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576-03421-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to insurer regulatory reporting;
creating s. 628.8015, F.S.; defining terms; requiring
an insurer to maintain a risk management framework;
requiring certain insurers and insurance groups to
conduct an own-risk and solvency assessment; providing
requirements for the preparation and submission of an
own-risk and solvency assessment summary report;
providing exemptions and waivers; requiring certain
insurers and members of an insurance group to prepare
and submit a corporate governance annual disclosure;
requiring the initial corporate governance annual
disclosure to be submitted to the Office of Insurance
Regulation by a specified date; authorizing the office
to require an insurer or insurance group to provide a
corporate governance annual disclosure before such
date under certain circumstances; specifying
requirements for preparing and annually filing the
corporate governance annual disclosure; specifying
privilege requirements and prohibitions for certain
filings and related documents; authorizing the Office
of Insurance Regulation to retain third-party
consultants for certain purposes; authorizing the
Financial Services Commission to adopt rules; amending
s. 628.803, F.S.; revising provisions relating to
penalties to conform to the act; providing for
contingent repeal of the act; providing a contingent



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28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 628.8015, Florida Statutes, is created
33 to read:

34 628.8015 Own-risk and solvency assessment; corporate
35 governance annual disclosure.—

36 (1) DEFINITIONS.—As used in this section, the term:

37 (a) "Corporate governance annual disclosure" means a report
38 filed by an insurer or insurance group in accordance with this
39 section.

40 (b) "Insurance group" means insurers and affiliates
41 included within an insurance holding company system.

42 (c) "Insurer" has the same meaning as in s. 624.03.
43 However, the term does not include agencies, authorities,
44 instrumentalities, possessions, or territories of the United
45 States, the Commonwealth of Puerto Rico, or the District of
46 Columbia; or agencies, authorities, instrumentalities, or
47 political subdivisions of a state.

48 (d) "Own-risk and solvency assessment" or "ORSA" means an
49 internal assessment, appropriate to the nature, scale, and
50 complexity of an insurer or insurance group, conducted by that
51 insurer or insurance group, of the material and relevant risks
52 associated with the business plan of an insurer or insurance
53 group and the sufficiency of capital resources to support those
54 risks.

55 (e) "ORSA guidance manual" means the own-risk and solvency
56 assessment guidance manual developed and adopted by the National



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57 Association of Insurance Commissioners.

58 (f) "ORSA summary report" means a high-level ORSA summary
59 of an insurer or insurance group, consisting of a single report
60 or combination of reports.

61 (g) "Senior management" means any corporate officer
62 responsible for reporting information to the board of directors
63 at regular intervals or providing information to shareholders or
64 regulators and includes, but is not limited to, the chief
65 executive officer, chief financial officer, chief operations
66 officer, chief risk officer, chief procurement officer, chief
67 legal officer, chief information officer, chief technology
68 officer, chief revenue officer, chief visionary officer, or any
69 other executive performing one or more of these functions.

70 (2) OWN-RISK AND SOLVENCY ASSESSMENT.—

71 (a) Risk management framework.—An insurer shall maintain a
72 risk management framework to assist in identifying, assessing,
73 monitoring, managing, and reporting its material and relevant
74 risks. An insurer may satisfy this requirement by being a member
75 of an insurance group with a risk management framework
76 applicable to the operations of the insurer.

77 (b) ORSA requirement.—Subject to paragraph (c), an insurer,
78 or the insurance group of which the insurer is a member, shall
79 regularly conduct an ORSA consistent with and comparable to the
80 process in the ORSA guidance manual. The ORSA must be conducted
81 at least annually and whenever there have been significant
82 changes to the risk profile of the insurer or the insurance
83 group of which the insurer is a member.

84 (c) ORSA summary report.—

85 1.a. A domestic insurer or insurer member of an insurance



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86 group of which the office is the lead state, as determined by
87 the procedures in the most recent National Association of
88 Insurance Commissioners Financial Analysis Handbook, shall:

89 (I) Submit an ORSA summary report to the office once every
90 calendar year.

91 (II) Notify the office of its proposed annual submission
92 date by December 1, 2016. The initial ORSA summary report must
93 be submitted by December 31, 2017.

94 b. An insurer not required to submit an ORSA summary report
95 pursuant to sub-subparagraph a. shall:

96 (I) Submit an ORSA summary report at the request of the
97 office, but not more than once per calendar year.

98 (II) Notify the office of the proposed submission date
99 within 30 days after the request of the office.

100 2. An insurer may comply with sub-subparagraph 1.a. or sub-
101 subparagraph 1.b. by providing the most recent and substantially
102 similar ORSA summary report submitted by the insurer, or another
103 member of an insurance group of which the insurer is a member,
104 to the chief insurance regulatory official of another state or
105 the supervisor or regulator of a foreign jurisdiction. For
106 purposes of this subparagraph, a "substantially similar" ORSA
107 summary report is one that contains information comparable to
108 the information described in the ORSA guidance manual as
109 determined by the commissioner of the office. If the report is
110 in a language other than English, it must be accompanied by an
111 English translation.

112 3. The chief risk officer or chief executive officer of the
113 insurer or insurance group responsible for overseeing the
114 enterprise risk management process must sign the ORSA summary



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115 report attesting that, to the best of his or her knowledge and
116 belief, the insurer or insurance group applied the enterprise
117 risk management process described in the ORSA summary report and
118 provided a copy of the report to the board of directors or the
119 appropriate board committee.

120 4. The ORSA summary report must be prepared in accordance
121 with the ORSA guidance manual. Documentation and supporting
122 information must be maintained by the insurer and made available
123 upon examination pursuant to s. 624.316 or upon the request of
124 the office.

125 5. The ORSA summary report must include a brief description
126 of material changes and updates since the prior year report.

127 6. The office's review of the ORSA summary report must be
128 conducted, and any additional requests for information must be
129 made, using procedures similar to those used in the analysis and
130 examination of multistate or global insurers and insurance
131 groups.

132 (d) Exemption.—

133 1. An insurer is exempt from the requirements of this
134 subsection if:

135 a. The insurer has annual direct written and unaffiliated
136 assumed premium, including international direct and assumed
137 premium, but excluding premiums reinsured with the Federal Crop
138 Insurance Corporation and the National Flood Insurance Program,
139 of less than \$500 million; or

140 b. The insurer is a member of an insurance group and the
141 insurance group has annual direct written and unaffiliated
142 assumed premium, including international direct and assumed
143 premium, but excluding premiums reinsured with the Federal Crop



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144 Insurance Corporation and the National Flood Insurance Program,
145 of less than \$1 billion.

146 2. If an insurer is:

147 a. Exempt under sub-subparagraph 1.a., but the insurance
148 group of which the insurer is a member is not exempt under sub-
149 subparagraph 1.b., the ORSA summary report must include every
150 insurer within the insurance group. The insurer may satisfy this
151 requirement by submitting more than one ORSA summary report for
152 any combination of insurers if any combination of reports
153 includes every insurer within the insurance group.

154 b. Not exempt under sub-subparagraph 1.a., but the
155 insurance group of which it is a member is exempt under sub-
156 subparagraph 1.b., the insurer must submit to the office the
157 ORSA summary report applicable only to that insurer.

158 3. The office may require an exempt insurer to maintain a
159 risk management framework, conduct an ORSA, and file an ORSA
160 summary report:

161 a. Based on unique circumstances, including, but not
162 limited to, the type and volume of business written, ownership
163 and organizational structure, federal agency requests, and
164 international supervisor requests;

165 b. If the insurer has risk-based capital for a company
166 action level event pursuant to s. 624.4085(3), meets one or more
167 of the standards of an insurer deemed to be in hazardous
168 financial condition as defined in rules adopted by the
169 commission pursuant to s. 624.81(11), or exhibits qualities of
170 an insurer in hazardous financial condition as determined by the
171 office; or

172 c. If the office determines it is in the best interest of



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173 the state.

174 4. If an exempt insurer becomes disqualified for an
175 exemption because of changes in premium as reported on the most
176 recent annual statement of the insurer or annual statements of
177 the insurers within the insurance group of which the insurer is
178 a member, the insurer must comply with the requirements of this
179 section effective 1 year after the year in which the insurer
180 exceeded the premium thresholds.

181 (e) Waiver.—An insurer that does not qualify for an
182 exemption under paragraph (d) may request a waiver from the
183 office based upon unique circumstances. If the insurer is part
184 of an insurance group with insurers domiciled in more than one
185 state, the office must coordinate with the lead state and with
186 the other domiciliary regulators in deciding whether to grant a
187 waiver. In deciding whether to grant a waiver, the office may
188 consider:

189 1. The type and volume of business written by the insurer.

190 2. The ownership and organizational structure of the
191 insurer.

192 3. Any other factor the office considers relevant to the
193 insurer or insurance group of which the insurer is a member.

194
195 A waiver granted pursuant to this paragraph is valid until
196 withdrawn by the office.

197 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

198 (a) Scope.—This section does not prescribe or impose
199 corporate governance standards and internal procedures beyond
200 those required under applicable state corporate law or limit the
201 authority of the office, or the rights or obligations of third



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202 parties, under s. 624.316.

203 (b) Disclosure requirement.—

204 1.a. An insurer, or insurer member of an insurance group,
205 of which the office is the lead state regulator, as determined
206 by the procedures in the most recent National Association of
207 Insurance Commissioners Financial Analysis Handbook, shall
208 submit a corporate governance annual disclosure to the office by
209 June 1 of each calendar year. The initial corporate governance
210 annual disclosure must be submitted by December 31, 2018.

211 b. An insurer or insurance group not required to submit a
212 corporate governance annual disclosure under sub-subparagraph a.
213 shall do so at the request of the office, but not more than once
214 per calendar year. The insurer or insurance group shall notify
215 the office of the proposed submission date within 30 days after
216 the request of the office.

217 c. Before December 31, 2018, the office may require an
218 insurer or insurance group to provide a corporate governance
219 annual disclosure:

220 (I) Based on unique circumstances, including, but not
221 limited to, the type and volume of business written, the
222 ownership and organizational structure, federal agency requests,
223 and international supervisor requests;

224 (II) If the insurer has risk-based capital for a company
225 action level event pursuant to s. 624.4085(3), meets one or more
226 of the standards of an insurer deemed to be in hazardous
227 financial condition as defined in rules adopted pursuant to s.
228 624.81(11), or exhibits qualities of an insurer in hazardous
229 financial condition as determined by the office;

230 (III) If the insurer is the member of an insurer group of



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231 which the office acts as the lead state regulator as determined
232 by the procedures in the most recent National Association of
233 Insurance Commissioners Financial Analysis Handbook; or

234 (IV) If the office determines that it is in the best
235 interest of the state.

236 2. The chief executive officer or corporate secretary of
237 the insurer or the insurance group must sign the corporate
238 governance annual disclosure attesting that, to the best of his
239 or her knowledge and belief, the insurer has implemented the
240 corporate governance practices and provided a copy of the
241 disclosure to the board of directors or the appropriate board
242 committee.

243 3.a. Depending on the structure of its system of corporate
244 governance, the insurer or insurance group may provide corporate
245 governance information at one of the following levels:

246 (I) The ultimate controlling parent level;

247 (II) An intermediate holding company level; or

248 (III) The individual legal entity level.

249 b. The insurer or insurance group may make the corporate
250 governance annual disclosure at:

251 (I) The level used to determine the risk appetite of the
252 insurer or insurance group;

253 (II) The level at which the earnings, capital, liquidity,
254 operations, and reputation of the insurer are collectively
255 overseen and the supervision of those factors is coordinated and
256 exercised; or

257 (III) The level at which legal liability for failure of
258 general corporate governance duties would be placed.

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260 An insurer or insurance group must indicate the level of
261 reporting used and explain any subsequent changes in the
262 reporting level.

263 4. The review of the corporate governance annual disclosure
264 and any additional requests for information shall be made
265 through the lead state as determined by the procedures in the
266 most recent National Association of Insurance Commissioners
267 Financial Analysis Handbook.

268 5. An insurer or insurance group may comply with this
269 paragraph by cross-referencing other existing relevant and
270 applicable documents, including, but not limited to, the ORSA
271 summary report, Holding Company Form B or F filings, Securities
272 and Exchange Commission proxy statements, or foreign regulatory
273 reporting requirements, if the documents contain information
274 substantially similar to the information described in paragraph
275 (c). The insurer or insurance group shall clearly identify and
276 reference the specific location of the relevant and applicable
277 information within the corporate governance annual disclosure
278 and attach the referenced document if it has not already been
279 filed with, or made available to, the office.

