

20161422e1

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          to retain third-party consultants for certain  
23          purposes; providing certain requirements for the  
24          National Association of Insurance Commissioners or  
25          third-party consultants in an agreement; authorizing  
26          the Financial Services Commission to adopt rules;  
27          amending s. 628.803, F.S.; revising provisions  
28          relating to penalties to conform to the act; providing  
29          for contingent repeal of the act; providing a

20161422e1

30 contingent effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Section 628.8015, Florida Statutes, is created  
35 to read:

36 628.8015 Own-risk and solvency assessment; corporate  
37 governance annual disclosure.-

38 (1) DEFINITIONS.-As used in this section, the term:

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

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

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

50 (d) "Own-risk and solvency assessment" or "ORSA" means an  
51 internal assessment, appropriate to the nature, scale, and  
52 complexity of an insurer or insurance group, conducted by that  
53 insurer or insurance group, of the material and relevant risks  
54 associated with the business plan of an insurer or insurance  
55 group and the sufficiency of capital resources to support those  
56 risks.

57 (e) "ORSA guidance manual" means the own-risk and solvency  
58 assessment guidance manual developed and adopted by the National

20161422e1

59 Association of Insurance Commissioners.

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

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

72 (2) OWN-RISK AND SOLVENCY ASSESSMENT.-

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

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

86 (c) ORSA summary report.-

87 1.a. A domestic insurer or insurer member of an insurance

20161422e1

88 group of which the office is the lead state, as determined by  
89 the procedures in the most recent National Association of  
90 Insurance Commissioners Financial Analysis Handbook, shall:

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

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

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

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

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

102 2. An insurer may comply with sub-subparagraph 1.a. or sub-  
103 subparagraph 1.b. by providing the most recent and substantially  
104 similar ORSA summary report submitted by the insurer, or another  
105 member of an insurance group of which the insurer is a member,  
106 to the chief insurance regulatory official of another state or  
107 the supervisor or regulator of a foreign jurisdiction. For  
108 purposes of this subparagraph, a "substantially similar" ORSA  
109 summary report is one that contains information comparable to  
110 the information described in the ORSA guidance manual as  
111 determined by the commissioner of the office. If the report is  
112 in a language other than English, it must be accompanied by an  
113 English translation.

114 3. The chief risk officer or chief executive officer of the  
115 insurer or insurance group responsible for overseeing the  
116 enterprise risk management process must sign the ORSA summary

20161422e1

117 report attesting that, to the best of his or her knowledge and  
118 belief, the insurer or insurance group applied the enterprise  
119 risk management process described in the ORSA summary report and  
120 provided a copy of the report to the board of directors or the  
121 appropriate board committee.

122 4. The ORSA summary report must be prepared in accordance  
123 with the ORSA guidance manual. Documentation and supporting  
124 information must be maintained by the insurer and made available  
125 upon examination pursuant to s. 624.316 or upon the request of  
126 the office.

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

129 6. The office's review of the ORSA summary report must be  
130 conducted, and any additional requests for information must be  
131 made, using procedures similar to those used in the analysis and  
132 examination of multistate or global insurers and insurance  
133 groups.

134 (d) Exemption.—

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

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

142 b. The insurer is a member of an insurance group and the  
143 insurance group has annual direct written and unaffiliated  
144 assumed premium, including international direct and assumed  
145 premium, but excluding premiums reinsured with the Federal Crop

20161422e1

146 Insurance Corporation and the National Flood Insurance Program,  
147 of less than \$1 billion.

148 2. If an insurer is:

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

156 b. Not exempt under sub-subparagraph 1.a., but the  
157 insurance group of which it is a member is exempt under sub-  
158 subparagraph 1.b., the insurer must submit to the office the  
159 ORSA summary report applicable only to that insurer.

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

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

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

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

20161422e1

175 the state.

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

183 (e) Waiver.—An insurer that does not qualify for an  
184 exemption under paragraph (d) may request a waiver from the  
185 office based upon unique circumstances. If the insurer is part  
186 of an insurance group with insurers domiciled in more than one  
187 state, the office must coordinate with the lead state and with  
188 the other domiciliary regulators in deciding whether to grant a  
189 waiver. In deciding whether to grant a waiver, the office may  
190 consider:

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

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

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

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

199 (3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

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

20161422e1

204 parties, under s. 624.316.

205 (b) Disclosure requirement.—

206 1.a. An insurer, or insurer member of an insurance group,  
207 of which the office is the lead state regulator, as determined  
208 by the procedures in the most recent National Association of  
209 Insurance Commissioners Financial Analysis Handbook, shall  
210 submit a corporate governance annual disclosure to the office by  
211 June 1 of each calendar year. The initial corporate governance  
212 annual disclosure must be submitted by December 31, 2018.

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

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

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

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

232 (III) If the insurer is the member of an insurer group of



20161422e1

233 which the office acts as the lead state regulator as determined  
234 by the procedures in the most recent National Association of  
235 Insurance Commissioners Financial Analysis Handbook; or

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

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

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

248 (I) The ultimate controlling parent level;

249 (II) An intermediate holding company level; or

250 (III) The individual legal entity level.

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

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

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

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

261

20161422e1

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

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

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

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

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

290 1. The corporate governance annual disclosure must be

20161422e1

291 prepared in a manner consistent with this subsection.  
292 Documentation and supporting information must be maintained and  
293 made available upon examination pursuant to s. 624.316 or upon  
294 the request of the office.

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

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

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

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

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

312 c. Policies and practices for directing senior management.

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

317 (4) CONFIDENTIALITY.—The filings and related documents  
318 submitted pursuant to subsections (2) and (3) are privileged  
319 such that they may not be produced in response to a subpoena or

20161422e1

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

336 (5) USE OF THIRD-PARTY CONSULTANTS.—The office may retain  
337 third-party consultants at the expense of the insurer or  
338 insurance group for the purpose of assisting it in the  
339 performance of its regulatory responsibilities under this  
340 section, including, but not limited to, the risk management  
341 framework, the ORSA, the ORSA summary report, and the corporate  
342 governance annual disclosure. The NAIC or a third-party  
343 consultant must agree, in writing, to:

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

20161422e1

349 consultant pursuant to this section.

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

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

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

358 (e) Provide prompt notice to the office and to the insurer  
359 or insurance group regarding any subpoena, request for  
360 disclosure, or request for production of the insurer's filings  
361 and related documents submitted pursuant to subsections (2) and  
362 (3).

363 (f) Intervention by an insurer in any judicial or  
364 administrative action in which the NAIC or a third-party  
365 consultant may be required to disclose confidential information  
366 about the insurer shared within the NAIC or a third-party  
367 consultant pursuant to this section.

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

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

372 628.803 Sanctions.—

373 (1) Any company failing, without just cause, to file any  
374 registration statement or certificate of exemption required to  
375 be filed pursuant to commission rules relating to this part or  
376 to submit an ORSA summary report or a corporate governance  
377 annual disclosure required pursuant to s. 628.8015 shall, in

20161422e1

378 addition to other penalties prescribed under the Florida  
379 Insurance Code, be subject to pay a penalty of \$100 for each  
380 day's delay, not to exceed a total of \$10,000.

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

386 Section 3. Section 628.8015, Florida Statutes, and the  
387 amendments made by this act to s. 628.803, Florida Statutes, are  
388 repealed on October 2, 2021, unless, before that date, the  
389 Legislature saves from repeal through reenactment the amendments  
390 to s. 624.4212, Florida Statutes, made by SB 1416 or similar  
391 legislation.

392 Section 4. This act shall take effect October 1, 2016, if  
393 SB 1416 or similar legislation is adopted in the same  
394 legislative session or an extension thereof and becomes a law.