

By the Committees on Appropriations; and Banking and Insurance;
and Senator Simmons

576-04232-16

20161422c2

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 requiring the initial corporate governance annual
13 disclosure to be submitted to the Office of Insurance
14 Regulation by a specified date; authorizing the office
15 to require an insurer or insurance group to provide a
16 corporate governance annual disclosure before such
17 date under certain circumstances; specifying
18 requirements for preparing and annually filing the
19 corporate governance annual disclosure; specifying
20 privilege requirements and prohibitions for certain
21 filings and related documents; authorizing the office
22 to retain third-party consultants for certain
23 purposes; authorizing the Financial Services
24 Commission to adopt rules; amending s. 628.803, F.S.;
25 revising provisions relating to penalties to conform
26 to the act; providing for contingent repeal of the
27 act; providing a contingent effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

30
31 Section 1. Section 628.8015, Florida Statutes, is created

576-04232-16

20161422c2

32 to read:

33 628.8015 Own-risk and solvency assessment; corporate
34 governance annual disclosure.-

35 (1) DEFINITIONS.-As used in this section, the term:

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

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

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

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

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

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

60 (g) "Senior management" means any corporate officer

576-04232-16

20161422c2

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

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

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

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

83 (c) ORSA summary report.-

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

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

576-04232-16

20161422c2

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

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

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

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

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

111 3. The chief risk officer or chief executive officer of the
112 insurer or insurance group responsible for overseeing the
113 enterprise risk management process must sign the ORSA summary
114 report attesting that, to the best of his or her knowledge and
115 belief, the insurer or insurance group applied the enterprise
116 risk management process described in the ORSA summary report and
117 provided a copy of the report to the board of directors or the
118 appropriate board committee.

576-04232-16

20161422c2

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

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

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

131 (d) Exemption.—

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

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

139 b. The insurer is a member of an insurance group and the
140 insurance group has annual direct written and unaffiliated
141 assumed premium, including international direct and assumed
142 premium, but excluding premiums reinsured with the Federal Crop
143 Insurance Corporation and the National Flood Insurance Program,
144 of less than \$1 billion.

145 2. If an insurer is:

146 a. Exempt under sub-subparagraph 1.a., but the insurance
147 group of which the insurer is a member is not exempt under sub-

576-04232-16

20161422c2

148 subparagraph 1.b., the ORSA summary report must include every
149 insurer within the insurance group. The insurer may satisfy this
150 requirement by submitting more than one ORSA summary report for
151 any combination of insurers if any combination of reports
152 includes every insurer within the insurance group.

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

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

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

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

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

173 4. If an exempt insurer becomes disqualified for an
174 exemption because of changes in premium as reported on the most
175 recent annual statement of the insurer or annual statements of
176 the insurers within the insurance group of which the insurer is

576-04232-16

20161422c2

177 a member, the insurer must comply with the requirements of this
178 section effective 1 year after the year in which the insurer
179 exceeded the premium thresholds.

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

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

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

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

193
194 A waiver granted pursuant to this paragraph is valid until
195 withdrawn by the office.

196 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

197 (a) Scope.—This section does not prescribe or impose
198 corporate governance standards and internal procedures beyond
199 those required under applicable state corporate law or limit the
200 authority of the office, or the rights or obligations of third
201 parties, under s. 624.316.

202 (b) Disclosure requirement.—

203 1.a. An insurer, or insurer member of an insurance group,
204 of which the office is the lead state regulator, as determined
205 by the procedures in the most recent National Association of

576-04232-16

20161422c2

206 Insurance Commissioners Financial Analysis Handbook, shall
207 submit a corporate governance annual disclosure to the office by
208 June 1 of each calendar year. The initial corporate governance
209 annual disclosure must be submitted by December 31, 2018.

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

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

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

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

229 (III) If the insurer is the member of an insurer group of
230 which the office acts as the lead state regulator as determined
231 by the procedures in the most recent National Association of
232 Insurance Commissioners Financial Analysis Handbook; or

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

576-04232-16

20161422c2

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

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

245 (I) The ultimate controlling parent level;

246 (II) An intermediate holding company level; or

247 (III) The individual legal entity level.

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

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

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

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

258
259 An insurer or insurance group must indicate the level of
260 reporting used and explain any subsequent changes in the
261 reporting level.

262 4. The review of the corporate governance annual disclosure
263 and any additional requests for information shall be made

576-04232-16

20161422c2

264 through the lead state as determined by the procedures in the
265 most recent National Association of Insurance Commissioners
266 Financial Analysis Handbook.

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

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

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

287 1. The corporate governance annual disclosure must be
288 prepared in a manner consistent with this subsection.
289 Documentation and supporting information must be maintained and
290 made available upon examination pursuant to s. 624.316 or upon
291 the request of the office.

292 2. The corporate governance annual disclosure must be as

576-04232-16

20161422c2

293 descriptive as possible and include any attachments or example
294 documents used in the governance process.

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

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

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

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

309 c. Policies and practices for directing senior management.

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

314 (4) CONFIDENTIALITY.—The filings and related documents
315 submitted pursuant to subsections (2) and (3) are privileged
316 such that they may not be produced in response to a subpoena or
317 other discovery directed to the office, and any such filings and
318 related documents, if obtained from the office, are not
319 admissible in evidence in any private civil action. However, the
320 department or office may use these filings and related documents
321 in the furtherance of any regulatory or legal action brought

576-04232-16

20161422c2

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

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

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

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

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

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

576-04232-16

20161422c2

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

353 628.803 Sanctions.—

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

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

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

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