

Act No. 245
Public Acts of 2015
Approved by the Governor
December 22, 2015
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senator Hune

ENROLLED SENATE BILL No. 178

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” (MCL 500.100 to 500.8302) by adding chapter 17.

The People of the State of Michigan enact:

CHAPTER 17

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT

Sec. 1701. As used in this chapter:

(a) “Insurance group” means, for the purpose of conducting an ORSA, insurers and affiliates included within an insurance holding company system.

(b) “Insurer” means that term as defined in section 106. Insurer also includes a fraternal benefit society as that term is defined in section 8164 and a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373. Insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(c) “NAIC” means the National Association of Insurance Commissioners.

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

(e) “ORSA guidance manual” means the own risk and solvency assessment guidance manual as adopted and prescribed by the director. A change in the ORSA guidance manual is effective on the January 1 following the calendar year in which the changes have been adopted and prescribed by the director.

(f) “ORSA summary report” means a confidential high-level summary of an insurer or insurance group’s ORSA.

Sec. 1703. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Sec. 1705. Subject to section 1709, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Sec. 1707. (1) An insurer shall annually submit to the director an ORSA summary report, or any combination of reports that together contain the information as described in the ORSA guidance manual, applicable to the insurer, the insurance group of which it is a member, or both. Within 90 days after the effective date of the amendatory act that added this section, the insurer shall submit to the director the calendar date the insurer will annually submit the ORSA summary report required under this section. The insurer shall file the first report required under this subsection no later than the insurer’s submitted calendar date in 2018. If the insurer is a member of an insurance group and if the director is the lead state regulator of the insurance group as determined under the procedures within the National Association of Insurance Commissioners Financial Analysis Handbook, as adopted by the director, the insurer shall submit a report required by this subsection.

(2) A report required under subsection (1) must include a signature of the insurer or insurance group’s chief risk officer or other executive having responsibility for the oversight of the insurer’s enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer’s board of directors or appropriate committee of the insurer’s board of directors.

(3) An insurer may comply with subsection (1) by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to a commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if the report provides information that is comparable to the information described in the ORSA guidance manual. A report in a language other than English must be accompanied by a translation of the report into the English language.

Sec. 1709. (1) Except as otherwise provided in subsection (5), an insurer is exempt from the requirements of this chapter, if both of the following apply:

(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 federal flood program, less than \$500,000,000.00.

(b) The insurance group of which the insurer is a member 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 federal flood program, less than \$1,000,000,000.00.

(2) If an insurer qualifies for exemption under subsection (1)(a) but the insurance group of which the insurer is a member does not qualify for exemption under subsection (1)(b), the ORSA summary report that may be required under section 1707 must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than 1 ORSA summary report for any combination of insurers if the combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption under subsection (1)(a) but the insurance group of which it is a member qualifies for exemption under subsection (1)(b), the only ORSA summary report that may be required under section 1707 is the report applicable to the insurer.

(4) Subject to subsection (5), an insurer that does not qualify for exemption under subsection (1) may apply to the director for a waiver from the requirements of this chapter based on unique circumstances. In deciding whether to grant the insurer's request for a waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than 1 state, the director shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemption provided in subsection (1), the director may require 1 or more of the following:

(a) The director may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report 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) The director may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report if the director determines 1 or more of the following:

(i) The insurer has risk-based capital for a company action level event.

(ii) The insurer meets 1 or more of the conditions described in section 436.

(iii) The operation of the insurer is hazardous to policyholders, creditors, or the public under section 436a.

(iv) The insurer exhibits qualities of a troubled insurer.

(6) If an insurer that qualifies for an exemption under subsection (1) subsequently no longer qualifies for that exemption because of an increase in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has 1 year following the year the premium exceeded the limitation provided in subsection (1) to comply with this chapter.

Sec. 1711. (1) Subject to subsection (2), an insurer shall prepare an ORSA summary report under section 1707 consistent with the ORSA guidance manual prescribed by the director. The insurer shall maintain and make available to the director documentation and supporting information relating to the ORSA summary report.

(2) The director shall review an ORSA summary report and any additional requests for information using similar procedures used in the analysis and examination of multistate or global insurers and insurance groups.

Sec. 1713. (1) Documents, materials, or other information, including the ORSA summary report, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any other person under this chapter are considered proprietary and to contain trade secrets. The documents, materials, or other information are confidential and privileged, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action. However, the director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains.

(2) The director or any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the director or with whom the documents, materials, or other information are shared under this act shall not testify in a private civil action concerning confidential documents, materials, or information described in subsection (1).

(3) The director may do all of the following:

(a) Except as otherwise provided in this subdivision, on request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information described in subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of a supervisory college, with the NAIC and with any third-party consultants designated by the director. The director shall not share documents, materials, or other ORSA-related information described in this subdivision unless the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(b) Subject to this subdivision, receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of a supervisory college, and from the NAIC. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The director shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided under this chapter. The written agreement must do all of the following:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant under this chapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers.

(b) Contain a statement that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(c) Specify that the director owns the information shared with the NAIC or a third-party consultant under this chapter and that the NAIC's or third-party consultant's use of the information is subject to the direction of the director.

(d) Prohibit the NAIC or third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed.

(e) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or third-party consultant under this chapter is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production.

(f) Require the NAIC or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or third-party consultant under this chapter.

(g) For an agreement involving a third-party consultant, provide for the insurer's written consent.

(5) The sharing of information and documents by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of this chapter.

(6) The disclosure or sharing of documents, proprietary and trade-secret materials, or other ORSA-related information to the director or other person under this chapter is not a waiver of an applicable privilege or claim of confidentiality.

(7) Documents, materials, or other information in the possession or control of the NAIC or third-party consultants under this chapter is confidential and privileged, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in a private civil action.

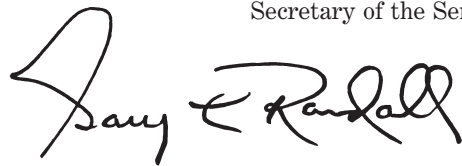
(8) Documents, materials, or other information in the possession of an insurer created by the insurer to comply with this chapter is confidential and privileged, is not subject to subpoena or to discovery, and is not admissible in evidence in a private civil action.

Sec. 1715. An insurer that does not, without just cause, timely file an ORSA summary report as required in this chapter shall pay a civil fine of \$1,000.00 for each day's delay, to be recovered by the director and paid into the general fund. The maximum civil fine under this section is \$75,000.00. The director may reduce the penalty if the insurer demonstrates to the director that the penalty would cause a financial hardship to the insurer.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor