

SENATE FILE NO. SF0021

Insurance-own risk solvency model act.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; requiring insurance companies
2 to maintain a risk management framework as specified;
3 providing for risk assessments; providing filing
4 requirements; providing penalties; providing for
5 applicability; and providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 26-51-101 through 26-51-110 are
10 created to read:

11

12 CHAPTER 51

13 OWN RISK SOLVENCY

14

15 **26-51-101. Purpose and scope.**

16

1

2 The requirements of this chapter shall apply to all
3 insurers domiciled in this state unless exempt pursuant to
4 W.S. 26-51-106.

5

6 **26-51-102. Definitions.**

7

8 (a) As used in this chapter:

9

10 (i) "Insurance group" means those insurers and
11 affiliates included within an insurance holding company
12 system as defined in W.S. 26-44-101(a)(iv);

13

14 (ii) "Insurer" shall have the same meaning as
15 set forth in W.S. 26-1-102(a)(xvi), except that it shall
16 not include agencies, authorities or instrumentalities of
17 the United States, its possessions and territories, the
18 Commonwealth of Puerto Rico, the District of Columbia or a
19 state or political subdivision of a state;

20

21 (iii) "Own risk and solvency assessment" or
22 "ORSA" means a confidential internal assessment,
23 appropriate to the nature, scale and complexity of an
24 insurer or insurance group, conducted by that insurer or

1 insurance group of the material and relevant risks
2 associated with the insurer or insurance group's current
3 business plan, and the sufficiency of capital resources to
4 support those risks;

5
6 (iv) "ORSA guidance manual" means the current
7 version of the Own Risk and Solvency Assessment Guidance
8 Manual developed and adopted by the National Association of
9 Insurance Commissioners (NAIC) and as amended from time to
10 time. A change in the ORSA guidance manual shall be
11 effective on January 1 following the calendar year in which
12 the changes have been adopted by the NAIC;

13
14 (v) "ORSA summary report" means a confidential
15 high-level summary of an insurer or insurance group's ORSA.

16
17 **26-51-103. Risk management framework.**

18
19 An insurer shall maintain a risk management framework to
20 assist the insurer with identifying, assessing, monitoring,
21 managing and reporting on its material and relevant risks.
22 This requirement may be satisfied if the insurance group of
23 which the insurer is a member maintains a risk management
24 framework applicable to the operations of the insurer.

1

2 **26-51-104. ORSA requirement.**

3

4 Subject to W.S. 26-51-106, an insurer, or the insurance
5 group of which the insurer is a member, shall regularly
6 conduct an ORSA consistent with a process comparable to the
7 ORSA guidance manual. The ORSA shall be conducted no less
8 than annually but also at any time when there are
9 significant changes to the risk profile of the insurer or
10 the insurance group of which the insurer is a member.

11

12 **26-51-105. ORSA summary report.**

13

14 (a) Upon the commissioner's request, and no more than
15 once each year, an insurer shall submit to the commissioner
16 an ORSA summary report or any combination of reports that
17 together contain the information described in the ORSA
18 guidance manual, applicable to the insurer and the
19 insurance group of which it is a member. Notwithstanding
20 any request from the commissioner, if the insurer is a
21 member of an insurance group, the insurer shall submit the
22 report required by this subsection if the commissioner is
23 the lead state commissioner of the insurance group as

1 determined by the procedures within the financial analysis
2 handbook adopted by the NAIC.

3

4 (b) The report shall include a signature of the
5 insurer or insurance group's chief risk officer or other
6 executive having responsibility for the oversight of the
7 insurer's enterprise risk management process attesting to
8 the best of his belief and knowledge that the insurer
9 applies the enterprise risk management process described in
10 the ORSA summary report and that a copy of the report has
11 been provided to the insurer's board of directors or the
12 appropriate committee thereof.

13

14 (c) An insurer may comply with subsection (a) of this
15 section by providing the most recent and substantially
16 similar report provided by the insurer or another member of
17 an insurance group of which the insurer is a member to the
18 commissioner of another state or to a supervisor or
19 regulator of a foreign jurisdiction, if that report
20 provides information that is comparable to the information
21 described in the ORSA guidance manual. Any report in a
22 language other than English shall be accompanied by a
23 translation of that report into the English language.

24

1 **26-51-106. Exemption.**

2

3 (a) An insurer shall be exempt from the requirements
4 of this chapter, if:

5

6 (i) The insurer has annual direct written and
7 unaffiliated assumed premium, including international
8 direct and assumed premium but excluding premiums reinsured
9 with the federal crop insurance corporation and federal
10 flood program, of less than five hundred million dollars
11 (\$500,000,000.00); and

12

13 (ii) The insurance group of which the insurer is
14 a member has annual direct written and unaffiliated assumed
15 premium including international direct and assumed premium,
16 but excluding premiums reinsured with the federal crop
17 insurance corporation and federal flood program, of less
18 than one billion dollars (\$1,000,000,000.00).

