



2013 ASSEMBLY BILL 735

February 7, 2014 – Introduced by Representative PETERSEN, cosponsored by Senator LASEE. Referred to Committee on Insurance.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber* 611.72 (3) and 611.73 (3); *to amend* 611.42 (1), 611.42 (2)
2 (a), 611.73 (4), 611.76 (1) (c), 644.10 (1) (a) and 644.10 (1) (b); and *to create*
3 601.415 (11), 601.465 (1m) (c) 7., 601.465 (1n), 601.465 (3), 611.425, 611.72 (3)
4 (bm), 611.73 (3) (b), 617.12, 617.21 (1) (cm), 617.215 and chapter 622 of the
5 statutes; **relating to:** own risk and solvency assessments, supervisory colleges,
6 consolidated hearings for mergers of insurance companies, proxy voting by
7 mutual policyholders, a presumption and exceptions with respect to the
8 disclosure of insurance-related information, granting rule-making authority,
9 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes various miscellaneous changes to the insurance laws, including the following:

1. The bill requires every insurer, or insurance holding company system of which the insurer is a member, to: a) maintain a risk management framework to assist the insurer or insurance holding company system in identifying and managing

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its material and relevant risks; and b) whenever there are significant changes to the insurer's or insurance holding company system's risk profile, but at least annually, conduct an "own risk and solvency assessment" (ORSA) consistent with the ORSA Guidance Manual (guidance manual) developed and adopted by the National Association of Insurance Commissioners. The bill defines an insurance holding company system as two or more persons that are affiliates, at least one of which is an insurer, and an ORSA as a confidential internal assessment of the insurer's or insurance holding company system's material and relevant risks associated with the insurer's or insurance holding company system's current business plan and of the sufficiency of the capital resources to support those risks. Under the bill, the insurer must file with the commissioner of insurance (commissioner) a report that is prepared consistently with the guidance manual summarizing the insurer's ORSA (summary report). In general, the report must be filed with the commissioner within 45 days after the insurer submits the summary report to its board of directors but no more than once per year or within 45 days after the insurer submits the summary report to the commissioner of the insurer's lead state.

An insurer is exempt from the requirements of maintaining a risk management framework, conducting an ORSA, and filing a summary report if the insurer's annual direct written premium and assumed premium from unaffiliated insurers is less than \$500,000,000 and, if the insurer is a member of an insurance holding company system, the insurance holding company system of which the insurer is a member has annual direct written premium and assumed premium from unaffiliated insurers of less than \$1,000,000,000. If the insurer's premium qualifies the insurer for exemption but the premium of the insurance holding company system of which the insurer is a member does not qualify the insurance holding company system for exemption, the summary report must include every insurer in the insurance holding company system. If the insurer does not qualify for exemption but the insurance holding company system of which it is a member qualifies for exemption, only the summary report applicable to the insurer is required.

The bill sets out detailed confidentiality requirements with respect to documents, materials, and other information, including summary reports, that are obtained or created by, or disclosed to, the commissioner as a result of the new risk assessment requirements. Generally, the documents, materials, and other information, including summary reports, are confidential and privileged and are not subject to inspection, copying, subpoena, or discovery and are not admissible in evidence in any private civil action. The bill sets out the circumstances under which and to whom the documents, materials, and other information, including summary reports, may be disclosed, as well as procedures that must be used for the disclosure.

2. Under current law, the Office of the Commissioner of Insurance (OCI) may refuse to disclose testimony, reports, records, and information obtained, produced, or created in the course of examinations, investigations, and other inquiries with respect to persons regulated under the insurance statutes. The statutes specify how this privilege of nondisclosure may be waived. The bill creates a rebuttable presumption that documents and information provided to OCI by an insurer in response to an OCI request or in the course of an examination of the affairs or

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condition of the insurer are proprietary and confidential and that the potential for harm and competitive disadvantage to the insurer outweighs the public interest in the disclosure of the documents and information. The presumption may be rebutted by presenting clear and convincing evidence to a court that the public interest in the disclosure substantially outweighs the potential for harm or competitive disadvantage to the insurer. The bill also excludes from the statute related to nondisclosure of insurance information certain types of information or reports, including ORSA reports and information, enterprise risk filing and related information, and reports of internal control over financial reporting and related information, and provides that the information or reports are subject to confidentiality provisions that are specific to that information or those reports.

3. The bill authorizes the commissioner to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations. A supervisory college is defined in the bill as a forum for communication and cooperation between regulators charged with the supervision of an insurer that is part of an insurance holding company system with international operations. The purpose for the commissioner's participation is to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes of the domestic insurer. The commissioner's participation may include initiating the establishment of a supervisory college, coordinating the ongoing activities of the supervisory college, establishing a crisis management plan, and entering into agreements for keeping information confidential. The commissioner may impose a regular assessment on affected insurers to pay the reasonable expenses of the commissioner's participation.

4. Under current law, the proxy voting provisions that apply to members of general nonstock corporations apply to policyholders of mutual insurance corporations (mutuals). The bill removes that applicability and sets out proxy voting rights that are specific to the policyholders of mutuals. Under the bill, a policyholder or the policyholder's authorized officer, director, employee, agent, or attorney-in-fact may appoint a proxy to vote or otherwise act for the policyholder at a meeting of policyholders or to consent or dissent in writing to any corporate action without a meeting. The appointment may be accomplished by affixing the policyholder's signature to an appointment form by any reasonable means or by transmitting an electric transmission, including by Internet, telephone, electronic mail, telegram, cablegram, or datagram, of the appointment to the person who will be appointed as proxy. An appointment of a proxy is effective when a signed appointment form or electronic transmission of the appointment is received by the officer or agent of the mutual authorized to tabulate votes and lasts 11 months unless a different period is expressly provided in the appointment. Unless the appointment form or electronic transmission states otherwise, appointment of a proxy may be revoked, which occurs if the policyholder appointing the proxy: a) attends a meeting and votes; or b) signs and delivers to the officer or agent of the mutual authorized to tabulate votes either a written statement that the proxy appointment is revoked or a subsequent proxy appointment form. The death or incapacity of the policyholder appointing the proxy does not affect the right of the mutual to accept the proxy's

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authority unless the officer or agent of the mutual authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

5. Under current law, a plan of merger or for acquisition of control of a domestic stock insurance corporation, or a plan of merger between two or more mutuals, may not be executed unless it is approved by the commissioner after a hearing. Such plans are approved unless the commissioner finds that they would violate the law or be contrary to the interests of the insureds of a participating insurance corporation or mutual. The bill provides that, if a plan requires the approval of more than one commissioner because the insurance corporations involved are domiciled in different states, the hearing for approval may be held on a consolidated basis, if so requested by the person filing the plan, although the commissioner may opt out of a consolidated hearing. Any consolidated hearing must be public and held within the United States before the commissioners of the states in which the insurers involved in the merger or other acquisition of control are domiciled. The commissioners may hear and receive evidence and may attend the consolidated hearing in person or by telecommunication.

6. The bill requires the commissioner to promulgate rules requiring insurers to report their enterprise risk, including the form of the report and the manner and process for filing. Enterprise risk is defined in the bill as any activity, circumstance, or event involving one or more affiliates of the insurer that, if not remedied, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 601.415 (11) of the statutes is created to read:
2 601.415 (11) AMENDMENTS TO OWN RISK AND SOLVENCY ASSESSMENT GUIDANCE
3 MANUAL. The commissioner shall, in his or her discretion, adopt amendments made
4 after the effective date of this subsection [LRB inserts date], by the National
5 Association of Insurance Commissioners to the guidance manual, as defined in s.
6 622.03 (1). Any such amendments made by the National Association of Insurance
7 Commissioners become effective in this state if adopted by the commissioner by order
8 after giving 30 days' notice to insurers of the changes proposed by the National

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1 Association of Insurance Commissioners. If one or more insurers request a hearing
2 on the proposed changes during the 30-day period, the commissioner shall hold a
3 hearing to determine whether the commissioner will, in his or her discretion, adopt
4 one or more of the changes made by the National Association of Insurance
5 Commissioners.

6 **SECTION 2.** 601.465 (1m) (c) 7. of the statutes is created to read:

7 601.465 (1m) (c) 7. Members of a supervisory college described in s. 617.215.

8 **SECTION 3.** 601.465 (1n) of the statutes is created to read:

9 601.465 (1n) PRESUMPTION OF CONFIDENTIALITY. (a) Notwithstanding sub. (1m)
10 and subch. II of ch. 19, it is presumed that nonpublic documents and information
11 provided by an insurer to the office under s. 601.42 or 601.43 are proprietary and
12 confidential and that the potential for harm and competitive disadvantage to the
13 insurer if the documents and information are made public by the office outweighs the
14 public interest in the disclosure of the documents and information.

15 (b) With notice to the insurer, the presumption under par. (a) may be rebutted
16 by the requesting party presenting clear and convincing evidence to a court of
17 competent jurisdiction that the public interest in the disclosure of the documents and
18 information substantially outweighs the potential for harm or competitive
19 disadvantage to the insurer if the documents and information are disclosed and that
20 the public interest concerns cannot be addressed without the disclosure of the
21 documents and information. If the presumption under par. (a) is successfully
22 rebutted, disclosure of the documents and information shall be made only to the
23 extent necessary to protect the public interest.

24 (c) Paragraph (a) does not apply to the commissioner's discretion to disclose
25 documents and information provided by an insurer to the office under s. 601.42 or

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1 601.43 as a part of an enforcement proceeding the commissioner brings under s.
2 601.64.

3 **SECTION 4.** 601.465 (3) of the statutes is created to read:

4 601.465 (3) EXCEPTIONS. This section does not apply to any of the following:

5 (a) Own risk and solvency assessment reports and related information
6 provided by an insurer under ch. 622, which are subject only to the confidentiality
7 provisions in ch. 622.

8 (b) Enterprise risk filing and any related information provided by an insurer
9 under rules promulgated under s. 617.12, which are not subject to subch. II of ch. 19
10 and are subject only to any confidentiality provisions of rules promulgated under s.
11 617.12.

12 (c) Reports of internal control over financial reporting and any related
13 information provided by an insurer under s. Ins 50.17, Wis. Adm. Code, which are
14 not subject to subch. II of ch. 19 and are subject only to the confidentiality provisions
15 of s. Ins 50.17 (6) (b), Wis. Adm. Code.

16 **SECTION 5.** 611.42 (1) of the statutes is amended to read:

17 611.42 (1) GENERAL. Subject to this section and s. 611.53, ss. 181.0701,
18 181.0702, 181.0705 (1) to (4), 181.0722 (1) to (3), 181.0723, 181.0724 and 181.0727
19 apply to mutuals.

20 **SECTION 6.** 611.42 (2) (a) of the statutes is amended to read:

21 611.42 (2) (a) *Mandatory voting rights.* Policyholders in all mutuals have the
22 right to vote on conversion, voluntary dissolution, amendment of the articles, and the
23 election of all directors except public directors appointed under s. 611.53 (1). Voting
24 may be conducted by mail, by electronic means, or by any other method or
25 combination of methods prescribed by the articles or bylaws. Directors may be

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1 divided into classes, and in that case one class shall be elected at least every 4 years
2 for terms not exceeding 6 years.

3 **SECTION 7.** 611.425 of the statutes is created to read:

4 **611.425 Mutual policyholders' proxy voting. (1) DEFINITION.** In this
5 section, "electronic transmission" means transmission by the Internet, telephone,
6 electronic mail, telegram, cablegram, datagram, or any other form or process of
7 communication that does not directly involve the physical transfer of paper and that
8 is capable of retention, retrieval, and reproduction of information by the recipient.

9 **(2) GENERALLY.** (a) Unless the articles of incorporation or bylaws prohibit or
10 limit proxy voting, a policyholder may appoint another person as proxy to vote or
11 otherwise act for the policyholder at a meeting of policyholders or to express consent
12 or dissent in writing to any corporate action without a meeting of policyholders.

13 (b) A policyholder or the policyholder's authorized officer, director, employee,
14 agent, or attorney-in-fact may validly appoint a proxy by signing or causing the
15 policyholder's signature to be affixed to an appointment form by any reasonable
16 means, including by facsimile signature.

17 (c) To the extent authorized by the mutual's bylaws, a policyholder or the
18 policyholder's authorized officer, director, employee, agent, or attorney-in-fact may
19 validly appoint a proxy by transmitting or authorizing the transmission of an
20 electronic transmission of the appointment to the person who will be appointed as
21 proxy or to a proxy solicitation firm, proxy support service organization, or like agent
22 authorized to receive the transmission by the person who will be appointed as proxy.
23 Every electronic transmission shall contain, or be accompanied by, information that
24 can be used to reasonably determine that the policyholder transmitted or authorized
25 the transmission of the electronic transmission. Any person charged with

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1 determining whether a policyholder transmitted or authorized the transmission of
2 the electronic transmission shall specify the information upon which the
3 determination is made.

4 (d) Any copy, facsimile telecommunication, or other reliable reproduction of the
5 information in the appointment form under par. (b) or the electronic transmission
6 under par. (c) may be substituted or used in lieu of the original appointment form or
7 electronic transmission for any purpose for which the original appointment form or
8 electronic transmission may be used, but only if the copy, facsimile
9 telecommunication, or other reliable reproduction is a complete reproduction of the
10 information in the original appointment form or electronic transmission.

11 (3) **WHEN EFFECTIVE.** An appointment of a proxy is effective when a signed
12 appointment form or, if authorized, an electronic transmission of the appointment
13 is received by the inspector of election or the officer or agent of the mutual authorized
14 to tabulate votes. An appointment is valid for 11 months unless a different period
15 is expressly provided in the appointment.

16 (4) **REVOCABILITY.** (a) An appointment of a proxy is revocable unless the
17 appointment form or, if authorized, electronic transmission states that it is
18 irrevocable.

19 (b) The appointment of a proxy is revoked if the policyholder appointing the
20 proxy does any of the following:

21 1. Attends any meeting and votes in person.

22 2. Signs and delivers to the secretary or other officer or agent authorized to
23 tabulate proxy votes either a written statement that the appointment of the proxy
24 is revoked or a subsequent appointment form.

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1 **(5) EFFECT OF DEATH OR INCAPACITY.** The death or incapacity of the policyholder
2 appointing a proxy does not affect the right of the mutual to accept the proxy's
3 authority unless the secretary or other officer or agent of the mutual authorized to
4 tabulate votes receives notice of the death or incapacity before the proxy exercises
5 his or her authority under the appointment.

6 **(6) ACCEPTANCE BY MUTUAL.** Subject to s. 181.0727 and to any express limitation
7 on the proxy's authority stated in the appointment form or, if authorized, electronic
8 transmission, a mutual may accept the proxy's vote or other action as that of the
9 policyholder making the appointment.

10 **SECTION 8.** 611.72 (3) of the statutes is renumbered 611.72 (3) (am).

11 **SECTION 9.** 611.72 (3) (bm) of the statutes is created to read:

12 611.72 (3) (bm) 1. If the proposed merger or other acquisition of control will
13 require the approval of more than one commissioner, the hearing under par. (am)
14 may be held on a consolidated basis upon the request of a person filing a statement
15 with the commissioner of insurance of this state under s. Ins 40.02 (2), Wis. Adm.
16 Code, which request must be made when the statement is filed. That person shall
17 file a copy of the statement under s. Ins 40.02 (2), Wis. Adm. Code, with the National
18 Association of Insurance Commissioners within 5 days after making the request for
19 a consolidated hearing. A hearing conducted on a consolidated basis shall be public
20 and held within the United States before the commissioners of the states in which
21 the insurers involved in the merger or other acquisition of control are domiciled. The
22 commissioners may hear and receive evidence. A commissioner may attend the
23 hearing in person or by telecommunication.

24 2. The commissioner of insurance of this state may opt out of a consolidated
25 hearing, and shall provide notice to the person requesting the consolidated hearing

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1 of the opt out within 10 days after the commissioner receives the statement under
2 s. Ins 40.02 (2), Wis. Adm. Code.

3 **SECTION 10.** 611.73 (3) of the statutes is renumbered 611.73 (3) (a).

4 **SECTION 11.** 611.73 (3) (b) of the statutes is created to read:

5 611.73 (3) (b) 1. If the proposed merger of 2 or more domestic and foreign
6 mutuals will require the approval of more than one commissioner, the hearing under
7 par. (a) may be held on a consolidated basis upon the request of a person filing with
8 the commissioner of insurance of this state the plan of merger under par. (a) and the
9 statement under s. Ins 40.02 (2), Wis. Adm. Code. The person must request a
10 consolidated hearing when the plan of merger and statement are filed. That person
11 shall file copies of the plan of merger and the statement under s. Ins 40.02 (2), Wis.
12 Adm. Code, with the National Association of Insurance Commissioners within 5 days
13 after making the request for a consolidated hearing. A hearing conducted on a
14 consolidated basis shall be public and held within the United States before the
15 commissioners of the states in which the insurers involved in the merger are
16 domiciled. The commissioners may hear and receive evidence. A commissioner may
17 attend the hearing in person or by telecommunication.

18 2. The commissioner of insurance of this state may opt out of a consolidated
19 hearing, and shall provide notice to the person requesting the consolidated hearing
20 of the opt out within 10 days after the commissioner receives the plan of merger
21 under par. (a) and the statement under s. Ins 40.02 (2), Wis. Adm. Code.

22 **SECTION 12.** 611.73 (4) of the statutes is amended to read:

23 611.73 (4) VOTING BY POLICYHOLDERS. The commissioner may order that the
24 plan submitted to him or her under sub. (3) (a) be amended to provide for voting by
25 policyholders of any mutual involved.

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1 **SECTION 13.** 611.76 (1) (c) of the statutes is amended to read:

2 611.76 (1) (c) *Conversion and merger.* A domestic mutual may adopt a plan of
3 acquisition or merger as part of a plan of conversion under this section. The
4 commissioner shall approve the plan of acquisition or merger as part of the plan of
5 conversion unless grounds for disapproval exist under s. 611.72 (3) (am).

6 **SECTION 14.** 617.12 of the statutes is created to read:

7 **617.12 Rules requiring enterprise risk reports.** (1) In this section,
8 “enterprise risk” means any activity, circumstance, event, or series of events
9 involving one or more affiliates of an insurer that, if not remedied, is likely to have
10 a material adverse effect on the financial condition or liquidity of the insurer or its
11 insurance holding company system, as defined in s. 622.03 (2), as a whole, including
12 anything that would cause the insurer’s risk-based capital to fall into company
13 action level as set forth in s. Ins 51.01 (4), Wis. Adm. Code, or that would cause the
14 insurer to be in a hazardous financial condition as described in s. 623.11, 645.31, or
15 645.41.

16 (2) The commissioner shall promulgate rules requiring insurers to report their
17 enterprise risk, including the form of the report and the manner and process for filing
18 the report.

19 **SECTION 15.** 617.21 (1) (cm) of the statutes is created to read:

20 617.21 (1) (cm) Any cost-sharing services or management agreements
21 involved in the transaction include such provisions as the commissioner requires by
22 rule.

23 **SECTION 16.** 617.215 of the statutes is created to read:

24 **617.215 Supervisory colleges.** (1) **DEFINITIONS.** In this section:

25 (a) “Insurance holding company system” has the meaning given in s. 622.03 (2).

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1 (b) "Supervisory college" means a temporary or permanent forum for
2 communication and cooperation between the regulators charged with the
3 supervision of an insurer that is part of an insurance holding company system with
4 international operations.

5 **(2) POWERS OF COMMISSIONER.** (a) In accordance with par. (b), the commissioner
6 may participate in a supervisory college for any domestic insurer that is part of an
7 insurance holding company system with international operations to determine the
8 insurer's compliance with this chapter. The powers of the commissioner with respect
9 to supervisory colleges include all of the following:

10 1. Initiating the establishment of a supervisory college.

11 2. Clarifying the membership and participation of other supervisors in the
12 supervisory college.

13 3. Clarifying the functions of the supervisory college and the role of other
14 regulators, including the establishment of a group-wide supervisor.

15 4. Coordinating the ongoing activities of the supervisory college, including
16 planning meetings, supervisory activities, and processes for information sharing.

17 5. Establishing a crisis management plan.

18 (b) In order to assess the business strategy, financial position, legal and
19 regulatory position, risk exposure, risk management, and governance processes of
20 an insurer specified in par. (a), and as part of an examination of such an insurer
21 under s. 601.43, the commissioner may participate in a supervisory college with
22 other regulators charged with the supervision of the insurer or its affiliates,
23 including other state, federal, and international regulatory agencies.

24 (c) The commissioner may enter into agreements for keeping information
25 confidential in accordance with s. 601.465, providing the basis for cooperation

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1 between the commissioner and the other regulatory agencies and the activities of the
2 supervisory college.

3 **(3) PAYMENT OF EXPENSES.** All insurers to which this section applies are liable
4 for and shall pay the reasonable expenses related to the commissioner's participation
5 in supervisory colleges, including reasonable travel expenses. The commissioner
6 may impose a regular assessment on insurers to cover the expenses.

7 **(4) NOT DELEGATION OF AUTHORITY.** Nothing in this section delegates to a
8 supervisory college the authority of the commissioner to regulate or supervise an
9 insurer or its affiliates within the commissioner's jurisdiction.

10 **SECTION 17.** Chapter 622 of the statutes is created to read:

11 **CHAPTER 622**
12 **OWN RISK AND SOLVENCY ASSESSMENT**

13 **622.03 Definitions.** In this chapter, unless the context indicates otherwise:

14 **(1)** "Guidance manual" means the most current version of the Own Risk and
15 Solvency Assessment Guidance Manual developed and adopted by the National
16 Association of Insurance Commissioners as of the effective date of this subsection
17 [LRB inserts date], subject to the adoption of any amendments by the commissioner
18 under s. 601.415 (11).

19 **(2)** "Insurance holding company system" means 2 or more persons that are
20 affiliates, at least one of which is an insurer.

21 **(3)** "Insurer" means an insurer domiciled in this state, except that "insurer"
22 does not include agencies, authorities, or instrumentalities of the United States, its
23 possessions and territories, the Commonwealth of Puerto Rico, the District of
24 Columbia, or a state or political subdivision of a state.

