

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          requiring the initial corporate governance annual  
13          disclosure to be submitted to the Office of Insurance  
14          Regulation by a specified date; authorizing the office  
15          to require an insurer or insurance group to provide a  
16          corporate governance annual disclosure before such  
17          date under certain circumstances; specifying  
18          requirements for preparing and annually filing the  
19          corporate governance annual disclosure; specifying  
20          privilege requirements and prohibitions for certain  
21          filings and related documents; authorizing the Office  
22          of Insurance Regulation to retain third-party  
23          consultants for certain purposes; authorizing the  
24          Financial Services Commission to adopt rules; amending  
25          s. 628.803, F.S.; revising provisions relating to  
26          penalties to conform to the act; providing for

27 | contingent repeal of the act; providing a contingent  
 28 | effective date.

29 |  
 30 | Be It Enacted by the Legislature of the State of Florida:  
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32 | Section 1. Section 628.8015, Florida Statutes, is created  
 33 | to read:

34 | 628.8015 Own-risk and solvency assessment; corporate  
 35 | governance annual disclosure.—

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

37 | (a) "Corporate governance annual disclosure" means a  
 38 | report filed by an insurer or insurance group in accordance with  
 39 | this section.

40 | (b) "Insurance group" means insurers and affiliates  
 41 | included within an insurance holding company system.

42 | (c) "Insurer" has the same meaning as in s. 624.03.  
 43 | However, the term does not include agencies, authorities,  
 44 | instrumentalities, possessions, or territories of the United  
 45 | States, the Commonwealth of Puerto Rico, or the District of  
 46 | Columbia; or agencies, authorities, instrumentalities, or  
 47 | political subdivisions of a state.

48 | (d) "Own-risk and solvency assessment" or "ORSA" means an  
 49 | internal assessment, appropriate to the nature, scale, and  
 50 | complexity of an insurer or insurance group, conducted by that  
 51 | insurer or insurance group, of the material and relevant risks  
 52 | associated with the business plan of an insurer or insurance

53 group and the sufficiency of capital resources to support those  
54 risks.

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

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

61 (g) "Senior management" means any corporate officer  
62 responsible for reporting information to the board of directors  
63 at regular intervals or providing information to shareholders or  
64 regulators and includes, but is not limited to, the chief  
65 executive officer, chief financial officer, chief operations  
66 officer, chief risk officer, chief procurement officer, chief  
67 legal officer, chief information officer, chief technology  
68 officer, chief revenue officer, chief visionary officer, or any  
69 other executive performing one or more of these functions.

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

71 (a) Risk management framework.—An insurer shall maintain a  
72 risk management framework to assist in identifying, assessing,  
73 monitoring, managing, and reporting its material and relevant  
74 risks. An insurer may satisfy this requirement by being a member  
75 of an insurance group with a risk management framework  
76 applicable to the operations of the insurer.

77 (b) ORSA requirement.—Subject to paragraph (c), an  
78 insurer, or the insurance group of which the insurer is a

79 member, shall regularly conduct an ORSA consistent with and  
80 comparable to the process in the ORSA guidance manual. The ORSA  
81 must be conducted at least annually and whenever there have been  
82 significant changes to the risk profile of the insurer or the  
83 insurance group of which the insurer is a member.

84 (c) ORSA summary report.—

85 1.a. A domestic insurer or insurer member of an insurance  
86 group of which the office is the lead state, as determined by  
87 the procedures in the most recent National Association of  
88 Insurance Commissioners Financial Analysis Handbook, shall:

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

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

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

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

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

100 2. An insurer may comply with sub-subparagraph 1.a. or  
101 sub-subparagraph 1.b. by providing the most recent and  
102 substantially similar ORSA summary report submitted by the  
103 insurer, or another member of an insurance group of which the  
104 insurer is a member, to the chief insurance regulatory official

105 of another state or the supervisor or regulator of a foreign  
106 jurisdiction. For purposes of this subparagraph, a  
107 "substantially similar" ORSA summary report is one that contains  
108 information comparable to the information described in the ORSA  
109 guidance manual as determined by the commissioner of the office.  
110 If the report is in a language other than English, it must be  
111 accompanied by an English translation.

112 3. The chief risk officer or chief executive officer of  
113 the insurer or insurance group responsible for overseeing the  
114 enterprise risk management process must sign the ORSA summary  
115 report attesting that, to the best of his or her knowledge and  
116 belief, the insurer or insurance group applied the enterprise  
117 risk management process described in the ORSA summary report and  
118 provided a copy of the report to the board of directors or the  
119 appropriate board committee.

120 4. The ORSA summary report must be prepared in accordance  
121 with the ORSA guidance manual, subject to the requirements of  
122 paragraph (b). Supporting information must be maintained by the  
123 insurer and made available upon examination pursuant to s.  
124 624.316 or upon the request of the office.

125 5. The ORSA summary report must include a brief  
126 description of material changes and updates since the prior year  
127 report.

128 6. The office's review of the ORSA summary report must be  
129 conducted, and any additional requests for information must be  
130 made, using procedures similar to those used in the analysis and

131 examination of multistate or global insurers and insurance  
132 groups.

133 (d) Exemption.—

134 1. An insurer is exempt from the requirements of this  
135 subsection if:

136 a. The insurer has annual direct written and unaffiliated  
137 assumed premium, including international direct and assumed  
138 premium, but excluding premiums reinsured with the Federal Crop  
139 Insurance Corporation and the National Flood Insurance Program,  
140 of less than \$500 million; or

141 b. The insurer is a member of an insurance group and the  
142 insurance group has annual direct written and unaffiliated  
143 assumed premium, including international direct and assumed  
144 premium, but excluding premiums reinsured with the Federal Crop  
145 Insurance Corporation and the National Flood Insurance Program,  
146 of less than \$1 billion.

147 2. If an insurer is:

148 a. Exempt under sub-subparagraph 1.a., but the insurance  
149 group of which the insurer is a member is not exempt under sub-  
150 subparagraph 1.b., the ORSA summary report must include every  
151 insurer within the insurance group. The insurer may satisfy this  
152 requirement by submitting more than one ORSA summary report for  
153 any combination of insurers if any combination of reports  
154 includes every insurer within the insurance group.

155 b. Not exempt under sub-subparagraph 1.a., but the  
156 insurance group of which it is a member is exempt under sub-

157 subparagraph 1.b., the insurer must submit to the office the  
158 ORSA summary report applicable only to that insurer.

159 3. The office may require an exempt insurer to maintain a  
160 risk management framework, conduct an ORSA, and file an ORSA  
161 summary report:

162 a. Based on unique circumstances, including, but not  
163 limited to, the type and volume of business written, ownership  
164 and organizational structure, federal agency requests, and  
165 international supervisor requests;

166 b. If the insurer has risk-based capital for a company  
167 action level event pursuant to s. 624.4085(3), meets one or more  
168 of the standards of an insurer deemed to be in hazardous  
169 financial condition as defined in rules adopted by the  
170 commission pursuant to s. 624.81(11), or exhibits qualities of  
171 an insurer in hazardous financial condition as determined by the  
172 office; or

173 c. If the office determines it is in the best interest of  
174 the state.

175 4. If an exempt insurer becomes disqualified for an  
176 exemption because of changes in premium as reported on the most  
177 recent annual statement of the insurer or annual statements of  
178 the insurers within the insurance group of which the insurer is  
179 a member, the insurer must comply with the requirements of this  
180 section effective 1 year after the year in which the insurer  
181 exceeded the premium thresholds.

182 (e) Waiver.—An insurer that does not qualify for an

183 exemption under paragraph (d) may request a waiver from the  
184 office based upon unique circumstances. If the insurer is part  
185 of an insurance group with insurers domiciled in more than one  
186 state, the office must coordinate with the lead state and with  
187 the other domiciliary regulators in deciding whether to grant a  
188 waiver. In deciding whether to grant a waiver, the office may  
189 consider:

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

191 2. The ownership and organizational structure of the  
192 insurer.

