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BILL ANALYSIS

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Senate Bills 177 and 178 (as enacted) **PUBLIC ACTS 244 & 245 of 2015**
Sponsor: Senator Joe Hune
Senate Committee: Insurance
House Committee: Insurance

Date Completed: 6-20-16

RATIONALE

In response to the widespread financial crisis that began in 2008, the National Association of Insurance Commissioners (NAIC) launched the Solvency Modernization Initiative (SMI) to examine the situation and identify potential reforms to financial regulation in the United States. In particular, the SMI focused on holding company systems that include both insurance companies and noninsurance components, as the activities of noninsurance entities can affect the viability of insurers in the same system. To protect the insurance companies from what NAIC labels "contagion effects" from their noninsurance counterparts, the Association revised its model legislation regarding the group supervisory framework for state insurance regulators and adopted a new model act aimed at enabling regulators to assess the financial condition of an entire holding company system, as well as the impact on an insurer within the system. In addition, as part of the SMI, the NAIC adopted the U.S. Own Risk and Solvency Assessment (ORSA) model, which requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process. According to the NAIC, an ORSA allows regulators to form an enhanced view of an insurer's ability to withstand financial stress. The ORSA regulation was adopted in 2011 and went into effect on January 1, 2015.

To extend these regulations to Michigan insurers and maintain the State's NAIC accreditation, it was suggested that Michigan's Insurance Code be revised to conform to the model legislation.

CONTENT

Senate Bill 177 amended Chapter 13 (Holding Companies) of the Insurance Code to do the following:

- **Require the controlling person of a domestic insurer seeking to divest its controlling interest to file with the Director of the Department of Insurance and Financial Services (DIFS) a confidential notice at least 30 days before ceding control, and give a copy of the notice to the insurer.**
- **Require the DIFS Director to determine the instances in which a person seeking to divest or to acquire a controlling interest in an insurer is required to file for approval of the transaction.**
- **Provide, as a rule, that the information contained in such a filing is confidential until the transaction concludes.**
- **Require certain controlling people to file an annual enterprise risk report with the DIFS Director, provide information that allows the Director to evaluate enterprise risk to the insurer, and ensure that all subsidiaries within the person's control in the insurance holding company system provide such information.**
- **Create an exception to a requirement that the Director approve a proposed acquisition of a domestic insurer in the case of an acquisition that is likely to be hazardous or prejudicial to the insurance-buying public.**

-- Authorize the Director to hold a public hearing to receive evidence and to hear parties affected by a merger or acquisition involving a domestic insurer.
-- Require a statement regarding corporate governance and internal control procedures to be included in the information required in the registration statement filed with the Director by an insurer that is a member of a holding company system.
-- Require financial statements of or within an insurance holding company system, if requested by the Director, to be included in financial reports certain insurers must file with the Director.
-- Delete a felony penalty for an ultimately controlling person of an insurer who misrepresents financial information provided to the Director.
-- Require the ultimate controlling person of an insurer subject to registration to file with the Director an annual enterprise risk report that identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer.
-- Provide that the enterprise risk report is not subject to subpoena or discovery, is not admissible in evidence in a private civil or administrative action, and is not subject to the Freedom of Information Act (FOIA).
-- Expand the types of transactions between a domestic insurer and a person in its holding company system for which the insurer must notify the DIFS Director in advance.
-- Allow the Director to order a registered insurer to produce records, books, or other information not in the insurer's possession if necessary to determine the insurer's financial condition or legality of conduct and the insurer can obtain access to it.
-- Specify that information provided by an insurer in connection with its registration statement is not subject to FOIA, not subject to discovery, and not admissible in evidence in a private civil or administrative action.
-- Allow the Director to share information, including confidential and privileged documents, with other regulatory agencies, the National Association of Insurance Commissioners, and law enforcement authorities, if they agree to maintain the confidentiality and privileged status of the information and have verified the legal authority to maintain confidentiality.
-- Allow the Director to share confidential and privileged information regarding an enterprise risk report with insurance commissioners of other states who agree not to disclose the information.
-- Authorize the Director to receive information, including otherwise confidential and privileged information, from the NAIC and from regulatory and law enforcement officials of other jurisdictions, and require the Director to maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged.
-- Provide that information in the possession or control of DIFS or the NAIC under Chapter 13 is confidential and privileged, is not subject to FOIA, is not subject to subpoena, and is not subject to discovery or admissible as evidence in a private civil or administrative action.
-- Require the Director to enter into agreements with the NAIC governing the sharing and use of information provided under Chapter 13.
-- Authorize the Director to participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine the insurer's financial condition, business strategy, risk management, risk exposures, governance processes, regulatory position, or legality of conduct.

