

**SENATE BILL No. 76**

By Committee on Financial Institutions and Insurance

1-26

1 AN ACT concerning insurance; relating to assessments; enacting the risk  
2 management and own risk and solvency assessment act; sanctions.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) (1) This act shall be known and may be cited as the risk  
6 management and own risk and solvency assessment act.

7 (2) The risk management and own risk and solvency assessment act  
8 provides the requirements for maintaining a risk management framework  
9 and completing an own risk and solvency assessment (ORSA) summary  
10 report with the insurance commissioner of the state of Kansas. The  
11 requirements of the act shall apply to all insurers domiciled in the state of  
12 Kansas unless exempted pursuant to section 6, and amendments thereto.

13 (3) The risk management and own risk and solvency assessment act  
14 and the ORSA summary report will contain confidential and sensitive  
15 information related to an insurer or insurance group's identification of risks  
16 material and relevant to the insurer or insurance group filing the report.  
17 This information will include proprietary and trade secret information that  
18 has the potential for harm and competitive disadvantage to the insurer or  
19 insurance group if the information is made public. The ORSA summary  
20 report shall be a confidential document filed with the commissioner and  
21 shall only be shared as stated herein and to assist the commissioner in the  
22 performance of the commissioner's duties. In no event shall the ORSA  
23 summary report be subject to public disclosure.

24 Sec. 2. As used in this act:

25 (a) "Act" means the risk management and own risk and solvency  
26 assessment act.

27 (b) "Commissioner" means the state commissioner of insurance.

28 (c) "Insurance group" means those insurers and affiliates included  
29 within an insurance holding company system as defined in K.S.A. 40-  
30 3302, and amendments thereto.

31 (d) "Insurer" has the meaning ascribed to it in K.S.A. 40-3302, and  
32 amendments thereto, except that it shall not include agencies, authorities  
33 or instrumentalities of the United States, its possessions and territories, the  
34 Commonwealth of Puerto Rico, the District of Columbia, or a state or  
35 political subdivision of a state.

36 (e) "NAIC" means the national association of insurance

1 commissioners.

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

8 (g) "ORSA guidance manual" means the current version of the own  
9 risk and solvency assessment guidance manual developed and adopted by  
10 the NAIC, as in effect on January 1, 2017.

11 (h) "ORSA summary report" means a confidential high-level  
12 summary of an insurer or insurance group's ORSA.

13 Sec. 3. An insurer shall maintain a risk management framework to  
14 assist the insurer with identifying, assessing, monitoring, managing and  
15 reporting on its material and relevant risks. This requirement may be  
16 satisfied if the insurance group of which the insurer is a member maintains  
17 a risk management framework applicable to the operations of the insurer.

18 Sec. 4. Subject to section 6, and amendments thereto, an insurer or  
19 the insurance group of which the insurer is a member shall regularly  
20 conduct an ORSA consistent with a process comparable to the ORSA  
21 guidance manual. The ORSA shall be conducted no less than annually, but  
22 also at any time when there are significant changes to the risk profile of  
23 the insurer or the insurance group of which the insurer is a member.

24 Sec. 5. (a) Upon the commissioner's request, and no more than once  
25 each year, an insurer shall submit to the commissioner an ORSA summary  
26 report or any combination of reports that together contain the information  
27 described in the ORSA guidance manual, applicable to the insurer and the  
28 insurance group of which it is a member. Notwithstanding any request  
29 from the commissioner, if the insurer is a member of an insurance group,  
30 the insurer shall submit the reports required by this subsection if the  
31 commissioner is the lead state commissioner of the insurance group as  
32 determined by the procedures within the financial analysis handbook  
33 adopted by the NAIC.

34 (b) The reports shall include a signature of the insurer or insurance  
35 group's chief risk officer or other executive having responsibility for the  
36 oversight of the insurer's enterprise risk management process attesting to  
37 the best of such person's belief and knowledge that the insurer applies the  
38 enterprise risk management process described in the ORSA summary  
39 report and that a copy of the report has been provided to the insurer's board  
40 of directors or appropriate committee thereof.

41 (c) An insurer may comply with subsection (a) by providing the most  
42 recent and substantially similar reports provided by the insurer or another  
43 member of an insurance group of which the insurer is a member to the

1 commissioner of another state or to a supervisor or regulator of a foreign  
2 jurisdiction, if that report provides information that is comparable to the  
3 information described in the ORSA guidance manual. Any such report in a  
4 language other than English must be accompanied by a translation of that  
5 report into the English language.

6 (d) The ORSA summary report shall be prepared consistent with the  
7 ORSA guidance manual, subject to the requirements of subsection (e).  
8 Documentation and supporting information shall be maintained and made  
9 available upon examination or upon request of the commissioner.

10 (e) The review of the ORSA summary report and any additional  
11 requests for information shall be made using similar procedures currently  
12 used in the analysis and examination of multi-state or global insurers and  
13 insurance groups.

14 Sec. 6. (a) An insurer shall be exempt from the requirements of this  
15 act if:

16 (1) The insurer has annual written and unaffiliated assumed premium,  
17 including international direct and assumed premium but excluding  
18 premiums reinsured with the federal crop insurance corporation and  
19 federal flood program, less than \$500,000,000; and

20 (2) The insurance group of which the insurer is a member has annual  
21 direct written and unaffiliated assumed premium, including international  
22 direct and assumed premium, but excluding premiums reinsured with the  
23 federal crop insurance corporation and federal flood program, less than  
24 \$1,000,000,000.

25 (b) If an insurer qualifies for exemption pursuant to subsection (a)(1),  
26 but the insurance group of which the insurer is a member does not qualify  
27 for exemption pursuant to subsection (a)(2), then the ORSA summary  
28 report that may be required pursuant to section 5, and amendments thereto,  
29 shall include every insurer within the insurance group. This requirement  
30 may be satisfied by the submission of more than one ORSA summary  
31 report for any combination of insurers provided any combination of  
32 reports includes every insurer within the insurance group.

33 (c) If an insurer does not qualify for exemption pursuant to subsection  
34 (a)(1), but the insurance group of which it is a member qualifies for  
35 exemption pursuant to subsection (a)(2), then the only ORSA summary  
36 report that may be required pursuant to section 5, and amendments thereto,  
37 shall be the report applicable to that insurer.

38 (d) An insurer that does not qualify for exemption pursuant to  
39 subsection (a) may apply to the commissioner for a waiver from the  
40 requirements of this act based upon unique circumstances. In deciding  
41 whether to grant the insurer's request for waiver, the commissioner may  
42 consider the type and volume of business written, ownership and  
43 organizational structure and any other factor the commissioner considers

1 relevant to the insurer or insurance group of which the insurer is a  
2 member. If the insurer is part of an insurance group with insurers  
3 domiciled in more than one state, the commissioner shall coordinate with  
4 the lead state commissioner and with the other domiciliary commissioners  
5 in considering whether to grant the insurer's request for a waiver.

6 (e) Notwithstanding the exemptions stated in this section:

7 (1) The commissioner may require that an insurer maintain a risk  
8 management framework, conduct an ORSA and file an ORSA summary  
9 report based on unique circumstances including, but not limited to, the  
10 type and volume of business written, ownership and organizational  
11 structure, federal agency requests and international supervisor requests.

12 (2) The commissioner may require that an insurer maintain a risk  
13 management framework, conduct an ORSA and file an ORSA summary  
14 report if the insurer has risk-based capital for a company action level event  
15 as set forth in K.S.A 40-2c01 et seq., and K.S.A. 40-2d01 et seq., and  
16 amendments thereto, meets one or more of the standards of an insurer  
17 deemed to be in hazardous financial condition as defined in K.A.R. 40-1-  
18 38, or otherwise exhibits qualities of a troubled insurer as determined by  
19 the commissioner.

20 (f) If an insurer that qualifies for an exemption pursuant to subsection  
21 (a) subsequently no longer qualifies for that exemption due to changes in  
22 premium as reflected in the insurer's most recent annual statement or in the  
23 most recent annual statements of the insurers within the insurance group of  
24 which the insurer is a member, the insurer shall have one year following  
25 the year the threshold is exceeded to comply with the requirements of this  
26 act.

27 Sec. 7. (a) Documents, materials or other information, including the  
28 ORSA summary report, in the possession or control of the department of  
29 insurance that are obtained or created by or disclosed to the commissioner  
30 or any other person under this act, are recognized by this state as being  
31 proprietary and to contain trade secrets. All such documents, materials, or  
32 other information shall be confidential by law and privileged; shall not be  
33 subject to the open records act, K.S.A. 45-215 et seq., and amendments  
34 thereto; and shall not be subject to subpoena and shall not be subject to  
35 discovery or admissible in evidence in any private civil action. However,  
36 the commissioner is authorized to use the documents, materials or other  
37 information in the furtherance of any regulatory or legal action brought as  
38 part of the commissioner's official duties. The commissioner shall not  
39 otherwise make the documents, materials or other information public  
40 without the prior written consent of the insurer. The provisions of this  
41 subsection shall expire on July 1, 2021, unless the legislature reviews and  
42 reenacts this provision pursuant to K.S.A 45-229, and amendments  
43 thereto, prior to July 1, 2022.

1 (b) Neither the commissioner nor any person who received  
2 documents, materials or other ORSA-related information, through  
3 examination or otherwise while acting under the authority of the  
4 commissioner, or with whom such documents, materials or other  
5 information are shared pursuant to this act, shall be permitted or required  
6 to testify in any private civil action concerning any confidential  
7 documents, materials or information subject to subsection (a).

8 (c) In order to assist in the performance of the commissioner's  
9 regulatory duties, the commissioner:

10 (1) May, upon request, share documents, materials or other ORSA-  
11 related information, including the confidential and privileged documents,  
12 materials or information subject to subsection (a), including proprietary  
13 and trade secret documents and materials with other state, federal and  
14 international financial regulatory agencies, including members of any  
15 supervisory college as defined in K.S.A. 40-3316, and amendments  
16 thereto, the NAIC and with any third-party consultants designated by the  
17 commissioner, provided that the recipient agrees in writing to maintain the  
18 confidentiality and privileged status of the ORSA-related documents,  
19 materials or other information and has verified in writing the legal  
20 authority to maintain confidentiality;

21 (2) may receive documents, materials or other ORSA-related  
22 information, including otherwise confidential and privileged documents,  
23 materials or information, including proprietary and trade secret  
24 information or documents, from regulatory officials of other foreign or  
25 domestic jurisdictions, including members of any supervisory college as  
26 defined in K.S.A. 40-3316, and amendments thereto, and the NAIC, and  
27 shall maintain as confidential or privileged any documents, materials or  
28 information received with notice or the understanding that it is confidential  
29 or privileged under the laws of the jurisdiction that is the source of the  
30 document, material or information; and

31 (3) shall enter into a written agreement with the NAIC or a third-party  
32 consultant governing sharing and use of information provided pursuant to  
33 this act, consistent with this subsection that shall:

34 (A) Specify procedures and protocols regarding the confidentiality  
35 and security of information shared with the NAIC or a third-party  
36 consultant pursuant to this act, including procedures and protocols for  
37 sharing by the NAIC with other state regulators from states in which the  
38 insurance group has domiciled insurers. The agreement shall provide that  
39 the recipient agrees in writing to maintain the confidentiality and  
40 privileged status of the ORSA-related documents, materials or other  
41 information and has verified in writing the legal authority to maintain  
42 confidentiality;

43 (B) specify that ownership of information shared with the NAIC or a

1 third-party consultant pursuant to this act remains with the commissioner  
2 and use of the information by the NAIC or a third-party consultant is  
3 subject to the direction of the commissioner;

4 (C) prohibit the NAIC or third-party consultant from storing the  
5 information shared pursuant to this act in a permanent database after the  
6 underlying analysis is completed;

7 (D) require prompt notice to be given to an insurer whose confidential  
8 information in the possession of the NAIC or a third-party consultant  
9 pursuant to this act is subject to a request or subpoena to the NAIC or a  
10 third-party consultant for disclosure or production;

11 (E) require the NAIC or a third-party consultant to consent to  
12 intervention by an insurer in any judicial or administrative action in which  
13 the NAIC or a third-party consultant may be required to disclose  
14 confidential information about the insurer shared with the NAIC or a third-  
15 party consultant pursuant to this act; and

16 (F) in the case of an agreement involving a third party consultant,  
17 provide for the insurer's written consent.

18 (d) The sharing of information and documents by the commissioner  
19 pursuant to this act shall not constitute a delegation of regulatory authority  
20 or rulemaking and the commissioner is solely responsible for the  
21 administration, execution and enforcement of the provisions of this act.

22 (e) No waiver of any applicable privilege or claim of confidentiality  
23 in the documents, proprietary and trade secret materials or other ORSA-  
24 related information shall occur as a result of disclosure of such ORSA-  
25 related information or documents to the commissioner under this section  
26 or as a result of sharing as authorized in this act.

27 (f) Documents, materials or other information in the possession or  
28 control of the NAIC or third-party consultants pursuant to this act shall be  
29 confidential by law and privileged, shall not be subject to subpoena and  
30 shall not be subject to discovery or admissible as evidence in any private  
31 civil action.

32 Sec. 8. Any insurer failing, without just cause, to timely file the  
33 ORSA summary report as required in this act shall be required, after notice  
34 and hearing, to pay a penalty for each day's delay, to be recovered by the  
35 commissioner. The penalty so recovered shall be paid into the state  
36 general revenue fund. The maximum penalty under this section is \$50,000.  
37 The commissioner may reduce the penalty if the insurer demonstrates to  
38 the commissioner that the imposition of the penalty would constitute a  
39 financial hardship to the insurer.

40 Sec. 9. If any provision of this act, or the application thereof to any  
41 person or circumstance is held invalid, such determination shall not affect  
42 the provisions or applications of this act which can be given effect without  
43 the invalid provision or application, and to that end, the provisions of this

1 act are severable.

2 Sec. 10. The first filing of the ORSA summary report shall be in 2017  
3 pursuant to section 5, and amendments thereto, of this act.

4 Sec. 11. This act shall take effect and be in force from and after  
5 January 1, 2017, and its publication in the statute book.