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

195  
196 A waiver granted pursuant to this paragraph is valid until  
197 withdrawn by the office.

198 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

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

204 (b) Disclosure requirement.—

205 1.a. An insurer, or insurer member of an insurance group,  
206 of which the office is the lead state regulator, as determined  
207 by the procedures in the most recent National Association of  
208 Insurance Commissioners Financial Analysis Handbook, shall



209 submit a corporate governance annual disclosure to the office by  
210 June 1 of each calendar year. The initial corporate governance  
211 annual disclosure must be submitted by December 31, 2018.

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

218 c. Before December 31, 2018, the office may require an  
219 insurer or insurance group to provide a corporate governance  
220 annual disclosure:

221 (I) Based on unique circumstances, including, but not  
222 limited to, the type and volume of business written, the  
223 ownership and organizational structure, federal agency requests,  
224 and international supervisor requests;

225 (II) If the insurer has risk-based capital for a company  
226 action level event pursuant to s. 624.4085(3), meets one or more  
227 of the standards of an insurer deemed to be in hazardous  
228 financial condition as defined in rules adopted pursuant to s.  
229 624.81(11), or exhibits qualities of an insurer in hazardous  
230 financial condition as determined by the office;

231 (III) If the insurer is the member of an insurer group of  
232 which the office acts as the lead state regulator as determined  
233 by the procedures in the most recent NAIC Financial Analysis  
234 Handbook; or

235 (IV) If the office determines that it is in the best  
236 interest of the state.

237 2. The chief executive officer or corporate secretary of  
238 the insurer or the insurance group must sign the corporate  
239 governance annual disclosure attesting that, to the best of his  
240 or her knowledge and belief, the insurer has implemented the  
241 corporate governance practices and provided a copy of the  
242 disclosure to the board of directors or the appropriate board  
243 committee.

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

247 (I) The ultimate controlling parent level;  
248 (II) An intermediate holding company level; or  
249 (III) The individual legal entity level.

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

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

254 (II) The level at which the earnings, capital, liquidity,  
255 operations, and reputation of the insurer are collectively  
256 overseen and the supervision of those factors is coordinated and  
257 exercised; or

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

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261 An insurer or insurance group must indicate the level of  
262 reporting used and explain any subsequent changes in the  
263 reporting level.

264 4. The review of the corporate governance annual  
265 disclosure and any additional requests for information shall be  
266 made through the lead state as determined by the procedures in  
267 the most recent National Association of Insurance Commissioners  
268 Financial Analysis Handbook.

269 5. An insurer or insurance group may comply with this  
270 paragraph by cross-referencing other existing relevant and  
271 applicable documents, including, but not limited to, the ORSA  
272 summary report, Holding Company Form B or F filings, Securities  
273 and Exchange Commission proxy statements, or foreign regulatory  
274 reporting requirements, if the documents contain information  
275 substantially similar to the information described in paragraph  
276 (c). The insurer or insurance group shall clearly identify and  
277 reference the specific location of the relevant and applicable  
278 information within the corporate governance annual disclosure  
279 and attach the referenced document if it has not already been  
280 filed with, or made available to, the office.

281 6. Each year following the initial filing of the corporate  
282 governance annual disclosure, the insurer or insurance group  
283 shall file an amended version of the previously filed corporate  
284 governance annual disclosure indicating changes that have been  
285 made. If changes have not been made in the previously filed  
286 disclosure, the insurer or insurance group should so indicate.

287 (c) Preparation of the corporate governance annual  
288 disclosure.—

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

291 Documentation and supporting information must be maintained and  
292 made available upon examination pursuant to s. 624.316 or upon  
293 the request of the office.

294 2. The corporate governance annual disclosure must be as  
295 descriptive as possible and include any attachments or example  
296 documents used in the governance process.

297 3. The insurer or insurance group has discretion in  
298 determining the appropriate format of the corporate governance  
299 annual disclosure in communicating the required information and  
300 responding to inquiries, provided that the corporate governance  
301 annual disclosure includes material and relevant information  
302 sufficient to enable the office to understand the corporate  
303 governance structure, policies, and practices used by the  
304 insurer or insurance group.

305 4. The corporate governance annual disclosure must  
306 describe the:

307 a. Corporate governance framework and structure of the  
308 insurer or insurance group.

309 b. Policies and practices of the most senior governing  
310 entity and significant committees.

311 c. Policies and practices for directing senior management.

312 d. Processes by which the board, its committees, and

313 senior management ensure an appropriate amount of oversight to  
314 the critical risk areas that have an impact on the insurer's  
315 business activities.

316 (4) CONFIDENTIALITY.—The filings and related documents  
317 submitted pursuant to subsections (2) and (3) are privileged and  
318 may not be produced in response to a subpoena or other discovery  
319 directed to the office, and such filings and related documents,  
320 if obtained from the office, are not admissible in evidence in  
321 any private civil action. However, the department or office may  
322 use these filings and related documents in the furtherance of  
323 any regulatory or legal action brought against an insurer as  
324 part of the official duties of the department or office. A  
325 waiver of any applicable claim of privilege in these filings and  
326 related documents may not occur because of a disclosure to the  
327 office under this section, because of any other provision of the  
328 Insurance Code, or because of sharing under s. 624.4212. The  
329 office or a person receiving these filings and related  
330 documents, while acting under the authority of the office, or  
331 with whom such filings and related documents are shared pursuant  
332 to s. 624.4212, is not permitted or required to testify in any  
333 private civil action concerning any such filings or related  
334 documents.

335 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain  
336 third-party consultants at the expense of the insurer or  
337 insurance group for the purpose of assisting it in the  
338 performance of its regulatory responsibilities under this

339 section, including, but not limited to, the risk management  
340 framework, the ORSA, the ORSA summary report, and the corporate  
341 governance annual disclosure. The NAIC or a third-party  
342 consultant must agree, in writing, to:

343 (a) Adhere to confidentiality standards and requirements  
344 applicable to the office governing the sharing and use of such  
345 filings and related documents as evidenced by specific  
346 procedures and protocols for maintaining the confidentiality and  
347 security of information shared with the NAIC or a third-party  
348 consultant pursuant to this section.

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

351 (c) Monitor compliance with applicable confidentiality and  
352 conflict of interest standards pursuant to a system of internal  
353 procedures.

354 (d) Not store the information shared pursuant to this  
355 section in a permanent database after the underlying analysis is  
356 complete.

357 (e) Provide prompt notice to the office and to the insurer  
358 or insurance group regarding any subpoena, request for  
359 disclosure, or request for production of the insurer's filings  
360 and related documents submitted pursuant to subsections (2) and  
361 (3).

362 (f) Intervention by an insurer in any judicial or  
363 administrative action in which the NAIC or a third-party  
364 consultant may be required to disclose confidential information

365 about the insurer shared within the NAIC or a third-party  
 366 consultant pursuant to this section.

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

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

371 628.803 Sanctions.—

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

380 (4) If the office determines that any person violated s.  
 381 628.461, ~~or~~ s. 628.801, or s. 628.8015, the violation may serve  
 382 as an independent basis for disapproving dividends or  
 383 distributions and for placing the insurer under an order of  
 384 supervision in accordance with part VI of chapter 624.

385 Section 3. Section 628.8015, Florida Statutes, and the  
 386 amendments made by this act to s. 628.803, Florida Statutes, are  
 387 repealed on October 2, 2021, unless, before that date, the  
 388 Legislature saves from repeal through reenactment the amendments  
 389 to s. 624.4212, Florida Statutes, made by CS/CS/HB 1165 or  
 390 similar legislation.

CS/CS/HB 1163

2016

391           Section 4. This act shall take effect October 1, 2016, if  
392 CS/CS/HB 1165 or similar legislation is adopted in the same  
393 legislative session or an extension thereof and becomes a law.