SENATE BILL REPORT
SHB 2461

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 27, 2014

Title: An act relating to the financial solvency of insurance companies.

Brief Description: Addressing the financial solvency of insurance companies.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby and Ryu; by request of Insurance Commissioner).

Brief History: Passed House: 2/17/14, 82-14.
Committee Activity: Financial Institutions, Housing & Insurance: 2/25/14, 2/27/14 [DPA, DNP].

Brief Summary of Substitute Bill
(As Amended by Senate)

- Combines provisions under the Health Carrier Holding Company Act, RCW 48.31C, with the provision under the Insurer Holding Company Act, RCW 48.31B;
- Amends current law and adopts substantive provisions of the National Association of Insurance Commissioners (NAIC) Insurer Holding Company Act necessary for accreditation;
- Establishes a framework for insurers to perform own risk and solvency assessments.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass as amended.
Signed by Senators Angel, Co-Chair; Hobbs, Co-Chair; Benton, Vice Co-Chair; Fain, Hatfield and Roach.

Minority Report: Do not pass.
Signed by Senators Mullet, Vice Co-Chair; Nelson.

Staff: Edward Redmond (786-7471)

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.

Background: The Office of Insurance Commissioner is the agency responsible for regulating insurance in the state. This includes the oversight of insurance companies and insurance holding companies.

The NAIC is the organization of insurance regulators from across the U.S. and U.S. territories, which develops uniform insurance policy whenever appropriate. In 2010 as part of its solvency modernization initiative, the NAIC adopted broad revisions to its model Insurance Holding Company System Regulatory Act and its Insurance Holding Company System Model Regulation; collectively, the Insurer Holding Company Act. Prior to the revisions, the model law focused on protecting the solvency of insurers within the insurance holding company system by monitoring transactions between insurers and their affiliates, dividends declared by insurers, and acquisitions of insurers.

The Insurer Holding Company Act seeks to assess the enterprise risk within the entire insurance holding company system, including the risk caused by non-insurer affiliates, and determine the impact of such risk upon the solvency of insurers within the insurance group. To accomplish this goal, the Insurer Holding Company Act broadens insurance regulators' authority to supervise the insurance group by mandating reporting of information regarding the solvency and risk of an insurer's non-insurer affiliates and allowing examination of such entities. The NAIC determined that the adoption of certain revisions and significant elements of the Insurer Holding Company Act is now required as part of its national accreditation standards for insurance departments.

In 2008 in response to the recent financial crisis the NAIC launched the Solvency Modernization Initiative, a critical self examination to update the U.S. insurance solvency framework. As part of that initiative, the NAIC adopted the Own Risk and Solvency Assessment Model Act (ORSA). ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA will require insurers to analyze all reasonably foreseeable and relevant material risks, i.e., underwriting, credit, liquidity risks, etc., that could have an impact on an insurer's ability to meet its policyholder obligations. An insurer and/or the insurance group of which the insurer is a member will be required to complete an ORSA at least annually. The ORSA will apply to any individual U.S. insurer that writes more than $500 million of annual direct written and assumed premiums, and/or insurance groups that collectively write more than $1 billion of annual direct written and assumed premiums.

Surplus line brokers must remit a 2 percent tax on the premiums of their transactions. If Washington is the insured's legal state of residence or where the insured maintains its headquarters, the tax is levied on the entire premium of surplus lines of property or casualty insurance. For all other surplus lines of insurance, the tax is levied on the portion of the premium attributable to the liability located in Washington.

Summary of Bill (Recommended Amendments): Substantive provisions of the Insurer Holding Company Act and ORSA are combined and adopted in statute.

Insurer Holding Company Act. *Control or Merger with Domestic Insurer.* A person acquiring control of an insurer must file a statement under oath with the Commissioner which

includes the following: (1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control is to be effected, (2) financial information, (3) information regarding the number of shares that the acquiring party proposes to acquire, (4) a full description of contracts, and (5) other information required by the Commissioner.

The required statement regarding acquisition must include (1) an agreement that an annual report regarding potential risks will be provided as long as control over the domestic insurer exists; and (2) 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 Insurer. 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 approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

Disclaimers of Affiliation. A disclaimer of affiliation is deemed to have been granted if the Commissioner has not responded to the disclaimer within 30 days from the date the disclaimer was received. An insurer may request and must be granted an administrative hearing if the disclaimer is disallowed by the Commissioner.

Enterprise Risk Report. The ultimate controlling person of an insurer must file a confidential enterprise risk management report identifying material risks within the insurance holding company system that could pose enterprise risk to the insurer. Enterprise risk is defined as any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system, including anything that would cause the insurer's risk-based capital to fall into the company action level, or would cause the insurer to be in a hazardous financial condition. The report must be filed with the lead state Commissioner of the insurance holding company system as 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 another 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 the Commissioner 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 created consisting of state, federal, and international regulatory agencies that oversee the same insurers and/or their affiliates. The Commissioner is permitted to participate in supervisory colleges for a 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. The Washington domestic insurer must reimburse the Commissioner for reasonable expenses for the Commissioner's participation in the supervisory college.

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 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 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, not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

There must 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.

ORSA. *Definitions.* New terms regarding an insurer's internal assessment of risk are defined:

- An 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 ORSA 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 a person must attest to the best of that person's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA 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 are confidential by law, privileged, and not subject to the Public Records Act. They are also not subject to subpoena, 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 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 to file the required ORSA Report without cause 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.

Surplus Lines Premium Tax. The surplus lines property and casualty insurance premium tax must be levied on the entire premium where the liability insured is located inside the U.S. or its territories, regardless of whether the liability is located in Washington. If the surplus lines insurance covers liability located outside of the U.S. and its territories, no tax is due or payable for the portion of the premium attributable to liability located outside the U.S. and its territories.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Amendments):

- Amends insurance confidentiality provisions so that a confidential and privileged record receives the same confidentiality treatment under the insurance code and

Public Records Act regardless of the statutory mechanism used by the Office of Insurance Commissioner to request or receive such information.
- Provides that the surplus lines property and casualty insurance premium tax must be levied on the entire premium where the liability insured is located inside the U.S. or its territories, regardless of whether the liability is located in Washington.
- Further provides that if the surplus lines insurance covers liability located outside of the U.S. and its territories, no tax is due or payable for the portion of the premium attributable to liability located outside the U.S. and its territories.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Except for sections 14 and 32 of this act, which take effect July 1, 2017, this act takes effect January 1, 2015.

Staff Summary of Public Testimony on Substitute House Bill: PRO: This is the Office of Insurance Commissioner (OIC) requested legislation, which is in response to the global financial crisis. The bill gives OIC greater regulatory authority to ensure the financial solvency of insurance companies including those that have holding companies. The bill is necessary for OIC to maintain its NAIC accreditation.

Although the Holding Company Model Act is necessary for accreditation, the NAIC has not required that states adopt the ORSA model act to maintain accreditation. If the NAIC does make ORSA a requirement, it will likely be for 2017. Group Health is requesting that the effective date for the ORSA portion be delayed until 2017. The delayed effective date would give our state the appropriate time to implement the ORSA provisions correctly.

OIC would not like to see any amendments made that could potentially slow down the passage of the bill. There is a slight variation with the confidentiality provisions in the bill, but no matter which method OIC receives the records, it is kept confidential and privileged. Amending the confidential provisions is therefore unnecessary and may hold up the passage of the bill. Regarding the ORSA provisions, there is no set date for when OIC would require the first report. OIC would be willing to work with the carriers so they can provide such reports after they have sufficient staffing.

The Insurance Holding Company Act is required for accreditation and must be adopted by all states no later than the end of 2015. The trade associations have no substantive objections to either amendments. However, anything that would impair the passage of this necessary legislation would be an overriding factor.

OTHER: Premera is in support of the bill but has some remaining concerns regarding the confidentiality provisions of the bill. Premera wants to ensure that a confidential and privileged record receives the same confidentiality protections under the insurance code regardless of the statutory mechanism that OIC uses to request the records. For example, Premera operates under statutes related to financial exams, financial analysis, market conduct

exams, exams and analysis through the Holding Company Act, and with the passage of this bill, new ORSA regulations. If OIC requests a record in a financial exam, market analysis, enterprise risk analysis under the Holding Company Act, or ORSA, different standards would apply under the bill as currently drafted. Premera's amendment clarifies existing holding company language so there is consistent treatment of identical records regardless of the statutory basis OIC may utilize to request those records.

Persons Testifying: PRO: Representative Kirby, prime sponsor; Amber Ulvenes, Group Health; Jim Tompkins, OIC; Mel Sorenson, Property Casualty Insurers Assn. of America, American Council of Life Insurers.

OTHER: Leonard Sorrin, Premera Blue Cross.