

SCS HCS HB 50 -- BUSINESS OF INSURANCE

This bill changes the laws regarding the business of insurance.

INSURANCE HOLDING COMPANIES (Sections 382.010 - 382.278, RSMo)

The bill:

(1) Expands the authority of the Director of the Department of Insurance, Financial Institutions and Professional Registration to assess the financial stability and risk of insurance holding companies. The department director may seek information relevant to the determination of "enterprise risk" which is defined in terms of systematic financial risks that threaten to deplete capital under Section 375.1225 or create a hazardous financial condition under Section 375.539. The department director may order the production of information and issue subpoenas in order to obtain relevant information that may legally be obtained by insurance holding companies. Whenever it appears to the department director that any person has committed a violation of the provisions of the bill and the violation prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of suspension. The department director may also require additional registration information such as financial interest statements from affiliates and board of governance member statements as specified in the bill. Upon request of the department director, an ultimate controlling individual in each insurance holding company must file an annual enterprise risk report with the department director. The department director must approve or disapprove a request for exemption from registration and reporting requirements on the basis of non-affiliation within 30 days;

(2) Requires any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer to file a confidential notice with the department director, with a copy to the insurer, of its proposed divestiture at least 30 days prior to the cessation of control. The department director must determine those instances in which the party or parties seeking to divest or to acquire a controlling interest must be required to file for and obtain approval of the transaction. The acquiring person must also file a preacquisition notification with the department director containing specified information;

(3) Requires a person acquiring a controlling interest in a domestic insurer to sign a statement that includes an agreement to file an annual report with the department director for so long as

control exists and an acknowledgment that he or she and all subsidiaries within its control in the insurance holding company will provide information to the department director upon request as necessary to evaluate enterprise risk to the insurer;

(4) Allows for a consolidated public hearing upon request of the person filing the required statement if the proposed acquisition of control requires the approval of more than one state insurance commissioner. In connection with a change of control of a domestic insurer, any determination by the department director that the person acquiring control must be required to maintain or restore the capital of the insurer to the required state level must be made within 60 days after the date of notification of the change in control. Companies acquired by Missouri insurers may be subject to Missouri law and will no longer be exempt;

(5) Requires a disclaimer of affiliation with any authorized insurer to be deemed to have been granted unless the department director notifies, within 30 days following receipt of a complete disclaimer, the filing party that the disclaimer is disallowed. If it is disallowed, the disclaiming party may request an administrative hearing which must be granted;

(6) Requires the ultimate controlling person of every insurer subject to registration to file an annual enterprise risk report upon request of the department director. The report must be filed with the lead state insurance commissioner of the insurance holding company system as determined by specified procedures adopted by the National Association of Insurance Commissioners. The first report must be due and filed no later than May 1, 2016, and annually thereafter by May 1 unless extended by the lead commissioner for good cause shown;

(7) Requires the accounting documentation of a registered insurer to include information as is necessary to support the reasonableness of fees or charges to the respective parties. Other criteria for department director supervision of affiliated insurer practices are specified in the bill;

(8) Requires the department director to have the power to establish and participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with these provisions. Each registered insurer subject to these provisions must be liable for and must pay the reasonable expenses of the department director's participation in a supervisory college;

(9) Specifies the requirements for the reporting and disclosure of

information between the department director and the National Association of Insurance Commissioners (NAIC) or other regulatory bodies and prohibits all information, documents, and copies obtained by or disclosed to the department director or in the possession or control of NAIC from being subject to the Open Meetings and Records Law, commonly known as the Sunshine Law, and from being subject to discovery or admissible as evidence in any private civil action;

(10) Specifies that the provisions of Sections 382.100 to 382.180 must not apply to any insurer, information, or transaction if and to the extent that the department director by rule, regulation, or order must exempt the same from these provisions; and

(11) Exempts any insurance holding company or its affiliates from specified provisions relating to enterprise risk reporting if the insurance company affiliates of the insurance holding company had total premiums of less than \$150 million in the preceding year and the insurance holding company certifies in writing to the department director that more than 25% of the employees of its non-insurance affiliates, not including insurance affiliates or the holding company itself, are engaged in agricultural operations.

OWN RISK AND SOLVENCY ASSESSMENTS (Sections 382.500 - 382.550)

The bill enacts the provisions of the model legislation of the own risk and solvency assessments (ORSA) legislation developed by the National Association of Insurance Commissioners (NAIC). The purpose of the model legislation is to allow large- and medium-sized insurers to develop their own model of current and future financial risk and allow regulators to determine how insurers will react to financial stress.

An insurer must file a report on its solvency risk with the Director of the Department of Insurance, Financial Institutions and Professional Registration upon the director's request but not more than once each year. Insurers who are required to file the report are specified in the bill, and the criteria for the report are specified in the bill. Specified insurers must be exempt from the requirements. Procedures for sharing information with the NAIC and for maintaining records are also specified. All documents, materials, or other information, including the ORSA summary report, disclosed to the department director under these provisions are recognized by this state as being proprietary and to contain trade secrets and must be confidential by law and privileged and not subject to disclosure under Chapter 610, the Open Meetings and Records Law, commonly known as the Sunshine Law; be subject to subpoena; or be subject to discovery or admissible as evidence in any private civil action. The department director must not make

the documents, materials, or other information public without the prior written consent of the insurer. Any insurer failing without just cause to timely file a required ORSA summary report commits a level two violation with respect to each day's delay.

The provisions of the bill regarding own risk and solvency assessments will become effective January 1, 2016.