

## **Risk Management and Own Risk and Solvency Assessment Act; SB 76**

**SB 76** creates the Risk Management and Own Risk and Solvency Assessment Act (Act). The requirements of the Act apply to certain insurers and insurance groups transacting business in Kansas.

The Act:

- Provides requirements for maintaining a risk management framework and completing an own risk and solvency assessment (ORSA) summary report with the Insurance Commissioner; and
- Contains, along with the ORSA summary report, confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or group filing the report. The bill further states the "information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or group if the information is made public. The ORSA summary report shall be a confidential document filed with the commissioner and shall only be shared as stated herein and to assist the commissioner in the performance of the commissioner's duties. In no event shall the ORSA summary report be subject to public disclosure."

### ***Definitions***

The bill creates definitions associated with the Act, including:

- Insurance group – those insurers and affiliates included within an insurance holding company system;
- Own risk and solvency assessment or ORSA – a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks;
- ORSA Guidance Manual – the current version of the ORSA manual developed and adopted by the National Association of Insurance Commissioners (NAIC), as in effect on January 1, 2017; and
- ORSA Summary Report – a confidential high-level summary of an insurer or insurance group's ORSA.

### ***Requirements on Insurers and Insurance Groups***

Under the requirements specified in the bill, an insurer will be required to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing,

and reporting on its material and relevant risks. This requirement could be satisfied if the insurance group of which the insurer is a member maintains an applicable risk management framework. An insurer or insurance group is required to regularly conduct, at least annually and when there are significant changes to the risk profile of the insurer or the insurance group, an ORSA consistent with the process specified in the ORSA Guidance Manual.

Upon the request of the Insurance Commissioner, and on an annual basis, an insurer will be required to submit to the Commissioner an ORSA Summary Report or a combination of reports that contain information described in the ORSA Guidance Manual. The reports will be required to include the signature of an officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process. Documentation and supporting material associated with the ORSA Summary Report is required to be maintained and made available upon examination or at the request of the Commissioner. The bill provides reporting requirements for insurers and insurance groups making reports to commissioners in other states and regulators in foreign jurisdictions.

### ***Exemptions; Risk Management Framework***

The bill exempts insurers from the requirements of the Act if:

- The insurer has an annual written and unaffiliated assumed premium, including international and direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and
- The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

The bill further clarifies ORSA Summary Report filing requirements for those insurers and insurance groups that meet one of the two allowable exemptions and requests for waivers from reporting by an insurer or insurance group. The Commissioner is authorized to require an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report based on unique circumstances, such as the type and volume of business written, ownership and organizational structure, and federal agency requests and international supervisor requests. The bill also provides for the filing of certain information by an insurer in the event the insurer no longer qualifies for an exemption.

### ***Confidentiality—Proprietary Information; Duties of the Insurance Commissioner***

The bill specifies that documents, materials, or other information, including the ORSA Summary Report, in the possession or control of the Department of Insurance that are obtained or created by or disclosed to the Commissioner or any other person under the Act are recognized by this state as being proprietary and to contain trade secrets. The bill declares that all such documents, materials, or other information is confidential by law and privileged, not subject to the Kansas Open Records Act, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action. The bill grants the Commissioner the

authority to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner will not be permitted to otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Further, neither the Commissioner nor any other person in receipt of the documents, materials, or other ORSA-related information will be permitted or required to testify in any private civil action concerning any such confidential documents.

The bill specifies certain agreements, arrangements, procedures, and notifications to gather information and share confidential and privileged documents, materials, and ORSA-related information the Commissioner could utilize to perform the regulatory duties. The bill further specifies that documents, materials, or other information in the possession or control of the NAIC or a third-party consultant shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

### ***Penalty***

If an insurer fails, without just cause, to timely file its ORSA Summary Report, the bill requires the insurer, after notice and hearing, to pay a penalty for each day's delay, to be recovered by the Insurance Commissioner. The bill further provides the recovered penalty must be paid into the State General Fund. The maximum penalty allowed under the Act is \$50,000. The Commissioner is allowed to reduce the penalty if the insurer demonstrates the imposition of the penalty would constitute a financial hardship.

### ***Severability; Effective Dates***

The bill provides, if any provision of the Act or application thereof is held invalid, the determination will not affect the provisions or application of the Act which can be given effect without the invalid provision or application and, to that end, the provisions of the Act are severable.

The bill specifies the first filing of the ORSA Summary Report will be in 2017 and the Act will take effect and be in force from and after January 1, 2017, and its publication in the statute book.