Senate Bill 178 added Chapter 17 (Risk Management and Own Risk and Solvency Assessment) to the 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 is 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 DIFS Director an annual confidential ORSA summary report.**
- **-- Exempt an insurer from the requirements of Chapter 17 if it has annual direct written and unaffiliated assumed premium less than $500.0 million and the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium less than $1.0 billion.**
- **-- Allow an insurer that does 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 are 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 NAIC, and third-party consultants, if the recipient agrees to maintain their confidentiality and has 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 are confidential or privileged.**
- **-- Require the Director to enter into an agreement with the NAIC or a third-party consultant governing the 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 does not, without just cause, file a required ORSA summary report in a timely fashion.**

The bill also amended 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 is a public record as provided in 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 is exempt from FOIA if the DIFS Director determines it is a trade secret.**

The bills took effect on December 22, 2015.

Senate Bill 177

Merger, Acquisition, & Divestiture of Controlling Interest

Under the Code, a person other than the issuer may not make a tender offer for or a request or invitation for tenders of, or enter into an agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, a voting security of a domestic insurer if, after

consummation of the agreement, the person would be in control of the insurer. A person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time an offer, request, or invitation is made or an agreement is entered into, or before the acquisition if no offer or agreement is involved, the person has filed with the DIFS Director and has sent to the insurer, which has sent to its shareholders, a statement containing the required information and the offer, request, invitation, agreement, or acquisition has been approved by the Director.

Under the bill, if a person has not filed the required statement, a controlling person of a domestic insurer seeking to divest its controlling interest in any manner must file with the Director a confidential notice of the proposed divestiture at least 30 days before the cessation of control. The controlling person also must give a copy of the notice to the insurer. The Director must determine the instances in which the person or people seeking to divest or to acquire a controlling interest in an insurer are required to file to obtain approval of the transaction. The information must remain confidential until conclusion of the transaction, unless the Director determines that confidential treatment will interfere with enforcement.

If the DIFS Director determines that a person violated Section 1311 (which contains the provisions discussed above) and the violation prevents the full understanding of the enterprise risk of the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision under Chapter 81 (Supervision, Rehabilitation, and Liquidation).

(Under the Code, a domestic insurer includes a person controlling a domestic insurer and any foreign insurer whose written insurance premium in Michigan for each of the last three years exceeds the premiums written in its state of domicile and whose written premium in Michigan was at least 20% of its total written premium in each of the last three years.)

The bill requires a person required to file a statement with the Director to file an annual enterprise risk report (described below) for as long as control exists. Additionally, the person must provide information to the Director upon request as necessary to evaluate enterprise risk to the insurer, and ensure that all subsidiaries within the person's control in the insurance holding company system will provide such information.

The Code requires the Director to approve a merger or other acquisition of control of a domestic insurer unless the Director determines from information furnished to him or her that certain conditions exist. The bill includes among these conditions that the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

The bill authorizes the Director to hold a public hearing to receive evidence and to hear parties affected by a merger or acquisition. A hearing must be held within 30 days after the required statement is filed. The Director must provide notice of the hearing to the person filing the statement at least 20 days in advance. The person must give at least seven days' notice of the hearing to the insurer and to any other people designated by the Director. If the proposed acquisition of control requires the approval of more than one insurance commissioner, the hearing may be held on a consolidated basis upon request of the person filing the statement or as determined by the Director. The Director may opt out of a consolidated hearing and must notify the person who filed the statement within 10 days after receiving it. A hearing conducted on a consolidated basis must be held within the U.S. before the commissioners of the states in which the insurers are domiciled.

