

# SENATE . . . . . No. 2276

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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SENATE, Monday, May 2, 2016

The committee on Financial Services.to whom was referred the 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,- reports the accompanying bill (Senate, No. 2276).

For the committee,  
James B. Eldridge

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

*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:

Insurance group, for the purpose of conducting an ORSA, the term insurance group shall mean those insurers and affiliates included within an insurance holding company system as defined in Section 206 of Chapter 175 of the General Laws, those health maintenance organizations and affiliates included within a health maintenance organization holding system as defined in Section 1 of Chapter 176G of the General Laws, Public Employer Workers Compensation Self-Insurance Groups organized under Chapter 40M of the General Laws and their affiliates, Workers Compensation Self-Insurance Groups organized under Sections 25E

through 25U of Chapter 152 of the General Laws and their affiliates, Fraternal Benefit Societies organized under Chapter 176 of the General Laws and their affiliates, Non-Profit Hospital Service Corporations organized under Chapter 176A of the General Laws and their affiliates, Medical Service Corporations organized under Chapter 176B of the General Laws and their affiliates, Dental Service Corporations organized under Chapter 176E of the General Laws and their affiliates, Optometric Service Corporations organized under Chapter 176F of the General Laws and their affiliates, Legal Services Plans organized under Chapter 176H of the General Laws and their affiliates and Limited Societies organized under Chapter 176P of the General Laws and their affiliates.

Insurer, the term insurer, shall have the same meaning as set forth in Section 1 of Chapter 175 and, as used in this chapter, the term insurer shall also include Public Employer Workers Compensation Self-Insurance Groups organized under Chapter 40M of the General Laws, Workers Compensation Self-Insurance Groups organized under Sections 25E through 25U of Chapter 152 of the General Laws, Fraternal Benefit Societies organized under Chapter 176 of the General Laws, Non-Profit Hospital Service Corporations organized under Chapter 176A of the General Laws, Medical Service Corporations organized under Chapter 176B of the General Laws, Dental Services Corporations organized under Chapter 176E of the General Laws, Optometric Service Corporations organized under Chapter 176F of the General Laws, Health Maintenance Organizations organized under Chapter 176G of the General Laws, Legal Services Plans organized under Chapter 176H of the General Laws and Limited Societies organized under Chapter 176P of the General Laws; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of 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 Assessment  
39 or ORSA shall mean a confidential internal assessment, appropriate to the nature, scale and  
40 complexity of an insurer or insurance group, conducted by that insurer or insurance group of the  
41 material and relevant risks associated with the insurer or insurance groups current business plan,  
42 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-level  
49 summary of an insurer or insurance groups ORSA.

50 Supervisory College, a forum for cooperation and communication between the involved  
51 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.

(c) Subject to the provisions of subsection (e), an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than 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.

(d)

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

(2) The report(s) shall include a signature of the insurer or insurance groups chief risk officer or other executive having responsibility for the oversight of the insurers enterprise risk management process attesting to the best of his/her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurers board of directors or the appropriate committee thereof.

(3) An insurer may comply with paragraph (1) of this subsection by providing the most recent and substantially similar report(s) provided by the insurer or another member of an

insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

(e)

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

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

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

(2) If an insurer qualifies for exemption pursuant to clause (i) of paragraph (1) of this subsection, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to clause (ii) of paragraph (1) of this subsection, then the ORSA Summary Report that may be required pursuant to subsection (d) shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Summary Report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

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

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

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

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

(ii) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA Summary Report if the insurer has Risk-Based Capital for company action level event as set forth in 211 CMR 20.00 and 211 CMR 25.00, meets one or more of the standards of an insurer deemed to be in hazardous financial

condition as defined in Section 3(c) of Chapter 175J of the General Laws, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

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

(f)

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

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

(g)

(1) Documents, materials or other information, including the ORSA Summary Report, in the possession of or control of the commissioner that are obtained by, created by or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to Chapter 66 of the



General Laws, or the twenty-sixth clause of Section 7 of Chapter 4 of the General Laws shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

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

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

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

materials or other information and has verified in writing the legal authority to maintain confidentiality; and

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

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

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

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

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

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

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

(F) In the case of an agreement involving a third-party consultant, provide for the insurers written consent.

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

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

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

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

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

(j) If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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