

1 HB65
2 164062-4
3 By Representative Hill (M)
4 RFD: Insurance
5 First Read: 02-FEB-16

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8 SYNOPSIS: This bill would provide further for the
9 regulation of insurance by requiring certain
10 insurers to maintain a risk management framework
11 and complete an Own Risk and Solvency Assessment
12 (ORSA) to be filed with the Commissioner of
13 Insurance; by adopting a law substantially similar
14 to the Risk Management and Own Risk and Solvency
15 Assessment Model Act developed by the National
16 Association of Insurance Commissioners.

17 The bill would provide that documents and
18 other information from an insurer in an assessment
19 would be confidential and privileged except as
20 otherwise provided in the bill.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to the State Insurance Department and the
27 regulation of insurance; to add Chapter 29A to Title 27, Code

1 of Alabama 1975; to provide requirements for maintaining a
2 risk management framework and completing an Own Risk and
3 Solvency Assessment (ORSA), with instructions for filing an
4 ORSA Summary Report with the Commissioner of Insurance; and to
5 provide that documents and other information from an insurer
6 in an assessment would be confidential and privileged except
7 as otherwise provided in this act.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Chapter 29A is added to Title 27, Code of
10 Alabama 1975, to read as follows:

11 Chapter 29A. Risk Management and Own Risk and
12 Solvency Assessment.

13 §27-29A-1. Purpose and Scope.

14 (a) The purpose of this chapter is to provide the
15 requirements for maintaining a risk management framework and
16 completing an Own Risk and Solvency Assessment (ORSA) and
17 provide guidance and instructions for filing an ORSA Summary
18 Report with the Commissioner of Insurance.

19 (b) The requirements of this chapter shall apply to
20 all insurers domiciled in this state unless exempt pursuant to
21 Section 27-29A-6.

22 (c) The Legislature finds and declares that the ORSA
23 Summary Report will contain confidential and sensitive
24 information related to an insurer or insurance group's
25 identification of risks material and relevant to the insurer
26 or insurance group filing the report. This information will
27 include proprietary and trade secret information that has the

1 potential for harm and competitive disadvantage to the insurer
2 or insurance group if the information is made public. It is
3 the intent of this Legislature that the ORSA Summary Report
4 shall be a confidential document filed with the commissioner,
5 that the ORSA Summary Report will be shared only as stated
6 herein and to assist the commissioner in the performance of
7 his or her duties, and that in no event shall the ORSA Summary
8 Report be subject to public disclosure.

9 §27-29A-2. Definitions.

10 For purposes of this chapter, the following
11 definitions shall apply:

12 (1) INSURANCE GROUP. Those insurers and affiliates
13 included within an insurance holding company system as defined
14 in Chapter 29.

15 (2) INSURER. As set forth in Section 27-1-2, except
16 that it shall not include agencies, authorities, or
17 instrumentalities of the United States, its possessions and
18 territories, the Commonwealth of Puerto Rico, the District of
19 Columbia, or a state or political subdivision of a state.

20 (3) NAIC. The National Association of Insurance
21 Commissioners and its affiliates and subsidiaries.

22 (4) OWN RISK AND SOLVENCY ASSESSMENT or ORSA. A
23 confidential internal assessment, appropriate to the nature,
24 scale, and complexity of an insurer or insurance group,
25 conducted by that insurer or insurance group of the material
26 and relevant risks associated with the insurer or insurance

1 group's current business plan, and the sufficiency of capital
2 resources to support those risks.

3 (5) ORSA GUIDANCE MANUAL. The current version of the
4 Own Risk and Solvency Assessment Guidance Manual developed and
5 adopted by the NAIC and as amended from time to time. A change
6 in the ORSA Guidance Manual shall be effective on the January
7 1 following the calendar year in which the changes have been
8 adopted by the NAIC.

9 (6) ORSA SUMMARY REPORT. A confidential high level
10 summary of an insurer or insurance group's ORSA.

11 §27-29A-3. Risk Management Framework.

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

19 §27-29A-4. ORSA Requirement.

20 Subject to Section 27-29A-6, an insurer, or the
21 insurance group of which the insurer is a member, shall
22 regularly conduct an ORSA consistent with a process comparable
23 to the ORSA Guidance Manual. The ORSA shall be conducted no
24 less than annually but also at any time when there are
25 significant changes to the risk profile of the insurer or the
26 insurance group of which the insurer is a member, or both.

27 §27-29A-5. ORSA Summary Report.

1 (a) Upon the commissioner's request, and no more
2 than once each year, an insurer shall submit to the
3 commissioner an ORSA Summary Report or any combination of
4 reports that together contain the information described in the
5 ORSA Guidance Manual, applicable to the insurer or the
6 insurance group of which it is a member, or both.

7 Notwithstanding any request from the commissioner, if the
8 insurer is a member of an insurance group, the insurer shall
9 submit the report or reports required by this subsection if
10 the commissioner is the lead state commissioner of the
11 insurance group as determined by the procedures within the
12 Financial Analysis Handbook adopted by the NAIC.

13 (b) The report or reports shall include a signature
14 of the insurer or insurance group's chief risk officer or
15 other executive having responsibility for the oversight of the
16 insurer's enterprise risk management process attesting to the
17 best of his or her belief and knowledge that the insurer
18 applies the enterprise risk management process described in
19 the ORSA Summary Report and that a copy of the report has been
20 provided to the insurer's board of directors or the
21 appropriate committee thereof.

22 (c) An insurer may comply with subsection (a) by
23 providing the most recent and substantially similar report or
24 reports provided by the insurer or another member of an
25 insurance group of which the insurer is a member to the
26 commissioner of another state or to a supervisor or regulator
27 of a foreign jurisdiction, if that report provides information

1 that is comparable to the information described in the ORSA
2 Guidance Manual. A report in a language other than English
3 must be accompanied by a translation of that report into the
4 English language.

5 §27-29A-6. Exemption.

6 (a) An insurer shall be exempt from the requirements
7 of this chapter, if it meets both of the following:

8 (1) The insurer has annual direct written and
9 unaffiliated assumed premium, including international direct
10 and assumed premium but excluding premiums reinsured with the
11 Federal Crop Insurance Corporation and Federal Flood Program,
12 less than five hundred million dollars (\$500,000,000).

13 (2) The insurance group of which the insurer is a
14 member has annual direct written and unaffiliated assumed
15 premium including international direct and assumed premium,
16 but excluding premiums reinsured with the Federal Crop
17 Insurance Corporation and Federal Flood Program, less than one
18 billion dollars (\$1,000,000,000).

19 (b) If an insurer qualifies for exemption pursuant
20 to subdivision (1) of subsection (a), but the insurance group
21 of which the insurer is a member does not qualify for
22 exemption pursuant to subdivision (2) of subsection (a), then
23 the ORSA Summary Report that may be required pursuant to
24 Section 27-29A-5 shall include every insurer within the
25 insurance group. This requirement may be satisfied by the
26 submission of more than one ORSA Summary Report for any

1 combination of insurers provided any combination of reports
2 includes every insurer within the insurance group.

3 (c) If an insurer does not qualify for exemption
4 pursuant to subdivision (1) of subsection (a), but the
5 insurance group of which it is a member qualifies for
6 exemption pursuant to subdivision (2) of subsection (a), then
7 the only ORSA Summary Report that may be required pursuant to
8 Section 27-29A-5 shall be the report applicable to that
9 insurer.

10 (d) An insurer that does not qualify for exemption
11 pursuant to subsection (a) may apply to the commissioner for a
12 waiver from the requirements of this chapter based upon unique
13 circumstances. In deciding whether to grant the insurer's
14 request for waiver, the commissioner may consider the type and
15 volume of business written, ownership, and organizational
16 structure, and any other factor the commissioner considers
17 relevant to the insurer or insurance group of which the
18 insurer is a member. If the insurer is part of an insurance
19 group with insurers domiciled in more than one state, the
20 commissioner shall coordinate with the lead state commissioner
21 and with the other domiciliary commissioners in considering
22 whether to grant the insurer's request for a waiver.

23 (e) Notwithstanding the exemptions stated in this
24 section, the commissioner may require of an insurer to do both
25 of the following:

26 (1) To maintain a risk management framework, conduct
27 an ORSA, and file an ORSA Summary Report based on unique

1 circumstances including, but not limited to, the type and
2 volume of business written, ownership, and organizational
3 structure, federal agency requests, and international
4 supervisor requests.

5 (2) To maintain a risk management framework, conduct
6 an ORSA, and file an ORSA Summary Report if the insurer has
7 Risk-Based Capital for company action level event as set forth
8 in Section 27-2B-4, meets one or more of the standards of an
9 insurer deemed to be in hazardous financial condition as
10 defined by regulation of the commissioner, or otherwise
11 exhibits qualities of a troubled insurer as determined by the
12 commissioner.

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

21 §27-29A-7. Contents of ORSA Summary Report.

22 (a) The ORSA Summary Report shall be prepared
23 consistent with the ORSA Guidance Manual, subject to the
24 requirements of subsection (b). Documentation and supporting
25 information shall be maintained and made available upon
26 examination or upon request of the commissioner.

1 (b) The review of the ORSA Summary Report, and any
2 additional requests for information, shall be made using
3 similar procedures currently used in the analysis and
4 examination of multi-state or global insurers and insurance
5 groups.

6 §27-29A-8. Confidentiality.

7 (a) Documents, materials, or other information,
8 including the ORSA Summary Report, in the possession of or
9 control of the Department of Insurance that are obtained by,
10 created by, or disclosed to the commissioner or any other
11 person under this chapter, are recognized by this state as
12 being proprietary and to contain trade secrets. All such
13 documents, materials, or other information shall be
14 confidential by law and privileged, shall not be subject to
15 any open records, freedom of information, sunshine, or other
16 public record disclosure laws, shall not be subject to
17 subpoena, and shall not be subject to discovery or admissible
18 in evidence in any private civil action. However, the
19 commissioner is authorized to use the documents, materials, or
20 other information in the furtherance of any regulatory or
21 legal action brought as a part of the commissioner's official
22 duties. The commissioner shall not otherwise make the
23 documents, materials, or other information public without the
24 prior written consent of the insurer.

25 (b) Neither the commissioner nor any person who
26 received documents, materials, or other ORSA-related
27 information, through examination or otherwise, while acting

1 under the authority of the commissioner or with whom such
2 documents, materials, or other information are shared pursuant
3 to this chapter shall be permitted or required to testify in
4 any private civil action concerning any confidential
5 documents, materials, or information subject to subsection
6 (a).

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

9 (1) Upon request, may share documents, materials, or
10 other ORSA-related information, including the confidential and
11 privileged documents, materials, or information subject to
12 subsection (a), including proprietary and trade secret
13 documents and materials with other state, federal, and
14 international financial regulatory agencies, including members
15 of any supervisory college as defined in Section 27-29-6.1,
16 with the NAIC and with any third-party consultants designated
17 by the commissioner, provided that the recipient agrees in
18 writing to maintain the confidentiality and privileged status
19 of the ORSA-related documents, materials, or other information
20 and has verified in writing the legal authority to maintain
21 confidentiality.

22 (2) May receive documents, materials, or other
23 ORSA-related information, including otherwise confidential and
24 privileged documents, materials, or information, including
25 proprietary and trade secret information or documents, from
26 regulatory officials of other foreign or domestic
27 jurisdictions, including members of any supervisory college as

1 defined in Section 27-29-6.1, and from the NAIC, and shall
2 maintain as confidential or privileged any documents,
3 materials, or information received with notice or the
4 understanding that it is confidential or privileged under the
5 laws of the jurisdiction that is the source of the documents,
6 materials, or information.

7 (3) Shall enter into a written agreement with the
8 NAIC or a third-party consultant governing sharing and use of
9 information provided pursuant to this chapter, consistent with
10 this subsection that shall satisfy all of the following:

11 a. Specify procedures and protocols regarding the
12 confidentiality and security of information shared with the
13 NAIC or a third-party consultant pursuant to this chapter,
14 including procedures and protocols for sharing by the NAIC
15 with other state regulators from states in which the insurance
16 group has domiciled insurers. The agreement shall provide that
17 the recipient agrees in writing to maintain the
18 confidentiality and privileged status of the ORSA-related
19 documents, materials, or other information and has verified in
20 writing the legal authority to maintain confidentiality.

21 b. Specify that ownership of information shared with
22 the NAIC or a third-party consultant pursuant to this chapter
23 remains with the commissioner and the NAIC's or a third-party
24 consultant's use of the information is subject to the
25 direction of the commissioner.

1 c. Prohibit the NAIC or third-party consultant from
2 storing the information shared pursuant to this chapter in a
3 permanent database after the underlying analysis is completed.

4 d. Require prompt notice to be given to an insurer
5 whose confidential information in the possession of the NAIC
6 or a third-party consultant pursuant to this chapter is
7 subject to a request or subpoena to the NAIC or a third-party
8 consultant for disclosure or production.

9 e. Require the NAIC or a third-party consultant to
10 consent to intervention by an insurer in any judicial or
11 administrative action in which the NAIC or a third-party
12 consultant may be required to disclose confidential
13 information about the insurer shared with the NAIC or a
14 third-party consultant pursuant to this chapter.

15 f. In the case of an agreement involving a
16 third-party consultant, provide for the insurer's written
17 consent.

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

23 (e) No waiver of any applicable privilege or claim
24 of confidentiality in the documents, proprietary, and trade
25 secret materials or other ORSA-related information shall occur
26 as a result of disclosure of such ORSA-related information or

1 documents to the commissioner under this section or as a
2 result of sharing as authorized in this chapter.

3 (f) Documents, materials, or other information in
4 the possession or control of the NAIC or third-party
5 consultants pursuant to this chapter shall be confidential by
6 law and privileged, shall not be subject to any open records,
7 freedom of information, sunshine, or other public record
8 disclosure laws, and shall not be subject to subpoena.

9 §27-29A-9. Sanctions.

10 (a) Any insurer failing, without just cause as
11 determined by the commissioner, to timely file the ORSA
12 Summary Report as required in this chapter shall be required,
13 after notice and hearing as provided in Chapter 2, to pay a
14 penalty of one hundred dollars (\$100) for each day's delay,
15 not to exceed ten thousand dollars (\$10,000).

16 (b) The commissioner may reduce the penalty if the
17 insurer demonstrates to the commissioner that the imposition
18 of the penalty would constitute a financial hardship to the
19 insurer.

20 (c) Any penalty collected under this section shall
21 be deposited in the State Treasury to the credit of the
22 Insurance Department Fund.

23 §27-29A-10. Operative Date.

24 The first filing of the ORSA Summary Report shall be
25 in the year 2016 pursuant to Section 27-29A-5.

26 Section 2. All laws or parts of laws which conflict
27 with this act are repealed.

1 Section 3. This act shall become effective on the
2 first day of January following its passage and approval by the
3 Governor or its otherwise becoming law.