
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 969 Session of 2013

INTRODUCED BY WHITE, STACK, SCHWANK, RAFFERTY AND MENSCH,
MAY 29, 2013

REFERRED TO BANKING AND INSURANCE, MAY 29, 2013

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," providing
13 for risk management and own risk solvency assessment.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The act of May 17, 1921 (P.L.789, No.285), known
17 as The Insurance Department Act of 1921, is amended by adding an
18 article to read:

19 ARTICLE XIII

20 RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT

21 Section 1301. Purpose and scope of article.

22 (a) Purpose.--The purpose of this article is to:

23 (1) Require an insurer or insurance group to maintain a

1 risk management framework and complete an own risk and
2 solvency assessment (ORSA).

3 (2) Set forth the requirements for filing an ORSA
4 summary report with the Insurance Department.

5 (3) Provide for the confidential treatment of the ORSA,
6 the ORSA summary report and other ORSA-related information,
7 which contain trade secrets and other proprietary information
8 that, if made public, could potentially cause the insurer or
9 insurance group competitive harm or disadvantage.

10 (b) Scope.--The requirements of this article shall apply to
11 all insurers domiciled in this Commonwealth unless exempt under
12 section 1306.

13 Section 1302. Definitions.

14 The following words and phrases when used in this article
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Commissioner." The Insurance Commissioner of the
18 Commonwealth.

19 "Department." The Insurance Department of the Commonwealth.

20 "Domestic insurer." An insurer that is incorporated or
21 organized under the laws of this Commonwealth.

22 "Insurance group." The insurers and affiliates included
23 within an insurance holding company system as defined in section
24 1401 of the act of May 17, 1921 (P.L.682, No.284), known as The
25 Insurance Company Law of 1921.

26 "Insurer." Any fraternal benefit society, health maintenance
27 organization, preferred provider organization, company,
28 association, exchange, hospital plan corporation as defined in
29 and subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan
30 corporations) or professional health services plan corporation

1 subject to 40 Pa.C.S. Ch. 63 (relating to professional health
2 services plan corporations), authorized by the Insurance
3 Commissioner to transact the business of insurance in this
4 Commonwealth except that the term shall not include:

5 (1) the Commonwealth or any agency or instrumentality
6 thereof; or

7 (2) agencies, authorities or instrumentalities of the
8 United States, its possessions and territories, the
9 Commonwealth of Puerto Rico, the District of Columbia or a
10 state or political subdivision.

11 "NAIC." The National Association of Insurance Commissioners
12 or successor organization and its affiliates and subsidiaries.

13 "ORSA guidance manual." The current version of the *Own Risk*
14 *and Solvency Assessment Guidance Manual* developed and adopted by
15 the NAIC and as amended. A change in the ORSA guidance manual
16 will be effective on January 1 following the calendar year in
17 which the change was adopted by the NAIC.

18 "ORSA-related information." The ORSA, ORSA summary report,
19 risk management framework or any documents, materials or other
20 information related to an insurer or insurer group's ORSA, ORSA
21 summary or risk management framework.

22 "ORSA summary report." The confidential high-level summary
23 of an insurer or insurance group's ORSA.

24 "Own risk and solvency assessment" or "ORSA"." A
25 confidential internal assessment, appropriate to the nature,
26 scale and complexity of an insurer or insurance group, conducted
27 by that insurer or insurance group, of the material and relevant
28 risks associated with the insurer or insurance group's current
29 business plan and the sufficiency of capital resources to
30 support those risks.

1 Section 1303. Risk management framework.

2 An insurer shall maintain a risk management framework for
3 identifying, assessing, monitoring, managing and reporting its
4 material and relevant risks. This requirement may be satisfied
5 if the insurance group of which the insurer is a member
6 maintains a risk management framework applicable to the
7 operations of the insurer.

