Legislative Analysis

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INSURANCE HOLDING COMPANIES

House Bill 6297 as introduced
Sponsor: Rep. Andrew W. Beeler

House Bill 6298 as introduced
Sponsor: Rep. Ken Borton

House Bill 6299 as introduced
Sponsor: Rep. Mike Harris

House Bill 6300 as introduced
Sponsor: Rep. Sarah Anthony

House Bill 6301 as introduced
Sponsor: Rep. Richard M. Steenland

House Bill 6302 as introduced
Sponsor: Rep. Tim Sneller

House Bill 6303 as introduced
Sponsor: Rep. Julie Calley

Committee: Rules and Competitiveness
Complete to 9-15-22

SUMMARY:

House Bills 6297 through 6303 would amend Chapter 13 (Holding Companies) of the Insurance Code to add provisions requiring certain insurers to file an annual group capital calculation and the results of a National Association of Insurance Commissioners (NAIC) liquidity stress test under certain circumstances. The bills also would revise provisions that address the confidentiality of certain information. Finally, they would add provisions regarding a domestic insurer's investment in one or more subsidiaries. The changes proposed by the bills largely reflect updates to the NAIC model act that is the basis for Chapter 13.[1] Each bill can take effect only if all of the bills are enacted.

Annual group capital calculation

With some exceptions, Chapter 13 of the Insurance Code requires an insurer that is a member of an insurance holding company system and is authorized to do business in Michigan to register with the director of the Department of Insurance and Financial Services (DIFS) by May 1 of each year for the immediately preceding calendar year.

Under the bills, with exemptions described below, the ultimate controlling person of such an insurer would have to file along with its registration an annual group capital calculation as directed by the ***lead state commissioner***.

> ***Lead state commissioner*** would mean the insurance commissioner of the state in which an insurer member of an insurance holding company system is domiciled and that is determined to be the lead state under the procedures in the [NAIC] Financial Analysis Handbook, as adopted by the director of DIFS.

[1] House Bills 6297 to 6302 would adopt recent NAIC revisions to the model act. House Bill 6303 would adopt provisions from Section 2 of the model act that were not adopted previously. The NAIC model act and applicable revisions can be seen here: https://content.naic.org/sites/default/files/inline-files/Model%20440_FINAL.pdf

The annual group capital calculation would have to be filed with the lead state commissioner and would have to be completed in accordance with the ***group capital calculation instructions*** (which could allow the lead state commissioner to let a controlling person other than the ultimate controlling person file the calculation).

> ***Group capital calculation instructions*** would mean the group calculation instructions that are adopted by the NAIC and are amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

Exemptions

The following insurance holding company systems would be exempt from filing the annual group capital calculation described above:

- A system that has only one insurer in its holding company structure, writes only business, is licensed only in its domestic state, and does not assume business from any other insurer.
- A system that is required to perform a group capital calculation specified by the Federal Reserve Board, if the lead state commissioner requests the calculation from the Board and the Board shares the calculation.
- A system whose non–U.S. ***group-wide supervisor*** is located in a reciprocal jurisdiction, as described in section 1103 of the code,[2] that recognizes the U.S. state's regulatory approach to group supervision and group capital.
- A system that meets both of the following:
    - It provides information to the lead state that meets the requirements for accreditation under the NAIC Financial Standards and Accreditation Program, either directly or indirectly, through the group-wide supervisor who has determined that the information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook.
    - Its non–U.S. group-wide supervisor is not in a reciprocal jurisdiction, as described in section 1103, and recognizes and accepts, as specified by the director, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups that operate in that jurisdiction.

> ***Group-wide supervisor*** means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the director of DIFS under Chapter 13 to have sufficient contacts with an ***internationally active insurance group***.

> ***Internationally active insurance group*** means an insurance holding company system to which both of the following apply:
>
> - The system includes an insurer registered as described above.
> - The system meets all of the following:
>   - It has premiums written in at least three countries.
>   - Gross premiums written outside the United States are at least 10% of its total gross written premiums.
>   - Based on a three-year rolling average, its total assets are at least $50.0 billion or its total gross written premiums are at least $10.0 billion.

