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**Business & Financial Services Committee**

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**HB 1172**

**Brief Description:** Creating the risk management and solvency assessment act.

**Sponsors:** Representatives Stanford, Vick and Ryu; by request of Insurance Commissioner.

**Brief Summary of Bill**

- Implements the own risk and solvency model act.

**Hearing Date:** 1/21/15

**Staff:** Linda Merelle (786-7092).

**Background:**

In the wake of the financial crisis of 2008 insurance regulators developed more tools to assess the solvency of insurers and potential risks that may be imposed. The model act implementing the own risk and solvency assessment was adopted by the National Association of Insurance Commissioners (NAIC), and it has been made part of the NAIC accreditation requirements for state insurance agencies.

**Summary of Bill:**

Own Risk and Solvency Assessment.

*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. The own risk and solvency assessment (ORSA) is a confidential internal assessment, and it was developed as a process for maintaining a risk management framework.

*ORSA Summary Report.*

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*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.*

The ORSA Summary Report (Report) is a confidential high-level ORSA summary of an insurer or insurance group. An insurer must regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual (Manual), which was developed by the NAIC. 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.

Upon the Office of the Insurance Commissioner's (Commissioner) request, and no more than once per year, an insurer must submit to the Commissioner a Report or a combination of Reports that together contain the information described in the Manual.

A 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.

#### *Exemption from ORSA Requirements.*

An insurer may be exempt from the requirements of this act if it meets certain criteria. The Commissioner may still require an insurer to maintain a risk management framework, conduct an ORSA, and file a Report based upon unique circumstances. This may include circumstances where the insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition, as set out in rule, or if the insurer otherwise exhibits the characteristics of a troubled insurer, as determined by the Commissioner.

#### *Confidential Treatment of Documents and Information.*

The Report and other ORSA-related documents (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 and privileged and not subject to the Public Records Act. 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 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 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 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 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:** This act takes effect January 1, 2016, except for section 11, regarding amendments to the Public Records Act, which takes effect July 1, 2017.