In connection with a change of control of a domestic insurer, a determination by the Director that the person acquiring control must maintain or restore the insurer's capital to the level required by the Code must be made within 60 days after the date of notification of the change of control.

Registration

Under the Code, subject to specific exceptions, an insurer that is a member of an insurance holding company system and is authorized to do business in Michigan annually must register with the DIFS Director, and file a registration statement on a form containing prescribed information. The bill includes among the required information statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers and senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

Financial Reports

If a person ultimately or intermediately controlling an insurer is registered on a national stock exchange or is otherwise required to make periodic reports to the U.S. Securities and Exchange Commission (SEC) or other instrumentality of a state or the government of the U.S. or of a foreign nation or jurisdiction regulating the person's financial conduct, the insurer must file the reports with the DIFS Director in addition to other information required by the Director. Under the bill, if requested by the Director, the insurer must include financial statements of or within an insurance holding company system, including all affiliates. The insurer may satisfy the request by giving the Director the most recently filed parent corporation financial statements that have been filed with the SEC.

Previously, if the person ultimately controlling the insurer was an individual or group of individuals or a person who was not required to make such financial reports, the person had to file under oath with the DIFS Director information disclosing the person's financial position, except under specified circumstances. A person who knowingly misrepresented the financial information provided to the Director was guilty of a felony punishable by a maximum fine of $5,000 and/or imprisonment for up to five years. The bill deleted these provisions.

Enterprise Risk Report

Under the bill, except as otherwise provided, the ultimate controlling person of an insurer subject to registration must file an annual enterprise risk report with the DIFS Director or a jurisdiction designated by the Director. The report must be appropriate to the nature, scale, and complexity of the operations of the insurance holding company system and, to the best of the ultimate controlling person's knowledge and belief, must identify the material risks within the system that could pose enterprise risk to the insurer. The bill defines "enterprise risk" as an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied properly, 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, including anything that would cause the insurer to be hazardous to policyholders, creditors, and the public.

The report is not be subject to subpoena or discovery, is not admissible in evidence in a private civil or administrative action, and is not subject to the Freedom of Information Act.

The ultimate controlling person of an insurer subject to registration may request an exemption from the enterprise risk report requirement. The person must file with the Director a written statement discussing the reasons why the person should be exempt. The Director may grant the exemption if, after review of the statement, he or she finds that compliance would create an undue financial or organizational hardship on the ultimate controlling person.

The ultimate controlling person of an insurance holding company system subject to registration does not have to file an annual enterprise risk report if all of the following conditions were met on or before the bill's effective date:

-- The person was exempt from taxation under Section 501(c)(5) of the Internal Revenue Code (which refers to labor, agricultural, or horticultural organizations).
-- The person was organized under Michigan law before January 1, 1921.

-- The DIFS Director had not approved the person's petition for disclaimer of affiliation or had disallowed such a disclaimer.
-- The insurer in which the ultimate controlling person owns a controlling interest was registered under the Code and was a wholly domestic insurer with a maximum of 10% of its written premium covering risks outside of Michigan and had not issued policies directly insuring any risk located outside of Michigan.

Failure to File

The Code provides that the failure to file a registration statement or an amendment to a registration statement as required within the time specified for the filing is a violation of Chapter 13. The bill also includes the failure to file a summary of the registration statement as well as an enterprise risk report.

Transaction Modification

Under the Code, a domestic insurer and a person in its holding company system may not enter into certain types of transactions with each other unless the insurer notifies the DIFS Director of its intention to enter into the transaction at least 30 days in advance and the Director has not disapproved it within that time period. The bill includes the following among the transactions subject to this condition:

-- A tax allocation agreement.
-- A cost-sharing agreement.
-- A guarantee that is quantifiable and exceeds the lesser of 0.5% of the insurer's admitted assets or 10% of surplus as of December 31 of the preceding year.
-- A direct or indirect acquisition of, or investment in, a person who controls the insurer or an affiliate of the insurer, if the amount of the transaction plus the insurer's present holdings in investment exceeds 2.5% of surplus.

The 30-day notification requirement does not apply to a direct or indirect acquisition of, or investment in, a subsidiary acquired under Chapter 13, or a nonsubsidiary insurance affiliate that is subject to the Code.

A guarantee that is not quantifiable is subject to prior approval of the DIFS Director.

The bill also applies the 30-day notification requirement to the modification of an existing transaction. The insurer must notify the Director of the reason for the modification and its financial impact on the insurer.

The bill requires an insurer to notify the Director informally of a termination of any of the specified transactions within 30 days after the transaction terminates.

Access to Information

The Code authorizes the DIFS Director to order a registered insurer to produce records, books, or other information papers in the possession of the insurer or its affiliates as necessary to determine the insurer's financial condition or legality of conduct. Under the bill, the insurer's financial condition includes enterprise risk to the insurer by the ultimate controlling party, by combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis. Additionally, the bill allows the Director to order a registered insurer to produce information not in its possession if the insurer can obtain access to it under a contractual relationship, statutory obligation, or other method. If the insurer cannot obtain the requested information, the insurer must give the Director a detailed explanation why, as well as the identity of the holder of the information. If the Director determines that the explanation is without merit, he or she may require the insurer, after notice and hearing, to pay a civil fine of $1,000 for each day's delay, or may suspend or revoke the insurer's license.

Except as otherwise provided, information, documents, and document copies obtained by or disclosed to the Director or any other person in the course of an examination or investigation described above and the information reported in connection with the filing of a registration statement are confidential, are not subject to subpoena, and may not be made public by the Director or any other person, except to insurance departments of other states, without the written consent of the insurer to which the information pertains. The Director may, however, disclose the information after giving the insurer and its affected affiliates notice and opportunity to be heard, if the Director determines that the interests of policyholders, shareholders, or the public will be served by publication of the information. Under the bill, such information also is not subject to FOIA or subject to discovery, or admissible in evidence in a private civil or administrative action. The bill prohibits the Director or a person who receives documents, materials, or other information while acting under the Director's authority or with whom the information is shared under the Code from testifying in a private civil or administrative action concerning confidential documents, materials, or information obtained in relation to an enterprise risk report and information reported with regard to a registration statement**.**

The bill allows the Director to share documents, materials, or other information, including the confidential and privileged documents, with other state, Federal, and international regulatory agencies, the National Association of Insurance Commissioners, and state, Federal and international law enforcement authorities, including members of a supervisory college, if the regulator, NAIC, or law enforcement authority agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or information and has verified the legal authority to maintain confidentiality in writing.

The Director also may share confidential and privileged documents, materials, or information reported in an enterprise risk report with insurance commissioners of other states that have statutes or regulations pertaining to the confidentiality of the information substantially similar to Michigan's and who have agreed in writing not to disclose the information. The Director may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and from regulatory and law enforcement officials of other domestic or foreign jurisdictions, and must maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the source jurisdiction. The disclosure or sharing of information, a document, or other material to the Director or other person is not a waiver of an applicable privilege or claim of confidentiality.

The bill provides that a document, material, or other information in the possession or control of DIFS or the NAIC under Chapter 13 is confidential and privileged, is not subject to FOIA, is not subject to subpoena, and is not subject to discovery or admissible as evidence in a private civil or administrative action. The Director must enter into written agreements with the NAIC governing the sharing and use of information provided under Chapter 13. An agreement must specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries, including procedures and protocols for sharing by the NAIC with other state, Federal, or international regulators. The agreement also must provide that the DIFS Director owns the information shared with the NAIC and its affiliates and subsidiaries, and that the NAIC's use of the information is subject to the Director's direction. Additionally, the agreement must provide for prompt notice to be given to an insurer whose confidential information in the NAIC's possession is subject to a request or subpoena to the NAIC for disclosure or production, and require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in a judicial or administrative action.

The bill specifies that the Director's sharing of information under Chapter 13 is not a delegation of regulatory authority or rule-making. The Director is solely responsible for the administration, execution, and enforcement of the provisions of Chapter 13.

Supervisory College

The bill permits the DIFS Director to participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations to determine the insurer's financial condition, business strategy, risk management, risk exposures, governance processes, regulatory position, or legality of conduct. The Director may participate in a supervisory college with other regulators, including state, Federal, and international regulatory agencies, charged with the supervision of the insurer or its affiliates. The Director's authority includes initiating a supervisory college; clarifying membership and participation of other supervisors in the college; clarifying the functions of the college and roles of other regulators, including establishing a groupwide supervisor; coordinating ongoing college activities; and establishing a crisis management plan.

The insurer will be liable for and have to pay the reasonable expenses for the Director to participate in the supervisory college, including reasonable travel expenses, if the Director considers it appropriate to require the insurer to pay these costs.

The bill authorizes the Director to enter into agreements providing the basis for cooperation and sharing confidential information with state, Federal, and international regulatory agencies that regulate the domestic insurer or affiliates within the insurance holding company system. This provision does not delegate to the supervisory college the Director's authority to regulate or supervise the insurer or its affiliates within its jurisdiction.

Failure to File Registration Statement

Under the Code, an insurer that does not file a registration statement as required without just cause must pay a penalty of $1,000 for each day's delay, up to a maximum of $50,000 to be recovered by the DIFS Director and paid into the General Fund. The Director may reduce the penalty if the insurer demonstrates that it would cause financial hardship to the insurer. The bill refers to the penalty as a civil fine.

Senate Bill 178

Chapter 17: Risk Management & Own Risk & Solvency Assessment

The bill created Part 17 to 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. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the insurer's operations.

Under the bill, "insurer" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, nonprofit dental care corporation, and any other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts. The term does 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" means, for the purpose of conducting an own risk and solvency assessment, insurers and affiliates included within an insurance holding company system.

The bill defines "own risk and solvency assessment" as 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 is a member regularly must conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA must be conducted at least annually, as well as at any time when there are significant

changes to the risk profile of the insurer or its insurance group. The bill defines "ORSA guidance manual" as the ORSA guidance manual as adopted and prescribed by the DIFS Director.

An insurer must submit to the Director an annual ORSA summary report, or any combination of reports that together contain the information described in the guidance manual, applicable to the insurer and/or the insurance group of which it is a member. Within 90 days after the bill took effect, the insurer had to submit to the Director the calendar date the insurer annually will submit the summary report. The insurer must file the first report by its submitted calendar date in 2018. The bill defines "ORSA summary report" as a confidential high-level summary of an insurer or insurance group's ORSA. If the insurer is a member of an insurance group and the DIFS Director is the lead State regulator of the insurance group in accordance with the procedures, as adopted by the Director, within the NAIC Financial Analysis Handbook, the insurer must submit an ORSA summary report.

An ORSA summary 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 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 has been given to the insurer's board of directors or appropriate committee of the board.

An insurer may 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 is a member to a commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if the report provides information that is comparable to the information prescribed by the ORSA guidance manual.

Except as otherwise provided, an insurer is exempt from the requirements of Chapter 17 if both of the following apply:

-- The insurer has 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 is a member has 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 qualifies for the exemption but the applicable insurance group does not qualify, the ORSA summary report must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one summary report for any combination of insurers if the combination includes every insurer within the group.

If an insurer does not qualify for the exemption but the insurance group qualifies, the only ORSA summary report that may be required is the report applicable to the insurer.

Notwithstanding the exemption, the DIFS Director may 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 determines one or more of the following: 1) the insurer has risk-based capital for a company action level event, 2) the insurer meets one or more of the conditions described in Section 436, 3) the insurer's operation is hazardous to policyholders, creditors, or the public under Section 436a, or 4) the insurer exhibits 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 qualifies for an exemption subsequently no longer qualifies 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 is a member, the insurer has one year following the year that the premium exceeds the bill's limitation to comply with Chapter 17.

An insurer that does not qualify for exemption may 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 may consider the type and volume of business written, ownership and organizational structure, and any other factor the Director considers relevant to the insurer or insurance group of which it is a member. If the insurer is part of a group with insurers domiciled in more than one state, the Director must coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the waiver request.

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

An insurer that does not, without just cause, file a required ORSA summary report in a timely fashion must 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 is $75,000. The Director may reduce the penalty if the insurer demonstrates that the penalty will cause a financial hardship.

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

A document, material, or other information, including the summary report, in the possession or control of the Director that is obtained by, created by, or disclosed to the Director or any other person under Chapter 17 is considered proprietary and to contain trade secrets. The document, material, or other information is confidential and privileged, not subject to disclosure under FOIA, not subject to subpoena, and not subject to discovery or admissible in evidence in a private civil action. The Director may use the document, material, or information, however, in the furtherance of any regulatory or legal action brought as a part of the Director's official duties. The Director may not otherwise make the document, material, or information public without the prior written consent of the insurer to which it pertains.

The Director or any other person who receives a document, material, or other ORSA-related information, through examination or otherwise, while acting under the Director's authority or with whom it is shared under the Code may not testify in a private civil action concerning confidential documents, materials, or information.

Except as otherwise provided, upon request, the DIFS Director may share documents, materials, and other ORSA-related information, including those that are 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, the NAIC, and any third-party consultants designated by the Director. The Director may not share a document, material, or other ORSA-related information unless the recipient agrees in writing to maintain its confidentiality and privileged status and has verified in writing the legal authority to maintain confidentiality.

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

jurisdictions, including members of a supervisory college, and from the NAIC. The Director must maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the source jurisdiction.

The Director must enter into a written agreement with the NAIC or a third-party consultant governing the sharing and use of the information provided under Chapter 17. The agreement must 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 an insurance group has domiciled insurers.
-- Contain a statement that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, and other information and has verified in writing the legal authority to maintain confidentiality.
-- Specify that the DIFS Director owns the information shared with the NAIC or a third-party consultant and that the NAIC's or consultant's use of the information is subject to the Director's direction.
-- Prohibit the NAIC or consultant from storing the shared information in a permanent database after the underlying analysis is completed.
-- Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a consultant is 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 may 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 is not a delegation of regulatory authority or rule-making, and the Director is 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 is not a waiver of an applicable privilege or claim of confidentiality.

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

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.

Previously, the Code provided that a filing and any accompanying information were open to public inspection upon filing. The bill deleted this provision. Instead, except as otherwise provided, the filing and any accompanying information are a public record as provided in FOIA. An insurer or rating organization filing on its behalf may designate the filing or information as a trade secret. If the DIFS Director determines that the filing or information is a trade secret, it is exempt from

FOIA. Under the bill, "trade secret" means 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.

Previously, a filing and any supporting information were open to public inspection after the filing became effective. The bill deleted this provision, and added language similar to that added to 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 500.1301 et al. (S.B. 178)
500.1701 et al. (S.B. 179)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It is important to incorporate the NAIC's model acts in State law because the expanded information and oversight provided to State insurance regulators will enhance consumer protection with regard to insurer solvency. Senate Bill 177 will enable DIFS to identify risk in a holding company system that might have a negative effect on an insurer's financial condition. The bill will facilitate communication and cooperation among regulators and company officials through the supervisory college provisions, and equip DIFS with appropriate enforcement measures for violations. By enacting the ORSA requirements, Senate Bill 178 will help insurers to better understand their own financial situation and promote an effective level of enterprise risk management. Additionally, the bill will allow DIFS to assess the financial status of a holding company as a whole, and its impact on individual insurers within the holding company system.

Adoption of the model acts is a requirement for Michigan to maintain its NAIC accreditation, which creates administrative efficiency for regulators and insurance companies with regard to insurers that do business in multiple jurisdictions. A number of other states have incorporated NAIC's changes in their insurance statutes.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton