

CHAPTER 2016-206

Committee Substitute for Committee Substitute for Senate Bill No. 1422

An act relating to insurer regulatory reporting; creating s. 628.8015, F.S.; defining terms; requiring an insurer to maintain a risk management framework; requiring certain insurers and insurance groups to conduct an own-risk and solvency assessment; providing requirements for the preparation and submission of an own-risk and solvency assessment summary report; providing exemptions and waivers; requiring certain insurers and members of an insurance group to prepare and submit a corporate governance annual disclosure; requiring the initial corporate governance annual disclosure to be submitted to the Office of Insurance Regulation by a specified date; authorizing the office to require an insurer or insurance group to provide a corporate governance annual disclosure before such date under certain circumstances; specifying requirements for preparing and annually filing the corporate governance annual disclosure; specifying privilege requirements and prohibitions for certain filings and related documents; authorizing the office to retain third-party consultants for certain purposes; providing certain requirements for the National Association of Insurance Commissioners or third-party consultants in an agreement; authorizing the Financial Services Commission to adopt rules; amending s. 628.803, F.S.; revising provisions relating to penalties to conform to the act; providing for contingent repeal of the act; providing a contingent effective date.

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

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

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

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

(a) “Corporate governance annual disclosure” means a report filed by an insurer or insurance group in accordance with this section.

(b) “Insurance group” means insurers and affiliates included within an insurance holding company system.

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

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

(e) “ORSA guidance manual” means the own-risk and solvency assessment guidance manual developed and adopted by the National Association of Insurance Commissioners.

(f) “ORSA summary report” means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.

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

(2) OWN-RISK AND SOLVENCY ASSESSMENT.—

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

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

(c) *ORSA summary report.*—

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

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

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

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

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

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

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

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

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

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

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

(d) Exemption.—

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

a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but

excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$500 million; or

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

2. If an insurer is:

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

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

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

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

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

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

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

(e) Waiver.—An insurer that does not qualify for an exemption under paragraph (d) may request a waiver from the office based upon unique circumstances. If the insurer is part of an insurance group with insurers domiciled in more than one state, the office must coordinate with the lead

state and with the other domiciliary regulators in deciding whether to grant a waiver. In deciding whether to grant a waiver, the office may consider:

- 1. The type and volume of business written by the insurer.
- 2. The ownership and organizational structure of the insurer.
- 3. Any other factor the office considers relevant to the insurer or insurance group of which the insurer is a member.

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

(3) CORPORATE GOVERNANCE ANNUAL DISCLOSURE.—

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

(b) Disclosure requirement.—

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

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

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

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

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

(III) If the insurer is the member of an insurer group of which the office acts as the lead state regulator as determined by the procedures in the most

recent National Association of Insurance Commissioners Financial Analysis Handbook; or

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

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

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

(I) The ultimate controlling parent level;

(II) An intermediate holding company level; or

(III) The individual legal entity level.

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

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

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

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

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

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

5. An insurer or insurance group may comply with this paragraph by cross-referencing other existing relevant and applicable documents, including, but not limited to, the ORSA summary report, Holding Company Form B or F filings, Securities and Exchange Commission proxy statements, or foreign regulatory reporting requirements, if the documents contain information substantially similar to the information described in paragraph (c). The insurer or insurance group shall clearly identify and reference the specific location of the relevant and applicable information within the

corporate governance annual disclosure and attach the referenced document if it has not already been filed with, or made available to, the office.

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

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

1. The corporate governance annual disclosure must be prepared in a manner consistent with this subsection. Documentation and supporting information must be maintained and made available upon examination pursuant to s. 624.316 or upon the request of the office.

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

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

4. The corporate governance annual disclosure must describe the:

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

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

c. Policies and practices for directing senior management.

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

(4) CONFIDENTIALITY.—The filings and related documents submitted pursuant to subsections (2) and (3) are privileged such that they may not be produced in response to a subpoena or other discovery directed to the office, and any such filings and related documents, if obtained from the office, are not admissible in evidence in any private civil action. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office. A waiver of any

applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

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

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

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

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

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

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

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

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

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

628.803 Sanctions.—

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

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

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

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

Approved by the Governor April 8, 2016.

Filed in Office Secretary of State April 8, 2016.