
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. **1481** Session of
2013

 INTRODUCED BY MICOZZIE, DeLUCA AND CALTAGIRONE, JUNE 4, 2013

 SENATOR WHITE, BANKING AND INSURANCE, IN SENATE, AS AMENDED,
JUNE 26, 2013

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," providing for ELECTRONIC DELIVERY <--
12 OF INFORMATION AND POSTING OF POLICIES AND ENDORSEMENTS AND
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.682, No.284), known <--~~
17 ~~as The Insurance Company Law of 1921, is amended by adding an~~
18 ~~article to read:~~

19 SECTION 1. THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN <--
20 AS THE INSURANCE COMPANY LAW OF 1921, IS AMENDED BY ADDING A
21 SECTION TO READ:

22 SECTION 354.7. ELECTRONIC DELIVERY OF INFORMATION AND
23 POSTING OF POLICIES AND ENDORSEMENTS.--(A) (1) WITH REGARD TO

1 ANY LAW OR REGULATION OF THIS COMMONWEALTH REQUIRING AN INSURER
2 TO PROVIDE, SEND OR DELIVER INFORMATION, NOTICES OR DOCUMENTS IN
3 WRITING TO AN INSURED OR APPLICANT AS PART OF AN INSURANCE
4 TRANSACTION IF THE INSURER AND THE INSURED OR APPLICANT HAVE
5 AGREED TO CONDUCT A TRANSACTION BY ELECTRONIC MEANS, THE
6 REQUIREMENT IS SATISFIED IF THE INFORMATION IS PROVIDED, SENT OR
7 DELIVERED, AS THE CASE MAY BE, IN AN ELECTRONIC RECORD CAPABLE
8 OF RETENTION BY THE RECIPIENT AT THE TIME OF RECEIPT. AN
9 ELECTRONIC RECORD IS NOT CAPABLE OF RETENTION BY THE RECIPIENT
10 IF THE SENDER OR ITS INFORMATION PROCESSING SYSTEM INHIBITS THE
11 ABILITY OF THE RECIPIENT TO PRINT OR STORE THE ELECTRONIC
12 RECORD. THE PROVISIONS OF THE ACT OF DECEMBER 16, 1999 (P.L.971,
13 NO.69), KNOWN AS THE "ELECTRONIC TRANSACTIONS ACT," SHALL
14 OTHERWISE APPLY TO THE INSURER AND THE INSURED OR APPLICANT WITH
15 RESPECT TO THE PROVIDING, SENDING OR DELIVERING OF THE
16 INFORMATION, NOTICES OR DOCUMENTS.

17 (2) ANY LAW OR REGULATION REQUIRING AN INSURER TO SEND
18 MULTIPLE COPIES OF THE INFORMATION, NOTICES OR DOCUMENTS SHALL
19 NOT APPLY WHERE THE INSURER PROVIDES, SENDS OR DELIVERS THE
20 INFORMATION, NOTICES OR DOCUMENTS IN ACCORDANCE WITH THE
21 PROVISIONS OF THE "ELECTRONIC TRANSACTIONS ACT."

22 (3) AN INSURER PROVIDING, SENDING OR DELIVERING
23 INFORMATION, NOTICES OR DOCUMENTS SHALL SATISFY ANY FONT, SIZE,
24 SPACING OR OTHER FORMAT REQUIREMENTS IF THE ELECTRONIC
25 INFORMATION, NOTICES OR DOCUMENTS AS PROVIDED, SENT OR DELIVERED
26 BY THE INSURER MEET THOSE REQUIREMENTS AND MAY BE PRINTED OR
27 SAVED BY THE INSURED OR APPLICANT USING PROGRAMS OR APPLICATIONS
28 WIDELY AVAILABLE ON THE INTERNET AND FREE OF CHARGE TO USE.

29 (B) NOTWITHSTANDING SUBSECTION (A) OR ANY OTHER LAW OR
30 REGULATION OF THIS COMMONWEALTH REQUIRING AN INSURER TO PROVIDE,

1 SEND OR DELIVER AN INSURANCE POLICY OR ENDORSEMENT TO AN
2 INSURED, AN INSURER MAY ELECT TO POST A POLICY OR ENDORSEMENT
3 THAT DOES NOT CONTAIN PERSONALLY IDENTIFIABLE INFORMATION ON ITS
4 INTERNET WEBSITE PROVIDED IT COMPLIES WITH ALL OF THE FOLLOWING:

5 (1) THE POLICY OR ENDORSEMENT IS EASILY ACCESSIBLE ON THE
6 INTERNET WEBSITE SO LONG AS IT IS IN FORCE.

7 (2) THE POLICY OR ENDORSEMENT IS POSTED IN A MANNER THAT
8 ENABLES THE INSURED TO PRINT AND SAVE IT USING PROGRAMS OR
9 APPLICATIONS WIDELY AVAILABLE ON THE INTERNET AND FREE OF CHARGE
10 TO USE.

11 (3) THE INSURER PROVIDES NOTICE, IN THE MANNER IT NORMALLY
12 COMMUNICATES WITH THE INSURED, AT THE TIME OF ISSUANCE OR
13 RENEWAL OF THE POLICY OR ENDORSEMENT, OR AT THE TIME OF ANY
14 CHANGES TO THE POLICY OR ENDORSEMENT, OF A METHOD BY WHICH THE
15 INSURED MAY OBTAIN, UPON REQUEST AND WITHOUT CHARGE, A PAPER OR
16 ELECTRONIC COPY OF THE POLICY OR ENDORSEMENT, OR ANY CHANGES TO
17 THEM, AND THE INTERNET ADDRESS WHERE THE POLICY AND ENDORSEMENT
18 ARE POSTED.

19 (4) THE INSURER PROVIDES ALL OF THE FOLLOWING INFORMATION ON
20 EACH DECLARATIONS PAGE, OR SIMILAR DOCUMENT AS APPROPRIATE TO
21 THE LINE OF COVERAGE, PROVIDED TO THE INSURED AT THE TIME OF
22 ISSUANCE OR RENEWAL:

23 (I) A DESCRIPTION OF THE EXACT POLICY AND ENDORSEMENT FORMS
24 PURCHASED BY THE INSURED.

25 (II) A METHOD BY WHICH THE INSURED MAY OBTAIN, UPON REQUEST
26 AND WITHOUT CHARGE, A PAPER OR ELECTRONIC COPY OF THE POLICY OR
27 ENDORSEMENT, OR ANY CHANGES TO THEM.

28 (III) THE INTERNET ADDRESS WHERE THE POLICY AND ENDORSEMENT
29 ARE POSTED.

30 (5) AFTER EXPIRATION OF THE POLICY OR ENDORSEMENT, THE

1 INSURER ARCHIVES THE EXPIRED POLICIES OR ENDORSEMENTS IN
2 ACCORDANCE WITH THE INSURANCE DEPARTMENT'S GENERAL RECORD
3 RETENTION REQUIREMENTS AND MAKES THEM AVAILABLE UPON REQUEST.

4 (C) UPON SATISFACTORY EVIDENCE OF THE VIOLATION OF THIS
5 SECTION BY AN INSURER, THE INSURANCE COMMISSIONER MAY, IN HIS
6 DISCRETION, PURSUE ONE OR MORE OF THE FOLLOWING COURSES OF
7 ACTION:

8 (1) SUSPEND OR REVOKE THE LICENSE OF THE INSURER.

9 (2) REFUSE, FOR A PERIOD NOT TO EXCEED ONE YEAR THEREAFTER,
10 TO ISSUE A NEW LICENSE TO THE INSURER.

11 (3) IMPOSE A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS
12 (\$1,000) FOR EACH ACT IN VIOLATION OF THIS SECTION.

13 SECTION 2. THE ACT IS AMENDED BY ADDING AN ARTICLE TO READ:

14 ARTICLE XXVI

15 RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT

16 Section 2601. Purpose and scope of article.

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

18 (1) Require an insurer or insurance group to maintain a
19 risk management framework and complete an own risk and
20 solvency assessment (ORSA).

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

23 (3) Provide for the confidential treatment of the ORSA,
24 the ORSA summary report and other ORSA-related information,
25 which contain trade secrets and other proprietary information
26 that, if made public, could potentially cause the insurer or
27 insurance group competitive harm or disadvantage.

28 (b) Scope.--The requirements of this article shall apply to
29 all insurers domiciled in this Commonwealth unless exempt under
30 section 2606.

1 Section 2602. Definitions.

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

5 "Commissioner." The Insurance Commissioner of the
6 Commonwealth.

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

8 "Insurance group." The insurers and affiliates included
9 within an insurance holding company system as defined in section
10 1401.

11 "Insurer." Any fraternal benefit society, health maintenance
12 organization, preferred provider organization, company,
13 association, exchange, hospital plan corporation as defined in
14 and subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan
15 corporations) or professional health services plan corporation
16 subject to 40 Pa.C.S. Ch. 63 (relating to professional health
17 services plan corporations), authorized by the Insurance
18 Commissioner to transact the business of insurance in this
19 Commonwealth except that the term shall not include:

20 (1) the Commonwealth or any agency or instrumentality
21 thereof; or

22 (2) agencies, authorities or instrumentalities of the
23 United States, its possessions and territories, the
24 Commonwealth of Puerto Rico, the District of Columbia or a
25 state or political subdivision.

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

28 "ORSA guidance manual." The current version of the *Own Risk*
29 *and Solvency Assessment Guidance Manual* developed and adopted by
30 the NAIC and as amended. A change in the ORSA guidance manual

1 will be effective on January 1 following the calendar year in
2 which the change was adopted by the NAIC.

