

HB 1808 by *Hawk

(SB 2232) by *Norris

Insurance Companies, Agents, Brokers, Policies - As enacted, enacts the "Corporate Governance Annual Disclosure Act" and revises various provisions of insurance laws. - Amends TCA Title 9 and Title 56.

HB1808 has been assigned Public Chapter Number 873 by the Secretary of State.

Summary

FISCAL SUMMARY

Increase State Revenue - \$50,000 Decrease State Expenditures - \$900 The Governors proposed budget for FY18-19, on page A-37, recognizes a recurring increase in state revenue to the General Fund of \$50,000.

BILL SUMMARY

This bill revises various provisions regarding insurance laws, as follows:

(1) Under present law, the claims commission has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees in regard to claims for the recovery of taxes collected or administered by the state. This provision does not apply to any tax collected or administered by the commissioner of commerce and insurance pursuant to present law provisions governing a retaliatory tax imposed on companies from other states, which states impose greater taxes or fees upon Tennessee companies. This bill expands this exemption from claims commission jurisdiction to any tax collected by the commissioner.

(2) This bill specifies that claims challenging liability imposed by the insurance laws of this state must be brought in the chancery court of Davidson County pursuant to the procedures set out in the present law provisions governing payment of tax under protest. This bill provides for the commissioner assessing actual and reasonable costs of investigation and prosecution, and provides remedies for when a disciplined entity fails to pay an assessment.

(3) Present law provides a credit for reinsurance for a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets certain requirements, as detailed in present law. This bill authorizes the commissioner to adopt, by rule, specific additional requirements relating to or setting forth the valuation of assets or reserve credits; the amount and forms of security supporting reinsurance arrangements; and the circumstances pursuant to which credit will be reduced or eliminated.

(4) This bill adds that any information submitted by an assuming insurer who is applying for certification as a reinsurer and any information submitted to the commissioner pursuant to this credit for reinsurance provisions by an assuming insurer who has been certified as a reinsurer is confidential by law, is not open for inspection by members of the public, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties and may share the documents, materials, or other information in accordance with procedures set forth in present law.

(5) Under present law, an asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements referenced above in (3) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. This bill authorizes the commissioner to adopt by rule specific additional requirements relating to or setting forth the valuation of assets or reserve credits; the amount and forms of security supporting reinsurance arrangements; and the circumstances pursuant to which credit will be reduced or eliminated.

(6) This bill grants the commissioner additional rulemaking authority over reinsurance arrangements relating to:

- (A) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
- (B) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
- (C) Variable annuities with guaranteed death or living benefits;
- (D) Long-term care insurance policies; or
- (E) Other life and health insurance and annuity products as to which the commissioner adopts regulatory requirements with respect to credit for reinsurance.

(7) This bill enacts the "Corporate Governance Annual Disclosure Act." The stated purposes of the Act are to:

- (A) Provide the commissioner a summary 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;
- (B) Outline the requirements for completing a corporate governance annual disclosure with the commissioner; and
- (C) Provide 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 proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

This bill sets out in detail requirements to fulfill the above stated purposes of the Act. This bill specifies that the Act does not prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable law.

The Act will apply to all insurers domiciled in this state, except for:

- (A) Captive insurance companies licensed under the Revised Tennessee Captive Insurance Act; and
- (B) Risk retention groups.

(8) This bill redefines "managing general agent" for purposes of the Managing General Agents Act. Under present law, "managing general agent" means any person, firm, association or corporation that negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for the insurer. This bill removes the reference to a "firm, association or corporation that negotiates and binds ceding reinsurance contracts on behalf of an insurer" from the definition. Also, under present law, to be considered such an agent a person must adjust or pay claims "in excess of an amount determined by rule by the commissioner". This bill instead sets a statutory amount of "in excess of \$10,000".

(9) Under present law, if a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in this state, the issuer may not provide for the issuance of any health insurance coverage in the individual market in the state during the five-year period beginning on this date of the discontinuation of the last health insurance coverage not so renewed. This bill authorizes the commissioner to waive the five-year period upon written request by a health insurance issuer that demonstrates to the satisfaction of the commissioner that a waiver would benefit insurance consumers in this state and would strengthen the individual market.

(10) This bill extends certain confidentiality provisions related to information reported under the Insurance Holding Company System Act to include information provided under the supervisory colleges provisions.

(11) This bill authorizes the commissioner to act as the group-wide supervisor for any internationally active insurance group. This bill specifies that the commissioner may also acknowledge that another regulatory official will serve as the group-wide supervisor in certain circumstances. In cooperation with other state, federal, and international regulatory agencies, the commissioner must identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state, or the commissioner may acknowledge that a regulatory

official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. This bill sets out factors that the commissioner must consider when making such a determination or acknowledgement, and sets out in detail other provisions governing group-wide supervision of internationally active insurance groups and the authority of the commissioner when acting as the group-wide supervisor.

For rulemaking purposes, this bill will take effect upon becoming law. For all other purposes, this bill will take effect January 1, 2019.

ON APRIL 17, 2018, THE HOUSE ADOPTED AMENDMENT #1 AND PASSED HOUSE BILL 1808, AS AMENDED.

AMENDMENT #1 revises various provisions of this bill, as follows:

(1) This amendment removes the reference to that information "that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage" in regard to the state purpose of the Corporate Governance Annual Disclosure Act, as described above in the bill summary in (7)(C).

(2) This amendment revises various details of the Corporate Governance Annual Disclosure Act created by this bill in regard to filing requirements.

(3) This amendment removes the present law provision for life insurance companies accumulating and maintaining a contingency reserve.

(4) This amendment revises present law regarding transactions with holding companies. Present law regulates certain transactions involving a domestic insurer or a health maintenance organization and any person in its insurance or health maintenance organization holding company system, including sales and purchases. This amendment adds "exchanges, loans, extensions of credit, and investments" to those provisions.

(5) This amendment changes this bill's effective date for all provision except the Corporate Governance Annual Disclosure Act from January 1, 2019, to upon becoming law.