

SENATE No. 2517

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Thursday, December 22, 2016

The committee on Ways and Means, to whom was referred the Senate Bill relative to risk management and own risk and solvency assessment (Senate, No. 2276),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2517).

For the committee,
Karen E. Spilka

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An Act relative to risk management and own risk and solvency assessment.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 40M of the General Laws is hereby amended by adding the
2 following section:-

3 Section 17. Notwithstanding any general or special law to the contrary, chapter 176V
4 shall apply to groups governed by this chapter.

5 SECTION 2. Section 25E of chapter 152 of the General Laws, as appearing in the 2014
6 Official Edition, is hereby amended by striking out the words “twenty-five U”, in lines 1, 15 to
7 16 and 17, each time they appear, and inserting in place thereof the following words:- “25V”.

8 SECTION 3. Said chapter 152 of the General Laws, as so appearing, is hereby further
9 amended by inserting, after section 25U, the following section:-

10 Section 25V. Notwithstanding any general or special law to the contrary, chapter 176V
11 shall apply to groups governed by sections 25E to 25U of this chapter.

12 SECTION 4. Chapter 175 of the General Laws is hereby amended by adding the
13 following section:-

14 Section 229. Notwithstanding any general or special law to the contrary, chapter 176V
15 shall apply to insurers governed by this chapter.

16 SECTION 5. Chapter 176 of the General Laws is hereby amended by adding the
17 following section:-

18 Section 1A. Notwithstanding any general or special law to the contrary, chapter 176V
19 shall apply to fraternal benefit societies governed by this chapter.

20 SECTION 6. Section 18 of chapter 176A of the General Laws, as appearing in the 2014
21 Official Edition, is hereby amended by adding the following paragraph:-

22 Notwithstanding any general or special law to the contrary, chapter 176V shall apply to
23 every corporation subject to this chapter.

24 SECTION 7. Chapter 176B of the General Laws is hereby amended by inserting, after
25 section 8A, the following section:-

26 Section 8B. Notwithstanding any general or special law to the contrary, chapter 176V
27 shall apply to a medical service corporation governed by this chapter.

28 SECTION 8. Chapter 176E of the General Laws is hereby amended by inserting, after
29 section 8A, the following section:-

30 Section 8B. Notwithstanding any general or special law to the contrary, chapter 176V
31 shall apply to a dental service corporation governed by this chapter.

32 SECTION 9. Chapter 176F of the General Laws is hereby amended by inserting, after
33 section 8, the following section:-

54 “Commissioner”, the commissioner of insurance.

55 “Insurance group”, for the purpose of conducting an ORSA, insurers and affiliates
56 included within an insurance holding company system as defined in section 206 of chapter 175;
57 health maintenance organizations and affiliates included within a health maintenance
58 organization holding system as defined in section 1 of chapter 176G; public employer self-
59 insurance groups and their affiliates organized pursuant to chapter 40M; workers compensation
60 self-insurance groups and their affiliates organized pursuant to sections 25E to 25U of chapter
61 152; fraternal benefit societies and their affiliates organized pursuant to chapter 176; non-profit
62 hospital service corporations and their affiliates organized pursuant to chapter 176A; medical
63 service corporations and their affiliates organized pursuant to chapter 176B; dental service
64 corporations and their affiliates organized pursuant to chapter 176E; optometric service
65 corporations and their affiliates organized pursuant to chapter 176F; insured legal services plans
66 and their affiliates organized pursuant to chapter 176H; and limited societies their affiliates
67 organized pursuant to chapter 176P.

68 “Insurer”, shall have the same meaning as in section 1 of chapter 175 and, as used in this
69 chapter, shall also include public employer self-insurance groups organized pursuant to chapter
70 40M; workers compensation self-insurance groups organized pursuant to sections 25E to 25U of
71 chapter 152; fraternal benefit societies organized pursuant to chapter 176; non-profit hospital
72 service corporations organized pursuant to chapter 176A; medical service corporations organized
73 pursuant to chapter 176B; dental services corporations organized pursuant to chapter 176E;
74 optometric service corporations organized pursuant to chapter 176F; health maintenance
75 organizations organized pursuant to Chapter 176G; insured legal services plans organized
76 pursuant to chapter 176H; and limited societies organized pursuant to chapter 176P; except that

77 “insurer” shall not include agencies, authorities or instrumentalities of the United States, its
78 possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state
79 or political subdivision of a state.

80 “NAIC”, the National Association of Insurance Commissioners.

81 “Own risk and solvency assessment” or “ORSA”, a confidential internal assessment,
82 appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by
83 that insurer or insurance group of the material and relevant risks associated with the insurer or
84 insurance group’s current business plan and the sufficiency of capital resources to support those
85 risks.

86 “Own risk and solvency assessment guidance manual” or “ORSA guidance manual”, the
87 current version of the own risk and solvency assessment guidance manual developed and
88 adopted by the NAIC and as amended. A change in the ORSA guidance manual shall be
89 effective on January 1 following the calendar year in which the changes are adopted by the
90 NAIC.

91 “ORSA summary report”, a confidential high-level summary of an insurer or insurance
92 group’s ORSA.

93 “Supervisory college”, a forum for cooperation and communication between the
94 regulators or supervisors of the insurer or insurance group, established to facilitate the effective
95 supervision of entities that belong to an insurance group as a whole, on a group-wide basis and
96 by improving supervision of the entities within the insurance group.

97 Section 2. An insurer shall maintain a risk management framework to assist the insurer
98 with identifying, assessing, monitoring, managing and reporting on its material and relevant
99 risks. This requirement may be satisfied if the insurance group of which the insurer is a member
100 maintains a risk management framework applicable to the operations of the insurer.

101 Section 3. Subject to section 5, an insurer, or the insurance group of which the insurer is a
102 member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA
103 guidance manual. The ORSA shall be conducted annually and at any time when there are
104 significant changes to the risk profile of the insurer or the insurance group of which the insurer is
105 a member.

106 Section 4. (a) Upon the request of the commissioner, and no more than annually, an
107 insurer shall submit to the commissioner an ORSA summary report or any combination of
108 reports that together contain the information described in the ORSA guidance manual, applicable
109 to the insurer or the insurance group of which it is a member. Notwithstanding any request from
110 the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the
111 report required by this subsection if the commissioner is the lead state commissioner of the
112 insurance group as determined by the procedures within the financial analysis handbook adopted
113 by the NAIC.

114 (b) The report required by subsection (a) shall include the attestation of the insurer or
115 insurance group's chief risk officer or other executive with responsibility for the oversight of the
116 insurer's enterprise risk management process that, to the best of their belief and knowledge, the
117 insurer applies the enterprise risk management process described in the ORSA summary report

118 and that a copy of the report has been provided to the insurer's board of directors or to the
119 appropriate committee thereof.

120 (c) An insurer may comply with subsection (a) by providing to the commissioner the
121 most recent and substantially similar report provided by the insurer or another member of an
122 insurance group of which the insurer is a member to the commissioner of another state or to a
123 supervisor or regulator of a foreign jurisdiction if that report provides information that is
124 comparable to the information described in the ORSA guidance manual. A report in a language
125 other than English shall be accompanied by a translation of that report into the English language.

126 Section 5. (a) An insurer shall be exempt from the requirements of this chapter, if: (i) the
127 insurer has an annual direct written and unaffiliated assumed premium, including an international
128 direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance
129 Corporation and National Flood Insurance Program, that is less than \$500,000,000; and (ii) the
130 insurance group of which the insurer is a member has an annual direct written and unaffiliated
131 assumed premium, including an international direct and assumed premium but excluding
132 premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance
133 Program, that is less than \$1,000,000,000.

134 (b) If an insurer qualifies for exemption pursuant to clause (i) of subsection (a), but the
135 insurance group of which the insurer is a member does not qualify for an exemption pursuant to
136 clause (ii) of subsection (a), then any ORSA summary report required pursuant to section 4 shall
137 include every insurer within the insurance group. This requirement may be satisfied by the
138 submission of more than 1 ORSA summary report for any combination of insurers, provided the
139 combination of reports includes every insurer within the insurance group.

140 (c) If an insurer does not qualify for an exemption pursuant to clause (i) of subsection (a),
141 but the insurance group of which it is a member qualifies for an exemption pursuant to clause (ii)
142 of subsection (a), then the only ORSA summary report required pursuant to section 4 shall be the
143 report applicable to that insurer.

144 (d) An insurer that does not qualify for an exemption pursuant to subsection (a) may
145 apply to the commissioner for a waiver from the requirements of this chapter based upon unique
146 circumstances. In deciding whether to grant the insurer's request for a waiver, the commissioner
147 may consider the type and volume of business written, ownership and organizational structure
148 and any other factor the commissioner considers relevant to the insurer or insurance group of
149 which the insurer is a member. If the insurer is part of an insurance group with insurers
150 domiciled in more than 1 state, the commissioner shall coordinate with the lead state
151 commissioner and with the other domiciliary commissioners in considering whether to grant the
152 insurer's request for a waiver.

153 (e) Notwithstanding the exemptions in this section, the commissioner may require: (i)
154 that an insurer maintains a risk management framework, conducts an ORSA and files an ORSA
155 summary report based on unique circumstances including, but not limited to, the type and
156 volume of business written, ownership and organizational structure, federal agency requests and
157 international supervisor requests; or (ii) that an insurer maintains a risk management framework,
158 conducts an ORSA and files an ORSA summary report if the insurer has risk-based capital for a
159 company action level event as set forth through regulation, meets 1 or more of the standards of
160 an insurer in hazardous financial condition pursuant to subsection (c) of section 3 of chapter
161 175J or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

162 (f) If an insurer that qualifies for an exemption pursuant to this section no longer qualifies
163 for that exemption due to changes in the premium as reflected in the insurer's most recent annual
164 statement or in the most recent annual statements of the insurers within the insurance group of
165 which the insurer is a member, the insurer shall comply with the requirements of this chapter not
166 later than 1 year immediately following the calendar year during which the threshold is
167 exceeded.

168 Section 6. (a) An ORSA summary report shall be prepared consistent with the ORSA
169 guidance manual, subject to the requirements of this chapter. Documentation and supporting
170 information shall be maintained and made available upon examination or upon request of the
171 commissioner.

172 (b) The review of an ORSA summary report and any additional requests for information
173 shall be made using procedures consistent with the analysis and examination of multi-state or
174 global insurers and insurance groups.

175 Section 7. (a) Documents, materials or other information, including the ORSA summary
176 report, in the possession or control of the commissioner that are obtained by, created by or
177 disclosed to the commissioner or any other person pursuant to this chapter, shall be proprietary
178 and recognized to contain trade secrets. Such documents, materials or other information shall be
179 confidential and privileged, shall not be subject to chapter 66, or clause Twenty-sixth of section
180 7 of chapter 4 and shall not be subject to subpoena, discovery or introduction into evidence in
181 any private civil action. However, the commissioner may use the documents, materials or other
182 information in the furtherance of any regulatory or legal action brought as a part of the

183 commissioner's official duties. The commissioner shall not otherwise make the documents,
184 materials or other information public without the prior written consent of the insurer.

185 (b) Neither the commissioner nor any person who receives documents, materials or other
186 ORSA-related information, through examination or otherwise, while acting under the authority
187 of the commissioner or with whom such documents, materials or other information are shared
188 pursuant to this chapter shall be permitted or required to testify in any private civil action
189 concerning confidential documents, materials or information subject to subsection (a).

190 (c) To assist in the performance of the commissioner's regulatory duties, the
191 commissioner may:

192 (i) if requested, share documents, materials or other ORSA-related information
193 including, but not limited to, confidential and privileged documents, materials or
194 information subject to subsection (a) which may include proprietary and trade secret
195 materials, with other state, federal and international financial regulatory agencies,
196 including, but not limited to, members of a supervisory college as defined in this chapter,
197 NAIC and third-party consultants designated by the commissioner; provided, however,
198 that the recipient agrees in writing to maintain the confidentiality and privileged status of
199 the ORSA-related documents, materials or other information and provides written
200 verification of the recipient's legal authority to maintain confidentiality;

201 (ii) receive documents, materials or other ORSA-related information, including
202 otherwise confidential and privileged documents, materials or information which may
203 include proprietary and trade-secret information or documents from regulatory officials
204 of other foreign or domestic jurisdictions including, but not limited to, members of a

205 supervisory college as defined in this chapter and NAIC; provided, however, that the
206 commissioner shall maintain as confidential or privileged any documents, materials or
207 information received that are considered confidential or privileged under the laws of the
208 jurisdiction that is the source of the document, material or information; and

209 (iii) shall enter into a written agreement with NAIC or a third-party consultant
210 which shall govern the sharing and use of information provided pursuant to this chapter,
211 consistent with this subsection, and shall: (A) specify procedures and protocols for
212 maintaining the confidentiality and security of information shared with NAIC or a third-
213 party consultant pursuant to this chapter, including, but not limited to, procedures and
214 protocols for NAIC to share information with other state regulators from states in which
215 the insurance group has domiciled insurers, provided, however, that the recipient agrees
216 in writing to maintain the confidentiality and privileged status of the ORSA-related
217 documents, materials or other information and verifies in writing the recipient's legal
218 authority to maintain confidentiality; (B) specify that ownership of information shared
219 with NAIC or a third-party consultant pursuant to this chapter remains with the
220 commissioner and the NAIC's or a third-party consultants use of the information is
221 subject to the direction of the commissioner; (C) prohibit NAIC or a third-party
222 consultant from storing the information shared pursuant to this chapter in a permanent
223 database after the underlying analysis is completed; (D) require prompt notice to be given
224 to an insurer whose confidential information, in the possession of NAIC or a third-party
225 consultant pursuant to this chapter, is subject to a request or subpoena issued to the NAIC
226 or a third-party consultant for disclosure or production of the confidential information;
227 (E) require NAIC or a third-party consultant to consent to intervention by an insurer in

228 any judicial or administrative action in which the NAIC or a third-party consultant may
229 be required to disclose confidential information about the insurer shared with the NAIC
230 or a third-party consultant pursuant to this chapter; and (F) in the case of an agreement
231 involving a third-party consultant, provide for the insurer's written consent.

232 (d) The sharing of information and documents by the commissioner pursuant to this
233 chapter shall not constitute a delegation of regulatory authority or rulemaking, and the
234 commissioner is solely responsible for the administration, execution and enforcement of this
235 chapter.

236 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
237 proprietary and trade-secret materials or other ORSA-related information shall occur as a result
238 of disclosure of such ORSA-related information or documents to the commissioner pursuant to
239 this section or as a result of sharing authorized in this chapter.

240 (f) Documents, materials or other information in the possession or control of NAIC or a
241 third-party consultant pursuant to this chapter shall be confidential by law and privileged, shall
242 not be subject to chapter 66 or clause Twenty-sixth of section 7 of chapter 4 and shall not be
243 subject to subpoena, discovery or introduction into evidence in any private civil action.

244 Section 8. Any insurer failing, without just cause, to timely file the ORSA summary
245 report as required in this chapter shall be required, after notice and hearing, to pay a penalty of
246 \$500 for each day the report is delayed, to be recovered by the commissioner. The maximum
247 penalty under this section shall be \$10,000. The commissioner may reduce the penalty if the
248 insurer demonstrates to the commissioner that the imposition of the penalty would constitute a
249 financial hardship to the insurer.

250 Section 9. The commissioner may, pursuant to chapter 30A, upon notice and opportunity
251 for all interested parties to be heard, promulgate such rules, regulations and orders as shall be
252 necessary to carry out this chapter.

253 SECTION 14. Section 13 shall take effect on April 1, 2017.