3 "ORSA-related information." The ORSA, ORSA summary report,
4 risk management framework or any documents, materials or other
5 information related to an insurer or insurer group's ORSA, ORSA
6 summary or risk management framework.

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

9 "Own risk and solvency assessment" or "ORSA." A confidential
10 internal assessment, appropriate to the nature, scale and
11 complexity of an insurer or insurance group, conducted by that
12 insurer or insurance group, of the material and relevant risks
13 associated with the insurer or insurance group's current
14 business plan and the sufficiency of capital resources to
15 support those risks.

16 Section 2603. Risk management framework.

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

23 Section 2604. ORSA requirement.

24 An insurer, or the insurance group of which the insurer is a
25 member, shall conduct an ORSA consistent with the guidelines set
26 forth in the ORSA guidance manual. The ORSA shall be conducted
27 regularly, but no less frequently than annually, and at any time
28 when there are significant changes to the risk profile of the
29 insurer or the insurance group of which the insurer is a member.

30 Section 2605. ORSA summary report.

1 (a) General rule.--Beginning January 1, 2015, and every year
2 thereafter, a domestic insurer or an insurer that is a member of
3 an insurance group of which Pennsylvania is the lead state as
4 determined by the financial analysis handbook adopted by the
5 NAIC shall submit an ORSA summary report to the department once
6 per calendar year. The insurer or insurance group shall
7 determine the most appropriate date of filing based upon the
8 insurer or insurance group's internal strategic planning
9 processes and notify the department of the anticipated date of
10 filing by June 1 of each year.

11 (b) Exception.--An insurer not required to submit an ORSA
12 summary report under subsection (a) shall do so upon the
13 department's request, but not more than once per calendar year.
14 The insurer shall determine the most appropriate date of the
15 filing based upon the insurer's internal strategic planning
16 processes and notify the department of the anticipated date of
17 filing within 30 days of the department's request.

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

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

23 (2) A copy of the most recent reports submitted by the
24 insurer, or another member of an insurance group of which the
25 insurer is a member, to the chief insurance regulatory
26 official of another state or to a supervisor or regulator of
27 a foreign jurisdiction, if that report is substantially
28 similar to the ORSA summary report. For purposes of this
29 section, "substantially similar" means containing information
30 comparable to the information described in the ORSA guidance

1 manual as determined by the commissioner. If the report is in
2 a language other than English, it must be accompanied by a
3 translation of that report into the English language.

4 (d) Attestation.--The ORSA summary report must include a
5 signature of the insurer or insurance group's chief risk officer
6 or other executive having responsibility for the oversight of
7 the insurer's risk management process attesting to the best of
8 that person's belief and knowledge that the insurer applies the
9 risk management process described in the ORSA summary report and
10 that a copy of the report has been provided to the insurer's
11 board of directors or the appropriate committee thereof.

12 (e) Compliance with ORSA guidance manual.--The ORSA summary
13 report must be prepared in accordance with the ORSA guidance
14 manual. Documentation and supporting information must be
15 maintained and made available upon request in an examination
16 conducted pursuant to section 1406 or Article IX of the act of
17 May 17, 1921 (P.L.789, No.285), known as The Insurance
18 Department Act of 1921.

19 (f) Review by department.--The department shall review the
20 ORSA summary report and make additional requests for information
21 using procedures similar to current procedures for coordinating
22 analysis and examination of multistate or global insurers and
23 insurance groups.

24 (g) Summary of material changes and updates.--The ORSA
25 summary report should also include a short summary of material
26 changes and updates to the ORSA summary report since the prior
27 year.

28 Section 2606. Exemption.

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

1 (1) the insurer has annual direct written and
2 unaffiliated assumed premium, including international direct
3 and assumed premium but excluding premiums reinsured with the
4 Federal Crop Insurance Corporation and Federal Flood Program,
5 less than \$500,000,000; and

6 (2) the insurer is a member of an insurance group, the
7 insurance group has annual direct written and unaffiliated
8 assumed premium including international direct and assumed
9 premium, but excluding premiums reinsured with the Federal
10 Crop Insurance Corporation and Federal Flood Program, less
11 than \$1,000,000,000.

12 (b) Partial exemption for insurer.--If an insurer is exempt
13 under subsection (a)(1), but the insurance group of which the
14 insurer is a member is not exempt under subsection (a)(2), then
15 the ORSA summary report must include every insurer within the
16 insurance group. This requirement may be satisfied by the
17 submission of more than one ORSA summary report for any
18 combination of insurers if the reports include every insurer
19 within the insurance group.

20 (c) Partial exemption for insurance group.--If an insurer is
21 not exempt under subsection (a)(1), but the insurance group of
22 which the insurer is a member is exempt under subsection (a)(2),
23 then the insurer shall file the ORSA summary report applicable
24 only to the insurer.