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1 (4) “Lead state” means the state in which an insurer member of an insurance
2 holding company system is domiciled and that is determined to be the lead state
3 under the procedures in the financial analysis handbook most recently adopted by
4 the National Association of Insurance Commissioners.

5 (5) “Own risk and solvency assessment” means a confidential internal
6 assessment, appropriate to the nature, scale, and complexity of an insurer or
7 insurance holding company system, conducted by that insurer or insurance holding
8 company system, of the material and relevant risks associated with the insurer’s or
9 insurance holding company system’s current business plan and of the sufficiency of
10 capital resources to support those risks.

11 (6) “Summary report” means a confidential high-level summary of an insurer’s
12 or insurance holding company system’s own risk and solvency assessment.

13 **622.05 Risk management framework.** An insurer shall maintain a risk
14 management framework to assist the insurer in identifying, assessing, monitoring,
15 managing, and reporting on its material and relevant risks. This requirement is
16 satisfied if the insurer is a member of an insurance holding company system that
17 maintains a risk management framework applicable to the operations of the insurer.

18 **622.07 Own risk and solvency assessment requirement.** Subject to s.
19 622.11, an insurer, or the insurance holding company system of which the insurer is
20 a member, shall regularly conduct an own risk and solvency assessment consistent
21 with the process specified in the guidance manual. The own risk and solvency
22 assessment must be conducted whenever there are significant changes to the risk
23 profile of the insurer or the insurance holding company system of which the insurer
24 is a member, but in no case less often than annually.

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1 **622.09 Own risk and solvency assessment summary report. (1) FILING**
2 WITH THE COMMISSIONER. An insurer must file with the commissioner a summary
3 report or any combination of reports that together contain the information described
4 in the guidance manual applicable to the insurer and, if applicable, the insurance
5 holding company system of which the insurer is a member as follows:

6 (a) Within 45 days after the date on which the final summary report is provided
7 to the insurer's board of directors or the appropriate committee of that board, but no
8 more than once each year if either of the following applies:

9 1. The insurer is domiciled in Wisconsin and is not a member of an insurance
10 holding company system.

11 2. The insurer is a member of an insurance holding company system and the
12 commissioner is the lead state commissioner.

13 (b) Within 45 days after the date on which the final summary report is filed with
14 the commissioner of the insurer's lead state if all of the following apply:

15 1. The insurer is domiciled in Wisconsin.

16 2. The insurer is a member of an insurance holding company system for which
17 the commissioner is not the lead state commissioner.

18 **(2) ATTESTATION.** The summary report shall include the signature of the
19 insurer's, or insurance holding company system's, chief risk officer or other executive
20 having responsibility for the oversight of the insurer's enterprise risk management
21 process attesting to the best of his or her belief and knowledge that the insurer
22 applies the enterprise risk management process described in the summary report
23 and that a copy of the summary report has been provided to the insurer's board of
24 directors or the appropriate committee of that board.

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1 **(3) ALTERNATE FILING.** An insurer may satisfy sub. (1) by providing the most
2 recent summary report provided by the insurer or another member of the insurance
3 holding company system of which the insurer is a member to the commissioner of
4 another state or to a supervisor or regulator of a jurisdiction not located in the United
5 States or any of its territories, if that summary report provides information that is
6 substantially comparable to the information described in the guidance manual. Any
7 such summary report in a language other than English must be accompanied by a
8 translation of that summary report into English.

9 **622.11 Exemption. (1) EXEMPT INSURERS.** An insurer is exempt from the
10 requirements of this chapter, if all of the following apply:

11 (a) The insurer has annual direct written premium and assumed premium
12 from unaffiliated insurers, including international direct and assumed premium but
13 excluding premiums reinsured with the federal crop insurance corporation and
14 federal flood program, of less than \$500,000,000.

15 (b) If the insurer is a member of an insurance holding company system, the
16 insurance holding company system of which the insurer is a member has annual
17 direct written premium and assumed premium from unaffiliated insurers, including
18 international direct and assumed premium but excluding premiums reinsured with
19 the federal crop insurance corporation and federal flood program, of less than
20 \$1,000,000,000.

21 **(2) PARTIAL EXEMPTION.** (a) If an insurer that is a member of an insurance
22 holding company system qualifies for exemption under sub. (1) (a), but the insurance
23 holding company system of which the insurer is a member does not qualify for
24 exemption under sub. (1) (b), the summary report required under s. 622.09 shall
25 include every insurer within the insurance holding company system. An insurer

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1 may satisfy this requirement by submitting more than one summary report for any
2 combination of insurers, provided that any combination of summary reports includes
3 every insurer within the insurance holding company system.

4 (b) If an insurer that is a member of an insurance holding company system does
5 not qualify for exemption under sub. (1) (a), but the insurance holding company
6 system of which the insurer is a member qualifies for exemption under sub. (1) (b),
7 the only summary report that is required under s. 622.09 is the summary report
8 applicable to that insurer.

9 **(3) WAIVER.** An insurer that does not qualify for exemption under sub. (1) may
10 apply to the commissioner for a waiver from the requirements of this chapter. In
11 determining whether to grant the waiver, the commissioner may consider the type
12 and volume of business written by the insurer, the ownership and organizational
13 structure of the insurer, and any other factor the commissioner considers relevant
14 to the insurer or insurance holding company system of which the insurer is a
15 member. If the insurer is part of an insurance holding company system that includes
16 insurers domiciled in more than one state, the commissioner shall coordinate with
17 the commissioner of the lead state and with the commissioners of each of the other
18 states in which insurer members of the insurance holding company system are
19 domiciled in determining whether to grant the insurer's request for a waiver.

20 **(4) WITHDRAWAL OF EXEMPTION OR WAIVER.** Notwithstanding subs. (1) and (3), the
21 commissioner may issue an order requiring an insurer to create and maintain a risk
22 management framework, conduct an own risk and solvency assessment, and file a
23 summary report if either of the following applies:

24 (a) The commissioner finds that the insurer's unique circumstances, including
25 the type and volume of business written, the ownership and organizational

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1 structure, federal agency requests, or international supervisor requests, warrant
2 withdrawal of the exemption or waiver. If the commissioner withdraws the
3 exemption or waiver, the insurer or the insurance holding company system is subject
4 to the requirement under s. 622.09 until the commissioner reinstates the exemption
5 under sub. (1) or the waiver under sub. (3).

6 (b) The insurer has a risk-based capital company action level event, as defined
7 in s. Ins 51.01 (4), Wis. Adm. Code, meets one or more of the standards for an insurer
8 in hazardous financial condition as described in s. 623.11, 645.31, or 645.41, or
9 otherwise exhibits qualities of a troubled insurer as determined by the
10 commissioner.

11 (5) COMPLIANCE AFTER LOSS OF EXEMPTION. If an insurer no longer qualifies for
12 an exemption under sub. (1) due to increased premium, as reflected in the insurer's
13 most recent annual statement or in the most recent annual statements of the
14 insurers within the insurance holding company system of which the insurer is a
15 member, the insurer shall have one year following the year in which the premium
16 threshold is exceeded to comply with the requirements of this chapter.

17 **622.13 Contents of summary report. (1) PREPARATION.** The summary report
18 shall be prepared consistently with the guidance manual. Documentation and
19 supporting information shall be maintained and made available upon examination
20 or upon request of the commissioner.

21 (2) REVIEW. The commissioner's review of the summary report, and any
22 additional requests for information, shall be made using similar procedures used in
23 the analysis and examination of multistate or global insurers and insurance holding
24 company systems.

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1 **622.15 Confidentiality. (1) CONFIDENTIAL TREATMENT.** Documents, materials,
2 or other information, including summary reports, in the possession or control of the
3 commissioner that are obtained by, created by, or disclosed to the commissioner or
4 any other person under this chapter, are confidential and privileged, are not subject
5 to inspection or copying under s. 19.35 (1), are not subject to subpoena, and are not
6 subject to discovery or admissible in evidence in any private civil action. The
7 commissioner is authorized to use the documents, materials, or other information in
8 the commissioner's regulation of the insurer or insurance holding company system
9 but may not make the documents, materials, or other information public without the
10 prior written consent of the insurer.

11 **(2) PROHIBITION ON TESTIMONY.** Neither the commissioner nor any person who
12 received documents, materials, or other information related to own risk and solvency
13 assessments, through examination or otherwise, while acting under the authority of
14 the commissioner or with whom such documents, materials, or other information are
15 shared in accordance with this chapter, may testify in any private civil action
16 concerning any confidential documents, materials, or information subject to sub. (1).

17 **(3) PERMITTED DISCLOSURES.** In furtherance of the performance of the
18 commissioner's regulatory duties, all of the following apply:

19 (a) The commissioner may, upon request, share documents, materials, or other
20 information related to own risk and solvency assessments, including the confidential
21 and privileged documents, materials, or information subject to sub. (1), including
22 proprietary and trade secret documents and materials, with other state, federal, and
23 international financial regulatory agencies, including members of any supervisory
24 college as described in s. 617.215, with the National Association of Insurance
25 Commissioners, and with any 3rd-party consultants designated by the

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1 commissioner, provided that the recipient agrees in writing to maintain the
2 confidentiality and privileged status of the documents, materials, or other
3 information required by this section related to own risk and solvency assessments
4 and has verified in writing its legal authority to maintain confidentiality.

