2013 DRAFTING REQUEST

Bill

Received:	**2/4/2014**	Received By:	**pkahler**
Wanted:	**As time permits**	Same as LRB:	**-3620**
For:	**Insurance, office of cmmssnr of**	By/Representing:	**Mollie Zito**
May Contact:		Drafter:	**pkahler**
Subject:	**Insurance - miscellaneous**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Mollie.Zito@wisconsin.gov**
Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Miscellaneous provisions for accreditation by NAIC

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	pkahler 2/4/2014	jdyer 2/5/2014		_____ _____	mbarman 2/5/2014	mbarman 2/5/2014	State

FE Sent For:

at intro

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/1	pkahler	1 2/5 jld	jd				State

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may be jacketed for the assembly

Mollie Zito by phone 2-4

create companion to 3620/1

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-~~3620/1~~ 4194/1
PJK:jld:jf

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2013 BILL

No changes SOON in 2-4

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

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

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

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:

SECTION 1. 601.415 (11) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Attends any meeting and votes in person.

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

(5) EFFECT OF DEATH OR INCAPACITY. The death or incapacity of the policyholder appointing a proxy does not affect the right of the mutual to accept the proxy's authority unless the secretary or other 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.

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

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

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

611.72 **(3)** (bm) 1. If the proposed merger or other acquisition of control will require the approval of more than one commissioner, the hearing under par. (am) may be held on a consolidated basis upon the request of a person filing a statement with the commissioner of insurance of this state under s. Ins 40.02 (2), Wis. Adm. Code, which request must be made when the statement is filed. That person shall file a copy of the statement under s. Ins 40.02 (2), Wis. Adm. Code, with the National Association of Insurance Commissioners within 5 days after making the request for a consolidated hearing. A hearing conducted on a consolidated basis shall 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. A commissioner may attend the hearing in person or by telecommunication.

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

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

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

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

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

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

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

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

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

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

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

617.12 Rules requiring enterprise risk reports. (1) In this section, "enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an 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, as defined in s. 622.03 (2), as a whole, including anything that would cause the insurer's risk–based capital to fall into company action level as set forth in s. Ins 51.01 (4), Wis. Adm. Code, or that would cause the insurer to be in a hazardous financial condition as described in s. 623.11, 645.31, or 645.41.

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

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

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

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

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

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

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

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

1. Initiating the establishment of a supervisory college.

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

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

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

5. Establishing a crisis management plan.

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

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

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

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

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

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

CHAPTER 622

OWN RISK AND SOLVENCY ASSESSMENT

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

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

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

(3) "Insurer" means an insurer domiciled in this state, except that "insurer" does 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.

(4) "Lead state" means 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 financial analysis handbook most recently adopted by the National Association of Insurance Commissioners.

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

(6) "Summary report" means a confidential high–level summary of an insurer's or insurance holding company system's own risk and solvency assessment.

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

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

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

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

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

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

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

1. The insurer is domiciled in Wisconsin.

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

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

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

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

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

(b) 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, including international direct and assumed premium but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than $1,000,000,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The commissioner may receive documents, materials, or other information related to own risk and solvency assessments, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other jurisdictions, including members of any supervisory college as described in the s. 617.215, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any document, material, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

644.10 **(1)** (b) In the case of a domestic mutual, no grounds for disapproval exist under s. 611.73 (3) (a) and the domestic mutual has complied with s. 644.07 (2) to (8). The converting insurance company and any domestic mutual that the converting insurance company proposes to acquire, or merge or consolidate with, may adopt one plan. The commissioner may combine the hearings required under s. 644.07 (6) for the converting insurance company and any domestic mutual that is the subject of the acquisition by, or merger or consolidation with, the converting insurance company. Section 644.07 (9), (10) (b) to (f), and (11) applies to a domestic mutual acquired by, merged into, or consolidated with a converting insurance company under this section.

SECTION 20. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of chapter 622 of the statutes takes effect on January 1, 2015.

(END)

Barman, Mike

From: LRB.Legal
To: Zito, Mollie K - OCI
Subject: Draft review: LRB -4194/1 Topic: Miscellaneous provisions for accreditation by NAIC
Attachments: 13-4194/1

State of Wisconsin - Legislative Reference Bureau

One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Pamela J. Kahler, Senior Attorney, at (608) 266-2682, at pam.kahler@legis.wisconsin.gov, or at One East Main Street, Suite 200.

Per instructions from the drafting attorney ... we will jacket this draft for the Assembly and send it (by page) to your office today.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.

Kahler, Pam

From: Zito, Mollie K - OCI <Mollie.Zito@wisconsin.gov>
Sent: Wednesday, February 05, 2014 4:32 PM
To: Kahler, Pam
Subject: RE: jacketed bills

Thanks so much Pam. Could you have the pages deliver the LRB-4194 Assembly bill to Representative Petersen's office [redacted] If not, no big deal. I can come pick them up and deliver them.

[redacted]

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]
Sent: Wednesday, February 05, 2014 3:14 PM
To: Zito, Mollie K - OCI
Subject: jacketed bills

Hi, Mollie:

Looks like both the Senate bill and the Assembly bill have been jacketed and are waiting to be picked up here at the LRB. Since the pages only deliver to the Capitol, the agencies must pick up their own bills.

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682