

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 (a) The purpose of this chapter is to provide the
2 requirements for maintaining a risk management framework
3 and completing an own risk and solvency assessment (ORSA)
4 and provide guidance and instructions for filing an ORSA
5 summary report with the insurance commissioner of this
6 state.

7

8 (b) The requirements of this chapter shall apply to
9 all insurers domiciled in this state unless exempt pursuant
10 to W.S. 26-51-106.

11

12 **26-51-102. Definitions.**

13

14 (a) As used in this chapter:

15

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

19

20 (ii) "Insurer" shall have the same meaning as
21 set forth in W.S. 26-1-102(a)(xvi), except that it shall
22 not include agencies, authorities or instrumentalities of
23 the United States, its possessions and territories, the

1 Commonwealth of Puerto Rico, the District of Columbia or a
2 state or political subdivision of a state;

3

4 (iii) "Own risk and solvency assessment" or
5 "ORSA" means a confidential internal assessment,
6 appropriate to the nature, scale and complexity of an
7 insurer or insurance group, conducted by that insurer or
8 insurance group of the material and relevant risks
9 associated with the insurer or insurance group's current
10 business plan, and the sufficiency of capital resources to
11 support those risks;

12

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

20

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

23

24 **26-51-103. Risk management framework.**

1

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

8

9 **26-51-104. ORSA requirement.**

10

11 Subject to W.S. 26-51-106, an insurer, or the insurance
12 group of which the insurer is a member, shall regularly
13 conduct an ORSA consistent with a process comparable to the
14 ORSA guidance manual. The ORSA shall be conducted no less
15 than annually but also at any time when there are
16 significant changes to the risk profile of the insurer or
17 the insurance group of which the insurer is a member.

18

19 **26-51-105. ORSA summary report.**

20

21 (a) Upon the commissioner's request, and no more than
22 once each year, an insurer shall submit to the commissioner
23 an ORSA summary report or any combination of reports that
24 together contain the information described in the ORSA

1 guidance manual, applicable to the insurer and the
2 insurance group of which it is a member. Notwithstanding
3 any request from the commissioner, if the insurer is a
4 member of an insurance group, the insurer shall submit the
5 report required by this subsection if the commissioner is
6 the lead state commissioner of the insurance group as
7 determined by the procedures within the financial analysis
8 handbook adopted by the NAIC.

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

19
20 (c) An insurer may comply with subsection (a) of this
21 section by providing the most recent and substantially
22 similar report provided by the insurer or another member of
23 an insurance group of which the insurer is a member to the
24 commissioner of another state or to a supervisor or

1 regulator of a foreign jurisdiction, if that report
2 provides information that is comparable to the information
3 described in the ORSA guidance manual. Any report in a
4 language other than English shall be accompanied by a
5 translation of that report into the English language.

6

7 **26-51-106. Exemption.**

8

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

11

12 (i) The insurer has annual direct written and
13 unaffiliated assumed premium, including international
14 direct and assumed premium but excluding premiums reinsured
15 with the federal crop insurance corporation and federal
16 flood program, of less than five hundred million dollars
17 (\$500,000,000.00); and

18

19 (ii) The insurance group of which the insurer is
20 a member has annual direct written and unaffiliated assumed
21 premium including international direct and assumed premium,
22 but excluding premiums reinsured with the federal crop
23 insurance corporation and federal flood program, of less
24 than one billion dollars (\$1,000,000,000.00).

1

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

12

13 (c) If an insurer does not qualify for exemption
14 pursuant to paragraph (a)(i) of this section, but the
15 insurance group of which it is a member qualifies for
16 exemption pursuant to paragraph (a)(ii) of this section,
17 then the only ORSA summary report that may be required
18 pursuant to W.S. 26-51-105 shall be the report applicable
19 to that insurer.

20

21 (d) An insurer that does not qualify for exemption
22 pursuant to subsection (a) of this section may apply to the
23 commissioner for a waiver from the requirements of this
24 chapter based upon unique circumstances. In deciding

1 whether to grant the insurer's request for waiver, the
2 commissioner may consider the type and volume of business
3 written, ownership and organizational structure and any
4 other factor the commissioner considers relevant to the
5 insurer or insurance group of which the insurer is a
6 member. If the insurer is part of an insurance group with
7 insurers domiciled in more than one (1) state, the
8 commissioner shall coordinate with the lead state
9 commissioner and with the other domiciliary commissioners
10 in considering whether to grant the insurer's request for a
11 waiver.

12

13 (e) Notwithstanding the exemptions stated in this
14 section:

15

16 (i) The commissioner may require that an insurer
17 maintain a risk management framework, conduct an ORSA and
18 file an ORSA summary report based on unique circumstances
19 including, but not limited to, the type and volume of
20 business written, ownership and organizational structure,
21 federal agency requests and international supervisor
22 requests;

23

1 (ii) The commissioner may require that an
2 insurer maintain a risk management framework, conduct an
3 ORSA and file an ORSA summary report if the insurer has
4 risk-based capital for company action level event as set
5 forth in W.S. 26-48-103 and 26-48-203, meets one (1) or
6 more of the standards of an insurer deemed to be in
7 hazardous financial condition as defined in W.S. 26-3-116,
8 or otherwise exhibits qualities of a troubled insurer as
9 determined by the commissioner.

10

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

20

21 **26-51-107. Contents of ORSA summary report.**

22

23 (a) The ORSA summary report shall be prepared
24 consistent with the ORSA guidance manual, subject to the

1 requirements of subsection (b) of this section.
2 Documentation and supporting information shall be
3 maintained and made available upon examination or upon
4 request of the commissioner.

5

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

11

12 **26-51-108. Confidentiality.**

13

14 (a) Documents, materials or other information,
15 including the ORSA summary report, in the possession of or
16 control of the department that are obtained by, created by
17 or disclosed to the commissioner or any other person under
18 this chapter, is recognized by this state as being
19 proprietary and to contain trade secrets. All such
20 documents, materials or other information shall be
21 confidential by law and privileged, shall not be subject to
22 the Wyoming Public Records Act, shall not be subject to
23 subpoena, and shall not be subject to discovery or
24 admissible in evidence in any private civil action.

1 However, the commissioner is authorized to use the
2 documents, materials or other information in the
3 furtherance of any regulatory or legal action brought as a
4 part of the commissioner's official duties. The
5 commissioner shall not otherwise make the documents,
6 materials or other information public without the prior
7 written consent of the insurer.

8

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

18

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

21

22 (i) May, upon request, share documents,
23 materials or other ORSA-related information, including the
24 confidential and privileged documents, materials or

1 information subject to subsection (a) of this section,
2 including proprietary and trade secret documents and
3 materials with other state, federal and international
4 financial regulatory agencies, including members of any
5 supervisory college as defined in W.S. 26-44-118, with the
6 NAIC and with any third-party consultants designated by the
7 commissioner, provided that the recipient agrees in writing
8 to maintain the confidentiality and privileged status of
9 the ORSA-related documents, materials or other information
10 and has verified in writing the legal authority to maintain
11 confidentiality; and

12

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

1

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

6

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

18

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

24

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

5

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

11

12 (E) Require the NAIC or a third-party
13 consultant to consent to intervention by an insurer in any
14 judicial or administrative action in which the NAIC or a
15 third-party consultant may be required to disclose
16 confidential information about the insurer shared with the
17 NAIC or a third-party consultant pursuant to this chapter;
18 and

19

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

23

1 (d) The sharing of information and documents by the
2 commissioner pursuant to this chapter shall not constitute
3 a delegation of regulatory authority or rulemaking, and the
4 commissioner is solely responsible for the administration,
5 execution and enforcement of the provisions of this
6 chapter.

7

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

15

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

23

24 **26-51-109. Sanctions.**

1

2 Any insurer failing, without just cause, to timely file the
3 ORSA summary report as required in this chapter shall be
4 required, after notice and hearing, to pay a penalty of two
5 thousand five hundred dollars (\$2,500.00) for each day's
6 delay, to be recovered by the commissioner. The maximum
7 penalty under this section is seventy-five thousand dollars
8 (\$75,000.00). The commissioner may reduce the penalty if
9 the insurer demonstrates to the commissioner that the
10 imposition of the penalty would constitute a financial
11 hardship to the insurer.

12

13 **26-51-110. Applicability.**

14

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

18

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

20

21

(END)