5 (b) The commissioner may receive documents, materials, or other information
6 related to own risk and solvency assessments, including otherwise confidential and
7 privileged documents, materials, or information, including proprietary and trade
8 secret information or documents, from regulatory officials of other jurisdictions,
9 including members of any supervisory college as described in the s. 617.215, and from
10 the National Association of Insurance Commissioners, and shall maintain as
11 confidential or privileged any document, material, or information received with
12 notice or the understanding that it is confidential or privileged under the laws of the
13 jurisdiction that is the source of the document, material, or information.

14 (c) The commissioner shall enter into a written agreement with the National
15 Association of Insurance Commissioners or any 3rd party consulted formally or
16 informally by the commissioner governing the sharing and use of information
17 provided under this chapter, consistent with this subsection, that does all of the
18 following:

19 1. Specifies procedures and protocols regarding the confidentiality and security
20 of information shared with the National Association of Insurance Commissioners or
21 3rd-party consultants in accordance with this chapter, including procedures and
22 protocols for sharing by the National Association of Insurance Commissioners with
23 other state regulators from states in which the insurance holding company system
24 has domiciled insurers. The agreement shall provide that the recipient agrees in
25 writing to maintain the confidentiality and privileged status of the documents,

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1 materials, or other information related to own risk and solvency assessments and
2 has verified in writing its legal authority to maintain confidentiality.

3 2. Specifies that ownership of information shared with the National
4 Association of Insurance Commissioners or 3rd-party consultants in accordance
5 with this chapter remains with the commissioner and that the use of the information
6 by the National Association of Insurance Commissioners, regulatory officials, or
7 3rd-party consultants is subject to the direction of the commissioner.

8 3. Prohibits the National Association of Insurance Commissioners or a
9 3rd-party consultant from storing the information shared under this chapter in a
10 permanent database after the underlying analysis is completed, and provides that
11 the National Association of Insurance Commissioners or 3rd-party consultant will
12 either destroy or return the information to the insurer within 2 years of completion
13 of the underlying analysis.

14 4. Requires prompt notice to be given to an insurer whose confidential
15 information in the possession of the National Association of Insurance
16 Commissioners or a 3rd-party consultant under this chapter is subject to a request
17 or subpoena to the National Association of Insurance Commissioners or 3rd-party
18 consultant for disclosure or production.

19 5. Requires the National Association of Insurance Commissioners or a
20 3rd-party consultant to consent to intervention by an insurer in any judicial or
21 administrative action in which the National Association of Insurance
22 Commissioners or 3rd-party consultant may be required to disclose confidential
23 information about the insurer shared with the National Association of Insurance
24 Commissioners or 3rd-party consultant under this chapter.

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1 6. In the case of an agreement involving a 3rd-party consultant, provides for
2 the insurer's written consent before sharing any of the insurer's information with the
3 3rd-party consultant.

4 (d) The sharing of information and documents by the commissioner under this
5 chapter does not constitute a delegation of regulatory authority or rule making, and
6 the commissioner is solely responsible for the administration, execution, and
7 enforcement of the provisions of this chapter.

8 (e) No waiver of any applicable privilege or claim of confidentiality in the
9 documents, proprietary and trade secret materials, or other information related to
10 own risk and solvency assessments obtained or developed under this chapter shall
11 occur as a result of disclosure of such information or documents to the commissioner
12 under this section or as a result of the commissioner sharing such information or
13 documents as authorized in this section.

14 (f) Documents, materials, or other information in the possession or control of
15 the National Association of Insurance Commissioners or 3rd-party consultants
16 under this chapter are confidential and privileged, are not subject to inspection or
17 copying under s. 19.35 (1), are not subject to subpoena, and are not subject to
18 discovery or admissible in evidence in any private civil action.

19 **622.17 Penalty.** Notwithstanding s. 601.64 (1) and (4), an insurer that is
20 subject to this chapter that fails, without just cause, to timely file the summary
21 report required under s. 622.09 is subject to the penalties under s. 601.64 (2) and (3).

22 **SECTION 18.** 644.10 (1) (a) of the statutes is amended to read:

23 644.10 (1) (a) In the case of a domestic stock corporation, no grounds for
24 disapproval exist under s. 611.72 (3) (am).

25 **SECTION 19.** 644.10 (1) (b) of the statutes is amended to read:

