

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.

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

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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, subject to the requirements of
114 paragraph (b). Supporting information must be maintained by the
115 insurer and made available upon examination pursuant to s.
116 624.316 or upon the request of 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 6. The office's review of the ORSA summary report must be
121 conducted, and any additional requests for information must be
122 made, using procedures similar to those used in the analysis and
123 examination of multistate or global insurers and insurance
124 groups.

125 (d) Exemption.—

126 1. An insurer is exempt from the requirements of this
127 subsection if:

128 a. The insurer has annual direct written and unaffiliated
129 assumed premium, including international direct and assumed
130 premium, but excluding premiums reinsured with the Federal Crop

131 Insurance Corporation and the National Flood Insurance Program,
132 of less than \$500 million; or

133 b. The insurer is a member of an insurance group and the
134 insurance group has annual direct written and unaffiliated
135 assumed premium, including international direct and assumed
136 premium, but excluding premiums reinsured with the Federal Crop
137 Insurance Corporation and the National Flood Insurance Program,
138 of less than \$1 billion.

139 2. If an insurer is:

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

147 b. Not exempt under sub-subparagraph 1.a., but the
148 insurance group of which it is a member is exempt under sub-
149 subparagraph 1.b., the insurer must submit to the office the
150 ORSA summary report applicable only to that insurer.

151 3. The office may require an exempt insurer to maintain a
152 risk management framework, conduct an ORSA, and file an ORSA
153 summary report:

154 a. Based on unique circumstances, including, but not
155 limited to, the type and volume of business written, ownership
156 and organizational structure, federal agency requests, and

157 international supervisor requests;

158 b. If the insurer has risk-based capital for a company
159 action level event pursuant to s. 624.4085(3), meets one or more
160 of the standards of an insurer deemed to be in hazardous
161 financial condition as defined in rules adopted by the
162 commission pursuant to s. 624.81(11), or exhibits qualities of
163 an insurer in hazardous financial condition as determined by the
164 office; or

165 c. If the office determines it is in the best interest of
166 the state.

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

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

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

183 2. The ownership and organizational structure of the
184 insurer.

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

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188 A waiver granted pursuant to this paragraph is valid until
189 withdrawn by the office.

190 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

191 (a) Scope.—This section does not prescribe or impose
192 corporate governance standards and internal procedures beyond
193 those required under applicable state corporate law or to limit
194 the authority of the office, or the rights or obligations of
195 third parties, under s. 624.316.

196 (b) Disclosure requirement.—

197 1.a. An insurer, or insurer member of an insurance group,
198 of which the office is the lead state regulator, as determined
199 by the procedures in the most recent National Association of
200 Insurance Commissioners Financial Analysis Handbook, shall
201 submit a corporate governance annual disclosure to the office by
202 June 1 of each calendar year. The initial corporate governance
203 annual disclosure must be submitted by December 31, 2017.

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

209 the office.

210 2. The chief executive officer or corporate secretary of
211 the insurer or the insurance group must sign the corporate
212 governance annual disclosure attesting that, to the best of his
213 or her knowledge and belief, the insurer has implemented the
214 corporate governance practices and provided a copy of the
215 disclosure to the board of directors or the appropriate board
216 committee.

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

220 (I) The ultimate controlling parent level;

221 (II) An intermediate holding company level; or

222 (III) The individual legal entity level.

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

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

227 (II) The level at which the earnings, capital, liquidity,
228 operations, and reputation of the insurer are collectively
229 overseen and the supervision of those factors is coordinated and
230 exercised; or

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

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234 An insurer or insurance group must indicate the level of

235 reporting used and explain any subsequent changes in the
236 reporting level.

237 4. The review of the corporate governance annual
238 disclosure and any additional requests for information shall be
239 made through the lead state as determined by the procedures in
240 the most recent National Association of Insurance Commissioners
241 Financial Analysis Handbook.

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

254 6. Each year following the initial filing of the corporate
255 governance annual disclosure, the insurer or insurance group
256 shall file an amended version of the previously filed corporate
257 governance annual disclosure indicating changes that have been
258 made. If changes have not been made in the previously filed
259 disclosure, the insurer or insurance group should so indicate.

260 (c) Preparation of the corporate governance annual

261 disclosure.—

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

264 Documentation and supporting information must be maintained and
265 made available upon examination pursuant to s. 624.316 or upon
266 the request of the office.

267 2. The corporate governance annual disclosure must be as
268 descriptive as possible and include any attachments or example
269 documents used in the governance process.

270 3. The insurer or insurance group has discretion in
271 determining the appropriate format of the corporate governance
272 annual disclosure in communicating the required information and
273 responding to inquiries, provided that the corporate governance
274 annual disclosure includes material and relevant information
275 sufficient to enable the office to understand the corporate
276 governance structure, policies, and practices used by the
277 insurer or insurance group.

278 4. The corporate governance annual disclosure must
279 describe the:

280 a. Corporate governance framework and structure of the
281 insurer or insurance group.

282 b. Policies and practices of the most senior governing
283 entity and significant committees.

284 c. Policies and practices for directing senior management.

285 d. Processes by which the board, its committees, and
286 senior management ensure an appropriate amount of oversight to

287 the critical risk areas that have an impact on the insurer's
288 business activities.

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

305 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain
306 third-party consultants at the expense of the insurer or
307 insurance group for the purpose of assisting it in the
308 performance of its regulatory responsibilities under this
309 section, including, but not limited to, the risk management
310 framework, the ORSA, the ORSA summary report, and the corporate
311 governance annual disclosure. A third-party consultant must
312 agree, in writing, to:

313 (a) Adhere to confidentiality standards and requirements
 314 applicable to the office governing the sharing and use of such
 315 filings and related documents.

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

318 (c) Monitor compliance with applicable confidentiality and
 319 conflict of interest standards pursuant to a system of internal
 320 procedures.

321 (6) RULE ADOPTION.—The commission may adopt rules to
 322 administer this section.

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

325 628.803 Sanctions.—

326 (1) Any company failing, without just cause, to file any
 327 registration statement or certificate of exemption required to
 328 be filed pursuant to commission rules relating to this part or
 329 to submit an ORSA summary report or a corporate governance
 330 annual disclosure required pursuant to s. 628.8015 shall, in
 331 addition to other penalties prescribed under the Florida
 332 Insurance Code, be subject to pay a penalty of \$100 for each
 333 day's delay, not to exceed a total of \$10,000.

334 (4) If the office determines that any person violated s.
 335 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve
 336 as an independent basis for disapproving dividends or
 337 distributions and for placing the insurer under an order of
 338 supervision in accordance with part VI of chapter 624.

CS/HB 1163

2016

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