

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

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 26-51-111 are

10 created to read:

11

12 **26-51-101. Purpose and scope.**

13

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 the January 1 following the calendar year in
19 which 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

1 **26-51-103. Risk management framework.**

2

3 An insurer shall maintain a risk management framework to
4 assist the insurer with identifying, assessing, monitoring,
5 managing and reporting on its material and relevant risks.

6 This requirement may be satisfied if the insurance group of
7 which the insurer is a member maintains a risk management
8 framework applicable to the operations of the insurer.

9

10 **26-51-104. ORSA requirement.**

11

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

19

20 **26-51-105. ORSA summary report.**

21

22 (a) Upon the commissioner's request, and no more than
23 once each year, an insurer shall submit to the commissioner

1 an ORSA summary report or any combination of reports that
2 together contain the information described in the ORSA
3 guidance manual, applicable to the insurer and the
4 insurance group of which it is a member. Notwithstanding
5 any request from the commissioner, if the insurer is a
6 member of an insurance group, the insurer shall submit the
7 report required by this subsection if the commissioner is
8 the lead state commissioner of the insurance group as
9 determined by the procedures within the financial analysis
10 handbook adopted by the National Association of Insurance
11 Commissioners.

12

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

22

1 (c) An insurer may comply with subsection (a) of this
2 section by providing the most recent and substantially
3 similar report provided by the insurer or another member of
4 an insurance group of which the insurer is a member to the
5 commissioner of another state or to a supervisor or
6 regulator of a foreign jurisdiction, if that report
7 provides information that is comparable to the information
8 described in the ORSA guidance manual. Any such report in
9 a language other than English shall be accompanied by a
10 translation of that report into the English language.

11

12 **26-51-106. Exemption.**

13

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

16

17 (i) The insurer has annual direct written and
18 unaffiliated assumed premium, including international
19 direct and assumed premium but excluding premiums reinsured
20 with the federal crop insurance corporation and federal
21 flood program, of less than five hundred million dollars
22 (\$500,000,000.00); and

23

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

7

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

18

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

1 pursuant to W.S. 26-51-105 shall be the report applicable
2 to that insurer.

3

4 (d) An insurer that does not qualify for exemption
5 pursuant to subsection (a) of this section may apply to the
6 commissioner for a waiver from the requirements of this
7 chapter based upon unique circumstances. In deciding
8 whether to grant the insurer's request for waiver, the
9 commissioner may consider the type and volume of business
10 written, ownership and organizational structure and any
11 other factor the commissioner considers relevant to the
12 insurer or insurance group of which the insurer is a
13 member. If the insurer is part of an insurance group with
14 insurers domiciled in more than one (1) state, the
15 commissioner shall coordinate with the lead state
16 commissioner and with the other domiciliary commissioners
17 in considering whether to grant the insurer's request for a
18 waiver.

19

20 (e) Notwithstanding the exemptions stated in this
21 section:

22

1 (i) The commissioner may require that an insurer
2 maintain a risk management framework, conduct an ORSA and
3 file an ORSA summary report based on unique circumstances
4 including, but not limited to, the type and volume of
5 business written, ownership and organizational structure,
6 federal agency requests and international supervisor
7 requests;

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

18
19 (f) If an insurer that qualifies for an exemption
20 pursuant to subsection (a) of this section subsequently no
21 longer qualifies for that exemption due to changes in
22 premium as reflected in the insurer's most recent annual
23 statement or in the most recent annual statements of the

1 insurers within the insurance group of which the insurer is
2 a member, the insurer shall have one (1) year following the
3 year the threshold is exceeded to comply with the
4 requirements of this chapter.

5

6 **26-51-107. Contents of ORSA summary report.**

7

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

14

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

20

21 **26-51-108. Confidentiality.**

22

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

19

20 (b) Neither the commissioner nor any person who
21 received documents, materials or other ORSA-related
22 information, through examination or otherwise, while acting
23 under the authority of the commissioner or with whom those

1 documents, materials or other information are shared
2 pursuant to this chapter shall be permitted or required to
3 testify in any private civil action concerning any
4 confidential documents, materials, or information subject
5 to subsection (a) of this section.

6

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

9

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

1

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

14

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

19

20 (A) Specify procedures and protocols
21 regarding the confidentiality and security of information
22 shared with the NAIC or a third-party consultant pursuant
23 to this chapter, including procedures and protocols for

1 sharing by the NAIC with other state regulators from states
2 in which the insurance group has domiciled insurers. The
3 agreement shall provide that the recipient agrees in
4 writing to maintain the confidentiality and privileged
5 status of the ORSA-related documents, materials or other
6 information and has verified in writing the legal authority
7 to maintain confidentiality;

8

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

14

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

19

20 (D) Require prompt notice to be given to an
21 insurer whose confidential information in the possession of
22 the NAIC or a third-party consultant pursuant to this

1 chapter is subject to a request or subpoena to the NAIC or
2 a third-party consultant for disclosure or production;

3

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

11

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

15

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

22

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

8
9 (f) Documents, materials or other information in the
10 possession or control of the NAIC or a third-party
11 consultant pursuant to this chapter shall be confidential
12 by law and privileged, shall not be subject to the Wyoming
13 Public Records Act, shall not be subject to subpoena, and
14 shall not be subject to discovery or admissible in evidence
15 in any private civil action.

16

17 **26-51-109. Sanctions.**

18

19 Any insurer failing, without just cause, to timely file the
20 ORSA summary report as required in this chapter shall be
21 required, after notice and hearing, to pay a penalty of
22 **[\$insert amount]** for each day's delay, to be recovered by
23 the commissioner. The maximum penalty under this section

1 is **[\$insert amount]**. The commissioner may reduce the
2 penalty if the insurer demonstrates to the commissioner
3 that the imposition of the penalty would constitute a
4 financial hardship to the insurer.

5

6 **26-51-110. Applicability.**

7

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

11

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

13

14

(END)