

SENATE No. 540

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony W. Petrucci

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Anthony W. Petrucci

First Suffolk and Middlesex

Marc R. Pacheco

First Plymouth and Bristol

SENATE No. 540

By Mr. Petruccelli, a petition (accompanied by bill, Senate, No. 540) of Anthony W. Petruccelli and Marc R. Pacheco for legislation relative to risk management and own risk and solvency assessment. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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. The General Laws are hereby amended by inserting after Chapter 176U the
2 following chapter:

3 CHAPTER 176V

4 OWN RISK AND SOLVENCY ASSESSMENT

5 (a) As used in this chapter, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:

7 “Insurance group”, for the purpose of conducting an ORSA, the term “insurance group”
8 shall mean those insurers and affiliates included within an insurance holding company system as
9 defined in Section 206 of Chapter 175 of the General Laws, those health maintenance
10 organizations and affiliates included within a health maintenance organization holding system as
11 defined in Section 1 of Chapter 176G of the General Laws, Public Employer Workers’

12 Compensation Self-Insurance Groups organized under Chapter 40M of the General Laws and
13 their affiliates, Workers' Compensation Self-Insurance Groups organized under Sections 25E
14 through 25U of Chapter 152 of the General Laws and their affiliates, Fraternal Benefit Societies
15 organized under Chapter 176 of the General Laws and their affiliates, Non-Profit Hospital
16 Service Corporations organized under Chapter 176A of the General Laws and their affiliates,
17 Medical Service Corporations organized under Chapter 176B of the General Laws and their
18 affiliates, Dental Service Corporations organized under Chapter 176E of the General Laws and
19 their affiliates, Optometric Service Corporations organized under Chapter 176F of the General
20 Laws and their affiliates, Legal Services Plans organized under Chapter 176H of the General
21 Laws and their affiliates and Limited Societies organized under Chapter 176P of the General
22 Laws and their affiliates.

23 "Insurer", the term "insurer", shall have the same meaning as set forth in Section 1 of
24 Chapter 175 and, as used in this chapter, the term "insurer" shall also include Public Employer
25 Workers' Compensation Self-Insurance Groups organized under Chapter 40M of the General
26 Laws, Workers' Compensation Self-Insurance Groups organized under Sections 25E through
27 25U of Chapter 152 of the General Laws, Fraternal Benefit Societies organized under Chapter
28 176 of the General Laws, Non-Profit Hospital Service Corporations organized under Chapter
29 176A of the General Laws, Medical Service Corporations organized under Chapter 176B of the
30 General Laws, Dental Services Corporations organized under Chapter 176E of the General Laws,
31 Optometric Service Corporations organized under Chapter 176F of the General Laws, Health
32 Maintenance Organizations organized under Chapter 176G of the General Laws, Legal Services
33 Plans organized under Chapter 176H of the General Laws and Limited Societies organized under
34 Chapter 176P of the General Laws; except that it shall not include agencies, authorities or

35 instrumentalities of the United States, its possessions and territories, the Commonwealth of
36 Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

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

38 “Own Risk and Solvency Assessment” or “ORSA”, an “Own Risk and Solvency
39 Assessment” or “ORSA” shall mean a confidential internal assessment, appropriate to the nature,
40 scale and complexity of an insurer or insurance group, conducted by that insurer or insurance
41 group of the material and relevant risks associated with the insurer or insurance group’s current
42 business plan, and the sufficiency of capital resources to support those risks.

43 “ORSA Guidance Manual”, the term “ORSA Guidance Manual” shall mean the current
44 version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by
45 the NAIC and as amended from time to time. A change in the ORSA Guidance Manual shall be
46 effective on the January 1 following the calendar year in which the changes have been adopted
47 by the NAIC.

48 “ORSA Summary Report”, an “ORSA Summary Report” shall mean a confidential high-
49 level summary of an insurer or insurance group’s ORSA.

50 “Supervisory College”, a forum for cooperation and communication between the
51 involved supervisors established for the fundamental purpose of facilitating the effectiveness of
52 supervision of entities which belong to an insurance group; facilitating both the supervision of
53 the group as a whole on a group-wide basis and improving the legal entity supervision of the
54 entities within the insurance group.

55 (b) An insurer shall maintain a risk management framework to assist the insurer with
56 identifying, assessing, monitoring, managing and reporting on its material and relevant risks.
57 This requirement may be satisfied if the insurance group of which the insurer is a member
58 maintains a risk management framework applicable to the operations of the insurer.

59 (c) Subject to the provisions of subsection (e), an insurer, or the insurance group of which
60 the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable
61 to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at
62 any time when there are significant changes to the risk profile of the insurer or the insurance
63 group of which the insurer is a member.

64 (d)

65 (1) Upon the commissioner's request, and no more than once each year, an insurer shall
66 submit to the commissioner an ORSA Summary Report or any combination of reports that
67 together contain the information described in the ORSA Guidance Manual, applicable to the
68 insurer and/or the insurance group of which it is a member. Notwithstanding any request from
69 the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the
70 report(s) required by this subsection if the commissioner is the lead state commissioner of the
71 insurance group as determined by the procedures within the Financial Analysis Handbook
72 adopted by the National Association of Insurance Commissioners.

73 (2) The report(s) shall include a signature of the insurer or insurance group's chief risk
74 officer or other executive having responsibility for the oversight of the insurer's enterprise risk
75 management process attesting to the best of his/her belief and knowledge that the insurer applies
76 the enterprise risk management process described in the ORSA Summary Report and that a copy

77 of the report has been provided to the insurer's board of directors or the appropriate committee
78 thereof.

79 (3) An insurer may comply with paragraph (1) of this subsection by providing the most
80 recent and substantially similar report(s) provided by the insurer or another member of an
81 insurance group of which the insurer is a member to the commissioner of another state or to a
82 supervisor or regulator of a foreign jurisdiction, if that report provides information that is
83 comparable to the information described in the ORSA Guidance Manual. Any such report in a
84 language other than English must be accompanied by a translation of that report into the English
85 language.

86 (e)

87 (1) An insurer shall be exempt from the requirements of this chapter, if

88 (i) The insurer has annual direct written and unaffiliated assumed premium,
89 including international direct and assumed premium but excluding premiums reinsured with the
90 Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

91 (ii) The insurance group of which the insurer is a member has annual direct written
92 and unaffiliated assumed premium including international direct and assumed premium, but
93 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood
94 Program, less than \$1,000,000,000.

95 (2) If an insurer qualifies for exemption pursuant to clause (i) of paragraph (1) of this
96 subsection, but the insurance group of which the insurer is a member does not qualify for
97 exemption pursuant to clause (ii) of paragraph (1) of this subsection, then the ORSA Summary

98 Report that may be required pursuant to subsection (d) shall include every insurer within the
99 insurance group. This requirement may be satisfied by the submission of more than one ORSA
100 Summary Report for any combination of insurers provided any combination of reports includes
101 every insurer within the insurance group.

102 (3) If an insurer does not qualify for exemption pursuant to clause (i) of paragraph (1) of
103 this subsection, but the insurance group of which it is a member qualifies for exemption pursuant
104 to clause (ii) of paragraph (1) of this subsection, then the only ORSA Summary Report that may
105 be required pursuant to subsection (d) shall be the report applicable to that insurer.

106 (4) An insurer that does not qualify for exemption pursuant to paragraph (1) of this
107 subsection, may apply to the commissioner for a waiver from the requirements of this chapter
108 based upon unique circumstances. In deciding whether to grant the insurer's request for waiver,
109 the commissioner may consider the type and volume of business written, ownership and
110 organizational structure, and any other factor the commissioner considers relevant to the insurer
111 or insurance group of which the insurer is a member. If the insurer is part of an insurance group
112 with insurers domiciled in more than one state, the commissioner shall coordinate with the lead
113 state commissioner and with the other domiciliary commissioners in considering whether to
114 grant the insurer's request for a waiver.

115 (5) Notwithstanding the exemptions stated in subsection (e),

116 (i) The commissioner may require that an insurer maintain a risk management
117 framework, conduct an ORSA and file an ORSA Summary Report based on unique
118 circumstances including, but not limited to, the type and volume of business written, ownership
119 and organizational structure, federal agency requests, and international supervisor requests.

120 (ii) The commissioner may require that an insurer maintain a risk management
121 framework, conduct an ORSA and file an ORSA Summary Report if the insurer has Risk-Based
122 Capital for company action level event as set forth in 211 CMR 20.00 and 211 CMR 25.00,
123 meets one or more of the standards of an insurer deemed to be in hazardous financial condition
124 as defined in Section 3(c) of Chapter 175J of the General Laws, or otherwise exhibits qualities
125 of a troubled insurer as determined by the commissioner.

126 (6) If an insurer that qualifies for an exemption pursuant to subsection (e) subsequently
127 no longer qualifies for that exemption due to changes in premium as reflected in the insurer's
128 most recent annual statement or in the most recent annual statements of the insurers within the
129 insurance group of which the insurer is a member, the insurer shall have one (1) year following
130 the year the threshold is exceeded to comply with the requirements of this chapter.

131 (f)

132 (1) The ORSA Summary Report shall be prepared consistent with the ORSA Guidance
133 Manual, subject to the requirements of paragraph (2) of this subsection. Documentation and
134 supporting information shall be maintained and made available upon examination or upon
135 request of the commissioner.

136 (2) The review of the ORSA Summary Report, and any additional requests for
137 information, shall be made using similar procedures currently used in the analysis and
138 examination of multi-state or global insurers and insurance groups.

139 (g)

140 (1) Documents, materials or other information, including the ORSA Summary Report, in
141 the possession of or control of the commissioner that are obtained by, created by or disclosed to
142 the commissioner or any other person under this chapter, is recognized by this state as being
143 proprietary and to contain trade secrets. All such documents, materials or other information shall
144 be confidential by law and privileged, shall not be subject to Chapter 66 of the General Laws, or
145 the twenty-sixth clause of Section 7 of Chapter 4 of the General Laws shall not be subject to
146 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
147 action. However, the commissioner is authorized to use the documents, materials or other
148 information in the furtherance of any regulatory or legal action brought as a part of the
149 commissioner's official duties. The commissioner shall not otherwise make the documents,
150 materials or other information public without the prior written consent of the insurer unless the
151 commissioner, after giving the insurer and its affiliates who would be affected thereby, notice
152 and opportunity to be heard, determines that the interest of policyholders, shareholders or the
153 public will be served by the publication thereof, in which event he may publish all or any part
154 thereof in such manner as he may deem appropriate.

155 (2) Neither the commissioner nor any person who received documents, materials or other
156 ORSA-related information, through examination or otherwise, while acting under the authority
157 of the commissioner or with whom such documents, materials or other information are shared
158 pursuant to this chapter shall be permitted or required to testify in any private civil action
159 concerning any confidential documents, materials, or information subject to paragraph (1) of this
160 subsection.

161 (3) In order to assist in the performance of the commissioner's regulatory duties, the
162 commissioner:

163 (i) May, upon request, share documents, materials or other ORSA-related
164 information, including the confidential and privileged documents, materials or information
165 subject to paragraph (1) of this subsection, including proprietary and trade secret documents and
166 materials with other state, federal and international financial regulatory agencies, including
167 members of any Supervisory College as defined in this chapter, with the NAIC and with any
168 third-party consultants designated by the commissioner, provided that the recipient agrees in
169 writing to maintain the confidentiality and privileged status of the ORSA-related documents,
170 materials or other information and has verified in writing the legal authority to maintain
171 confidentiality; and

172 (ii) May receive documents, materials or other ORSA-related information, including
173 otherwise confidential and privileged documents, materials or information, including proprietary
174 and trade-secret information or documents, from regulatory officials of other foreign or domestic
175 jurisdictions, including members of any Supervisory College as defined in this chapter, and from
176 the NAIC, and shall maintain as confidential or privileged any documents, materials or
177 information received with notice or the understanding that it is confidential or privileged under
178 the laws of the jurisdiction that is the source of the document, material or information.

179 (iii) Shall enter into a written agreement with the NAIC or a third-party consultant
180 governing sharing and use of information provided pursuant to this chapter, consistent with this
181 subsection that shall:

182 (A) Specify procedures and protocols regarding the confidentiality and security of
183 information shared with the NAIC or a third-party consultant pursuant to this chapter, including
184 procedures and protocols for sharing by the NAIC with other state regulators from states in

185 which the insurance group has domiciled insurers. The agreement shall provide that the recipient
186 agrees in writing to maintain the confidentiality and privileged status of the ORSA-related
187 documents, materials or other information and has verified in writing the legal authority to
188 maintain confidentiality;

189 (B) Specify that ownership of information shared with the NAIC or a third-party
190 consultant pursuant to this chapter remains with the commissioner and the NAIC's or a third-
191 party consultant's use of the information is subject to the direction of the commissioner;

192 (C) Prohibit the NAIC or third-party consultant from storing the information shared
193 pursuant to this chapter in a permanent database after the underlying analysis is completed;

194 (D) Require prompt notice to be given to an insurer whose confidential information in
195 the possession of the NAIC or a third-party consultant pursuant to this chapter is subject to a
196 request or subpoena to the NAIC or a third-party consultant for disclosure or production;

197 (E) Require the NAIC or a third-party consultant to consent to intervention by an
198 insurer in any judicial or administrative action in which the NAIC or a third-party consultant
199 may be required to disclose confidential information about the insurer shared with the NAIC or a
200 third-party consultant pursuant to this chapter; and

201 (F) In the case of an agreement involving a third-party consultant, provide for the
202 insurer's written consent.

203 (iv) The sharing of information and documents by the commissioner pursuant to this
204 chapter shall not constitute a delegation of regulatory authority or rulemaking, and the

205 commissioner is solely responsible for the administration, execution and enforcement of the
206 provisions of this chapter.

207 (v) No waiver of any applicable privilege or claim of confidentiality in the
208 documents, proprietary and trade-secret materials or other ORSA-related information shall occur
209 as a result of disclosure of such ORSA-related information or documents to the commissioner
210 under this section or as a result of sharing as authorized in this chapter.

211 (vi) Documents, materials or other information in the possession or control of the
212 NAIC or a third-party consultants pursuant to this chapter shall be confidential by law and
213 privileged, shall not be subject to Chapter 66 of the General Laws or the twenty-sixth clause of
214 Section 7 of Chapter 4 of the General Laws, shall not be subject to subpoena, and shall not be
215 subject to discovery or admissible in evidence in any private civil action.

216 (h) Any insurer failing, without just cause, to timely file the ORSA Summary Report as
217 required in this chapter shall be required, after notice and hearing, to pay a penalty of \$500.00 for
218 each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid
219 to the Commonwealth. The maximum penalty under this section shall be \$10,000.00. The
220 commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the
221 imposition of the penalty would constitute a financial hardship to the insurer.

222 (i) The commissioner may, pursuant to Chapter 30A of the General Laws, upon notice
223 and opportunity for all interested parties to be heard, issue such rules, regulations and orders as
224 shall be necessary to carry out the provisions of this chapter.

225 (j) If any provision of this chapter, or the application thereof to any person or
226 circumstance, is held invalid, such determination shall not affect the provisions or applications of

227 this chapter which can be given effect without the invalid provision or application, and to that
228 end the provisions of this chapter are severable.

229 SECTION 2. Effective Date

230 The requirements of this chapter shall become effective 90 days after enactment.

231 SECTION 3. Section 10 of Chapter 40M of the General Laws, as appearing in the 2012
232 Official Edition, is hereby amended by inserting in subsection 10, after paragraph (D), the
233 following new paragraph:-

234 (E) Notwithstanding any contrary provision of this or any chapter of the General Laws,
235 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
236 groups governed by this chapter.

237 SECTION 4. Chapter 152 of the General Laws, as appearing in the 2012 Official Edition,
238 is hereby amended by inserting, after Section 25U, the following Section:

239 Section 25V. Own Risk and Solvency Assessment. Notwithstanding any contrary
240 provision of this or any other chapter of the General Laws, Chapter 176V of the General Laws,
241 titled “Own Risk and Solvency Assessment”, shall apply to groups governed by this chapter.

242 SECTION 5. Chapter 175 of the General Laws is hereby amended by inserting after
243 Section 25A the following section:-

244 Section 25B. Own Risk and Solvency Assessment. Notwithstanding any contrary
245 provision of this or any other chapter of the General Laws, Chapter 176V of the General Laws,
246 titled “Own Risk and Solvency Assessment,” shall apply to companies governed by this chapter.

247 SECTION 6. Section 41 of Chapter 176 of the General Laws, as appearing in the 2012
248 Official Edition, is hereby amended by inserting after subsection (7), the following subsection:

249 (8) Notwithstanding any contrary provision of this or any other chapter of the General
250 Laws, Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall
251 apply to societies governed by this chapter.

252 SECTION 7. Section 18 of Chapter 176A of the General Laws, as appearing in the 2012
253 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

254 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
255 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
256 corporations governed by this chapter.

257 SECTION 8. Section 8 of Chapter 176B of the General Laws, as appearing in the 2012
258 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

259 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
260 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to,
261 corporations governed by this chapter.

262 SECTION 9. Section 8 of Chapter 176E of the General Laws, as appearing in the 2012
263 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

264 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
265 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
266 corporations governed by this chapter.

267 SECTION 10. Section 8 of Chapter 176F of the General Laws, as appearing in the 2012
268 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

269 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
270 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
271 corporations governed by this chapter.

272 SECTION 11. Section 10 of Chapter 176G of the General Laws, as appearing in the 2012
273 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

274 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
275 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
276 health maintenance organizations governed by this chapter.

277 SECTION 12. Chapter 176H of the General Laws, as appearing in the 2012 Official
278 Edition, is hereby amended by inserting, after Section 13, the following Section:

279 13A. Own Risk and Solvency Assessment. Notwithstanding any contrary provision of
280 this or any other chapter of the General Laws, Chapter 176V of the General Laws, titled “Own
281 Risk and Solvency Assessment,” shall apply to plans governed by this Chapter.

282 SECTION 13. Section 38 of Chapter 176P of the General Laws, as appearing in the 2012
283 Official Edition, is hereby amended by inserting at the end thereof, the following paragraph:

284 Notwithstanding any contrary provision of this or any other chapter of the General Laws,
285 Chapter 176V of the General Laws, titled “Own Risk and Solvency Assessment,” shall apply to
286 societies governed by this chapter.