



Substitute Senate Bill No. 194

Public Act No. 14-107

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

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

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

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

(2) "Insurer" includes any person or combination of persons doing any kind or form of insurance business and includes a receiver of any insurer when the context reasonably permits. "Insurer" does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

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

(4) "ORSA" or "Own Risk and Solvency Assessment" means a confidential internal assessment conducted by an insurer or insurance group, appropriate to the nature, scale and complexity of such insurer

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or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks;

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

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

(7) "Person" has the same meaning as provided in section 38a-1 of the general statutes.

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

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

(c) Commencing January 1, 2015, upon request by the Insurance Commissioner, and not more than once each year, a domestic insurer shall submit to the commissioner an ORSA Summary Report and any combination of reports that together contain the information described in the ORSA Guidance Manual that is applicable to such insurer and

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insurance group. The date of submission of such report or reports shall be dependent on when such insurer or insurance group conducts its internal strategic planning process. If the commissioner is the lead state commissioner, as determined by the procedures in NAIC's applicable financial analysis handbook, of the insurance group of which such insurer is a member, such insurer shall submit to the commissioner the reports required under this subsection once each year regardless of whether the commissioner has requested such reports. A domestic insurer may comply with this subsection by providing the most recent and substantially similar reports that were provided by such insurer or another member of the insurance group of which such insurer is a member to the insurance regulatory official of another state or a foreign jurisdiction and that provide information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English shall be accompanied by a translation of that report into the English language.

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

(e) The ORSA Summary Report shall include the signature of the domestic insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process, attesting that, to the best of such

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officer's or executive's belief and knowledge, the insurer applied the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or appropriate committee thereof.

(f) The commissioner, after notice and hearing, may impose a civil penalty on a domestic insurer that fails, without just cause, to timely file an ORSA Summary Report, of one thousand dollars for each day the failure to file a report continues. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

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

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

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

(4) An insurer that does not qualify for an exemption pursuant to subparagraph (A) of subdivision (1) of this subsection may apply to the commissioner for a waiver from the requirements of subsections (b) to (e), inclusive, of this section, based on unique circumstances. In deciding whether to grant the insurer's request for a waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure of the insurer and any other factors the commissioner considers relevant to the insurer or insurance group of which such insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner, as determined by the procedures in NAIC's applicable financial analysis handbook, of such insurance group and with the other insurance regulatory officials of member insurers' states of domicile in considering whether to grant the insurer's request for a waiver.

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

(6) Notwithstanding the exemptions in this subsection, the commissioner may require that a domestic insurer comply with the

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requirements of subsections (b) to (e), inclusive, of this section: (A) Based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure of the insurer and requests from a federal agency or the insurance regulatory official of a foreign jurisdiction; or (B) if the insurer (i) has risk-based capital for a company action level event, as set forth in sections 38a-72-1 to 38a-72-13, inclusive, and 38a-193-1 to 38a-193-13, inclusive, of the regulations of Connecticut state agencies, (ii) meets one or more of the standards of an insurer deemed to be in a hazardous financial condition, as set forth in section 38a-8-103 of the regulations of Connecticut state agencies, or (iii) otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

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

(2) Neither the commissioner nor any person who, while acting under the authority of the commissioner, obtained or created documents, materials or other information pursuant to subsections (b) to (e), inclusive, or subsection (g) of this section, or to whom such documents, materials or other information were disclosed, through

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examination or otherwise, shall be permitted or required to testify in any civil action in this state concerning any such documents, materials or information.

(i) (1) To assist the commissioner in the performance of the commissioner's regulatory duties, the commissioner:

(A) May share upon request documents, materials or other information set forth in subdivision (1) of subsection (h) of this section, including documents, materials or information deemed confidential and privileged or not disclosable pursuant to said subdivision, with (i) other state, federal and international regulatory officials, including members of a supervisory college as described in section 38a-135 of the general statutes, (ii) NAIC, and (iii) any third-party consultants designated by the commissioner, provided the recipient of any such documents, materials or other information agrees, in writing, to maintain the confidentiality and privileged status of such documents, materials or other information and has verified, in writing, the recipient's legal authority to maintain confidentiality, and further provided the commissioner obtains the written consent of the insurer prior to sharing any such documents, materials or other information;

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

(C) Shall enter into a written agreement with NAIC or a third-party

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consultant, governing the sharing and use of documents, materials and information shared or received pursuant to subparagraph (A) or (B) of this subdivision. Any such agreement shall (i) specify policies and procedures regarding the confidentiality and security of such documents, materials or other information that are shared with NAIC or a third-party consultant, including (I) procedures and protocols limiting sharing by NAIC to only regulatory officials of states in which other member insurers of the insurance group of which a domestic insurer is a member are domiciled, and (II) a provision requiring NAIC or a third-party consultant to agree, in writing, and if applicable, a provision requiring NAIC to obtain from a regulatory official under subparagraph (C)(i)(I) of this subdivision an agreement, in writing, to maintain the confidentiality and privileged status of such documents, materials or other information, and verifying the recipient's legal authority to maintain confidentiality; (ii) specify that the commissioner shall retain ownership of such documents, materials or other information and that the use of such documents, materials or other information is subject to the commissioner's discretion; (iii) prohibit NAIC or the third-party consultant from storing such documents, materials or other information in a permanent database after the underlying analysis is completed; (iv) require prompt notice to be given to an insurer whose confidential information is in the possession of NAIC or a third-party consultant if NAIC or the third-party consultant is subject to a request or subpoena for disclosure or production of such documents, materials or other information; and (v) require NAIC or the third-party consultant, if NAIC or such consultant is subject to disclosure of an insurer's confidential documents, materials or other information that has been shared with NAIC or such consultant pursuant to subparagraph (A) of this subdivision, to allow such insurer to intervene in any judicial or administrative action regarding such disclosure.

(2) No waiver of any applicable privilege or claim of confidentiality

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in any documents, materials or other information thereof shall occur as a result of disclosure to the commissioner or of sharing in accordance with this subsection. Nothing in this subsection shall be construed to delegate any regulatory authority of the commissioner to any person or entity with which any documents, materials or other information thereof have been shared.

(3) The ORSA Summary Report and any related documents, materials or other information thereof in the possession or control of NAIC or a third-party consultant pursuant to this subsection shall be confidential by law and privileged, shall not be subject to disclosure under section 1-210 of the general statutes, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any civil action in this state.

Approved June 6, 2014