

ORIGINAL SENATE  
FILE NO. 0021

ENROLLED ACT NO. 34, SENATE

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING  
2014 BUDGET SESSION

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

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

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

CHAPTER 51  
OWN RISK SOLVENCY

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

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

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

(a) As used in this chapter:

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

(ii) "Insurer" shall have the same meaning as set forth in W.S. 26-1-102(a)(xvi), except that it shall 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;

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(iii) "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 that 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;

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

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

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

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.

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

Subject to W.S. 26-51-106, 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

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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.

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

(a) Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer and the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the NAIC.

(b) The report shall 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 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 the appropriate committee thereof.

(c) An insurer may comply with subsection (a) of this section 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 the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information

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described in the ORSA guidance manual. Any report in a language other than English shall be accompanied by a translation of that report into the English language.

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

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

(i) 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, of less than five hundred million dollars (\$500,000,000.00); and

(ii) 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, of less than one billion dollars (\$1,000,000,000.00).

(b) If an insurer qualifies for exemption pursuant to paragraph (a)(i) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to paragraph (a)(ii) of this section, then the ORSA summary report that may be required pursuant to W.S. 26-51-105 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one (1) ORSA summary report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to paragraph (a)(i) of this section, but the

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insurance group of which it is a member qualifies for exemption pursuant to paragraph (a)(ii) of this section, then the only ORSA summary report that may be required pursuant to W.S. 26-51-105 shall be the report applicable to that insurer.

(d) An insurer that does not qualify for exemption pursuant to subsection (a) of this section may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure and any other factor the commissioner 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 one (1) state, the commissioner 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.

(e) Notwithstanding the exemptions stated in this section:

(i) The commissioner 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;

(ii) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report if the insurer has

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risk-based capital for company action level event as set forth in W.S. 26-48-103 and 26-48-203, meets one (1) or more of the standards of an insurer deemed to be in hazardous financial condition as defined in W.S. 26-3-116, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section subsequently no longer qualifies for that exemption due to changes 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 shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this chapter.

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

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

(b) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

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

(a) Documents, materials or other information, including the ORSA summary report, in the possession of or

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control of the department that are obtained by, created by or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to the Wyoming Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

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

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

(i) May, upon request, share documents, materials or other ORSA-related information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials with other state, federal and international

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financial regulatory agencies, including members of any supervisory college as defined in W.S. 26-44-118, with the NAIC and with any third-party consultants designated by the commissioner, provided 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; and

(ii) May 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 any supervisory college as defined in W.S. 26-44-118, and from the NAIC, and 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;

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

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to 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. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other



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information and has verified in writing the legal authority to maintain confidentiality;

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

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

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

(E) Require the NAIC or a third-party consultant to consent to 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 with the NAIC or a third-party consultant pursuant to this chapter; and

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

(d) The sharing of information and documents by the commissioner pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration,

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execution and enforcement of the provisions of this chapter.

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

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

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

Any insurer failing, without just cause, to timely file the ORSA summary report as required in this chapter shall be required, after notice and hearing, to pay a penalty of two thousand five hundred dollars (\$2,500.00) for each day's delay, to be recovered by the commissioner. The maximum penalty under this section is seventy-five thousand dollars (\$75,000.00). The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

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

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk