
Business & Financial Services Committee

HB 2461

Brief Description: Addressing the financial solvency of insurance companies.

Sponsors: Representatives Kirby and Ryu; by request of Insurance Commissioner.

Brief Summary of Bill

- Creates the Insurer Holding Company Act.
- Creates a framework for insurers to perform risk assessments
- Repeals the provisions under RCW 48.31B.
- Repeals the provisions under RCW 48.31C.

Hearing Date: 1/21/14

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Background:

In 1993, the Legislature amended the insurance code to conform to the financial regulation standards and regulatory statutes recommended by the National Association of Insurance Commissioners (NAIC). The legislation enacted addressed, among other things, insurance holding companies; insurance company examination procedures; insurer capital and surplus requirements; limitations upon individual insurance company exposure to individual risks; valuation of insurance company investments; receivership, liquidation and rehabilitation of insurance companies; and penalties that may be imposed by the Commissioner.

The provisions under this 1993 legislation were codified in RCW chapters 48.31B, which addressed non-health care insurers, and 48.31C, which addressed insurers who provided health care insurance.

Summary of Bill:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Two new chapters are created within the insurance code: (1) the Insurer Holding Company Act and (2) a chapter regarding "own risk solvency assessments" (ORSA). RCW chapter 48.31B is repealed, but a significant number of the provisions that would be enacted under this bill are identical or nearly identical to provisions in chapter 48.31B. RCW chapter 48.31C is also repealed.

A brief summary of the comparison of the substantive existing provisions and the new provisions is contained in the following table:

| HB 2461 | Repealed RCW | Description |
|----------------|---------------------|---|
| Section 1 | 48.31B.005 | Definitions |
| Section 2 | 48.31B.010 | Subsidiaries of Insurers |
| Section 3 | 48.31B.015 | Acquisition of Control or Merger with Domestic Insurer |
| Section 4 | 48.31B.020 | Acquisitions Involving Insurers not otherwise Covered |
| Section 5 | 48.31B.025 | Registration of Insurers |
| Section 6 | 48.31B.030 | Standards and Management of an Insurer within an Insurance Holding Company System |
| Section 7 | 48.31B.035 | Examination |
| Section 8 | NA | Supervisory Colleges |
| Section 9 | NA | Confidential Treatment of Documents |
| Section 10 | 48.31B.045 | Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities |
| Section 11 | 48.31B.050 | Sanctions |
| Section 12 | 48.31B.055 | Receivership |
| Section 13 | 48.31B.060 | Recovery |
| Section 14 | 48.31B.065 | Revocation, Suspension, or Nonrenewal of Insurer's License |
| Section 15 | 48.31B.070 | Judicial Review, Mandamus |

Insurer Holding Company Act

Acquisition of, Control of, or Merger with Domestic Insurer.

A person acquiring control of an insurer must file a statement with the Commissioner under oath which includes the name and address of each person by whom or on whose behalf the merger or other acquisition of control is to be effected, financial information, information regarding the number of shares that the acquiring party proposes to acquire, a full description of contracts, and other information required by the Commissioner.

The required statement regarding acquisition must include an agreement that it will provide the an annual report regarding risk as long as the control exists and an acknowledgement that the person and all subsidiaries within its control will provide information to the Commissioner upon request as necessary to evaluate enterprise risk to the insurer.

If the Commissioner determines that the person acquiring control of the insurer must maintain or restore the capital of the insurer to the level required by rule and law, the Commissioner must make such determination no later than 60 days after the date of the notification of change in control.

If an acquisition is in violation of statutory standards, the Commissioner may enter an order requiring the insurer to cease and desist from doing business in this state with respect to the lines of insurance involved in the acquisition or deny the application of an acquired or acquiring insurer for a license to do business in this state. There is no provision that allows the involved insurer to submit a plan to remedy the anticompetitive impact of the acquisition.

Any controlling person seeking to divest its controlling interest in an insurer must give 30 days notice to the Commissioner.

Registration of Insurers.

Registration statements required to be filed by insurers must include, in addition to the existing requirements, financial statements of or within an insurance holding company system, including all affiliates if requested by the Commissioner. They must also include statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

Disclaimers of Affiliation.

A disclaimer of affiliation disclaimer is deemed to have been granted if no response to the disclaimer from the Commissioner is received within 30 days following receipt. Under the new provisions, an insurer may request and shall be granted an administrative hearing if the disclaimer is disallowed by the Commissioner.

Enterprise Risk Report.

The "ultimate controlling person," defined as a person who is not controlled by any other person, of every insurer subject to registration must file an annual enterprise risk report. An "enterprise risk" is defined in this bill as any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole. 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 and determined by the procedures within the financial analysis handbook adopted by the NAIC. Failure to file a registration statement or enterprise risk filing within the specified time is a violation of the provisions of the insurance code.

Examination of Insurers.

The Commissioner's power to examine an insurer or its affiliates is expanded to allow the Commissioner to ascertain the financial condition of the insurer, including the enterprise risk to

the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system. The Commissioner may order any registered insurer to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. An insurer who fails to provide requested information and does so without merit may be fined \$10,000 for each day's delay or may suspend or revoke the insurer's license. Any fine collected must be paid to the State Treasurer for deposit into the general fund.

Supervisory Colleges.

A "supervisory college" is defined as "a forum for cooperation and communication among involved regulators and international supervisors facilitating the effectiveness of supervision of entities which belong to an insurance group and supervision of the group as a whole on a groupwide basis and improving the legal entity supervision of the entities within the insurance group."

The Commissioner has the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this title.

Confidential Treatment of Documents.

Documents, materials, or other information (Documents) in the possession or control of the Commissioner that are obtained by or disclosed in the course of an examination or investigation, and all information reported pursuant to the annual enterprise risk report and the Supervisory Colleges are privileged and confidential by law. They are not subject to subpoena, to discovery or admissible in evidence in any private civil action.

The Commissioner is authorized to use the Documents in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner must not otherwise make the documents public without prior the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected notice and an opportunity to be heard, determines that the interest of policy holders, shareholders, or other public is served by the publication.

The Commissioner or any person who has received Documents may not be required to testify in any private civil action concerning any confidential documents, materials, or information.

The Commissioner may share confidential and privileged Documents with other state, federal, and international regulatory agencies and the following the (NAIC) and state, federal, and international law enforcement authorities, including members of any Supervisory College.

The recipients must agree in writing and have verified in writing the legal authority to maintain the confidentiality and privileged status of the Documents shared. The Commissioner may only share information regarding the annual enterprise risk report with commissioners of states having confidentiality statutes or rules substantially similar to those in Washington.

The Commissioner must maintain as confidential or privileged any Documents received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the Documents.

The Commissioner must enter into written agreements with the NAIC governing sharing and use of information provided. Documents in the possession or control of the NAIC are confidential by law and privileged, exempt from disclosure under the Public Records Act (PRA, not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

There shall be no waiver of any applicable privilege or claim of confidentiality in the Documents as a result of disclosure to the Commissioner due to authorized sharing.

Own Risk and Solvency Assessment

New terms regarding an insurer's internal assessment of risk are defined:

An "own risk and solvency assessment" (ORSA) is a "confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that 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."

The "ORSA guidance manual" is the own risk and solvency assessment guidance manual developed and adopted by the NAIC as of the effective date of this act.

The "ORSA summary report" is a confidential high-level ORSA summary of an insurer or insurance group.

Risk Management Framework.

An insurer must maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.

ORSA Summary Report.

An insurer must regularly conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA must be conducted annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

An ORSA Summary Report (ORSA Report) must 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. Such person must attest to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the Report and that a copy of the report has been provided to the insurer's Board of Directors or appropriate governing committee.

Confidential Treatment of Documents and Information.

The ORSA Report and other Documents in the possession or control of the Commissioner that are obtained by, created by, or disclosed to the Commissioner or any other person under the provisions of the act are recognized as proprietary and as containing trade secrets and is confidential by law and privileged and not subject to the PRA. They are also not subject to subpoena or discovery or admissible in evidence in any private civil action. The Commissioner is authorized to use such Documents in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner must obtain the prior written consent of the insurer before making such Documents public.

Persons who have received ORSA-related Documents are not permitted or required to testify in any private civil action concerning any confidential documents, materials, or information.

Sharing of ORSA-related Documents.

The Commissioner may share ORSA-related Documents with other state, federal, and international regulatory agencies, including members of any supervisory college, the NAIC, the International Association of Insurance Supervisors, the Bank for International Settlements, and with any third-party consultants designated by the Commissioner. The recipients must agree in writing to maintain the confidentiality and privileged status of the Documents and verify in writing the legal authority to maintain confidentiality.

The Commissioner must maintain ORSA-related Documents received from regulatory officials of other foreign or domestic jurisdictions as confidential or privileged under the laws of the jurisdiction that is the source of the documents.

The Commissioner must enter into written agreements with the NAIC or a third-party consultant governing sharing and use of information provided. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the Documents and verify in writing the legal authority to maintain confidentiality. The NAIC or a third-party consultant is prohibited from storing the information shared.

Intervention in Judicial or Administrative Action.

The Commissioner must require prompt notice to be given to an insurer whose confidential information is in the possession of the NAIC or a third-party consultant when such information is subject to a request or a subpoena for disclosure or production. The Commissioner must also require the NAIC to consent to intervention by an insurer in any judicial or administrative action in which the NAIC may be required to disclose confidential information about the insurer.

Sanctions.

After notice and a hearing, the Commissioner must require any insurer who fails, without cause, to file the required ORSA Report to pay a fine of \$500 for each day's delay. The maximum fine is \$100,000. The Commissioner may reduce the fine if the insurer demonstrates that the fine would impose a financial hardship to the insurer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Except for Sections 18 and 43 (both regarding exemptions from the requirements of the Public Disclosure Act for documents, materials, or information obtained by the Insurance Commissioner), which take effect July 1, 2017, this act takes effect January 1, 2015.