

SENATE BILL No. 76

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

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

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

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

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

Sec. 2. As used in this act:

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

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

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

(d) "Insurer" has the meaning ascribed to it in K.S.A. 40-3302, and amendments thereto, except that it shall 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.

(e) "NAIC" means the national association of insurance commissioners.

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

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

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

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

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

Sec. 5. (a) Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer and the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subsection if the

commissioner is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the NAIC.

(b) The reports shall include a signature of the insurer or insurance group'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 such person's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or appropriate committee thereof.

(c) An insurer may comply with subsection (a) by providing the most recent and substantially similar reports provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

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

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

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

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

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

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

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

(d) An insurer that does not qualify for exemption pursuant to subsection (a) may apply to the commissioner for a waiver from the requirements of this act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(e) Notwithstanding the exemptions stated in this section:

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

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

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

Sec. 7. (a) Documents, materials or other information, including the ORSA summary report, in the possession or control of the department of insurance that are obtained or created by or disclosed to the commissioner or any other person under this act, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged; shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto; and shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

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

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

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

(2) may receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in K.S.A. 40-3316, and amendments thereto, and the NAIC, and shall maintain as confidential or privileged any documents, materials 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; and

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

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this act, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that

the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(B) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this act remains with the commissioner and use of the information by the NAIC or a third-party consultant is subject to the direction of the commissioner;

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

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

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

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

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

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

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

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

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

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

Sec. 11. The provisions of this act shall expire on July 1, 2022, unless the legislature reviews and reenacts the provisions related to confidentiality in section 1 and section 7, and amendments thereto, pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2022.

Sec. 12. This act shall take effect and be in force from and after January 1, 2017, and its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.