280 6. Each year following the initial filing of the corporate
281 governance annual disclosure, the insurer or insurance group
282 shall file an amended version of the previously filed corporate
283 governance annual disclosure indicating changes that have been
284 made. If changes have not been made in the previously filed
285 disclosure, the insurer or insurance group should so indicate.

286 (c) Preparation of the corporate governance annual
287 disclosure.—

288 1. The corporate governance annual disclosure must be



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289 prepared in a manner consistent with this subsection.
290 Documentation and supporting information must be maintained and
291 made available upon examination pursuant to s. 624.316 or upon
292 the request of the office.

293 2. The corporate governance annual disclosure must be as
294 descriptive as possible and include any attachments or example
295 documents used in the governance process.

296 3. The insurer or insurance group has discretion in
297 determining the appropriate format of the corporate governance
298 annual disclosure in communicating the required information and
299 responding to inquiries, provided that the corporate governance
300 annual disclosure includes material and relevant information
301 sufficient to enable the office to understand the corporate
302 governance structure, policies, and practices used by the
303 insurer or insurance group.

304 4. The corporate governance annual disclosure must describe
305 the:

306 a. Corporate governance framework and structure of the
307 insurer or insurance group.

308 b. Policies and practices of the most senior governing
309 entity and significant committees.

310 c. Policies and practices for directing senior management.

311 d. Processes by which the board, its committees, and senior
312 management ensure an appropriate amount of oversight to the
313 critical risk areas that have an impact on the insurer's
314 business activities.

315 (4) CONFIDENTIALITY.—The filings and related documents
316 submitted pursuant to subsections (2) and (3) are privileged and
317 not subject to subpoena or discovery directly from the office.



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318 However, the department or office may use these filings and
319 related documents in the furtherance of any regulatory or legal
320 action brought against an insurer as part of the official duties
321 of the department or office. A waiver of any applicable claim of
322 privilege in these filings and related documents may not occur
323 because of a disclosure to the office under this section,
324 because of any other provision of the Insurance Code, or because
325 of sharing under s. 624.4212. The office or a person receiving
326 these filings and related documents, while acting under the
327 authority of the office, or with whom such filings and related
328 documents are shared pursuant to s. 624.4212, is not permitted
329 or required to testify in any private civil action concerning
330 any such filings or related documents.

331 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain
332 third-party consultants at the expense of the insurer or
333 insurance group for the purpose of assisting it in the
334 performance of its regulatory responsibilities under this
335 section, including, but not limited to, the risk management
336 framework, the ORSA, the ORSA summary report, and the corporate
337 governance annual disclosure. A third-party consultant must
338 agree, in writing, to:

339 (a) Adhere to confidentiality standards and requirements
340 applicable to the office governing the sharing and use of such
341 filings and related documents.

342 (b) Verify to the office, with notice to the insurer, that
343 the consultant is free of any conflict of interest.

344 (c) Monitor compliance with applicable confidentiality and
345 conflict of interest standards pursuant to a system of internal
346 procedures.



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347 (6) RULE ADOPTION.—The commission may adopt rules to
348 administer this section.

349 Section 2. Subsections (1) and (4) of section 628.803,
350 Florida Statutes, are amended to read:

351 628.803 Sanctions.—

352 (1) Any company failing, without just cause, to file any
353 registration statement or certificate of exemption required to
354 be filed pursuant to commission rules relating to this part or
355 to submit an ORSA summary report or a corporate governance
356 annual disclosure required pursuant to s. 628.8015 shall, in
357 addition to other penalties prescribed under the Florida
358 Insurance Code, be subject to pay a penalty of \$100 for each
359 day's delay, not to exceed a total of \$10,000.

360 (4) If the office determines that any person violated s.
361 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve
362 as an independent basis for disapproving dividends or
363 distributions and for placing the insurer under an order of
364 supervision in accordance with part VI of chapter 624.

365 Section 3. Section 628.8015, Florida Statutes, and the
366 amendments made by this act to s. 628.803, Florida Statutes, are
367 repealed on October 2, 2021, unless, before that date, the
368 Legislature saves from repeal through reenactment the amendments
369 to s. 624.4212, Florida Statutes, made by SB 1416 or similar
370 legislation.

371 Section 4. This act shall take effect October 1, 2016, if
372 SB 1416 or similar legislation is adopted in the same
373 legislative session or an extension thereof and becomes a law.