[2] See https://www.legislature.mi.gov/documents/mcl/pdf/mcl-500-1103.pdf

However, despite the above exemptions, the lead state commissioner would have to require the group capital calculation for U.S. operations of any non–U.S. based insurance holding company system if, after any necessary consultation with other supervisors or officials, the lead state commissioner considers doing so appropriate for prudential oversight and solvency monitoring purposes or to ensure the competitiveness of the insurance marketplace.

If the lead state commissioner determined that an insurance holding company system no longer qualified as one or more of the systems exempted above, the system would have to file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

Finally, the lead state commissioner could exempt the ultimate controlling person from filing the annual group capital calculation or accept a limited group capital filing or report in accordance with criteria specified by the director of DIFS.

NAIC liquidity stress test

The bills also would require the ultimate controlling person of an insurer that is subject to registration as described above and that is scoped into the ***NAIC Liquidity Stress Test Framework*** for the specified data year to file with the lead state commissioner the results of that year's liquidity stress test.

> ***NAIC Liquidity Stress Test Framework*** would mean a separate NAIC publication that includes all of the following components:
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> - A history of the NAIC's development of regulatory liquidity stress testing.
> - The liquidity stress test instructions and reporting templates and ***scope criteria*** for a specified data year, which are adopted by the NAIC and amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
>
> ***Scope criteria*** would mean, as detailed in the NAIC Liquidity Stress Test Framework, the designated exposure bases and their minimum magnitudes for a specified data year that are used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

The bills would require that a change adopted by the NAIC to the NAIC Liquidity Stress Test Framework or the data year for which the scope criteria are to be measured must be effective on January 1 of the year following the calendar year when the NAIC adopts the change.

An insurer meeting at least one threshold of the scope criteria would be considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year, and an insurer not meeting at least one threshold of the scope criteria would be considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year.

However, the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, could determine that an insurer should or should not be scoped into the framework for the specified data year. As part of such a determination, the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, would have to consider that regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis.

The performance of, and filing of the results from, a specified year's liquidity stress test would have to comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and with any lead state commissioner determination, in conjunction with the NAIC Financial Stability Task Force or its successor, provided within the NAIC Liquidity Stress Test Framework.

Materiality

The bills would provide that a sale, purchase, exchange, loan, extension of credit, or investment involving up to 0.5% or less of an insurer's admitted assets on the preceding December 31 is not material for purposes of an annual group calculation or an NAIC liquidity stress test. (Note that this is the same definition of materiality as now applies to a registration statement filed under Chapter 13.)

Confidential treatment

The bills would remove language that now provides that an annual enterprise risk report filed as required by Chapter 13 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). (This provision appears to be redundant in current law.)

The bills also would revise provisions that currently address the confidentiality, privileged status, and allowed disclosure or uses of information and reports under Chapter 13. The bills would retain many of the current provisions. Notably, the bills would newly allow confidential information to be shared with a third-party consultant designated by the director of DIFS under circumstances and procedures described in the bills. In addition, the bills would newly address the confidentiality of information related to group capital calculations and liquidity stress tests.

Under the bills, documents, materials, and other information possessed by DIFS that are obtained or disclosed in the course of an examination of an insurer under Chapter 13, and all information reported or provided to DIFS under applicable provisions of Chapter 13, would be proprietary and contain trade secrets, would be confidential and privileged, would not be subject to FOIA, would not be subject to subpoena, and would not be subject to discovery or admissible in evidence in a private civil or administrative action.

Except as described below, the director of DIFS could not publicly disclose the documents, materials, or information described above without the prior written consent of the insurer to which they pertain. The director could use the documents, materials, or information described above in furtherance of a regulatory or legal action brought as part of the director's official duties. In addition, the director could, after giving the insurer and its affiliates that would be affected by the disclosure notice and opportunity to be heard, disclose all or part of any document, material, or information described above if the director determines that the interests of policyholders, shareholders, or the public will be served by the publication of the document, material, or information.

However, the director could not disclose the following information reported to DIFS:

- The group capital calculation, the group capital ratio produced within the group capital calculation, and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor.
- The liquidity stress test results, any supporting disclosures, and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non–U.S. group-wide supervisors.

