

By the Committee on Banking and Insurance; and Senator Simmons

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1 A bill to be entitled
2 An act relating to insurer regulatory reporting;
3 creating s. 628.8015, F.S.; defining terms; requiring
4 an insurer to maintain a risk management framework;
5 requiring certain insurers and insurance groups to
6 conduct an own-risk and solvency assessment; providing
7 requirements for the preparation and submission of an
8 own-risk and solvency assessment summary report;
9 providing exemptions and waivers; requiring certain
10 insurers and members of an insurance group to prepare
11 and submit a corporate governance annual disclosure;
12 providing disclosure and preparation requirements;
13 specifying privilege requirements and prohibitions for
14 certain filings and related documents; authorizing the
15 Office of Insurance Regulation to retain third-party
16 consultants for certain purposes; authorizing the
17 Financial Services Commission to adopt rules; amending
18 s. 628.803, F.S.; revising provisions relating to
19 penalties to conform to the act; providing a
20 contingent effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 628.8015, Florida Statutes, is created
25 to read:

26 628.8015 Own-risk and solvency assessment; corporate
27 governance annual disclosure.—

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

29 (a) "Corporate governance annual disclosure" means a report
30 filed by an insurer or insurance group in accordance with this
31 section.

32 (b) "Insurance group" means insurers and affiliates

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33 included within an insurance holding company system.

34 (c) "Insurer" has the same meaning as in s. 624.03.

35 However, the term does not include agencies, authorities,
36 instrumentalities, possessions, or territories of the United
37 States, the Commonwealth of Puerto Rico, or the District of
38 Columbia; or agencies, authorities, instrumentalities, or
39 political subdivisions of a state.

40 (d) "Own-risk and solvency assessment" or "ORSA" means an
41 internal assessment, appropriate to the nature, scale, and
42 complexity of an insurer or insurance group, conducted by that
43 insurer or insurance group, of the material and relevant risks
44 associated with the business plan of an insurer or insurance
45 group and the sufficiency of capital resources to support those
46 risks.

47 (e) "ORSA guidance manual" means the own-risk and solvency
48 assessment guidance manual developed and adopted by the National
49 Association of Insurance Commissioners.

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

53 (g) "Senior management" means any corporate officer
54 responsible for reporting information to the board of directors
55 at regular intervals or providing information to shareholders or
56 regulators and includes, but is not limited to, the chief
57 executive officer, chief financial officer, chief operations
58 officer, chief risk officer, chief procurement officer, chief
59 legal officer, chief information officer, chief technology
60 officer, chief revenue officer, chief visionary officer, or any
61 other executive performing one or more of these functions.

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62 (2) OWN-RISK AND SOLVENCY ASSESSMENT.-

63 (a) Risk management framework.-An insurer shall maintain a
64 risk management framework to assist in identifying, assessing,
65 monitoring, managing, and reporting its material and relevant
66 risks. An insurer may satisfy this requirement by being a member
67 of an insurance group with a risk management framework
68 applicable to the operations of the insurer.

69 (b) ORSA requirement.-Subject to paragraph (c), an insurer,
70 or the insurance group of which the insurer is a member, shall
71 regularly conduct an ORSA consistent with and comparable to the
72 process in the ORSA guidance manual. The ORSA must be conducted
73 at least annually and whenever there have been significant
74 changes to the risk profile of the insurer or the insurance
75 group of which the insurer is a member.

76 (c) ORSA summary report.-

77 1.a. A domestic insurer or insurer member of an insurance
78 group of which the office is the lead state, as determined by
79 the procedures in the most recent National Association of
80 Insurance Commissioners Financial Analysis Handbook, shall:

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

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

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

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

90 (II) Notify the office of the proposed submission date

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91 within 30 days after the request of the office.

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

104 3. The chief risk officer or chief executive officer of the
105 insurer or insurance group responsible for overseeing the
106 enterprise risk management process must sign the ORSA summary
107 report attesting that, to the best of his or her knowledge and
108 belief, the insurer or insurance group applied the enterprise
109 risk management process described in the ORSA summary report and
110 provided a copy of the report to the board of directors or the
111 appropriate board committee.

112 4. The ORSA summary report must be prepared in accordance
113 with the ORSA guidance manual. Documentation and supporting
114 information must be maintained by the insurer and made available
115 upon examination pursuant to s. 624.316 or upon the request of
116 the office.

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

119 6. The office's review of the ORSA summary report must be

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120 conducted, and any additional requests for information must be
121 made, using procedures similar to those used in the analysis and
122 examination of multistate or global insurers and insurance
123 groups.

124 (d) Exemption.—

125 1. An insurer is exempt from the requirements of this
126 subsection if:

127 a. The insurer has annual direct written and unaffiliated
128 assumed premium, including international direct and assumed
129 premium, but excluding premiums reinsured with the Federal Crop
130 Insurance Corporation and the National Flood Insurance Program,
131 of less than \$500 million; or

132 b. The insurer is a member of an insurance group and the
133 insurance group has annual direct written and unaffiliated
134 assumed premium, including international direct and assumed
135 premium, but excluding premiums reinsured with the Federal Crop
136 Insurance Corporation and the National Flood Insurance Program,
137 of less than \$1 billion.

138 2. If an insurer is:

139 a. Exempt under sub-subparagraph 1.a., but the insurance
140 group of which the insurer is a member is not exempt under sub-
141 paragraph 1.b., the ORSA summary report must include every
142 insurer within the insurance group. The insurer may satisfy this
143 requirement by submitting more than one ORSA summary report for
144 any combination of insurers if any combination of reports
145 includes every insurer within the insurance group.

146 b. Not exempt under sub-subparagraph 1.a., but the
147 insurance group of which it is a member is exempt under sub-
148 paragraph 1.b., the insurer must submit to the office the

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149 ORSA summary report applicable only to that insurer.

150 3. The office may require an exempt insurer to maintain a
151 risk management framework, conduct an ORSA, and file an ORSA
152 summary report:

153 a. Based on unique circumstances, including, but not
154 limited to, the type and volume of business written, ownership
155 and organizational structure, federal agency requests, and
156 international supervisor requests;

157 b. If the insurer has risk-based capital for a company
158 action level event pursuant to s. 624.4085(3), meets one or more
159 of the standards of an insurer deemed to be in hazardous
160 financial condition as defined in rules adopted by the
161 commission pursuant to s. 624.81(11), or exhibits qualities of
162 an insurer in hazardous financial condition as determined by the
163 office; or

164 c. If the office determines it is in the best interest of
165 the state.

166 4. If an exempt insurer becomes disqualified for an
167 exemption because of changes in premium as reported on the most
168 recent annual statement of the insurer or annual statements of
169 the insurers within the insurance group of which the insurer is
170 a member, the insurer must comply with the requirements of this
171 section effective 1 year after the year in which the insurer
172 exceeded the premium thresholds.

173 (e) Waiver.—An insurer that does not qualify for an
174 exemption under paragraph (d) may request a waiver from the
175 office based upon unique circumstances. If the insurer is part
176 of an insurance group with insurers domiciled in more than one
177 state, the office must coordinate with the lead state and with

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178 the other domiciliary regulators in deciding whether to grant a
179 waiver. In deciding whether to grant a waiver, the office may
180 consider:

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

182 2. The ownership and organizational structure of the
183 insurer.

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

186

187 A waiver granted pursuant to this paragraph is valid until
188 withdrawn by the office.

189 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

190 (a) Scope.—This section does not prescribe or impose
191 corporate governance standards and internal procedures beyond
192 those required under applicable state corporate law or limit the
193 authority of the office, or the rights or obligations of third
194 parties, under s. 624.316.

195 (b) Disclosure requirement.—

196 1.a. An insurer, or insurer member of an insurance group,
197 of which the office is the lead state regulator, as determined
198 by the procedures in the most recent National Association of
199 Insurance Commissioners Financial Analysis Handbook, shall
200 submit a corporate governance annual disclosure to the office by
201 June 1 of each calendar year. The initial corporate governance
202 annual disclosure must be submitted by December 31, 2017.

203 b. An insurer or insurance group not required to submit a
204 corporate governance annual disclosure under sub-subparagraph
205 1.a. shall do so at the request of the office, but not more than
206 once per calendar year. The insurer shall notify the office of

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207 the proposed submission date within 30 days after the request of
208 the office.

209 2. The chief executive officer or corporate secretary of
210 the insurer or the insurance group must sign the corporate
211 governance annual disclosure attesting that, to the best of his
212 or her knowledge and belief, the insurer has implemented the
213 corporate governance practices and provided a copy of the
214 disclosure to the board of directors or the appropriate board
215 committee.

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

219 (I) The ultimate controlling parent level;

220 (II) An intermediate holding company level; or

221 (III) The individual legal entity level.

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

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

226 (II) The level at which the earnings, capital, liquidity,
227 operations, and reputation of the insurer are collectively
228 overseen and the supervision of those factors is coordinated and
229 exercised; or

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

232
233 An insurer or insurance group must indicate the level of
234 reporting used and explain any subsequent changes in the
235 reporting level.

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236 4. The review of the corporate governance annual disclosure
237 and any additional requests for information shall be made
238 through the lead state as determined by the procedures in the
239 most recent National Association of Insurance Commissioners
240 Financial Analysis Handbook.

241 5. An insurer or insurance group may comply with this
242 paragraph by cross-referencing other existing relevant and
243 applicable documents, including, but not limited to, the ORSA
244 summary report, Holding Company Form B or F filings, Securities
245 and Exchange Commission proxy statements, or foreign regulatory
246 reporting requirements, if the documents contain information
247 substantially similar to the information described in paragraph
248 (c). The insurer or insurance group shall clearly identify and
249 reference the specific location of the relevant and applicable
250 information within the corporate governance annual disclosure
251 and attach the referenced document if it has not already been
252 filed with, or made available to, the office.

253 6. Each year following the initial filing of the corporate
254 governance annual disclosure, the insurer or insurance group
255 shall file an amended version of the previously filed corporate
256 governance annual disclosure indicating changes that have been
257 made. If changes have not been made in the previously filed
258 disclosure, the insurer or insurance group should so indicate.

259 (c) *Preparation of the corporate governance annual*
260 *disclosure.*

261 1. The corporate governance annual disclosure must be
262 prepared in a manner consistent with this subsection.
263 Documentation and supporting information must be maintained and
264 made available upon examination pursuant to s. 624.316 or upon

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265 the request of the office.

266 2. The corporate governance annual disclosure must be as
267 descriptive as possible and include any attachments or example
268 documents used in the governance process.

269 3. The insurer or insurance group has discretion in
270 determining the appropriate format of the corporate governance
271 annual disclosure in communicating the required information and
272 responding to inquiries, provided that the corporate governance
273 annual disclosure includes material and relevant information
274 sufficient to enable the office to understand the corporate
275 governance structure, policies, and practices used by the
276 insurer or insurance group.

277 4. The corporate governance annual disclosure must describe
278 the:

279 a. Corporate governance framework and structure of the
280 insurer or insurance group.

281 b. Policies and practices of the most senior governing
282 entity and significant committees.

283 c. Policies and practices for directing senior management.

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

288 (4) CONFIDENTIALITY.—The filings and related documents
289 submitted pursuant to subsections (2) and (3) are privileged and
290 not subject to subpoena or discovery directly from the office.
291 However, the department or office may use these filings and
292 related documents in the furtherance of any regulatory or legal
293 action brought against an insurer as part of the official duties

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294 of the department or office. A waiver of any applicable claim of
295 privilege in these filings and related documents may not occur
296 because of a disclosure to the office under this section,
297 because of any other provision of the Insurance Code, or because
298 of sharing under s. 624.4212. The office or a person receiving
299 these filings and related documents, while acting under the
300 authority of the office, or with whom such filings and related
301 documents are shared pursuant to s. 624.4212, is not permitted
302 or required to testify in any private civil action concerning
303 any such filings or related documents.

304 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain
305 third-party consultants at the expense of the insurer or
306 insurance group for the purpose of assisting it in the
307 performance of its regulatory responsibilities under this
308 section, including, but not limited to, the risk management
309 framework, the ORSA, the ORSA summary report, and the corporate
310 governance annual disclosure. A third-party consultant must
311 agree, in writing, to:

312 (a) Adhere to confidentiality standards and requirements
313 applicable to the office governing the sharing and use of such
314 filings and related documents.

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

317 (c) Monitor compliance with applicable confidentiality and
318 conflict of interest standards pursuant to a system of internal
319 procedures.

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

322 Section 2. Subsections (1) and (4) of section 628.803,

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323 Florida Statutes, are amended to read:

324 628.803 Sanctions.—

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

333 (4) If the office determines that any person violated s.
334 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve
335 as an independent basis for disapproving dividends or
336 distributions and for placing the insurer under an order of
337 supervision in accordance with part VI of chapter 624.

338 Section 3. This act shall take effect October 1, 2016, if
339 SB 1416 or similar legislation is adopted in the same
340 legislative session or an extension thereof and becomes a law.