19

20 (b) If an insurer qualifies for exemption pursuant to
21 paragraph (a)(i) of this section, but the insurance group
22 of which the insurer is a member does not qualify for
23 exemption pursuant to paragraph (a)(ii) of this section,
24 then the ORSA summary report that may be required pursuant

1 to W.S. 26-51-105 shall include every insurer within the
2 insurance group. This requirement may be satisfied by the
3 submission of more than one (1) ORSA summary report for any
4 combination of insurers provided any combination of reports
5 includes every insurer within the insurance group.

6
7 (c) If an insurer does not qualify for exemption
8 pursuant to paragraph (a)(i) of this section, but the
9 insurance group of which it is a member qualifies for
10 exemption pursuant to paragraph (a)(ii) of this section,
11 then the only ORSA summary report that may be required
12 pursuant to W.S. 26-51-105 shall be the report applicable
13 to that insurer.

14
15 (d) An insurer that does not qualify for exemption
16 pursuant to subsection (a) of this section may apply to the
17 commissioner for a waiver from the requirements of this
18 chapter based upon unique circumstances. In deciding
19 whether to grant the insurer's request for waiver, the
20 commissioner may consider the type and volume of business
21 written, ownership and organizational structure and any
22 other factor the commissioner considers relevant to the
23 insurer or insurance group of which the insurer is a
24 member. If the insurer is part of an insurance group with

1 insurers domiciled in more than one (1) state, the
2 commissioner shall coordinate with the lead state
3 commissioner and with the other domiciliary commissioners
4 in considering whether to grant the insurer's request for a
5 waiver.

6

7 (e) Notwithstanding the exemptions stated in this
8 section:

9

10 (i) The commissioner may require that an insurer
11 maintain a risk management framework, conduct an ORSA and
12 file an ORSA summary report based on unique circumstances
13 including, but not limited to, the type and volume of
14 business written, ownership and organizational structure,
15 federal agency requests and international supervisor
16 requests;

17

18 (ii) The commissioner may require that an
19 insurer maintain a risk management framework, conduct an
20 ORSA and file an ORSA summary report if the insurer has
21 risk-based capital for company action level event as set
22 forth in W.S. 26-48-103 and 26-48-203, meets one (1) or
23 more of the standards of an insurer deemed to be in
24 hazardous financial condition as defined in W.S. 26-3-116,

1 or otherwise exhibits qualities of a troubled insurer as
2 determined by the commissioner.

3

4 (f) If an insurer that qualifies for an exemption
5 pursuant to subsection (a) of this section subsequently no
6 longer qualifies for that exemption due to changes in
7 premium as reflected in the insurer's most recent annual
8 statement or in the most recent annual statements of the
9 insurers within the insurance group of which the insurer is
10 a member, the insurer shall have one (1) year following the
11 year the threshold is exceeded to comply with the
12 requirements of this chapter.

13

14 **26-51-107. Contents of ORSA summary report.**

15

16 (a) The ORSA summary report shall be prepared
17 consistent with the ORSA guidance manual, subject to the
18 requirements of subsection (b) of this section.
19 Documentation and supporting information shall be
20 maintained and made available upon examination or upon
21 request of the commissioner.

22

23 (b) The review of the ORSA summary report, and any
24 additional requests for information, shall be made using

1 similar procedures currently used in the analysis and
2 examination of multi-state or global insurers and insurance
3 groups.

4

5 **26-51-108. Confidentiality.**

6

7 (a) Documents, materials or other information,
8 including the ORSA summary report, in the possession of or
9 control of the department that are obtained by, created by
10 or disclosed to the commissioner or any other person under
11 this chapter, is recognized by this state as being
12 proprietary and to contain trade secrets. All such
13 documents, materials or other information shall be
14 confidential by law and privileged, shall not be subject to
15 the Wyoming Public Records Act, shall not be subject to
16 subpoena, and shall not be subject to discovery or
17 admissible in evidence in any private civil action.
18 However, the commissioner is authorized to use the
19 documents, materials or other information in the
20 furtherance of any regulatory or legal action brought as a
21 part of the commissioner's official duties. The
22 commissioner shall not otherwise make the documents,
23 materials or other information public without the prior
24 written consent of the insurer.

1

2 (b) Neither the commissioner nor any person who
3 received documents, materials or other ORSA-related
4 information, through examination or otherwise, while acting
5 under the authority of the commissioner or with whom those
6 documents, materials or other information are shared
7 pursuant to this chapter shall be permitted or required to
8 testify in any private civil action concerning any
9 confidential documents, materials or information subject to
10 subsection (a) of this section.

11

12 (c) In order to assist in the performance of the
13 commissioner's regulatory duties, the commissioner:

14

15 (i) May, upon request, share documents,
16 materials or other ORSA-related information, including the
17 confidential and privileged documents, materials or
18 information subject to subsection (a) of this section,
19 including proprietary and trade secret documents and
20 materials with other state, federal and international
21 financial regulatory agencies, including members of any
22 supervisory college as defined in W.S. 26-44-118, with the
23 NAIC and with any third-party consultants designated by the
24 commissioner, provided that the recipient agrees in writing

1 to maintain the confidentiality and privileged status of
2 the ORSA-related documents, materials or other information
3 and has verified in writing the legal authority to maintain
4 confidentiality; and

5
6 (ii) May receive documents, materials or other
7 ORSA-related information, including otherwise confidential
8 and privileged documents, materials or information,
9 including proprietary and trade-secret information or
10 documents, from regulatory officials of other foreign or
11 domestic jurisdictions, including members of any
12 supervisory college as defined in W.S. 26-44-118, and from
13 the NAIC, and shall maintain as confidential or privileged
14 any documents, materials or information received with
15 notice or the understanding that it is confidential or
16 privileged under the laws of the jurisdiction that is the
17 source of the document, material or information;

18
19 (iii) Shall enter into a written agreement with
20 the NAIC or a third-party consultant governing sharing and
21 use of information provided pursuant to this chapter,
22 consistent with this subsection that shall:

23

1 (A) Specify procedures and protocols
2 regarding the confidentiality and security of information
3 shared with the NAIC or a third-party consultant pursuant
4 to this chapter, including procedures and protocols for
5 sharing by the NAIC with other state regulators from states
6 in which the insurance group has domiciled insurers. The
7 agreement shall provide that the recipient agrees in
8 writing to maintain the confidentiality and privileged
9 status of the ORSA-related documents, materials or other
10 information and has verified in writing the legal authority
11 to maintain confidentiality;

12

13 (B) Specify that ownership of information
14 shared with the NAIC or a third-party consultant pursuant
15 to this chapter remains with the commissioner and the
16 NAIC's or a third-party consultant's use of the information
17 is subject to the direction of the commissioner;

18

19 (C) Prohibit the NAIC or third-party
20 consultant from storing the information shared pursuant to
21 this chapter in a permanent database after the underlying
22 analysis is completed;

23

1 (D) Require prompt notice to be given to an
2 insurer whose confidential information in the possession of
3 the NAIC or a third-party consultant pursuant to this
4 chapter is subject to a request or subpoena to the NAIC or
5 a third-party consultant for disclosure or production;

6
7 (E) Require the NAIC or a third-party
8 consultant to consent to intervention by an insurer in any
9 judicial or administrative action in which the NAIC or a
10 third-party consultant may be required to disclose
11 confidential information about the insurer shared with the
12 NAIC or a third-party consultant pursuant to this chapter;
13 and

14
15 (F) In the case of an agreement involving a
16 third-party consultant, provide for the insurer's written
17 consent.

18
19 (d) The sharing of information and documents by the
20 commissioner pursuant to this chapter shall not constitute
21 a delegation of regulatory authority or rulemaking, and the
22 commissioner is solely responsible for the administration,
23 execution and enforcement of the provisions of this
24 chapter.

1

2 (e) No waiver of any applicable privilege or claim of
3 confidentiality in the documents, proprietary and trade-
4 secret materials or other ORSA-related information shall
5 occur as a result of disclosure of such ORSA-related
6 information or documents to the commissioner under this
7 section or as a result of sharing as authorized in this
8 chapter.

9

10 (f) Documents, materials or other information in the
11 possession or control of the NAIC or a third-party
12 consultant pursuant to this chapter shall be confidential
13 by law and privileged, shall not be subject to the Wyoming
14 Public Records Act, shall not be subject to subpoena, and
15 shall not be subject to discovery or admissible in evidence
16 in any private civil action.

17

18 **26-51-109. Sanctions.**

19

20 Any insurer failing, without just cause, to timely file the
21 ORSA summary report as required in this chapter shall be
22 required, after notice and hearing, to pay a penalty of two
23 thousand five hundred dollars (\$2,500.00) for each day's
24 delay, to be recovered by the commissioner. The maximum

1 penalty under this section is seventy-five thousand dollars
2 (\$75,000.00). The commissioner may reduce the penalty if
3 the insurer demonstrates to the commissioner that the
4 imposition of the penalty would constitute a financial
5 hardship to the insurer.

6

7 **26-51-110. Applicability.**

8

9 The requirements of this chapter shall become effective on
10 January 1, 2015. The first filing of the ORSA summary
11 report shall be in 2015 pursuant to W.S. 26-51-105.

12

13 **Section 2.** This act is effective January 1, 2015.

14

15 (END)