

By Senator Simmons

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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 report  
 30 filed by an insurer or insurance group in accordance with this  
 31 section.

32           (b) "Insurance group" means insurers and affiliates

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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.

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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 insurer,  
70 or the insurance group of which the insurer is a member, shall  
71 regularly conduct an ORSA consistent with and comparable to the  
72 process in the ORSA guidance manual. The ORSA must be conducted  
73 at least annually and whenever there have been significant  
74 changes to the risk profile of the insurer or the insurance  
75 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 report  
87 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

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91 within 30 days after the request of the office.

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

104 3. The chief risk officer or chief executive officer of the  
105 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 description  
118 of material changes and updates since the prior year report.

119 (d) Exemption.—

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

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

127 b. The insurer is a member of an insurance group and the  
128 insurance group 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 \$1 billion.

133 2. If an insurer is:

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

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

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

148 a. Based on unique circumstances, including, but not

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149 limited to, the type and volume of business written, ownership  
150 and organizational structure, federal agency requests, and  
151 international supervisor requests;

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

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

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

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

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

177 2. The ownership and organizational structure of the

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178 insurer.

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

181  
182 A waiver granted pursuant to this paragraph is valid until  
183 withdrawn by the office.

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

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

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

195 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

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

201 (b) Disclosure requirement.—

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

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207 June 1 of each calendar year. The initial corporate governance  
208 annual disclosure must be submitted by December 31, 2017.

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

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

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

225 (I) The ultimate controlling parent level;

226 (II) An intermediate holding company level; or

227 (III) The individual legal entity level.

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

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

232 (II) The level at which the earnings, capital, liquidity,  
233 operations, and reputation of the insurer are collectively  
234 overseen and the supervision of those factors is coordinated and  
235 exercised; or



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

238  
239 An insurer or insurance group must indicate the level of  
240 reporting used and explain any subsequent changes in the  
241 reporting level.

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

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

259 6. Each year following the initial filing of the corporate  
260 governance annual disclosure, the insurer or insurance group  
261 shall file an amended version of the previously filed corporate  
262 governance annual disclosure indicating changes that have been  
263 made. If changes have not been made in the previously filed  
264 disclosure, the insurer or insurance group should so indicate.

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265 (c) Preparation of the corporate governance annual  
266 disclosure.—

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

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

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

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

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

285 a. Corporate governance framework and structure of the  
286 insurer or insurance group.

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

289 c. Policies and practices for directing senior management.

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

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

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

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

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

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

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

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

331 628.803 Sanctions.—

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

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

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