Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5823 (Substitute H-1 as passed by the House)
Sponsor: Representative Pete Lund
House Committee: Insurance
Senate Committee: Insurance

Date Completed: 12-16-14

**CONTENT**

The bill would add Part 17 (Risk Management and Own Risk and Solvency Assessment) to the Insurance Code to do the following:

-- Require an insurer, including a fraternal benefit society, 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 the insurer was a member, regularly to conduct an own risk and solvency assessment (ORSA).
-- Require the ORSA to be conducted at least annually, but also upon any significant changes to the insurer's or insurance group's risk profile.
-- Require an insurer to submit to the Director of the Department of Insurance and Financial Services (DIFS) an ORSA summary report upon the Director's request and not more than once each year.
-- Exempt an insurer from the requirements of proposed Part 17 if the insurer and the insurance group of which it was a member had annual direct written and unaffiliated assumed premium less than $500.0 million and $1.0 billion, respectively.
-- Allow an insurer that did not qualify for exemption to apply to the DIFS Director for a waiver from the requirements of Chapter 17 based upon unique circumstances.
-- Prescribe circumstances under which the Director could require an insurer to maintain a risk management framework, conduct an ORSA, and/or file an ORSA summary report.
-- Require an insurer that did not, without just cause, file a timely ORSA summary report to pay a civil fine of $1,000 for each day's delay, up to $75,000 total, to be recovered by the DIFS Director and paid into the General Fund.

"Own risk solvency assessment" would mean a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or the insurance group's current business plan, and the sufficiency of capital resources to support those risks.

The bill also provides that documents, materials, or other information in the possession or control of the DIFS Director that were obtained by, created by, or disclosed to the Director or any other person under proposed Chapter 17 would be considered proprietary and to contain trade secrets. They would be confidential and privileged, and would not be subject to disclosure under the Freedom of Information Act, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil action. The DIFS Director, however, could use the information in the furtherance of any regulatory or legal action brought as a part of his or her official duties. The bill provides for the sharing of such information between the DIFS Director; other state, Federal, and international financial regulatory agencies; the National Association of Insurance Commissioners; and third-party consultants.

The bill is tie-barred to House Bill 5792. House Bill 5792 (H-1) would do the following:

-- Require the ultimate controlling person of an insurer to file with the DIFS Director an annual enterprise risk report that identified the material risks within the insurance holding company system that could pose enterprise risk to the insurer.
-- Create an exception to a requirement that the Director approve any merger or other acquisition of control of a domestic insurer, if the acquisition were likely to be hazardous or prejudicial to the insurance buying public
-- Allow the Director to hold a public hearing to receive evidence and to hear parties affected by a proposed merger or acquisition.
-- Revise the transactions between a domestic controlled insurer and a person in its holding company system for which the Director's approval is required.

Proposed MCL 500.1701-500.1715 Legislative Analyst: Julie Cassidy

**FISCAL IMPACT**

The bill would have a minor, but potentially positive, fiscal impact on the State and no fiscal impact on local units of government. The bill would allow the Director of the Department of Insurance and Financial Services to levy a civil fine of up to $1,000 per day upon an insurer that did not file an own risk and solvency report in a timely manner. It is unknown how much revenue would be generated from these fines, but the fines would be credited to the State General Fund.

Fiscal Analyst: Josh Sefton

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