25 (d) Waiver.--An insurer that is not exempt under subsection
26 (a) may apply to the commissioner for a waiver from the
27 requirements of this article based upon unique circumstances. If
28 the insurer is a member of an insurance group with insurers
29 domiciled in more than one state, the commissioner shall
30 coordinate with the lead state commissioner and with the other

1 domiciliary commissioners in considering whether to grant the
2 insurer's request for a waiver. In deciding whether to grant the
3 insurer's request for waiver, the commissioner may consider:

4 (1) The type and volume of business written.

5 (2) Ownership and organizational structure.

6 (3) Material reduction in risk or risk exposures.

7 (4) Any other factor the commissioner determines to be
8 relevant to whether a wavier should be granted.

9 (e) Additional requirements.--Notwithstanding the exemptions
10 under subsection (a):

11 (1) The commissioner may require that an insurer
12 maintain a risk management framework, conduct an ORSA and
13 file an ORSA summary report based on unique circumstances,
14 including the type and volume of business written, ownership
15 and organizational structure, Federal agency requests and
16 international supervisor requests. If the commissioner
17 requires an insurer to maintain a risk management framework,
18 conduct an ORSA and file an ORSA summary report under this
19 paragraph, the insurer shall have one year after receiving
20 written notice to comply with the requirement.

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

24 (i) has risk-based capital for a company action
25 level event as set forth in sections 506-A and 505-B of
26 the act of May 17, 1921 (P.L.789, No.285), known as The
27 Insurance Department Act of 1921;

28 (ii) meets one or more of the standards of an
29 insurer deemed to be in hazardous financial condition as
30 defined in 31 Pa. Code Pt. VIII Ch. 160 (relating to

1 standards to define insurers deemed to be in hazardous
2 financial condition); or

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

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

12 Section 2607. Third-party consultants.

13 (a) Authorization.--The department may retain, at the
14 insurer's expense, third-party consultants, including attorneys,
15 actuaries, accountants and other experts not otherwise a part of
16 the department's staff as may be reasonably necessary to assist
17 the department in reviewing the risk management framework, ORSA,
18 ORSA summary report or the insurer's compliance with this
19 article.

20 (b) Control.--Any persons retained under subsection (a)
21 shall be under the direction and control of the department and
22 shall act in a purely advisory capacity.

23 (c) Confidentiality.--Third-party consultants shall be
24 subject to the same confidentiality standards and requirements
25 as the department.

26 (d) Verification.--As part of the retention process, a
27 third-party consultant shall verify to the department, with
28 notice to the insurer, that it is free of a conflict of interest
29 and that it has internal procedures in place to monitor
30 compliance with a conflict and to comply with the

1 confidentiality standards and requirements of this act.

2 (e) Written consent.--A retention agreement with a third-
3 party consultant shall expressly require the written consent of
4 the insurer prior to making public information provided under
5 this act, as required under section 2608(a).

6 Section 2608. Confidentiality.

7 (a) General rule.--The ORSA-related information in the
8 possession of or the control of the department that is produced
9 by, obtained by or disclosed to, the department or any other
10 person under this article shall be privileged and given
11 confidential treatment and shall not be:

12 (1) Subject to discovery or admissible as evidence, in a
13 private civil action.

14 (2) Subject to subpoena.

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

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

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

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

29 (1) May use ORSA-related information in furtherance of
30 any regulatory or legal action brought as part of the

1 department's official duties.

2 (2) May share ORSA-related information with the NAIC,
3 regulatory or law enforcement officials of this Commonwealth
4 or other jurisdictions, group supervisors, members of any
5 supervisory college under section 1406.1 and with third-party
6 consultants under section 2607, provided that, prior to
7 receiving the ORSA-related information, the recipient
8 demonstrates by written statement the necessary authority and
9 intent to provide the same confidential treatment as required
10 by this article.

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

21 (d) Written agreements.--The department shall enter into
22 written agreements with the NAIC or a third-party consultant
23 governing sharing and use of information provided under this
24 article that includes all of the following:

25 (1) Specific procedures and protocols for maintaining
26 the confidentiality and security of ORSA-related information.

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

1 to maintain the confidential and privileged status of the
2 ORSA-related information.

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

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

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

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

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

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

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

4 (1) Be confidential and privileged.

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

6 (3) Not be subject to subpoena.

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

9 Section 2609. Sanctions.

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

14 Section 2610. Regulations.

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

18 ~~Section 2. This act shall take effect January 1, 2015.~~ <--

19 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <--

20 (1) THE ADDITION OF SECTION 354.7 OF THE ACT SHALL TAKE
21 EFFECT IN 60 DAYS.

22 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

23 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JANUARY
24 1, 2015.