

HB 1163

2016

1 A bill to be entitled

2 An act relating to insurer regulatory reporting;
3 creating s. 628.8015, F.S.; defining terms; requiring
4 an insurer to maintain a risk management framework;
5 requiring certain insurers and insurance groups to
6 conduct an own-risk and solvency assessment; providing
7 requirements for the preparation and submission of an
8 own-risk and solvency assessment summary report;
9 providing exemptions and waivers; requiring certain
10 insurers and members of an insurance group to prepare
11 and submit a corporate governance annual disclosure;
12 providing disclosure and preparation requirements;
13 specifying privilege requirements and prohibitions for
14 certain filings and related documents; authorizing the
15 Office of Insurance Regulation to retain third-party
16 consultants for certain purposes; authorizing the
17 Financial Services Commission to adopt rules; amending
18 s. 628.803, F.S.; revising provisions relating to
19 penalties to conform to the act; providing a
20 contingent effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 628.8015, Florida Statutes, is created
25 to read:

26 628.8015 Own-risk and solvency assessment; corporate

27 governance annual disclosure.—

28 (1) DEFINITIONS.—As used in this section, the term:

29 (a) "Corporate governance annual disclosure" means a
30 report filed by an insurer or insurance group in accordance with
31 this section.

32 (b) "Insurance group" means insurers and affiliates
33 included within an insurance holding company system.

34 (c) "Insurer" has the same meaning as in s. 624.03.
35 However, the term does not include agencies, authorities,
36 instrumentalities, possessions, or territories of the United
37 States, the Commonwealth of Puerto Rico, or the District of
38 Columbia; or agencies, authorities, instrumentalities, or
39 political subdivisions of a state.

40 (d) "Own-risk and solvency assessment" or "ORSA" means an
41 internal assessment, appropriate to the nature, scale, and
42 complexity of an insurer or insurance group, conducted by that
43 insurer or insurance group, of the material and relevant risks
44 associated with the business plan of an insurer or insurance
45 group and the sufficiency of capital resources to support those
46 risks.

47 (e) "ORSA guidance manual" means the own-risk and solvency
48 assessment guidance manual developed and adopted by the National
49 Association of Insurance Commissioners.

50 (f) "ORSA summary report" means a high-level ORSA summary
51 of an insurer or insurance group, consisting of a single report
52 or combination of reports.

53 (g) "Senior management" means any corporate officer
54 responsible for reporting information to the board of directors
55 at regular intervals or providing information to shareholders or
56 regulators and includes, but is not limited to, the chief
57 executive officer, chief financial officer, chief operations
58 officer, chief risk officer, chief procurement officer, chief
59 legal officer, chief information officer, chief technology
60 officer, chief revenue officer, chief visionary officer, or any
61 other executive performing one or more of these functions.

62 (2) OWN-RISK AND SOLVENCY ASSESSMENT.—

63 (a) Risk management framework.—An insurer shall maintain a
64 risk management framework to assist in identifying, assessing,
65 monitoring, managing, and reporting its material and relevant
66 risks. An insurer may satisfy this requirement by being a member
67 of an insurance group with a risk management framework
68 applicable to the operations of the insurer.

69 (b) ORSA requirement.—Subject to paragraph (c), an
70 insurer, or the insurance group of which the insurer is a
71 member, shall regularly conduct an ORSA consistent with and
72 comparable to the process in the ORSA guidance manual. The ORSA
73 must be conducted at least annually and whenever there have been
74 significant changes to the risk profile of the insurer or the
75 insurance group of which the insurer is a member.

76 (c) ORSA summary report.—

77 1.a. A domestic insurer or insurer member of an insurance
78 group of which the office is the lead state, as determined by

79 the procedures in the most recent National Association of
80 Insurance Commissioners Financial Analysis Handbook, shall:

81 (I) Submit an ORSA summary report to the office once every
82 calendar year.

83 (II) Notify the office of its proposed annual submission
84 date by December 1, 2016. The initial ORSA summary report must
85 be submitted by December 31, 2017.

86 b. An insurer not required to submit an ORSA summary
87 report pursuant to sub-subparagraph a. shall:

88 (I) Submit an ORSA summary report at the request of the
89 office, but not more than once per calendar year.

90 (II) Notify the office of the proposed submission date
91 within 30 days after the request of the office.

92 2. An insurer may comply with sub-subparagraph 1.a. or
93 sub-subparagraph 1.b. by providing the most recent and
94 substantially similar ORSA summary report submitted by the
95 insurer, or another member of an insurance group of which the
96 insurer is a member, to the chief insurance regulatory official
97 of another state or the supervisor or regulator of a foreign
98 jurisdiction. For purposes of this subparagraph, a
99 "substantially similar" ORSA summary report is one that contains
100 information comparable to the information described in the ORSA
101 guidance manual as determined by the commissioner of the office.
102 If the report is in a language other than English, it must be
103 accompanied by an English translation.

104 3. The chief risk officer or chief executive officer of

105 the insurer or insurance group responsible for overseeing the
106 enterprise risk management process must sign the ORSA summary
107 report attesting that, to the best of his or her knowledge and
108 belief, the insurer or insurance group applied the enterprise
109 risk management process described in the ORSA summary report and
110 provided a copy of the report to the board of directors or the
111 appropriate board committee.

112 4. The ORSA summary report must be prepared in accordance
113 with the ORSA guidance manual. Documentation and supporting
114 information must be maintained by the insurer and made available
115 upon examination pursuant to s. 624.316 or upon the request of
116 the office.

117 5. The ORSA summary report must include a brief
118 description of material changes and updates since the prior year
119 report.

120 (d) Exemption.—

121 1. An insurer is exempt from the requirements of this
122 subsection if:

123 a. The insurer has annual direct written and unaffiliated
124 assumed premium, including international direct and assumed
125 premium, but excluding premiums reinsured with the Federal Crop
126 Insurance Corporation and the National Flood Insurance Program,
127 of less than \$500 million; or

128 b. The insurer is a member of an insurance group and the
129 insurance group has annual direct written and unaffiliated
130 assumed premium, including international direct and assumed

131 premium, but excluding premiums reinsured with the Federal Crop
132 Insurance Corporation and the National Flood Insurance Program,
133 of less than \$1 billion.

134 2. If an insurer is:

135 a. Exempt under sub-subparagraph 1.a., but the insurance
136 group of which the insurer is a member is not exempt under sub-
137 subparagraph 1.b., the ORSA summary report must include every
138 insurer within the insurance group. The insurer may satisfy this
139 requirement by submitting more than one ORSA summary report for
140 any combination of insurers if any combination of reports
141 includes every insurer within the insurance group.

142 b. Not exempt under sub-subparagraph 1.a., but the
143 insurance group of which it is a member is exempt under sub-
144 subparagraph 1.b., the insurer must submit to the office the
145 ORSA summary report applicable only to that insurer.

146 3. The office may require an exempt insurer to maintain a
147 risk management framework, conduct an ORSA, and file an ORSA
148 summary report:

149 a. Based on unique circumstances, including, but not
150 limited to, the type and volume of business written, ownership
151 and organizational structure, federal agency requests, and
152 international supervisor requests;

153 b. If the insurer has risk-based capital for a company
154 action level event pursuant to s. 624.4085(3), meets one or more
155 of the standards of an insurer deemed to be in hazardous
156 financial condition as defined in rules adopted by the

157 commission pursuant to s. 624.81(11), or exhibits qualities of
158 an insurer in hazardous financial condition as determined by the
159 office; or

160 c. If the office determines it is in the best interest of
161 the state.

162 4. If an exempt insurer becomes disqualified for an
163 exemption because of changes in premium as reported on the most
164 recent annual statement of the insurer or annual statements of
165 the insurers within the insurance group of which the insurer is
166 a member, the insurer must comply with the requirements of this
167 section effective 1 year after the year in which the insurer
168 exceeded the premium thresholds.

