

SENATE BILL No. 76

By Committee on Financial Institutions and Insurance

1-26

1 AN ACT concerning insurance; relating to assessments; enacting the risk
2 management and own risk and solvency assessment act; sanctions.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a)~~(1)~~ This act shall be known and may be cited as the risk
6 management and own risk and solvency assessment act.

7 ~~(2)~~ **(b)** The risk management and own risk and solvency assessment
8 act provides the requirements for maintaining a risk management
9 framework and completing an own risk and solvency assessment (ORSA)
10 summary report with the insurance commissioner of the state of Kansas.
11 The requirements of the act shall apply to all insurers domiciled in the
12 state of Kansas unless exempted pursuant to section 6, and amendments
13 thereto.

14 ~~(3)~~ **(c)** The risk management and own risk and solvency assessment
15 act and the ORSA summary report will contain confidential and sensitive
16 information related to an insurer or insurance group's identification of risks
17 material and relevant to the insurer or insurance group filing the report.
18 This information will include proprietary and trade secret information that
19 has the potential for harm and competitive disadvantage to the insurer or
20 insurance group if the information is made public. The ORSA summary
21 report shall be a confidential document filed with the commissioner and
22 shall only be shared as stated herein and to assist the commissioner in the
23 performance of the commissioner's duties. In no event shall the ORSA
24 summary report be subject to public disclosure.

25 Sec. 2. As used in this act:

26 (a) "Act" means the risk management and own risk and solvency
27 assessment act.

28 (b) "Commissioner" means the state commissioner of insurance.

29 (c) "Insurance group" means those insurers and affiliates included
30 within an insurance holding company system as defined in K.S.A. 40-
31 3302, and amendments thereto.

32 (d) "Insurer" has the meaning ascribed to it in K.S.A. 40-3302, and
33 amendments thereto, except that it shall not include agencies, authorities
34 or instrumentalities of the United States, its possessions and territories, the
35 Commonwealth of Puerto Rico, the District of Columbia, or a state or
36 political subdivision of a state.

1 (e) "NAIC" means the national association of insurance
2 commissioners.

3 (f) "Own risk and solvency assessment" or "ORSA" means a
4 confidential internal assessment, appropriate to the nature, scale and
5 complexity of an insurer or insurance group, conducted by that insurer or
6 insurance group of the material and relevant risks associated with the
7 insurer or insurance group's current business plan and the sufficiency of
8 capital resources to support those risks.

9 (g) "ORSA guidance manual" means the current version of the own
10 risk and solvency assessment guidance manual developed and adopted by
11 the NAIC, as in effect on January 1, 2017.

12 (h) "ORSA summary report" means a confidential high-level
13 summary of an insurer or insurance group's ORSA.

14 Sec. 3. An insurer shall maintain a risk management framework to
15 assist the insurer with identifying, assessing, monitoring, managing and
16 reporting on its material and relevant risks. This requirement may be
17 satisfied if the insurance group of which the insurer is a member maintains
18 a risk management framework applicable to the operations of the insurer.

19 Sec. 4. Subject to section 6, and amendments thereto, an insurer or
20 the insurance group of which the insurer is a member shall regularly
21 conduct an ORSA consistent with a process comparable to the ORSA
22 guidance manual. The ORSA shall be conducted no less than annually, but
23 also at any time when there are significant changes to the risk profile of
24 the insurer or the insurance group of which the insurer is a member.

25 Sec. 5. (a) Upon the commissioner's request, and no more than once
26 each year, an insurer shall submit to the commissioner an ORSA summary
27 report or any combination of reports that together contain the information
28 described in the ORSA guidance manual, applicable to the insurer and the
29 insurance group of which it is a member. Notwithstanding any request
30 from the commissioner, if the insurer is a member of an insurance group,
31 the insurer shall submit the reports required by this subsection if the
32 commissioner is the lead state commissioner of the insurance group as
33 determined by the procedures within the financial analysis handbook
34 adopted by the NAIC.

35 (b) The reports shall include a signature of the insurer or insurance
36 group's chief risk officer or other executive having responsibility for the
37 oversight of the insurer's enterprise risk management process attesting to
38 the best of such person's belief and knowledge that the insurer applies the
39 enterprise risk management process described in the ORSA summary
40 report and that a copy of the report has been provided to the insurer's board
41 of directors or appropriate committee thereof.

42 (c) An insurer may comply with subsection (a) by providing the most
43 recent and substantially similar reports provided by the insurer or another

1 member of an insurance group of which the insurer is a member to the
2 commissioner of another state or to a supervisor or regulator of a foreign
3 jurisdiction, if that report provides information that is comparable to the
4 information described in the ORSA guidance manual. Any such report in a
5 language other than English must be accompanied by a translation of that
6 report into the English language.

7 (d) The ORSA summary report shall be prepared consistent with the
8 ORSA guidance manual, subject to the requirements of subsection (e).
9 Documentation and supporting information shall be maintained and made
10 available upon examination or upon request of the commissioner.

11 (e) The review of the ORSA summary report and any additional
12 requests for information shall be made using similar procedures currently
13 used in the analysis and examination of multi-state or global insurers and
14 insurance groups.

15 Sec. 6. (a) An insurer shall be exempt from the requirements of this
16 act if:

17 (1) The insurer has annual written and unaffiliated assumed premium,
18 including international direct and assumed premium but excluding
19 premiums reinsured with the federal crop insurance corporation and
20 federal flood program, less than \$500,000,000; and

21 (2) The insurance group of which the insurer is a member has annual
22 direct written and unaffiliated assumed premium, including international
23 direct and assumed premium, but excluding premiums reinsured with the
24 federal crop insurance corporation and federal flood program, less than
25 \$1,000,000,000.

26 (b) If an insurer qualifies for exemption pursuant to subsection (a)(1),
27 but the insurance group of which the insurer is a member does not qualify
28 for exemption pursuant to subsection (a)(2), then the ORSA summary
29 report that may be required pursuant to section 5, and amendments thereto,
30 shall include every insurer within the insurance group. This requirement
31 may be satisfied by the submission of more than one ORSA summary
32 report for any combination of insurers provided any combination of
33 reports includes every insurer within the insurance group.

34 (c) If an insurer does not qualify for exemption pursuant to subsection
35 (a)(1), but the insurance group of which it is a member qualifies for
36 exemption pursuant to subsection (a)(2), then the only ORSA summary
37 report that may be required pursuant to section 5, and amendments thereto,
38 shall be the report applicable to that insurer.

39 (d) An insurer that does not qualify for exemption pursuant to
40 subsection (a) may apply to the commissioner for a waiver from the
41 requirements of this act based upon unique circumstances. In deciding
42 whether to grant the insurer's request for waiver, the commissioner may
43 consider the type and volume of business written, ownership and

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

7 (e) Notwithstanding the exemptions stated in this section:

8 (1) The commissioner may require that an insurer maintain a risk
9 management framework, conduct an ORSA and file an ORSA summary
10 report based on unique circumstances including, but not limited to, the
11 type and volume of business written, ownership and organizational
12 structure, federal agency requests and international supervisor requests.

13 (2) The commissioner may require that an insurer maintain a risk
14 management framework, conduct an ORSA and file an ORSA summary
15 report if the insurer has risk-based capital for a company action level event
16 as set forth in K.S.A. 40-2c01 et seq., and K.S.A. 40-2d01 et seq., and
17 amendments thereto, meets one or more of the standards of an insurer
18 deemed to be in hazardous financial condition as defined in K.A.R. 40-1-
19 38, or otherwise exhibits qualities of a troubled insurer as determined by
20 the commissioner.

21 (f) If an insurer that qualifies for an exemption pursuant to subsection
22 (a) subsequently no longer qualifies for that exemption due to changes in
23 premium as reflected in the insurer's most recent annual statement or in the
24 most recent annual statements of the insurers within the insurance group of
25 which the insurer is a member, the insurer shall have one year following
26 the year the threshold is exceeded to comply with the requirements of this
27 act.

28 Sec. 7. (a) Documents, materials or other information, including the
29 ORSA summary report, in the possession or control of the department of
30 insurance that are obtained or created by or disclosed to the commissioner
31 or any other person under this act, are recognized by this state as being
32 proprietary and to contain trade secrets. All such documents, materials, or
33 other information shall be confidential by law and privileged; shall not be
34 subject to the open records act, K.S.A. 45-215 et seq., and amendments
35 thereto; and shall not be subject to subpoena and shall not be subject to
36 discovery or admissible in evidence in any private civil action. However,
37 the commissioner is authorized to use the documents, materials or other
38 information in the furtherance of any regulatory or legal action brought as
39 part of the commissioner's official duties. The commissioner shall not
40 otherwise make the documents, materials or other information public
41 without the prior written consent of the insurer. ~~The provisions of this~~
42 ~~subsection shall expire on July 1, 2021, unless the legislature reviews and~~
43 ~~re-enacts this provision pursuant to K.S.A. 45-229, and amendments~~

1 ~~thereto, prior to July 1, 2022.~~

2 (b) Neither the commissioner nor any person who received
3 documents, materials or other ORSA-related information, through
4 examination or otherwise while acting under the authority of the
5 commissioner, or with whom such documents, materials or other
6 information are shared pursuant to this act, shall be permitted or required
7 to testify in any private civil action concerning any confidential
8 documents, materials or information subject to subsection (a).

9 (c) In order to assist in the performance of the commissioner's
10 regulatory duties, the commissioner:

11 (1) May, upon request, share documents, materials or other ORSA-
12 related information, including the confidential and privileged documents,
13 materials or information subject to subsection (a), including proprietary
14 and trade secret documents and materials with other state, federal and
15 international financial regulatory agencies, including members of any
16 supervisory college as defined in K.S.A. 40-3316, and amendments
17 thereto, the NAIC and with any third-party consultants designated by the
18 commissioner, provided that the recipient agrees in writing to maintain the
19 confidentiality and privileged status of the ORSA-related documents,
20 materials or other information and has verified in writing the legal
21 authority to maintain confidentiality;

22 (2) may receive documents, materials or other ORSA-related
23 information, including otherwise confidential and privileged documents,
24 materials or information, including proprietary and trade secret
25 information or documents, from regulatory officials of other foreign or
26 domestic jurisdictions, including members of any supervisory college as
27 defined in K.S.A. 40-3316, and amendments thereto, and the NAIC, and
28 shall maintain as confidential or privileged any documents, materials or
29 information received with notice or the understanding that it is confidential
30 or privileged under the laws of the jurisdiction that is the source of the
31 document, material or information; and

32 (3) shall enter into a written agreement with the NAIC or a third-party
33 consultant governing sharing and use of information provided pursuant to
34 this act, consistent with this subsection that shall:

35 (A) Specify procedures and protocols regarding the confidentiality
36 and security of information shared with the NAIC or a third-party
37 consultant pursuant to this act, including procedures and protocols for
38 sharing by the NAIC with other state regulators from states in which the
39 insurance group has domiciled insurers. The agreement shall provide that
40 the recipient agrees in writing to maintain the confidentiality and
41 privileged status of the ORSA-related documents, materials or other
42 information and has verified in writing the legal authority to maintain
43 confidentiality;

1 (B) specify that ownership of information shared with the NAIC or a
2 third-party consultant pursuant to this act remains with the commissioner
3 and use of the information by the NAIC or a third-party consultant is
4 subject to the direction of the commissioner;

5 (C) prohibit the NAIC or third-party consultant from storing the
6 information shared pursuant to this act in a permanent database after the
7 underlying analysis is completed;

8 (D) require prompt notice to be given to an insurer whose confidential
9 information in the possession of the NAIC or a third-party consultant
10 pursuant to this act is subject to a request or subpoena to the NAIC or a
11 third-party consultant for disclosure or production;

12 (E) require the NAIC or a third-party consultant to consent to
13 intervention by an insurer in any judicial or administrative action in which
14 the NAIC or a third-party consultant may be required to disclose
15 confidential information about the insurer shared with the NAIC or a third-
16 party consultant pursuant to this act; and

17 (F) in the case of an agreement involving a third party consultant,
18 provide for the insurer's written consent.

19 (d) The sharing of information and documents by the commissioner
20 pursuant to this act shall not constitute a delegation of regulatory authority
21 or rulemaking and the commissioner is solely responsible for the
22 administration, execution and enforcement of the provisions of this act.

23 (e) No waiver of any applicable privilege or claim of confidentiality
24 in the documents, proprietary and trade secret materials or other ORSA-
25 related information shall occur as a result of disclosure of such ORSA-
26 related information or documents to the commissioner under this section
27 or as a result of sharing as authorized in this act.

28 (f) Documents, materials or other information in the possession or
29 control of the NAIC or third-party consultants pursuant to this act shall be
30 confidential by law and privileged, shall not be subject to subpoena and
31 shall not be subject to discovery or admissible as evidence in any private
32 civil action.

33 Sec. 8. Any insurer failing, without just cause, to timely file the
34 ORSA summary report as required in this act shall be required, after notice
35 and hearing, to pay a penalty for each day's delay, to be recovered by the
36 commissioner. The penalty so recovered shall be paid into the state
37 general revenue fund. The maximum penalty under this section is \$50,000.
38 The commissioner may reduce the penalty if the insurer demonstrates to
39 the commissioner that the imposition of the penalty would constitute a
40 financial hardship to the insurer.

41 Sec. 9. If any provision of this act, or the application thereof to any
42 person or circumstance is held invalid, such determination shall not affect
43 the provisions or applications of this act which can be given effect without

1 the invalid provision or application, and to that end, the provisions of this
2 act are severable.

3 Sec. 10. The first filing of the ORSA summary report shall be in 2017
4 pursuant to section 5, and amendments thereto, of this act.

5 ***Sec. 11. The provisions of this act shall expire on July 1, 2022,***
6 ***unless the legislature reviews and reenacts the provisions related to***
7 ***confidentiality in section 1 and section 7, and amendments thereto,***
8 ***pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1,***
9 ***2022.***

10 ~~Sec. 12.~~ ***12.*** This act shall take effect and be in force from and after
11 January 1, 2017, and its publication in the statute book.