

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 663

By: Brooks of the Senate

and

McDaniel (Randy) of the
House

COMMITTEE SUBSTITUTE

An Act relating to insurance; creating the Own Risk and Solvency Assessment (ORSA) Act; defining terms; requiring insurers to maintain certain framework; requiring insurers and insurance groups to conduct ORSA consistent with certain process; providing for reporting to the Insurance Commissioner; requiring certain attestation of report; providing reporting procedures and setting date of first report; providing for exemption and providing procedures; granting certain authority to and specifying duties of the Insurance Commissioner; providing time period for certain compliance; providing for contents of report; specifying standards for review; providing for confidentiality of certain documents; authorizing certain use; prohibiting certain testimony; providing for certain agreements; construing certain acts; providing penalty for failure to file timely report; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3301 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Own Risk and
5 Solvency Assessment (ORSA) Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3302 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Own Risk and Solvency Assessment (ORSA) Act:

10 1. "Insurance group" shall mean, for the purpose of conducting
11 an Own Risk and Solvency Assessment (ORSA), those insurers and
12 affiliates included within an insurance holding company system as
13 defined in Section 1651 of Title 36 of the Oklahoma Statutes;

14 2. "Insurer" shall have the same meaning as set forth in
15 Section 103 of Title 36 of the Oklahoma Statutes, except that it
16 shall not include agencies, authorities or instrumentalities of the
17 United States, its possessions and territories, the Commonwealth of
18 Puerto Rico, the District of Columbia or a state or political
19 subdivision of a state;

20 3. "Own Risk and Solvency Assessment" or "ORSA" shall mean a
21 confidential internal assessment, appropriate to the nature, scale,
22 and complexity of an insurer or insurance group, conducted by that
23 insurer or insurance group of the material and relevant risks
24 associated with the insurer or insurance group's current business

1 plan, and the sufficiency of capital resources to support those
2 risks;

3 4. "ORSA Guidance Manual" shall mean the current version of the
4 Own Risk and Solvency Assessment Guidance Manual developed and
5 adopted by the National Association of Insurance Commissioners
6 (NAIC), as amended from time to time. A change in the ORSA Guidance
7 Manual shall be effective on January 1 following the calendar year
8 in which the changes have been adopted by the NAIC; and

9 5. "ORSA Summary Report" shall mean a confidential high-level
10 summary of an insurer's or insurance group's ORSA.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3303 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

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

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3304 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 Subject to the provisions of Section 6 of this act, an insurer,
24 or the insurance group of which the insurer is a member, shall

1 regularly conduct an ORSA consistent with a process comparable to
2 the ORSA Guidance Manual. The ORSA shall be conducted no less than
3 annually, but also at any time when there are significant changes to
4 the risk profile of the insurer or the insurance group of which the
5 insurer is a member.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3305 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Upon the Insurance Commissioner's request, and no more than
10 once each year, an insurer shall submit to the Insurance
11 Commissioner an ORSA Summary Report or any combination of reports
12 that together contain the information described in the ORSA Guidance
13 Manual, applicable to the insurer and/or the insurance group of
14 which it is a member. Notwithstanding any request from the
15 Insurance Commissioner, if the insurer is a member of an insurance
16 group, the insurer shall submit the report(s) required by this
17 subsection if the Insurance Commissioner is the lead state Insurance
18 Commissioner of the insurance group as determined by the procedures
19 within the Financial Analysis Handbook adopted by the National
20 Association of Insurance Commissioners.

21 B. The report(s) shall include a signature of the insurer or
22 insurance group's chief risk officer or other executive having
23 responsibility for the oversight of the insurer's enterprise risk
24 management process attesting to the best of his or her belief and

1 knowledge that the insurer applies the enterprise risk management
2 process described in the ORSA Summary Report and that a copy of the
3 report has been provided to the insurer's board of directors or the
4 appropriate committee thereof.

5 C. An insurer may comply with subsection A of this section by
6 providing the most recent and substantially similar reports provided
7 by the insurer or another member of an insurance group of which the
8 insurer is a member to the Insurance Commissioner of another state
9 or to a supervisor or regulator of a foreign jurisdiction, if that
10 report provides information that is comparable to the information
11 described in the ORSA Guidance Manual. Any such report in a
12 language other than English must be accompanied by a translation of
13 that report into the English language.

14 D. The first filing of the ORSA Summary Report shall be in 2016
15 pursuant to this section.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3306 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. An insurer shall be exempt from the requirements of this
20 act, if:

21 1. The insurer has annual direct written and unaffiliated
22 assumed premiums, including international direct and assumed
23 premiums, but excluding premiums reinsured with the Federal Crop
24

1 Insurance Corporation and Federal Flood Program, of less than Five
2 Hundred Million Dollars (\$500,000,000.00); and

3 2. The insurance group of which the insurer is a member has
4 annual direct written and unaffiliated assumed premiums including
5 international direct and assumed premiums, but excluding premiums
6 reinsured with the Federal Crop Insurance Corporation and Federal
7 Flood Program, of less than One Billion Dollars (\$1,000,000,000.00).

8 B. If an insurer qualifies for exemption pursuant to paragraph
9 1 of subsection A of this section, but the insurance group of which
10 the insurer is a member does not qualify for exemption pursuant to
11 paragraph 2 of subsection A of this section, then the ORSA Summary
12 Report that may be required pursuant to Section 5 of this act shall
13 include every insurer within the insurance group. This requirement
14 may be satisfied by the submission of more than one ORSA Summary
15 Report for any combination of insurers, provided any combination of
16 reports includes every insurer within the insurance group.

17 C. If an insurer does not qualify for exemption pursuant to
18 paragraph 1 of subsection A of this section, but the insurance group
19 of which it is a member qualifies for exemption pursuant to
20 paragraph 2 of subsection A of this section, then the only ORSA
21 Summary Report that may be required pursuant to the provisions of
22 Section 5 of this act shall be the report applicable to that
23 insurer.

1 D. An insurer that does not qualify for exemption pursuant to
2 subsection A of this section may apply to the Insurance Commissioner
3 for a waiver from the requirements of this act. In deciding whether
4 to grant the insurer's request for waiver, the Insurance
5 Commissioner may consider the type and volume of business written,
6 ownership and organizational structure, and any other factor the
7 Insurance Commissioner considers relevant to the insurer or
8 insurance group of which the insurer is a member. If the insurer is
9 part of an insurance group with insurers domiciled in more than one
10 state, the Insurance Commissioner shall coordinate with the lead
11 state Insurance Commissioner and with the other domiciliary
12 Insurance Commissioners in considering whether to grant the
13 insurer's request for a waiver.

14 E. Notwithstanding the exemptions stated in this section:

15 1. The Insurance Commissioner may require that an insurer
16 maintain a risk management framework, conduct an ORSA and file an
17 ORSA Summary Report based on circumstances including, but not
18 limited to, the type and volume of business written, ownership and
19 organizational structure, federal agency requests, and international
20 supervisor requests; and

21 2. The Insurance Commissioner may require that an insurer
22 maintain a risk management framework, conduct an ORSA, and file an
23 ORSA Summary Report if the insurer has risk-based capital for a
24 Company Action Level Event as provided by law, meets one or more of

1 the standards of an insurer deemed to be in hazardous financial
2 condition as provided by law or otherwise exhibits qualities of a
3 troubled insurer as determined by the Insurance Commissioner.

4 F. If an insurer that qualifies for an exemption pursuant to
5 subsection A of this section subsequently no longer qualifies for
6 that exemption due to changes in premium as reflected in the
7 insurer's most recent annual statement or in the most recent annual
8 statements of the insurers within the insurance group of which the
9 insurer is a member, the insurer shall have one (1) year following
10 the year the threshold is exceeded to comply with the requirements
11 of this act.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3307 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The ORSA Summary Report shall be prepared consistent with
16 the ORSA Guidance Manual, subject to the requirements of subsection
17 B of this section. Documentation and supporting information shall
18 be maintained and made available upon examination or upon request of
19 the Insurance Commissioner.

20 B. The review of the ORSA Summary Report and any additional
21 requests for information shall be made using similar procedures
22 currently used in the analysis and examination of multistate or
23 global insurers and insurance groups.
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1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3308 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Documents, materials or other information, including the
5 ORSA Summary Report, in the possession of or control of the
6 Department of Insurance that are obtained by, created by or
7 disclosed to the Insurance Commissioner or any other person under
8 this act are recognized by this state as being proprietary and to
9 contain trade secrets. All such documents, materials or other
10 information shall be confidential by law and privileged, shall not
11 be subject to the Oklahoma Open Records Act, shall not be subject to
12 subpoena, and shall not be subject to discovery or admissible in
13 evidence in any private civil action. However, the Insurance
14 Commissioner is authorized to use the documents, materials or other
15 information in the furtherance of any regulatory or legal action
16 brought as a part of the Insurance Commissioner's official duties.
17 The Insurance Commissioner shall not otherwise make the documents,
18 materials or other information public without the prior written
19 consent of the insurer.

20 B. Neither the Insurance Commissioner nor any person who
21 received documents, materials or other ORSA-related information,
22 through examination or otherwise, while acting under the authority
23 of the Insurance Commissioner or with whom such documents, materials
24 or other information are shared pursuant to this act shall be

1 permitted or required to testify in any private civil action
2 concerning any confidential documents, materials or information
3 subject to subsection A of this section.

4 C. In order to assist in the performance of the Insurance
5 Commissioner's regulatory duties, the Insurance Commissioner:

6 1. May, upon request, share documents, materials or other ORSA-
7 related information, including the confidential and privileged
8 documents, materials or information subject to subsection A of this
9 section, including proprietary and trade-secret documents and
10 materials with other state, federal, and international financial
11 regulatory agencies, including members of any supervisory college,
12 with the NAIC and with any third-party consultants designated by the
13 Insurance Commissioner, provided that the recipient agrees in
14 writing to maintain the confidentiality and privileged status of the
15 ORSA-related documents, materials or other information and has
16 verified in writing the legal authority to maintain confidentiality;

17 2. May receive documents, materials or other ORSA-related
18 information, including otherwise confidential and privileged
19 documents, materials or information, including proprietary and
20 trade-secret information or documents, from regulatory officials of
21 other foreign or domestic jurisdictions, including members of any
22 supervisory college, and from the NAIC, and shall maintain as
23 confidential or privileged any documents, materials or information
24 received with notice or the understanding that it is confidential or

1 privileged under the laws of the jurisdiction that is the source of
2 the document, material or information; and

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

7 a. specify procedures and protocols regarding the
8 confidentiality and security of information shared
9 with the NAIC or a third-party consultant pursuant to
10 this act, including procedures and protocols for
11 sharing by the NAIC with other state regulators from
12 states in which the insurance group has domiciled
13 insurers. The agreement shall provide that the
14 recipient agrees in writing to maintain the
15 confidentiality and privileged status of the ORSA-
16 related documents, materials or other information and
17 has verified in writing the legal authority to
18 maintain confidentiality,

19 b. specify that ownership of information shared with the
20 NAIC or a third-party consultant pursuant to this act
21 remains with the Insurance Commissioner and the NAIC's
22 or a third-party consultant's use of the information
23 is subject to the direction of the Insurance
24 Commissioner,

- 1 c. prohibit the NAIC or third-party consultant from
2 storing the information shared pursuant to this act in
3 a permanent database after the underlying analysis is
4 completed,
- 5 d. require prompt notice to be given to an insurer whose
6 confidential information in the possession of the NAIC
7 or a third-party consultant pursuant to this act is
8 subject to a request or subpoena to the NAIC or a
9 third-party consultant for disclosure or production,
- 10 e. require the NAIC or a third-party consultant to
11 consent to intervention by an insurer in any judicial
12 or administrative action in which the NAIC or a third-
13 party consultant may be required to disclose
14 confidential information about the insurer shared with
15 the NAIC or a third-party consultant pursuant to this
16 section, and
- 17 f. in the case of an agreement involving a third-party
18 consultant, provide for the insurer's written consent.

19 D. The sharing of information and documents by the Insurance
20 Commissioner pursuant to this act shall not constitute a delegation
21 of regulatory authority or rulemaking, and the Insurance
22 Commissioner is solely responsible for the administration, execution
23 and enforcement of the provisions of this act.
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1 E. No waiver of any applicable privilege or claim of
2 confidentiality in the documents, proprietary and trade-secret
3 materials or other ORSA-related information shall occur as a result
4 of disclosure of such ORSA-related information or documents to the
5 Insurance Commissioner under this section or as a result of sharing
6 as authorized in this act.

7 F. Documents, materials or other information in the possession
8 or control of the NAIC or a third-party consultant pursuant to this
9 act shall be confidential by law and privileged, shall not be
10 subject to the Oklahoma Open Records Act, shall not be subject to
11 subpoena, and shall not be subject to discovery or admissible in
12 evidence in any private civil action.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3309 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 Any insurer failing, without just cause, to timely file the ORSA
17 Summary Report as required in this act shall be required, after
18 notice and hearing, to pay a penalty of One Thousand Dollars
19 (\$1,000.00) for each day's delay, to be recovered by the Insurance
20 Commissioner. The maximum penalty under this section is Twenty-five
21 Thousand Dollars (\$25,000.00). The Insurance Commissioner may
22 reduce the penalty if the insurer demonstrates to the Insurance
23 Commissioner that the imposition of the penalty would constitute a
24 financial hardship to the insurer.

1 SECTION 10. This act shall become effective January 1, 2016.

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