8 Section 1304. ORSA requirement.

9 An insurer, or the insurance group of which the insurer is a
10 member, shall conduct an ORSA consistent with the guidelines set
11 forth in the ORSA guidance manual. The ORSA shall be conducted
12 regularly, but no less frequently than annually, and at any time
13 when there are significant changes to the risk profile of the
14 insurer or the insurance group of which the insurer is a member.

15 Section 1305. ORSA summary report.

16 (a) General rule.--Beginning January 1, 2015, and every year
17 thereafter, a domestic insurer or an insurer that is a member of
18 an insurance group of which Pennsylvania is the lead state as
19 determined by the financial analysis handbook adopted by the
20 NAIC shall submit an ORSA summary report to the department once
21 per calendar year. The insurer or insurance group shall
22 determine the most appropriate date of filing based upon the
23 insurer or insurance group's internal strategic planning
24 processes and notify the department of the anticipated date of
25 filing by June 1 of each year.

26 (b) Exception.--An insurer not required to submit an ORSA
27 summary report under subsection (a) shall do so upon the
28 department's request, but not more than once per calendar year.
29 The insurer shall determine the most appropriate date of the
30 filing based upon the insurer's internal strategic planning

1 processes and notify the department of the anticipated date of
2 filing within 30 days of the department's request.

3 (c) Form of summary report.--An insurer may comply with
4 subsection (a) or (b) by providing to the department either of
5 the following:

6 (1) A combination of reports that together contain the
7 information described in the ORSA guidance manual.

8 (2) A copy of the most recent reports submitted by the
9 insurer, or another member of an insurance group of which the
10 insurer is a member, to the chief insurance regulatory
11 official of another state or to a supervisor or regulator of
12 a foreign jurisdiction, if that report is substantially
13 similar to the ORSA summary report. For purposes of this
14 section, "substantially similar" means containing information
15 comparable to the information described in the ORSA guidance
16 manual as determined by the commissioner. If the report is in
17 a language other than English, it must be accompanied by a
18 translation of that report into the English language.

19 (d) Attestation.--The ORSA summary report must include a
20 signature of the insurer or insurance group's chief risk officer
21 or other executive having responsibility for the oversight of
22 the insurer's enterprise risk management process attesting to
23 the best of that person's belief and knowledge that the insurer
24 applies the enterprise risk management process described in the
25 ORSA summary report and that a copy of the report has been
26 provided to the insurer's board of directors or the appropriate
27 committee thereof.

28 (e) Compliance with ORSA guidance manual.--The ORSA summary
29 report must be prepared in accordance with the ORSA guidance
30 manual. Documentation and supporting information must be

1 maintained and made available upon request in an examination
2 conducted pursuant to section 1406 of the act of May 17, 1921
3 (P.L.682, No.284), known as The Insurance Company Law of 1921,
4 or Article IX.

5 (f) Review by department.--The department shall review the
6 ORSA summary report and make additional requests for information
7 using procedures similar to current procedures for coordinating
8 analysis and examination of multistate or global insurers and
9 insurance groups.

10 (g) Summary of material changes and updates.--The ORSA
11 summary report should also include a short summary of material
12 changes and updates to the ORSA summary report since the prior
13 year.

14 Section 1306. Exemption.

15 (a) General rule.--An insurer is exempt from the
16 requirements of this article, if:

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

22 (2) the insurer is a member of an insurance group, the
23 insurance group has annual direct written and unaffiliated
24 assumed premium including international direct and assumed
25 premium, but excluding premiums reinsured with the Federal
26 Crop Insurance Corporation and Federal Flood Program, less
27 than \$1,000,000,000.

28 (b) Partial exemption for insurer.--If an insurer is exempt
29 under subsection (a)(1), but the insurance group of which the
30 insurer is a member is not exempt under subsection (a)(2), then

1 the ORSA summary report must include every insurer within the
2 insurance group. This requirement may be satisfied by the
3 submission of more than one ORSA summary report for any
4 combination of insurers if the reports include every insurer
5 within the insurance group.

6 (c) Partial exemption for insurance group.--If an insurer is
7 not exempt under subsection (a)(1), but the insurance group of
8 which the insurer is a member is exempt under subsection (a)(2),
9 then the insurer shall file the ORSA summary report applicable
10 only to the insurer.

11 (d) Waiver.--An insurer that is not exempt under subsection
12 (a) may apply to the commissioner for a waiver from the
13 requirements of this article based upon unique circumstances. If
14 the insurer is a member of an insurance group with insurers
15 domiciled in more than one state, the commissioner shall
16 coordinate with the lead state commissioner and with the other
17 domiciliary commissioners in considering whether to grant the
18 insurer's request for a waiver. In deciding whether to grant the
19 insurer's request for waiver, the commissioner may consider:

- 20 (1) The type and volume of business written.
21 (2) Ownership and organizational structure.
22 (3) Material reduction in risk or risk exposures.
23 (4) Any other factor the commissioner determines to be
24 relevant to whether a wavier should be granted.

25 (e) Additional requirements.--Notwithstanding the exemptions
26 under subsection (a):

- 27 (1) The commissioner may require that an insurer
28 maintain a risk management framework, conduct an ORSA and
29 file an ORSA summary report based on unique circumstances,
30 including the type and volume of business written, ownership

1 and organizational structure, Federal agency requests and
2 international supervisor requests.

3 (2) The commissioner may require that an insurer
4 maintain a risk management framework, conduct an ORSA and
5 file an ORSA summary report if the insurer:

6 (i) has risk-based capital for a company action
7 level event as set forth in sections 506-A and 505-B;

8 (ii) meets one or more of the standards of an
9 insurer deemed to be in hazardous financial condition as
10 defined in 31 Pa. Code Part VIII, Ch. 160 (relating to
11 standards to define insurers deemed to be in hazardous
12 financial condition); or

13 (iii) otherwise exhibits qualities of a troubled
14 insurer as determined by the commissioner.

15 (3) If an insurer exempt under subsection (a) no longer
16 qualifies for that exemption due to changes in premium as
17 reflected in the insurer's most recent annual statement or in
18 the most recent annual statements of the insurers within the
19 insurance group of which the insurer is a member, the insurer
20 shall have one year after the year the threshold is exceeded
21 to comply with the requirements of this article.

22 Section 1307. Third-party consultants.

23 The department may retain, at the insurer's expense, third-
24 party consultants, including attorneys, actuaries, accountants
25 and other experts not otherwise a part of the department's staff
26 as may be reasonably necessary to assist the department in
27 reviewing the risk management framework, ORSA, ORSA summary
28 report or the insurer's compliance with this article. Any
29 persons so retained shall be under the direction and control of
30 the department and shall act in a purely advisory capacity.

1 Third-party consultants are subject to the same confidentiality
2 standards and requirements as the department.

3 Section 1308. Confidentiality.

4 (a) General rule.--The ORSA-related information that is
5 produced by, obtained by or disclosed to, the department or any
6 other person under this article shall be privileged and given
7 confidential treatment and shall not be:

8 (1) Subject to discovery or admissible as evidence in a
9 private civil action.

10 (2) Subject to subpoena.

11 (3) Subject to the act of February 14, 2008 (P.L.6,
12 No.3), known as the Right-to-Know Law.

13 (4) Made public by the department or any other person
14 without the prior written consent of the insurer to which it
15 pertains, except as provided in subsection (c).

16 (b) Private civil actions.--The commissioner, department or
17 any individual or person who receives ORSA-related information
18 while acting under the authority of the commissioner or
19 department or with whom the ORSA-related information is shared
20 pursuant to this article shall not be permitted or required to
21 testify in any private civil action concerning the ORSA-related
22 information.

23 (c) Use of ORSA-related information by the department.--To
24 assist in the performance of regulatory duties, the department:

25 (1) May use ORSA-related information in furtherance of
26 any regulatory or legal action brought as part of the
27 department's official duties.

28 (2) May share ORSA-related information with the NAIC,
29 regulatory or law enforcement officials of this Commonwealth
30 or other jurisdictions, group supervisors and members of any

1 supervisory college under section 1406.1 of the act of May
2 17, 1921 (P.L.682, No.284), known as The Insurance Company
3 Law of 1921, provided that, prior to receiving the ORSA-
4 related information, the recipient demonstrates by written
5 statement the necessary authority and intent to provide the
6 same confidential treatment as required by this article.

7 (3) May receive and maintain as confidential ORSA-
8 related information from the NAIC, regulatory or law
9 enforcement officials of this Commonwealth or other
10 jurisdictions, group supervisors and members of any
11 supervisory college under section 1406.1 of The Insurance
12 Company Law of 1921 in which the ORSA-related information is
13 confidential by law in those jurisdictions. ORSA-related
14 information obtained under this paragraph shall be given
15 confidential treatment, may not be subject to subpoena and
16 may not be made public by the department, commissioner or any
17 other person.

18 (4) Shall enter into written agreements with the NAIC or
19 a third-party consultant governing sharing and use of
20 information provided under this article that includes all of
21 the following:

22 (i) Specific procedures and protocols for
23 maintaining the confidentiality and security of ORSA-
24 related information.

25 (ii) Procedures and protocols for sharing ORSA-
26 related information with regulators from other states in
27 which the insurance group has domiciled insurers,
28 including a written acknowledgment of the recipient's
29 intent and legal authority to maintain the confidential
30 and privileged status of the ORSA-related information.

1 (iii) A provision specifying that ownership of the
2 ORSA-related information shared remains with the
3 department and that the use of the ORSA-related
4 information is subject to the direction and approval of
5 the department.

6 (iv) A provision that prohibits storing, in a
7 permanent database after the underlying analysis is
8 completed, ORSA-related information shared pursuant to
9 this article.

10 (v) A provision requiring the NAIC or third-party
11 consultant, where permitted by law, to give prompt notice
12 to the department and to the insurer regarding any
13 subpoena, request for disclosure or request for
14 production of the insurer's ORSA-related information in
15 the possession of the NAIC or third-party consultant.

16 (vi) A requirement that the NAIC or third-party
17 consultant would consent to intervention by an insurer in
18 any judicial or administrative action in which the NAIC
19 or third-party consultant may be required to disclose
20 ORSA-related information or other confidential
21 information about the insurer or insurer group that was
22 shared under this article.

23 (d) No delegation.--The sharing of information by the
24 department under this article shall not constitute a delegation
25 of regulatory authority or rulemaking. The department is solely
26 responsible for the administration, execution and enforcement of
27 this article.

28 (e) No waiver of privilege or confidentiality.--The sharing
29 of ORSA-related information by the department as authorized by
30 this article shall not constitute a waiver of any applicable

1 privilege or claim of confidentiality.

2 (f) Information with third parties.--ORSA-related
3 information in the possession or control of the NAIC or a third-
4 party consultant as provided under this article shall:

5 (1) Be confidential and privileged.

6 (2) Not be subject to the Right-to-Know Law.

7 (3) Not be subject to subpoena.

8 (4) Not be subject to discovery or admissible in
9 evidence in any private civil action.

10 Section 1309. Sanctions.

11 An insurer that fails to timely file an ORSA summary report
12 as required under this article or by regulation shall be
13 required to pay a penalty of \$200 for each day of delay. The
14 maximum penalty under this section is \$25,000 per year.

15 Section 1310. Regulations.

16 The department may promulgate rules and regulations and issue
17 such orders as are necessary to administer and enforce this
18 article.

19 Section 2. This act shall take effect January 1, 2015, or
20 immediately, whichever is later.