Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 178 (as introduced 3-4-15)
Sponsor: Senator Joe Hune
Committee: Insurance

Date Completed: 10-28-15

CONTENT

The bill would add Chapter 17 (Risk Management and Own Risk and Solvency Assessment) to the Insurance Code to do the following:

-- Require an insurer to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.
-- Require an insurer or the insurance group of which it was a member, at least annually, to conduct a regular own risk solvency assessment (ORSA) (i.e., an internal assessment of the risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks).
-- Require an insurer to submit to the Director of the Department of Financial and Insurance Services (DIFS) an annual confidential ORSA summary report.
-- Exempt an insurer from the requirements of Chapter 17 if it had annual direct written and unaffiliated assumed premium less than $500.0 million and the insurance group of which the insurer was a member had annual direct written and unaffiliated assumed premium less than $1.0 billion.
-- Allow an insurer that did not qualify for the exemption to apply to the DIFS Director for a waiver from the requirements of Chapter 17 based on unique circumstances.
-- Authorize the DIFS Director to require an insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report under certain circumstances.
-- Provide for the confidentiality of documents, materials, and other information, including the ORSA summary report, in the possession or control of the Director that were obtained by, created by, or disclosed to the Director or any other person under Chapter 17.
-- Allow the Director to use the documents, materials, or information in the furtherance of any regulatory or legal action brought as a part of his or her official duties, but prohibit the Director from otherwise making them public without the prior written consent of the insurer.
-- Allow the Director to share the documents, materials, or other ORSA-related information with other regulatory agencies, the National Association of Insurance Commissioners (NAIC) and third-party consultants, if the recipient agreed to maintain their confidentiality and had verified the legal authority to maintain confidentiality.
-- Allow the Director to receive documents, materials, or other ORSA-related information from regulatory officials of other jurisdictions and from the NAIC,

and require the Director to maintain them as confidential or privileged if received with notice or the understanding that they were confidential or privileged.

-- Require the Director to enter into an agreement with the NAIC or a third-party consultant governing sharing and use of the information provided under Chapter 17.

-- Provide for the confidentiality of information in the possession or control of the NAIC or third-party consultants under Chapter 17.

-- Provide for the confidentiality of documents, materials, or other information in the possession of an insurer created by the insurer to comply with Chapter 17.

-- Prescribe a civil fine for an insurer that did not, without just cause, file a required ORSA summary report in a timely fashion.

The bill also would amend Chapters 21 (which pertains to home and automobile insurance) and 24 (Casualty Insurance Rates) of the Code to do the following:

-- Provide that a filing by an insurer of a manual of classification, manual of rules and rates, rating plan, or modification of a manual or plan would be a public record as provided in the Freedom of Information Act (FOIA).

-- Allow an insurer or rating organization filing on the insurer's behalf to designate the filing as a trade secret, and provide that it would be exempt from FOIA if the DIFS Director determined it was a trade secret.

The bill would take effect 90 days after it was enacted.

Chapter 17: Risk Management & Own Risk & Solvency Assessment

Under proposed Part 17, an insurer would have to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement could be satisfied if the insurance group of which the insurer was a member maintained a risk management framework applicable to the insurer's operations.

"Insurer" would mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, and any other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts. The term would not include agencies, authorities, or instrumentalities of the U.S., its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state. "Insurance group" would mean, for the purpose of conducting an own risk and solvency assessment, insurers and affiliates included within an insurance holding company system.

"Own risk and solvency assessment" would mean a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer 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.

Subject to certain exceptions, an insurer or the insurance group of which it was a member regularly would have to conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA would have to be conducted at least annually, as well as at any time when there were significant changes to the risk profile of the insurer or its insurance group. The bill would define "ORSA guidance manual" as the ORSA guidance manual as adopted and prescribed by the DIFS Director.

An insurer would have to submit to the Director an annual ORSA summary report, or any combination of reports that together contained the information described in the guidance manual, applicable to the insurer and/or the insurance group of which it was a member. Within

90 days after the bill took effect, the insurer would have to submit to the Director the calendar date the insurer annually would submit the summary report. The bill would define "ORSA summary report" as a confidential high-level summary of an insurer or insurance group's ORSA. If the insurer were a member of an insurance group, the insurer would have to submit a summary report if the DIFS Director were the lead State regulator of the insurance group in accordance with the procedures, as adopted by the Director, within the NAIC Financial Analysis Handbook.

An ORSA summary report would have to include a signature of the insurer or the insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applied the process described in the summary report and that a copy of the report had been given to the insurer's board of directors or appropriate committee of the board.

An insurer could comply with the summary report requirement by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer was a member to a commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if the report provided information that was comparable to the information prescribed by the ORSA guidance manual.

Except as otherwise provided, an insurer would be exempt from the requirements of Chapter 17 if both of the following applied:

-- The insurer had annual direct written and unaffiliated assumed premium less than $500.0 million, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation (FCIC) and Federal flood program.
-- The insurance group of which the insurer was a member had annual direct written and unaffiliated assumed premium less than $1.0 billion, including international direct and assumed premium but excluding premiums reinsured with the FCIC and Federal flood program.

If an insurer qualified for the exemption but the applicable insurance group did not qualify, the ORSA summary report would have to include every insurer within the insurance group. This requirement could be satisfied by the submission of more than one summary report for any combination of insurers if the combination included every insurer within the group.

If an insurer did not qualify for the exemption but the insurance group qualified, the only ORSA summary report that could be required would be the report applicable to the insurer.

Notwithstanding the exemption, the DIFS Director could require either or both of the following:

-- That an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on unique circumstances, including the type and volume of business written, ownership and organizational structure, Federal agency requests, and international supervisor requests.
-- That an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report if the Director determined one or more of the following: 1) the insurer had risk-based capital for a company action level event, 2) the insurer met one or more of the conditions described in Section 436, 3) the insurer's operation was hazardous to policyholders, creditors, or the public under Section 436a, or 4) the insurer exhibited qualities of a troubled insurer.

(Section 436 prescribes the conditions under which the Director may suspend, revoke, or limit an insurer's certificate of authority. Section 436a prescribes the factors that the Director may

consider in determining whether the continued operation of an insurer is safe, reliable, and entitled to public confidence or is considered hazardous to policyholders, creditors, or the public.)

If an insurer that qualified for an exemption subsequently no longer qualified because of an increase in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the group of which the insurer was a member, the insurer would have one year following the year that the premium exceeded the bill's limitation to comply with Chapter 17.

An insurer that did not qualify for exemption could apply to the DIFS Director for a waiver from the requirements of Chapter 17 based on unique circumstances. In deciding whether to grant the request, the Director could consider the type and volume of business written, ownership and organizational structure, and any other factor the Director considered relevant to the insurer or insurance group of which the insurer was a member. If the insurer were part of a group with insurers domiciled in more than one state, the Director would have to coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the waiver request.

An insurer would have to prepare an ORSA summary report consistent with the guidance manual prescribed by the DIFS Director. The insurer would have to maintain and make available to the Director documentation and supporting information relating to the summary report.

The Director would have to review an ORSA summary report and any additional requests for information using similar procedures used in the analysis and examination of multistate or global insurers and insurance groups.

Documents, materials, or other information, including the summary report, in the possession or control of the Director that were obtained by, created by, or disclosed to the Director or any other person under Chapter 17 would be considered proprietary and to contain trade secrets. The documents, materials, or other information would be confidential and privileged, would not be subject to disclosure under the Freedom of Information Act (FOIA), would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil action. The Director could use the documents, materials, or information, however, in the furtherance of any regulatory or legal action brought as a part of the Director's official duties. The Director could not otherwise make them public without the prior written consent of the insurer to which they pertained.

The Director or any other person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the Director's authority or with whom they were shared under the Code could not testify in a private civil action concerning confidential documents, materials, or information.

