

# State of Tennessee

## PUBLIC CHAPTER NO. 23

SENATE BILL NO. 239

By Johnson

Substituted for: House Bill No. 57

By Lamberth, Cochran, Campbell, Powers

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 11, relative to insurance holding companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-11-101(b), is amended by adding the following as new subdivisions:

( ) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC;

( ) "NAIC" means the National Association of Insurance Commissioners;

( ) "NAIC liquidity stress test framework" means a 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 templates as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC;

( ) "Scope criteria" means the designated exposure bases, along with minimum magnitudes thereof, for a specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for a data year;

SECTION 2. Tennessee Code Annotated, Section 56-11-105(d), is amended by adding the following language after the last sentence of the subsection:

This standard of materiality does not apply for purposes of the group capital calculation or the liquidity stress test framework.

SECTION 3. Tennessee Code Annotated, Section 56-11-105(l), is amended by deleting the subsection and substituting:

(l)(1) **Enterprise Risk Filing.** The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the NAIC.

(2) **Group Capital Calculation.**

(A) Except as otherwise provided in this subdivision (l)(2), the ultimate controlling person of an insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report must be completed in accordance with the NAIC group capital calculation instructions, which may permit the lead state

commissioner to allow a controlling person who is not the ultimate controlling person to file the group capital calculation. The report must 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.

(B) An insurance holding company system is exempt from filing the group capital calculation if the insurance holding company system is:

(i) An insurance holding company system that has only one (1) insurer within its holding company structure, that only writes business in its domestic state, and that assumes no business from another insurer;

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

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in § 56-2-208 that recognizes the United States state regulatory approach to group supervision and group capital; or

(iv) An insurance holding company system:

(a) That 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; and

(b) Whose non-United States group-wide supervisor who is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rule, the group capital calculation as the worldwide group capital assessment for United States insurance groups who operate in that jurisdiction.

(C) Notwithstanding the provisions of subdivisions (1)(2)(B)(iii) and (1)(2)(B)(iv), the lead state commissioner shall require the group capital calculation for United States operations of a non-United States-based insurance holding company system where, after the 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.

(D) Notwithstanding the exemptions from filing the group capital calculation described in subdivisions (1)(2)(B)(i)-(iv), the lead state commissioner may 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 criteria as specified by the commissioner in rule.

(E) If the lead state commissioner determines that an insurance holding company system no longer meets one (1) or more of the requirements for an exemption from filing the group capital calculation under subdivisions (1)(2)(B)(i)-(iv), then the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based upon a showing of reasonable grounds for the extension, in the discretion of the lead state commissioner.

(3) **Liquidity Stress Test.** The ultimate controlling person of an insurer subject to registration and scoped into the NAIC liquidity stress test framework shall file the results of a specific year's liquidity stress test with 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.

(A) The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. The scope criteria are reviewed at least annually by the NAIC financial stability task force or its successor. A change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured is effective on January 1 of the year following the calendar year when the change is adopted. An insurer that meets at least one (1) threshold of the scope criteria is 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 liquidity stress test framework for that data year. Similarly, an insurer that does not trigger at least one (1) threshold of the scope criteria is considered scoped 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 liquidity stress test framework for that data year.

(B) To avoid an insurer being scoped in and out of the NAIC liquidity stress test framework on a frequent basis, the lead state insurance commissioner, in consultation with the financial stability task force or its successor, shall assess this concern as part of the determination for an insurer.

(C) The performance and filing of the results from a specific data year's liquidity stress test must comply with the NAIC liquidity stress test framework's instructions and reporting templates for that data year and the lead state insurance commissioner determinations, in consultation with the NAIC financial stability task force or its successor, provided within the liquidity stress test framework.

SECTION 4. Tennessee Code Annotated, Section 56-11-106(a)(1), is amended by adding the following new subdivisions:

(G) If an insurer subject to this part is deemed by the commissioner to be in a hazardous financial condition, as set out in Tenn. Comp. R. & Reg. 0780-01-66, as amended, or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain either a deposit, to be held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contracts or agreements, or the existence of the condition for which the commissioner required the deposit or the bond. In determining whether a deposit or a bond is required, the commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. 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, and a deposit or bond is necessary, the commissioner may determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one (1) year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person or persons;

(H) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to the 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 claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall authorize the receiver to obtain a complete set of all records that pertain to the insurer's business, to obtain access to the operating systems in which the data is maintained, and to obtain the software that runs those systems either through assumption of licensing agreements or otherwise. The insurer shall restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver, if applicable, of a landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

(l) 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. A right of offset in the event an insurer is placed into receivership is subject to chapter 9 of this title.

SECTION 5. Tennessee Code Annotated, Section 56-11-106(a), is amended by adding the following as a new subdivision:

(6)(A) An affiliate that is party to an agreement or contract with a domestic insurer that is subject to subdivision (a)(2)(D) is subject to the jurisdiction of a supervision, seizure, conservatorship, or receivership proceeding against the insurer and to the authority of a supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to chapter 9 of this title for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(i) Are an integral part of the insurer's operations, including management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or other similar functions; or

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

(B) The commissioner may require that an agreement or contract identified in subdivision (a)(2)(D) for the provision of services described in subdivisions (a)(6)(A)(i) and (ii) specify that the affiliate consents to the jurisdiction as set forth in subdivision (a)(6)(A).

SECTION 6. Tennessee Code Annotated, Section 56-11-108(a), is amended by designating the existing language as subdivision (a)(1) and adding the following new subdivisions:

(2) For purposes of the information reported and provided to the commissioner pursuant to § 56-11-105(l)(2), the group capital calculation and group capital ratio produced within the calculation and group capital information received from an insurance holding company supervised by the federal reserve board or a United States group-wide supervisor are confidential by law and privileged.

(3) For purposes of the information reported and provided to the commissioner pursuant to § 56-11-105(l)(3), the liquidity stress test results and supporting disclosures and liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States group-wide supervisors are confidential by law and privileged.

SECTION 7. Tennessee Code Annotated, Section 56-11-108(c)(4)(A), is amended by deleting "regulators;" and adding the following language:

regulators. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain such confidentiality;

SECTION 8. Tennessee Code Annotated, Section 56-11-108(c)(4), is amended by adding the following new subdivisions:

( ) Excluding documents, material, or information reported pursuant to § 56-11-105(l)(3), prohibit the NAIC and its affiliates and subsidiaries from storing the information shared pursuant to this part in a permanent database after the underlying analysis is completed; and

( ) For documents, material, or information reported pursuant to § 56-11-105(l)(3), in the case of an agreement involving an affiliate or subsidiary, provide for notification of the identity of the affiliate or subsidiary to the applicable insurers.

SECTION 9. Tennessee Code Annotated, Section 56-11-108, is amended by adding the following new subsection:

( ) The group capital calculation and resulting group capital ratio required under § 56-11-105(l)(2) and the liquidity stress test, along with its results and supporting disclosures required under § 56-11-105(l)(3), are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank

insurers or insurance holding company systems generally. Therefore, except as otherwise provided under this part, 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 over a radio or television station or an electronic means of communication available to the public, or in another 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 an insurer or an insurer group, or of a component derived in the calculation by an insurer, broker, or other person engaged in the insurance business would be misleading and is therefore prohibited; provided, however, that if a materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of an 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 to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in a written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness of such comparison, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement or inappropriate comparison.

SECTION 10. This act takes effect July 1, 2023, the public welfare requiring it.


SENATE BILL NO. 239

PASSED: February 23, 2023

  
RANDY McNALLY  
SPEAKER OF THE SENATE

  
CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 10<sup>th</sup> day of March 2023

  
BILL LEE, GOVERNOR