169 (e) Waiver.—An insurer that does not qualify for an
170 exemption under paragraph (d) may request a waiver from the
171 office based upon unique circumstances. If the insurer is part
172 of an insurance group with insurers domiciled in more than one
173 state, the office must coordinate with the lead state and with
174 the other domiciliary regulators in deciding whether to grant a
175 waiver. In deciding whether to grant a waiver, the office may
176 consider:

177 1. The type and volume of business written by the insurer.

178 2. The ownership and organizational structure of the
179 insurer.

180 3. Any other factor the office considers relevant to the
181 insurer or insurance group of which the insurer is a member.

182

183 A waiver granted pursuant to this paragraph is valid until
 184 withdrawn by the office.

185 (f) Preparation of the ORSA summary report.—

186 1. The ORSA summary report must be prepared consistent
 187 with the ORSA guidance manual, subject to the requirements of
 188 paragraph (b). Documentation and supporting information must be
 189 maintained and made available upon examination pursuant to s.
 190 624.316 or upon the request of the office.

191 2. Office review of the ORSA summary report must be
 192 conducted, and any additional requests for information must be
 193 made, using procedures similar to those used in the analysis and
 194 examination of multistate or global insurers and insurance
 195 groups.

196 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

197 (a) Scope.—This section does not prescribe or impose
 198 corporate governance standards and internal procedures beyond
 199 those required under applicable state corporate law or to limit
 200 the authority of the office, or the rights or obligations of
 201 third parties, under s. 624.316.

202 (b) Disclosure requirement.—

203 1.a. An insurer, or insurer member of an insurance group,
 204 of which the office is the lead state regulator, as determined
 205 by the procedures in the most recent National Association of
 206 Insurance Commissioners Financial Analysis Handbook, shall
 207 submit a corporate governance annual disclosure to the office by
 208 June 1 of each calendar year. The initial corporate governance

209 annual disclosure must be submitted by December 31, 2017.

210 b. An insurer or insurance group not required to submit a
211 corporate governance annual disclosure under sub-subparagraph
212 1.a. shall do so at the request of the office, but not more than
213 once per calendar year. The insurer shall notify the office of
214 the proposed submission date within 30 days after the request of
215 the office.

216 2. The chief executive officer or corporate secretary of
217 the insurer or the insurance group must sign the corporate
218 governance annual disclosure attesting that, to the best of his
219 or her knowledge and belief, the insurer has implemented the
220 corporate governance practices and provided a copy of the
221 disclosure to the board of directors or the appropriate board
222 committee.

223 3.a. Depending on the structure of its system of corporate
224 governance, the insurer or insurance group may provide corporate
225 governance information at one of the following levels:

226 (I) The ultimate controlling parent level;

227 (II) An intermediate holding company level; or

228 (III) The individual legal entity level.

229 b. The insurer or insurance group may make the corporate
230 governance annual disclosure at:

231 (I) The level used to determine the risk appetite of the
232 insurer or insurance group;

233 (II) The level at which the earnings, capital, liquidity,
234 operations, and reputation of the insurer are collectively

235 overseen and the supervision of those factors is coordinated and
236 exercised; or

237 (III) The level at which legal liability for failure of
238 general corporate governance duties would be placed.

239
240 An insurer or insurance group must indicate the level of
241 reporting used and explain any subsequent changes in the
242 reporting level.

243 4. The review of the corporate governance annual
244 disclosure and any additional requests for information shall be
245 made through the lead state as determined by the procedures in
246 the most recent National Association of Insurance Commissioners
247 Financial Analysis Handbook.

248 5. An insurer or insurance group may comply with this
249 paragraph by cross-referencing other existing relevant and
250 applicable documents, including, but not limited to, the ORSA
251 summary report, Holding Company Form B or F filings, Securities
252 and Exchange Commission proxy statements, or foreign regulatory
253 reporting requirements, if the documents contain information
254 substantially similar to the information described in paragraph
255 (c). The insurer or insurance group shall clearly identify and
256 reference the specific location of the relevant and applicable
257 information within the corporate governance annual disclosure
258 and attach the referenced document if it has not already been
259 filed with, or made available to, the office.

260 6. Each year following the initial filing of the corporate

261 governance annual disclosure, the insurer or insurance group
262 shall file an amended version of the previously filed corporate
263 governance annual disclosure indicating changes that have been
264 made. If changes have not been made in the previously filed
265 disclosure, the insurer or insurance group should so indicate.

266 (c) Preparation of the corporate governance annual
267 disclosure.-

268 1. The corporate governance annual disclosure must be
269 prepared in a manner consistent with this subsection.

270 Documentation and supporting information must be maintained and
271 made available upon examination pursuant to s. 624.316 or upon
272 the request of the office.

273 2. The corporate governance annual disclosure must be as
274 descriptive as possible and include any attachments or example
275 documents used in the governance process.

276 3. The insurer or insurance group has discretion in
277 determining the appropriate format of the corporate governance
278 annual disclosure in communicating the required information and
279 responding to inquiries, provided that the corporate governance
280 annual disclosure includes material and relevant information
281 sufficient to enable the office to understand the corporate
282 governance structure, policies, and practices used by the
283 insurer or insurance group.

284 4. The corporate governance annual disclosure must
285 describe the:

286 a. Corporate governance framework and structure of the

287 insurer or insurance group.

288 b. Policies and practices of the most senior governing
289 entity and significant committees.

290 c. Policies and practices for directing senior management.

291 d. Processes by which the board, its committees, and
292 senior management ensure an appropriate amount of oversight to
293 the critical risk areas that have an impact on the insurer's
294 business activities.

295 (4) CONFIDENTIALITY.—The filings and related documents
296 submitted pursuant to subsections (2) and (3) are privileged and
297 not subject to subpoena or discovery directly from the office.
298 However, the department or office may use these filings and
299 related documents in the furtherance of any regulatory or legal
300 action brought against an insurer as part of the official duties
301 of the department or office. A waiver of any applicable claim of
302 privilege in these filings and related documents may not occur
303 because of a disclosure to the office under this section,
304 because of any other provision of the Insurance Code, or because
305 of sharing under s. 624.4212. The office or a person receiving
306 these filings and related documents, while acting under the
307 authority of the office, or with whom such filings and related
308 documents are shared pursuant to s. 624.4212, is not permitted
309 or required to testify in any private civil action concerning
310 any such filings or related documents.

311 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain
312 third-party consultants at the expense of the insurer or

313 insurance group for the purpose of assisting it in the
314 performance of its regulatory responsibilities under this
315 section, including, but not limited to, the risk management
316 framework, the ORSA, the ORSA summary report, and the corporate
317 governance annual disclosure. A third-party consultant must
318 agree, in writing, to:

319 (a) Adhere to confidentiality standards and requirements
320 applicable to the office governing the sharing and use of such
321 filings and related documents.

322 (b) Verify to the office, with notice to the insurer, that
323 the consultant is free of any conflict of interest.

324 (c) Monitor compliance with applicable confidentiality and
325 conflict of interest standards pursuant to a system of internal
326 procedures.

327 (6) RULE ADOPTION.—The commission may adopt rules to
328 administer this section. The adoption of such rules is not
329 subject to s. 120.541(3).

330 Section 2. Subsections (1) and (4) of section 628.803,
331 Florida Statutes, are amended to read:

332 628.803 Sanctions.—

333 (1) Any company failing, without just cause, to file any
334 registration statement or certificate of exemption required to
335 be filed pursuant to commission rules relating to this part or
336 to submit an ORSA summary report or a corporate governance
337 annual disclosure required pursuant to s. 628.8015 shall, in
338 addition to other penalties prescribed under the Florida

HB 1163

2016

339 Insurance Code, be subject to pay a penalty of \$100 for each
340 day's delay, not to exceed a total of \$10,000.

341 (4) If the office determines that any person violated s.
342 628.461, ~~or s. 628.801~~, or s. 628.8015, the violation may serve
343 as an independent basis for disapproving dividends or
344 distributions and for placing the insurer under an order of
345 supervision in accordance with part VI of chapter 624.

346 Section 3. This act shall take effect October 1, 2016, if
347 HB 1165 or similar legislation is adopted in the same
348 legislative session or an extension thereof and becomes a law.