.

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## 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.

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

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

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

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

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

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Present law</u> provides for violations of <u>present law</u> and incorporation by reference. <u>Proposed</u> <u>law</u> retains and redesignates <u>present law</u>.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

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<u>Proposed law</u> provides that the commissioner may share certain proprietary information and trade secret documents with other state, federal, and international law enforcement authorities.

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

<u>Proposed law</u> 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.

<u>Proposed law</u> 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 <u>House Committee on Insurance</u> to the <u>original</u> bill:
- 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.