

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 663

By: Brooks

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5
6 AS INTRODUCED

7 An Act relating to insurance; creating the Own Risk
8 and Solvency Assessment (ORSA) Act; providing short
9 title; defining terms; requiring insurers to maintain
10 certain framework; requiring insurers and insurance
11 groups to conduct ORSA consistent with certain
12 process; providing for reporting to Insurance
13 Commissioner; requiring certain attestation of
14 report; providing reporting procedures and setting
15 date of first report; providing for exemption and
16 providing procedures; granting certain authority to
17 and specifying duties of Insurance Commissioner;
18 providing time period for certain compliance;
19 providing for contents of report; specifying
20 standards for review; providing for confidentiality
21 of certain documents; allowing certain use;
22 disallowing certain testimony; providing for certain
23 agreements; construing certain acts; providing
24 penalty for failure to file timely report; providing
for codification; and providing an effective date.

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

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

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

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

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

5 1. "Insurance group" shall mean, for the purpose of conducting
6 an Own Risk and Solvency Assessment "ORSA", those insurers and
7 affiliates included within an insurance holding company system as
8 defined in Section 1651 of Title 36 of the Oklahoma Statutes;

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

15 3. "Own Risk and Solvency Assessment" or "ORSA" shall mean a
16 confidential internal assessment, appropriate to the nature, scale,
17 and complexity of an insurer or insurance group, conducted by that
18 insurer or insurance group of the material and relevant risks
19 associated with the insurer or insurance group's current business
20 plan, and the sufficiency of capital resources to support those
21 risks;

22 4. "ORSA Guidance Manual" shall mean the current version of the
23 Own Risk and Solvency Assessment Guidance Manual developed and
24 adopted by the National Association of Insurance Commissioners

1 (NAIC), as amended from time to time. A change in the ORSA Guidance
2 Manual shall be effective on January 1 following the calendar year
3 in which the changes have been adopted by the NAIC; and

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

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

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

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

18 Subject to the provisions of Section 6 of this act, an insurer,
19 or the insurance group of which the insurer is a member, shall
20 regularly conduct an ORSA consistent with a process comparable to
21 the ORSA Guidance Manual. The ORSA shall be conducted no less than
22 annually, but also at any time when there are significant changes to
23 the risk profile of the insurer or the insurance group of which the
24 insurer is a member.

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

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

16 B. The report(s) shall include a signature of the insurer or
17 insurance group's chief risk officer or other executive having
18 responsibility for the oversight of the insurer's enterprise risk
19 management process attesting to the best of his or her belief and
20 knowledge that the insurer applies the enterprise risk management
21 process described in the ORSA Summary Report and that a copy of the
22 report has been provided to the insurer's board of directors or the
23 appropriate committee thereof.

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

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

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

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

17 1. The insurer has annual direct written and unaffiliated
18 assumed premiums, including international direct and assumed
19 premiums, but excluding premiums reinsured with the Federal Crop
20 Insurance Corporation and Federal Flood Program, less than Five
21 Hundred Million Dollars (\$500,000,000.00); and

22 2. The insurance group of which the insurer is a member has
23 annual direct written and unaffiliated assumed premium including
24 international direct and assumed premiums, but excluding premiums

1 reinsured with the Federal Crop Insurance Corporation and Federal
2 Flood Program, less than One Billion Dollars (\$1,000,000,000.00).

3 B. If an insurer qualifies for exemption pursuant to paragraph
4 1 of subsection A of this section, but the insurance group of which
5 the insurer is a member does not qualify for exemption pursuant to
6 paragraph 2 of subsection A of this section, then the ORSA Summary
7 Report that may be required pursuant to Section 5 of this act shall
8 include every insurer within the insurance group. This requirement
9 may be satisfied by the submission of more than one ORSA Summary
10 Report for any combination of insurers, provided any combination of
11 reports includes every insurer within the insurance group.

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

19 D. An insurer that does not qualify for exemption pursuant to
20 subsection A of this section may apply to the Insurance Commissioner
21 for a waiver from the requirements of this act. In deciding whether
22 to grant the insurer's request for waiver, the Insurance
23 Commissioner may consider the type and volume of business written,
24 ownership and organizational structure, and any other factor the

1 Insurance Commissioner considers relevant to the insurer or
2 insurance group of which the insurer is a member. If the insurer is
3 part of an insurance group with insurers domiciled in more than one
4 state, the Insurance Commissioner shall coordinate with the lead
5 state Insurance Commissioner and with the other domiciliary
6 Insurance Commissioners in considering whether to grant the
7 insurer's request for a waiver.

8 E. Notwithstanding the exemptions stated in this section:

9 1. The Insurance Commissioner may require that an insurer
10 maintain a risk management framework, conduct an ORSA and file an
11 ORSA Summary Report based on circumstances including, but not
12 limited to, the type and volume of business written, ownership and
13 organizational structure, federal agency requests, and international
14 supervisor requests; and

15 2. The Insurance Commissioner may require that an insurer
16 maintain a risk management framework, conduct an ORSA, and file an
17 ORSA Summary Report if the insurer has Risk-Based Capital for
18 company action level event as provided by law, meets one or more of
19 the standards of an insurer deemed to be in hazardous financial
20 condition as provided by law or otherwise exhibits qualities of a
21 troubled insurer as determined by the Insurance Commissioner.

22 F. If an insurer that qualifies for an exemption pursuant to
23 subsection A of this section subsequently no longer qualifies for
24 that exemption due to changes in premium as reflected in the

1 insurer's most recent annual statement or in the most recent annual
2 statements of the insurers within the insurance group of which the
3 insurer is a member, the insurer shall have one (1) year following
4 the year the threshold is exceeded to comply with the requirements
5 of this act.

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

9 A. The ORSA Summary Report shall be prepared consistent with
10 the ORSA Guidance Manual, subject to the requirements of subsection
11 B of this section. Documentation and supporting information shall
12 be maintained and made available upon examination or upon request of
13 the Insurance Commissioner.

14 B. The review of the ORSA Summary Report and any additional
15 requests for information shall be made using similar procedures
16 currently used in the analysis and examination of multistate or
17 global insurers and insurance groups.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3308 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Documents, materials or other information, including the
22 ORSA Summary Report, in the possession of or control of the
23 Department of Insurance that are obtained by, created by or
24 disclosed to the Insurance Commissioner or any other person under

1 this act, are recognized by this state as being proprietary and to
2 contain trade secrets. All such documents, materials or other
3 information shall be confidential by law and privileged, shall not
4 be subject to the Oklahoma Open Records Act, shall not be subject to
5 subpoena, and shall not be subject to discovery or admissible in
6 evidence in any private civil action. However, the Insurance
7 Commissioner is authorized to use the documents, materials or other
8 information in the furtherance of any regulatory or legal action
9 brought as a part of the Insurance Commissioner's official duties.
10 The Insurance Commissioner shall not otherwise make the documents,
11 materials or other information public without the prior written
12 consent of the insurer.

13 B. Neither the Insurance Commissioner nor any person who
14 received documents, materials or other ORSA-related information,
15 through examination or otherwise, while acting under the authority
16 of the Insurance Commissioner or with whom such documents, materials
17 or other information are shared pursuant to this act shall be
18 permitted or required to testify in any private civil action
19 concerning any confidential documents, materials or information
20 subject to subsection A of this section.

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

23 1. May, upon request, share documents, materials or other ORSA-
24 related information, including the confidential and privileged

1 documents, materials or information subject to subsection A of this
2 section, including proprietary and trade secret documents and
3 materials with other state, federal, and international financial
4 regulatory agencies, including members of any supervisory college,
5 with the NAIC and with any third-party consultants designated by the
6 Insurance Commissioner, provided that the recipient agrees in
7 writing to maintain the confidentiality and privileged status of the
8 ORSA-related documents, materials or other information and has
9 verified in writing the legal authority to maintain confidentiality;

10 2. May receive documents, materials or other ORSA-related
11 information, including otherwise confidential and privileged
12 documents, materials or information, including proprietary and
13 trade-secret information or documents, from regulatory officials of
14 other foreign or domestic jurisdictions, including members of any
15 supervisory college, and from the NAIC, and shall maintain as
16 confidential or privileged any documents, materials or information
17 received with notice or the understanding that it is confidential or
18 privileged under the laws of the jurisdiction that is the source of
19 the document, material or information; and

20 3. Shall enter into a written agreement with the NAIC or a
21 third-party consultant governing sharing and use of information
22 provided pursuant to this act, consistent with this subsection that
23 shall:
24

- 1 a. specify procedures and protocols regarding the
2 confidentiality and security of information shared
3 with the NAIC or a third-party consultant pursuant to
4 this act, including procedures and protocols for
5 sharing by the NAIC with other state regulators from
6 states in which the insurance group has domiciled
7 insurers. The agreement shall provide that the
8 recipient agrees in writing to maintain the
9 confidentiality and privileged status of the ORSA-
10 related documents, materials or other information and
11 has verified in writing the legal authority to
12 maintain confidentiality,
- 13 b. specify that ownership of information shared with the
14 NAIC or a third-party consultant pursuant to this act
15 remains with the Insurance Commissioner and the NAIC's
16 or a third-party consultant's use of the information
17 is subject to the direction of the Insurance
18 Commissioner,
- 19 c. prohibit the NAIC or third-party consultant from
20 storing the information shared pursuant to this act in
21 a permanent database after the underlying analysis is
22 completed,
- 23 d. require prompt notice to be given to an insurer whose
24 confidential information in the possession of the NAIC

- 1 or a third-party consultant pursuant to this act is
2 subject to a request or subpoena to the NAIC or a
3 third-party consultant for disclosure or production,
4 e. require the NAIC or a third-party consultant to
5 consent to intervention by an insurer in any judicial
6 or administrative action in which the NAIC or a third-
7 party consultant may be required to disclose
8 confidential information about the insurer shared with
9 the NAIC or a third-party consultant pursuant to this
10 section, and
11 f. in the case of an agreement involving a third-party
12 consultant, provide for the insurer's written consent.

13 D. The sharing of information and documents by the Insurance
14 Commissioner pursuant to this act shall not constitute a delegation
15 of regulatory authority or rulemaking, and the Insurance
16 Commissioner is solely responsible for the administration, execution
17 and enforcement of the provisions of this act.

18 E. No waiver of any applicable privilege or claim of
19 confidentiality in the documents, proprietary and trade-secret
20 materials or other ORSA-related information shall occur as a result
21 of disclosure of such ORSA-related information or documents to the
22 Insurance Commissioner under this section or as a result of sharing
23 as authorized in this act.
24

1 F. Documents, materials or other information in the possession
2 or control of the NAIC or a third-party consultant pursuant to this
3 act shall be confidential by law and privileged, shall not be
4 subject to the Oklahoma Open Records Act, shall not be subject to
5 subpoena, and shall not be subject to discovery or admissible in
6 evidence in any private civil action.

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

10 Any insurer failing, without just cause, to timely file the ORSA
11 Summary Report as required in this act shall be required, after
12 notice and hearing, to pay a penalty of One Thousand Dollars
13 (\$1,000.00) for each day's delay, to be recovered by the Insurance
14 Commissioner. The maximum penalty under this section is Twenty-five
15 Thousand Dollars (\$25,000.00). The Insurance Commissioner may
16 reduce the penalty if the insurer demonstrates to the Insurance
17 Commissioner that the imposition of the penalty would constitute a
18 financial hardship to the insurer.

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