

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1481 Session of 2013

INTRODUCED BY MICOZZIE AND DeLUCA, JUNE 4, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 17, 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 risk management and
12 own risk solvency assessment.

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

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
16 as The Insurance Company Law of 1921, is amended by adding an
17 article to read:

ARTICLE XXVI

RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT

20 Section 2601. Purpose and scope of article.

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

22 (1) Require an insurer or insurance group to maintain a
23 risk management framework and complete an own risk and

1 solvency assessment (ORSA).

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

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

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

12 Section 2602. Definitions.

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

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

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

19 "Insurance group." The insurers and affiliates included
20 within an insurance holding company system as defined in section
21 1401.

22 "Insurer." Any fraternal benefit society, health maintenance
23 organization, preferred provider organization, company,
24 association, exchange, hospital plan corporation as defined in
25 and subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan
26 corporations) or professional health services plan corporation
27 subject to 40 Pa.C.S. Ch. 63 (relating to professional health
28 services plan corporations), authorized by the Insurance
29 Commissioner to transact the business of insurance in this
30 Commonwealth except that the term shall not include:

1 (1) the Commonwealth or any agency or instrumentality
2 thereof; or

3 (2) agencies, authorities or instrumentalities of the
4 United States, its possessions and territories, the
5 Commonwealth of Puerto Rico, the District of Columbia or a
6 state or political subdivision.

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

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

14 "ORSA-related information." The ORSA, ORSA summary report,
15 risk management framework or any documents, materials or other
16 information related to an insurer or insurer group's ORSA, ORSA
17 summary or risk management framework.

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

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

27 Section 2603. Risk management framework.

28 An insurer shall maintain a risk management framework for
29 identifying, assessing, monitoring, managing and reporting its
30 material and relevant risks. This requirement may be satisfied

1 if the insurance group of which the insurer is a member
2 maintains a risk management framework applicable to the
3 operations of the insurer.

4 Section 2604. ORSA requirement.

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

11 Section 2605. ORSA summary report.

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

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

29 (c) Form of summary report.--An insurer may comply with
30 subsection (a) or (b) by providing to the department either of

1 the following:

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

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

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

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

30 (f) Review by department.--The department shall review the

1 ORSA summary report and make additional requests for information
2 using procedures similar to current procedures for coordinating
3 analysis and examination of multistate or global insurers and
4 insurance groups.

5 (g) Summary of material changes and updates.--The ORSA
6 summary report should also include a short summary of material
7 changes and updates to the ORSA summary report since the prior
8 year.

9 Section 2606. Exemption.

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

12 (1) the insurer has annual direct written and
13 unaffiliated assumed premium, including international direct
14 and assumed premium but excluding premiums reinsured with the
15 Federal Crop Insurance Corporation and Federal Flood Program,
16 less than \$500,000,000; and

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

23 (b) Partial exemption for insurer.--If an insurer is exempt
24 under subsection (a)(1), but the insurance group of which the
25 insurer is a member is not exempt under subsection (a)(2), then
26 the ORSA summary report must include every insurer within the
27 insurance group. This requirement may be satisfied by the
28 submission of more than one ORSA summary report for any
29 combination of insurers if the reports include every insurer
30 within the insurance group.

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

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

- 15 (1) The type and volume of business written.
16 (2) Ownership and organizational structure.
17 (3) Material reduction in risk or risk exposures.
18 (4) Any other factor the commissioner determines to be
19 relevant to whether a wavier should be granted.

20 (e) Additional requirements.--Notwithstanding the exemptions
21 under subsection (a):

- 22 (1) The commissioner may require that an insurer
23 maintain a risk management framework, conduct an ORSA and
24 file an ORSA summary report based on unique circumstances,
25 including the type and volume of business written, ownership
26 and organizational structure, Federal agency requests and
27 international supervisor requests. IF THE COMMISSIONER
28 REQUIRES AN INSURER TO MAINTAIN A RISK MANAGEMENT FRAMEWORK,
29 CONDUCT AN ORSA AND FILE AN ORSA SUMMARY REPORT UNDER THIS
30 PARAGRAPH, THE INSURER SHALL HAVE ONE YEAR AFTER RECEIVING

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1 WRITTEN NOTICE TO COMPLY WITH THE REQUIREMENT.

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

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

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

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

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

23 Section 2607. Third-party consultants.

24 (a) Authorization.--The department may retain, at the
25 insurer's expense, third-party consultants, including attorneys,
26 actuaries, accountants and other experts not otherwise a part of
27 the department's staff as may be reasonably necessary to assist
28 the department in reviewing the risk management framework, ORSA,
29 ORSA summary report or the insurer's compliance with this
30 article.

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

4 (c) Confidentiality.--Third-party consultants shall be
5 subject to the same confidentiality standards and requirements
6 as the department.

7 (d) Verification.--As part of the retention process, a
8 third-party consultant shall verify to the department, with
9 notice to the insurer, that it is free of a conflict of interest
10 and that it has internal procedures in place to monitor
11 compliance with a conflict and to comply with the
12 confidentiality standards and requirements of this act.

13 (e) Written consent.--A retention agreement with a third-
14 party consultant shall expressly require the written consent of
15 the insurer prior to making public information provided under
16 this act, as required under section 2608(a).
17 Section 2608. Confidentiality.

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

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

25 (2) Subject to subpoena.

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

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

1 (b) Private civil actions.--The commissioner, department or
2 any individual or person who receives ORSA-related information
3 while acting under the authority of the commissioner or
4 department or with whom the ORSA-related information is shared
5 pursuant to this article shall not be permitted or required to
6 testify in any private civil action concerning the ORSA-related
7 information.

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

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

13 (2) May share ORSA-related information with the NAIC,
14 regulatory or law enforcement officials of this Commonwealth
15 or other jurisdictions, group supervisors, members of any
16 supervisory college under section 1406.1 and with third-party
17 consultants under section 2607, provided that, prior to
18 receiving the ORSA-related information, the recipient
19 demonstrates by written statement the necessary authority and
20 intent to provide the same confidential treatment as required
21 by this article.

22 (3) May receive and maintain as confidential ORSA-
23 related information from the NAIC, regulatory or law
24 enforcement officials of this Commonwealth or other
25 jurisdictions, group supervisors and members of any
26 supervisory college under section 1406.1 in which the ORSA-
27 related information is confidential by law in those
28 jurisdictions. ORSA-related information obtained under this
29 paragraph shall be given confidential treatment, may not be
30 subject to subpoena and may not be made public by the

1 department, commissioner or any other person.

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

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

8 (2) Procedures and protocols for sharing ORSA-related
9 information with regulators from other states in which the
10 insurance group has domiciled insurers, including a written
11 acknowledgment of the recipient's intent and legal authority
12 to maintain the confidential and privileged status of the
13 ORSA-related information.

14 (3) A provision specifying that ownership of the ORSA-
15 related information shared remains with the department and
16 that the use of the ORSA-related information is subject to
17 the direction and approval of the department.

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

21 (5) A provision requiring the NAIC or third-party
22 consultant, where permitted by law, to give prompt notice to
23 the department and to the insurer regarding any subpoena,
24 request for disclosure or request for production of the
25 insurer's ORSA-related information in the possession of the
26 NAIC or third-party consultant.

27 (6) A requirement that the NAIC or third-party
28 consultant would consent to intervention by an insurer in any
29 judicial or administrative action in which the NAIC or third-
30 party consultant may be required to disclose ORSA-related

1 information or other confidential information about the
2 insurer or insurer group that was shared under this article.

3 (e) No delegation.--The sharing of information by the
4 department under this article shall not constitute a delegation
5 of regulatory authority or rulemaking. The department is solely
6 responsible for the administration, execution and enforcement of
7 this article.

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

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

15 (1) Be confidential and privileged.

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

17 (3) Not be subject to subpoena.

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

20 Section 2609. Sanctions.

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

25 Section 2610. Regulations.

26 The department may promulgate rules and regulations and issue
27 such orders as are necessary to administer and enforce this
28 article.

29 Section 2. This act shall take effect January 1, 2015.