Except as otherwise provided, upon request, the DIFS Director could share documents, materials, and other ORSA-related information, including those that were confidential and privileged, including proprietary and trade secret documents and materials, with other state, Federal, and international financial regulatory agencies, including members of a supervisory college, with the NAIC and with any third-party consultants designated by the Director. The Director could not share documents, materials, or other ORSA-related information unless the recipient agreed in writing to maintain their confidentiality and privileged status and had verified in writing the legal authority to maintain confidentiality.

The Director also could receive documents, materials, and other ORSA-related information, including those that were otherwise confidential and privileged, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic

jurisdictions, including members of a supervisory college, and from the NAIC. The Director would have to maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it was confidential or privileged under the laws of the source jurisdiction.

The Director would have to enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of the information provided under Chapter 17. The agreement would have to do all of the following:

-- Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a consultant under Chapter 17, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group had domiciled insurers.
-- Contain a statement that the recipient agreed in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, and other information and had verified in writing the legal authority to maintain confidentiality.
-- Specify that the DIFS Director owned the information shared with the NAIC or a third-party consultant and that the NAIC's or consultant's use of the information was subject to the Director's direction.
-- Prohibit the NAIC or consultant from storing the shared information in a permanent database after the underlying analysis was completed.
-- Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a consultant was subject to a request or subpoena to the NAIC or consultant for disclosure or production.
-- Require the NAIC or consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or consultant could be required to disclose confidential information about the insurer shared under Chapter 17.
-- For an agreement involving a third-party consultant, provide for the insurer's written consent.

The bill provides that the sharing of information and documents by the DIFS Director under Chapter 17 would not be a delegation of regulatory authority or rule-making, and the Director would be solely responsible for the administration, execution, and enforcement of Chapter 17. Also, the disclosure or sharing of documents, proprietary and trade-secret materials, or other ORSA-related information to the Director or other person under Chapter 17 would not be a waiver of an applicable privilege or claim of confidentiality.

Documents, materials, or other information in the possession or control of the NAIC or third-party consultants under Chapter 17 would be confidential and privileged, would not be subject to disclosure under FOIA, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil action. Documents, materials, or other information in the possession of an insurer created by the insurer to comply with Chapter 17 would be confidential and privileged, would not be subject to subpoena or to discovery, and would not be admissible in evidence in a private civil action.

An insurer that did not, without just cause, file a required ORSA summary report in a timely fashion would have to pay a civil fine of $1,000 for each day's delay, to be recovered by the DIFS Director and paid into the General Fund. The maximum civil fine would be $75,000. The Director could reduce the penalty if the insurer demonstrated that the penalty would cause a financial hardship.

Chapter 21: Automobile & Home Insurance

Under the Code, on the effective date of a manual of classification, manual of rules and rates, rating plan, or modification of a manual or plan that an insurer proposes to use for automobile or home insurance, the insurer must file the manual or plan with the DIFS Director. Each filing

must state the character and extent of the coverage contemplated. At all times, an insurer that is subject to Chapter 21 and that maintains rates in any part of Michigan must maintain rates in effect for all eligible people meeting the insurer's underwriting criteria. An insurer may satisfy the filing obligation by becoming a member of or a subscriber to a rating organization that makes the filings on the insurer's behalf. The filing must include prescribed information.

The Code provides that a filing and any accompanying information are open to public inspection upon filing. The bill would delete this provision. Instead, except as otherwise provided, the filing and any accompanying information would be a public record as provided in FOIA. An insurer or rating organization filing on its behalf could designate the filing or information as a trade secret. If the DIFS Director determined that the filing or information was a trade secret, it would be exempt from FOIA. "Trade secret" would mean that term as it is defined in Section 2 of the Uniform Trade Secrets Act (information that derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other people who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

Chapter 24: Casualty Insurance Rates

Chapter 24 contains a manual and plan filing requirement applicable to casualty insurance, similar to the requirement of Chapter 21 for auto and home insurers.

Currently, a filing and any supporting information are open to public inspection after the filing becomes effective. The bill would delete this provision, and would add language similar to that proposed in Chapter 21 for designating the filing as a public record under FOIA and exempting from FOIA a filing or accompanying information determined to be a trade secret.

MCL 500.2108 et al. Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Glenn Steffens