The director could not testify in a private civil or administrative action concerning documents, materials, or information described above. This prohibition would also apply to a person who received documents, materials, or other information while acting under the authority of the director or with whom the documents, materials, or other information is shared as below.

Information sharing

The director could share confidential, privileged, or proprietary documents, materials, or information with any of the following entities as long as the entity agrees in writing to maintain the confidentiality and privileged status of the document, material, or information and has verified in writing the legal authority to maintain the confidentiality:

- A state, federal, or international regulatory agency.
- The NAIC.
- A third-party consultant designated by the director.
- A state, federal, or international law enforcement authority, including a member of a supervisory college under Chapter 13.

Likewise, the director could receive confidential, privileged, or proprietary documents, materials, or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other jurisdictions. The director would have to maintain as confidential or privileged any document, material, or information received with the understanding that it is confidential or privileged under the laws of the applicable jurisdiction.

However, the director could only share confidential and privileged documents, material, or information reported in connection with an annual enterprise risk report with commissioners of states that have statutes or regulations substantially similar to the above provisions and who have agreed in writing not to disclose the documents, materials, or information.

Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant designated by the director under Chapter 13 would be confidential and privileged and would not be subject to FOIA, subject to subpoena, or subject to discovery or admissible as evidence in a private civil or administrative action.

The disclosure of documents, materials, or other information to the director or another person under these provisions or the sharing of documents, materials, or other information under these provisions would not be a waiver of an applicable privilege or claim of confidentiality.

Written agreements

The director would have to enter into written agreements with the NAIC and any third-party consultant designated by the director governing sharing and use of information provided under Chapter 13. The written agreement would have to do all of the following:

- Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or consultant, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The procedures and protocols would have to require the recipient of the shared documents, materials, or information to agree in writing to maintain their confidentiality and privileged status and verify in writing the legal authority to do so.
- Specify that the director owns the information shared with the NAIC or 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 shared information in a permanent database after the underlying analysis is completed. This prohibition would not apply to documents, materials, or other information reported under the bills' liquidity stress test provisions.
- Require prompt notice to be given to an insurer whose confidential information in possession of the NAIC or consultant is subject to a request or subpoena for disclosure or production.
- Require the NAIC or consultant to consent to intervention by an insurer in a judicial or administrative action in which the NAIC or consultant may be required to disclose shared confidential information about the insurer.
- With regard to documents, materials, or information reported under the bills' liquidity stress test provisions, if a third-party consultant designated by the director is a party to the agreement, provide for notification of the identity of the third-party consultant to the applicable insurer.

Prohibition of advertising group capital calculations or liquidity results

The bills would state that the group capital calculation and resulting group capital ratio and the NAIC liquidity stress test and its results and supporting disclosures are regulatory tools for assessing group risk, capital adequacy, and liquidity risks and are not intended as a way to rank insurers or insurance holding company systems.

Accordingly, the bills would prohibit as misleading any public dissemination, advertisement, or publication by an insurer group, insurer, broker, or other person engaged in any manner in the insurance business of an insurer's or insurer group's group capital calculation or group capital ratio (or any component derived in the calculation) or of an insurer's or insurer group's liquidity stress test results or supporting disclosures.

However, an insurer could publish announcements in a written publication solely to rebut a materially false statement or inappropriate comparison published in a written publication regarding a group capital calculation or ratio, derived component, liquidity stress test results, or supporting disclosures, as long as the insurer can demonstrate to the director of DIFS, with substantial proof, the falsity or inappropriateness of the statement.

Subsidiaries

Finally, the bills would (in addition to investments in common stock, preferred stock, debt obligations, and other securities allowed under Chapter 13) allow a domestic insurer to invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed either 10% of the insurer's assets or 50% of the insurer's surplus with regard to policyholders, whichever is less, as long as the insurer's surplus with regard to policyholders after the investments will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.

Investment in domestic or foreign insurance subsidiaries, licensed third-party administrators, and domestic health maintenance organizations would have to be excluded in calculating the amount described above, while both of the following would have to be included:

- Total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities.

- All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

With the approval of the director of DIFS, an insurer could invest a greater amount than prescribed above in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, as long as the insurer's surplus with regard to policyholders after the investment will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

All existing investments held on or before the effective date of House Bill 6303 would comply with the above provisions and would not count toward the limits prescribed above if held by an insurer that writes only premium in Michigan or is a nonprofit insurer statutorily prohibited from converting to a mutual holding company under Chapter 60 of the code. Any additional amounts expended in the investments would be subject to the above provisions except for any additional amounts expended by or in existing investments held by a nonprofit insurer that is statutorily prohibited from converting to a mutual holding company under Chapter 60. An investment in new subsidiaries after the effective date of House Bill 6303 by a nonprofit insurer statutorily prohibited from converting to a mutual holding company that exceeds the thresholds prescribed above would be subject to the approval of the director of DIFS.

CAPSULE SUMMARIES:

House Bill 6297 would add the defined terms ***lead state commissioner***, ***NAIC Liquidity Stress Test Framework***, and ***scope criteria***. (MCL 500.1301)

House Bill 6298 would exempt transactions involving up to 0.5% of an insurer's admitted assets from being material for purposes of an annual group calculation or NAIC liquidity stress test. This is the same definition of materiality as now applies to a registration statement filed under Chapter 13. (MCL 500.1326)

House Bill 6299 would remove a provision that now exempts an annual enterprise risk report from disclosure and admissibility as evidence in specified circumstances. (MCL 500.1325a)

House Bill 6300 would add provisions regarding the confidentiality, privileged status, and allowable use and disclosure of certain reports and information. (MCL 500.1355)

House Bill 6301 would require the ultimate controlling person of an insurer subject to registration to file an annual group capital calculation as directed by the lead state commissioner and would provide requirements for the calculation. (Proposed MCL 500.1325b)

House Bill 6302 would require the ultimate controlling person of an insurer subject to registration that is scoped into the NAIC liquidity stress test framework to file the results of the liquidity stress test with the lead state commissioner and would add provisions related to that requirement. (Proposed MCL 500.1325c)

House Bill 6303 would add provisions regarding a domestic insurer's investment in one or more subsidiaries. (Proposed MCL 500.1341a)

BACKGROUND:

The NAIC is a nonprofit organization governed by the chief insurance regulators of every state, the District of Columbia, and the territories of Puerto Rico, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and American Samoa. The NAIC establishes standards and best practices for the insurance industry, including developing and maintaining model laws, and coordinates regulatory oversight among the states. It promotes certain levels of interstate uniformity in insurance regulation as beneficial to insurers, consumers, and regulators. The NAIC also offers consumer education programs, provides support and training for state insurance officials, and represents state insurance regulators collectively at the national and international levels.[3]

The NAIC maintains an accreditation program under which, among other things, certain model regulations are identified as essential baseline standards that all states should adopt. States that uphold these standards are accredited by the NAIC. In the words of the NAIC, the accreditation program "allows for inter-state cooperation, reduces regulatory redundancies, and provides baseline consumer protections." The program is considered to provide uniform requirements for insurer solvency, allow states to accept reports and examinations made in other states, and ensure that insurance regulation in the United States remains state-based by addressing concerns that might otherwise call for federal intervention. State accreditation is reviewed every five years. When a model law is identified as a standard that states must adopt to maintain NAIC accreditation, states are generally given two years to implement it.[4]

The revisions to the holding company model act that House Bills 6297 to 6302 would implement are being considered as a requirement for NAIC state accreditation. As of September 14, 2022, there were 25 states that had introduced legislation to adopt these revisions.[5]

FISCAL IMPACT:

The bills would not have a fiscal impact on any unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does no constitute an official statement of legislative intent.

[3] https://www.naic.org/documents/about_faq.pdf
[4] Overview: https://content.naic.org/cipr-topics/accreditation
In greater detail: https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%208-2022%20.pdf
As of September 14, 2022, all 50 states, the District of Columbia, and the U.S. Virgin Islands were accredited.
See https://content.naic.org/cmte_f_accredited_states.htm
[5] https://track.govhawk.com/reports/2Ge66/public