



# House of Representatives

General Assembly

**File No. 305**

*January Session, 2013*

House Bill No. 6551

*House of Representatives, April 2, 2013*

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT CONCERNING OWN RISK AND SOLVENCY ASSESSMENTS FOR DOMESTIC INSURERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2015*) (a) As used in this  
2 section:

3 (1) "Insurance group" means those insurers and affiliates included  
4 within an insurance holding company system, as defined in section  
5 38a-129 of the general statutes;

6 (2) "Insurer" has the same meaning as provided in section 38a-1 of  
7 the general statutes, except that it shall not include agencies,  
8 authorities or instrumentalities of the United States, its possessions  
9 and territories, the Commonwealth of Puerto Rico, the District of  
10 Columbia, or a state or political subdivision of a state;

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

13 (4) "ORSA" or "Own Risk and Solvency Assessment" means a  
14 confidential internal assessment conducted by an insurer or insurance  
15 group, appropriate to the nature, scale and complexity of such insurer  
16 or insurance group, of the material and relevant risks associated with  
17 the insurer or insurer group's current business plan and the sufficiency  
18 of capital resources to support those risks;

19 (5) "ORSA Guidance Manual" means the current version of NAIC's  
20 Own Risk and Solvency Assessment Guidance Manual, as amended  
21 from time to time;

22 (6) "ORSA Summary Report" means a confidential high-level  
23 summary of an insurer or insurance group's ORSA.

24 (b) (1) Each domestic insurer shall establish and maintain a risk  
25 management framework to assist the insurer with identifying,  
26 assessing, monitoring, managing and reporting on its material and  
27 relevant risks. This requirement may be satisfied if the insurance  
28 group of which such insurer is a member maintains a risk management  
29 framework applicable to the operations of such insurer.

30 (2) Each domestic insurer or the insurance group of which such  
31 insurer is a member shall regularly conduct an ORSA consistent with  
32 procedures set forth in the ORSA Guidance Manual. Any change in the  
33 ORSA Guidance Manual shall be effective January first following the  
34 calendar year in which such change was adopted by NAIC. The ORSA  
35 shall be conducted at least annually and at any time when there are  
36 significant changes to the risk profile of such insurer or insurance  
37 group.

38 (c) On and after January 1, 2015, upon request by the Insurance  
39 Commissioner, and not more than once each year, a domestic insurer  
40 shall submit to the commissioner an ORSA Summary Report and any  
41 combination of reports that together contain the information described  
42 in the ORSA Guidance Manual that is applicable to such insurer and  
43 insurance group. If the commissioner is the lead state commissioner, as  
44 determined by the procedures in NAIC's applicable financial analysis

45 handbook, of the insurance group of which such insurer is a member,  
46 such insurer shall submit to the commissioner the reports required  
47 under this subsection once each year regardless of whether the  
48 commissioner has requested such reports. A domestic insurer may  
49 comply with this subsection by providing the most recent and  
50 substantially similar reports that were provided by such insurer or  
51 another member of the insurance group of which such insurer is a  
52 member to the insurance regulatory official of another state or a  
53 foreign jurisdiction and that provide information that is comparable to  
54 the information described in the ORSA Guidance Manual. Any such  
55 report in a language other than English shall be accompanied by a  
56 translation of that report into the English language.

57 (d) Each domestic insurer or the insurance group of which such  
58 insurer is a member shall prepare an ORSA Summary Report  
59 consistent with the standards set forth in the ORSA Guidance Manual.  
60 Such insurer or insurance group shall maintain documentation and  
61 supporting information of an ORSA and shall make such  
62 documentation and information available for examination upon  
63 request by the commissioner. The commissioner or the commissioner's  
64 designee shall review the ORSA Summary Report and such  
65 documentation or information using procedures similar to those  
66 currently used in the analysis and examination of multistate or global  
67 insurers and insurance groups.

68 (e) The ORSA Summary Report shall include the signature of the  
69 domestic insurer's or insurance group's chief risk officer or other  
70 executive having responsibility for the oversight of the insurer's  
71 enterprise risk management process, attesting that, to the best of such  
72 officer's or executive's belief and knowledge, the insurer applied the  
73 enterprise risk management process described in the ORSA Summary  
74 Report and that a copy of the report has been provided to the insurer's  
75 board of directors or appropriate committee thereof.

76 (f) The commissioner, after notice and hearing, may impose a civil  
77 penalty on a domestic insurer that fails, without just cause, to timely

78 file an ORSA Summary Report, of one thousand dollars for each day  
79 the failure to file a report continues. The commissioner may reduce the  
80 penalty if the insurer demonstrates to the commissioner that the  
81 imposition of the penalty would constitute a financial hardship to the  
82 insurer.

83 (g) (1) A domestic insurer shall be exempt from the requirements of  
84 subsections (b) to (e), inclusive, of this section if (A) such insurer has  
85 annual direct written and unaffiliated assumed premiums, including  
86 international direct and assumed premiums but excluding premiums  
87 reinsured with the Federal Crop Insurance Corporation and the  
88 National Flood Insurance Program, of less than five hundred million  
89 dollars, and (B) the insurance group of which such insurer is a member  
90 has annual direct written and unaffiliated assumed premiums,  
91 including international direct and assumed premiums but excluding  
92 premiums reinsured with the Federal Crop Insurance Corporation and  
93 the National Flood Insurance Program of less than one billion dollars.

94 (2) If an insurer qualifies for an exemption pursuant to  
95 subparagraph (A) of subdivision (1) of this subsection but the  
96 insurance group of which such insurer is a member does not qualify  
97 for an exemption pursuant to subparagraph (B) of subdivision (1) of  
98 this subsection, the ORSA Summary Report shall include every insurer  
99 within such insurance group. This requirement may be satisfied by the  
100 submission of more than one ORSA Summary Report for any  
101 combination of insurers, provided such combination of reports  
102 includes every insurer within such insurance group.

103 (3) If an insurer does not qualify for an exemption pursuant to  
104 subparagraph (A) of subdivision (1) of this subsection but the  
105 insurance group of which such insurer is a member qualifies for an  
106 exemption pursuant to subparagraph (B) of subdivision (1) of this  
107 subsection, the only ORSA Summary Report required shall be the  
108 report applicable to such insurer.

109 (4) An insurer that does not qualify for an exemption pursuant to  
110 subparagraph (A) of subdivision (1) of this subsection may apply to

111 the commissioner for a waiver from the requirements of subsections  
112 (b) to (e), inclusive, of this section, based on unique circumstances. In  
113 deciding whether to grant the insurer's request for a waiver, the  
114 commissioner may consider the type and volume of business written,  
115 ownership and organizational structure of the insurer and any other  
116 factors the commissioner considers relevant to the insurer or insurance  
117 group of which such insurer is a member. If the insurer is part of an  
118 insurance group with insurers domiciled in more than one state, the  
119 commissioner shall coordinate with the lead state commissioner, as  
120 determined by the procedures in NAIC's applicable financial analysis  
121 handbook, of such insurance group and with the other insurance  
122 regulatory officials of member insurers' states of domicile in  
123 considering whether to grant the insurer's request for a waiver.

124 (5) If an insurer that qualifies for an exemption pursuant to  
125 subdivision (1) of this subsection subsequently no longer qualifies for  
126 such exemption due to changes in premiums as reflected in the  
127 insurer's most recent annual statement or in the most recent annual  
128 statements of the insurers within the insurance group of which such  
129 insurer is a member, such insurer shall have one year following the  
130 year the threshold is exceeded to comply with the requirements of  
131 subsections (b) to (e), inclusive, of this section.

132 (6) Notwithstanding the exemptions in this subsection, the  
133 commissioner may require that a domestic insurer comply with the  
134 requirements of subsections (b) to (e), inclusive, of this section: (A)  
135 Based on unique circumstances including, but not limited to, the type  
136 and volume of business written, ownership and organizational  
137 structure of the insurer and requests from a federal agency or the  
138 insurance regulatory official of a foreign jurisdiction; or (B) if the  
139 insurer (i) has risk-based capital for a company action level event, as  
140 set forth in sections 38a-72-1 to 38a-72-13, inclusive, and 38a-193-1 to  
141 38a-193-13, inclusive, of the regulations of Connecticut state agencies,  
142 (ii) meets one or more of the standards of an insurer deemed to be in a  
143 hazardous financial condition, as set forth in section 38a-8-103 of the  
144 regulations of Connecticut state agencies, or (iii) otherwise exhibits

145 qualities of a troubled insurer as determined by the commissioner.

146 (h) (1) All documents, materials or other information, including the  
147 ORSA Summary Report, in the possession of or control of the  
148 Insurance Department that are obtained by, created by or disclosed to  
149 the commissioner or any other person pursuant to subsections (b) to  
150 (e), inclusive, or subsection (g) of this section shall be confidential by  
151 law and privileged, shall not be subject to disclosure under section 1-  
152 210 of the general statutes, shall not be subject to subpoena and shall  
153 not be subject to discovery or admissible in evidence in any civil action  
154 in this state. The commissioner may use such documents, materials or  
155 information in the furtherance of any regulatory or legal action  
156 brought as a part of the commissioner's official duties. The  
157 commissioner shall not otherwise make such documents, materials or  
158 other information public without the prior written consent of the  
159 insurer.

160 (2) Neither the commissioner nor any person who, while acting  
161 under the authority of the commissioner, obtained or created  
162 documents, materials or other information pursuant to subsections (b)  
163 to (e), inclusive, or subsection (g) of this section, or to whom such  
164 documents, materials or other information were disclosed, through  
165 examination or otherwise, shall be permitted or required to testify in  
166 any civil action in this state concerning any such documents, materials  
167 or information.

168 (i) To assist the commissioner in the performance of the  
169 commissioner's regulatory duties, the commissioner:

170 (1) May share upon request documents, materials or other  
171 information set forth in subdivision (1) of subsection (h) of this section,  
172 including documents, materials or information deemed confidential  
173 and privileged or not disclosable pursuant to said subdivision (1), with  
174 (A) other state, federal and international regulatory officials, including  
175 members of a supervisory college as described in section 38a-135 of the  
176 general statutes, (B) NAIC, and (C) any third-party consultants  
177 designated by the commissioner, provided the recipient of any such

178 documents, materials or other information agrees, in writing, to  
179 maintain the confidentiality and privileged status of such documents,  
180 materials or other information and has verified, in writing, the  
181 recipient's legal authority to maintain confidentiality, and further  
182 providing, the commissioner obtains the written consent of the insurer  
183 prior to sharing any such documents, materials or other information;

184 (2) May receive ORSA-related documents, materials or other  
185 information, including documents, materials or information deemed  
186 confidential and privileged, from regulatory officials of other states or  
187 foreign jurisdictions, including members of a supervisory college as  
188 described in section 38a-135 of the general statutes, and NAIC. The  
189 commissioner shall maintain as confidential and privileged any  
190 documents, materials or information received with notice or the  
191 understanding that such documents, materials or information are  
192 confidential and privileged under the laws of the jurisdiction that is  
193 the source of such documents, materials or information; and

194 (3) Shall enter into a written agreement with NAIC or a third-party  
195 consultant, governing the sharing and use of documents, materials and  
196 information shared or received pursuant to subsection (h) of this  
197 section. Any such agreement shall (A) specify procedures and  
198 protocols regarding the confidentiality and security of such  
199 documents, materials or other information that are shared with NAIC  
200 or a third-party consultant, including procedures and protocols  
201 limiting sharing by NAIC to only regulatory officials of states in which  
202 other member insurers of the insurance group of which a domestic  
203 insurer is a member are domiciled; (B) specify that the commissioner  
204 shall retain ownership of such documents, materials or other  
205 information and that the use of such documents, materials or other  
206 information is subject to the commissioner's discretion; (C) prohibit  
207 NAIC or the third-party consultant from storing such documents,  
208 materials or other information in a permanent database after the  
209 underlying analysis is completed; (D) require prompt notice to be  
210 given to an insurer whose confidential information is in the possession  
211 of NAIC or a third-party consultant if NAIC or the third-party

212 consultant is subject to a request or subpoena for disclosure or  
 213 production of such documents, materials or other information; and (E)  
 214 require NAIC or the third-party consultant, if NAIC or such consultant  
 215 is subject to disclosure of an insurer's confidential documents,  
 216 materials or other information that has been shared with NAIC or such  
 217 consultant pursuant to subsection (h) of this section, to allow such  
 218 insurer to intervene in any judicial or administrative action regarding  
 219 such disclosure.

220 (4) No waiver of any applicable privilege or claim of confidentiality  
 221 in any documents, materials or other information thereof shall occur as  
 222 a result of disclosure to the commissioner or of sharing in accordance  
 223 with this subsection. Nothing in this subsection shall be construed to  
 224 delegate any regulatory authority of the commissioner to any person  
 225 or entity with which any documents, materials or other information  
 226 thereof have been shared.

227 (5) Any documents, materials or other information thereof in the  
 228 possession of NAIC or a third-party consultant pursuant to this  
 229 subsection shall be confidential by law and privileged, shall not be  
 230 subject to disclosure under section 1-210 of the general statutes, shall  
 231 not be subject to subpoena and shall not be subject to discovery or  
 232 admissible in evidence in any civil action in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2015	New section

**INS**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

This bill specifies requirements for domestic insurers concerning risk assessment and reporting. The bill also specifies powers and duties for the Insurance Commissioner related to the handling and disclosure of these reports and related material. There is no state or municipal fiscal impact.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****HB 6551*****AN ACT CONCERNING OWN RISK AND SOLVENCY ASSESSMENTS FOR DOMESTIC INSURERS.*****SUMMARY:**

This bill requires each domestic (Connecticut) insurer to establish and maintain a framework to help it identify, assess, monitor, manage, and report on its material and relevant risks. The requirement may be satisfied if the insurance group of which the insurer is a member maintains a framework that applies to the insurer's operations.

It requires each insurer or its insurance group to conduct an Own Risk and Solvency Assessment (ORSA) at least annually. It requires, starting January 1, 2015, an insurer to submit to the insurance commissioner an ORSA summary report containing the information described in the ORSA Guidance Manual applicable to the insurer and its group. The commissioner must review the summary report.

The bill exempts certain insurers from these requirements and allows others to seek a waiver from the commissioner.

Under the bill, the ORSA summary report and related material in the Insurance Department's possession or control that are obtained by, created by, or disclosed to, the commissioner or any other person are generally confidential. It restricts the use of this material.

The bill gives the commissioner various powers and duties in administering these provisions.

EFFECTIVE DATE: January 1, 2015

**OWN RISK AND SOLVENCY ASSESSMENT**

Under the bill, an ORSA is a confidential internal assessment that an

insurer or its insurance group conducts and that is appropriate to the nature, scale, and complexity of the insurer or group. The assessment must cover the material and relevant risks associated with the insurer or group's current business plan and the sufficiency of capital resources to support those risks.

The insurer or group must conduct the assessment consistent with procedures in the ORSA Guidance Manual, which the National Association of Insurance Commissioners (NAIC) produces. Under the bill, any change in the manual becomes effective January 1 following the calendar year when NAIC adopted the change. The insurer or group must conduct the ORSA at (1) least annually and (2) any time its risk profile changes significantly.

### **SUMMARY REPORT**

Starting January 1, 2015, the bill requires each insurer or its group to prepare an ORSA summary report consistent with the standards in the guidance manual. An insurer can comply with this requirement by providing the most recent and substantially similar reports that it or another member of its group gave to the insurance regulatory official of another jurisdiction. A non-English report must include an English translation.

The insurer must file the summary at the Connecticut insurance commissioner's request, which cannot be more than once each year. If the Connecticut commissioner is the lead commissioner for the insurer's group, the insurer must provide the summary report once per year without being requested.

The report must include the signature of the insurer's or group's chief risk officer or other executive responsible for overseeing the insurer's enterprise risk management process. This executive must attest, to the best of his or her belief and knowledge, that (1) the insurer applied the enterprise risk management process described in the summary report and (2) a copy of the report has been provided to the insurer's board of directors or appropriate committee of the board.

The insurer or group must (1) maintain documentation and supporting information of an ORSA and (2) make them available for examination at the commissioner's request. The commissioner or his designee must review the summary report and the documentation or information using procedures like those he uses to analyze and examine multistate or global insurers and insurance groups.

The commissioner, after notice and hearing, may impose a civil penalty on an insurer that fails, without just cause, to timely file a summary report. The penalty is \$1,000 for each day the failure to file continues. The commissioner may reduce the penalty if the insurer demonstrates that it would constitute a financial hardship to the insurer.

### **EXEMPT INSURERS**

The bill does not apply to agencies, authorities, or instrumentalities of (1) the federal government, (2) a state or its political subdivisions, (3) Puerto Rico, or (4) the District of Columbia.

An insurer is exempt from the bill's requirements if:

1. it has annual direct written and unaffiliated assumed premiums of less than \$500 million, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, and
2. its group has such premiums of less than \$1 billion.

If an insurer qualifies for an exemption but its group does not, the summary report must include every insurer within the group. This requirement may be satisfied by submitting more than one ORSA summary report for any combination of insurers, so long as the combination of reports includes every insurer within the group. If the insurer does not qualify, but its group does, the only summary report that is required is that of the insurer.

If an insurer becomes ineligible for an exemption due to changes in its premium, as reflected in its most recent annual statement or those of the insurers in its group, it has one year following the year the threshold is exceeded to comply with the bill.

Notwithstanding the exemptions, the commissioner may require that an insurer comply with the bill:

1. based on unique circumstances, such as the type and volume of business written, the insurer's ownership and organizational structure, and requests from a federal agency or the insurance regulatory official of a foreign jurisdiction or
2. if it (a) has risk-based capital for a company action level event, as described in Connecticut law, (b) meets one or more of the standards for being considered to be in a hazardous financial condition, or (c) otherwise exhibits qualities of being a troubled insurer as determined by the commissioner.

### **WAIVERS**

An insurer subject to the bill can apply for a waiver based on unique circumstances. In deciding whether to grant a waiver, the commissioner may consider the type and volume of business written, the insurer's ownership and organizational structure, and any other factors he considers relevant to the insurer or its group. In considering whether to grant a waiver for an insurer that is part of a group with insurers domiciled in more than one state, the commissioner must coordinate with:

1. the lead state commissioner of the group, as determined by the procedures in NAIC's applicable financial analysis handbook, and
2. other insurance regulatory officials of member insurers' states of domicile.

### **CONFIDENTIALITY**

Under the bill, the ORSA summary report and all the other documents, material, or information in the Insurance Department's possession or control that are obtained by, created by, or disclosed to the commissioner or any other person under the bill are:

1. confidential by law and privileged,
2. not subject to disclosure under the Freedom of Information Act,
3. not subject to subpoena or discovery, and
4. inadmissible in evidence in any civil action in Connecticut.

The bill allows the commissioner to use the information to further any regulatory or legal action brought as a part of his official duties. It prohibits the commissioner from making this information public without the insurer's prior written consent.

Neither the commissioner nor any one acting under his authority who obtains or creates this information or to whom it is disclosed, through examination or otherwise, may be permitted or required to testify in any civil action in Connecticut about it.

## **COMMISSIONER'S POWERS AND DUTIES**

### ***Powers***

The bill allows the commissioner to share, upon request, summary reports and other information, documents, or material in his control, including those deemed confidential and privileged or not disclosable, with:

1. other state, federal, and international regulatory officials, including members of a supervisory college;
2. NAIC; and
3. any third-party consultants designated by the commissioner.

In each case, the recipient must agree, in writing, to maintain the confidentiality and privileged status of the information and must

verify, in writing, its legal authority to maintain confidentiality. The commissioner must obtain the insurer's written consent before sharing any such information.

The commissioner may receive ORSA-related information, documents, material, or other information, including those that are confidential and privileged, from NAIC and the regulatory officials described above. The commissioner must maintain as confidential and privileged any documents, material, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is their source.

### ***Duties***

The commissioner must enter into a written agreement with NAIC or the third-party consultant, governing the sharing and use of the above documents, material, and information. The agreement must:

1. specify procedures and protocols regarding the confidentiality and security of the information, documents, or material shared with NAIC or a third-party consultant, including procedures and protocols limiting sharing by NAIC to regulatory officials of states where other member insurers of the group of which a domestic insurer is a member are domiciled;
2. specify that the commissioner retains ownership of this information and has discretion over its use;
3. prohibit NAIC or the consultant from storing the information in a permanent database after completing the underlying analysis;
4. require that an insurer whose confidential information NAIC or the consultant possesses receive prompt notice if either entity is subject to a request or subpoena to disclose or produce such information; and
5. require NAIC or the consultant, if it is subject to disclosure of an insurer's confidential information in its possession, to allow the

insurer to intervene in any judicial or administrative action regarding the disclosure.

**BACKGROUND**

**NAIC**

NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 18    Nay 0    (03/14/2013)