An Act

ENROLLED SENATE
BILL NO. 663

By: Brooks of the Senate

and

McDaniel (Randy) of the House

An Act relating to insurance; creating the Own Risk and Solvency Assessment (ORSA) Act; defining terms; requiring insurers to maintain certain framework; requiring insurers and insurance groups to conduct ORSA consistent with certain process; providing for reporting to the Insurance Commissioner; requiring certain attestation of report; providing reporting procedures and setting date of first report; providing for exemption and providing procedures; granting certain authority to and specifying duties of the Insurance Commissioner; providing time period for certain compliance; providing for contents of report; specifying standards for review; providing for confidentiality of certain documents; authorizing certain use; prohibiting certain testimony; providing for certain agreements; construing certain acts; providing penalty for failure to file timely report; providing for codification; and providing an effective date.

SUBJECT: Creating the Own Risk and Solvency Assessment Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3301 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Own Risk and Solvency Assessment (ORSA) Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3302 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Own Risk and Solvency Assessment (ORSA) Act:

1. "Insurance group" shall mean, for the purpose of conducting an Own Risk and Solvency Assessment (ORSA), those insurers and affiliates included within an insurance holding company system as defined in Section 1651 of Title 36 of the Oklahoma Statutes;

2. "Insurer" shall have the same meaning as set forth in Section 103 of Title 36 of the Oklahoma Statutes, 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;

3. "Own Risk and Solvency Assessment" or "ORSA" shall mean 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;

4. "ORSA Guidance Manual" shall mean the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners (NAIC), 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; and

5. "ORSA Summary Report" shall mean a confidential high-level summary of an insurer's or insurance group's ORSA.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3303 of Title 36, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3304 of Title 36, unless there is created a duplication in numbering, reads as follows:

Subject to the provisions of Section 6 of this act, 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.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3305 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Upon the Insurance Commissioner's request, and no more than once each year, an insurer shall submit to the Insurance 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/or the insurance group of which it is a member. Notwithstanding any request from the Insurance Commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report(s) required by this subsection if the Insurance Commissioner is the lead state Insurance Commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

B. The report(s) 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 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 the appropriate committee thereof.

C. An insurer may comply with subsection A of this section by providing the most recent and substantially similar reports provided by the insurer or another member of an insurance group of which the insurer is a member to the Insurance 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 described in the ORSA Guidance Manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

D. The first filing of the ORSA Summary Report shall be in 2016 pursuant to this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3306 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An insurer shall be exempt from the requirements of this act, if:

1. The insurer has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums, 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

2. The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premiums including international direct and assumed premiums, 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 1 of subsection A of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to paragraph 2 of subsection A of this section, then the ORSA Summary Report that may be required pursuant to Section 5 of this act shall include every insurer within the insurance group. This requirement

may be satisfied by the submission of more than one 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 1 of subsection A of this section, but the insurance group of which it is a member qualifies for exemption pursuant to paragraph 2 of subsection A of this section, then the only ORSA Summary Report that may be required pursuant to the provisions of Section 5 of this act 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 Insurance Commissioner for a waiver from the requirements of this act. In deciding whether to grant the insurer's request for waiver, the Insurance Commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the Insurance 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 state, the Insurance Commissioner shall coordinate with the lead state Insurance Commissioner and with the other domiciliary Insurance Commissioners in considering whether to grant the insurer's request for a waiver.

E. Notwithstanding the exemptions stated in this section:

1. The Insurance Commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA Summary Report based on circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

2. The Insurance Commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report if the insurer has risk-based capital for a Company Action Level Event as provided by law, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as provided by law or otherwise exhibits qualities of a troubled insurer as determined by the Insurance 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 act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3307 of Title 36, unless there is created a duplication in numbering, reads as follows:

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 Insurance 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 multistate or global insurers and insurance groups.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3308 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Documents, materials or other information, including the ORSA Summary Report, in the possession of or control of the Department of Insurance that are obtained by, created by or disclosed to the Insurance Commissioner or any other person under this act are 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 Oklahoma Open 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 Insurance 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 Insurance Commissioner's official duties.

The Insurance Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

B. Neither the Insurance Commissioner nor any person who received documents, materials or other ORSA-related information, through examination or otherwise, while acting under the authority of the Insurance Commissioner or with whom such documents, materials or other information are shared pursuant to this act 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 Insurance Commissioner's regulatory duties, the Insurance Commissioner:

1. 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 financial regulatory agencies, including members of any supervisory college, with the NAIC and with any third-party consultants designated by the Insurance 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;

2. 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, 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; and

3. Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information

provided pursuant to this act, 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 act, 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 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 act remains with the Insurance Commissioner and the NAIC's or a third-party consultant's use of the information is subject to the direction of the Insurance Commissioner,

c. prohibit the NAIC or third-party consultant from storing the information shared pursuant to this act 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 act 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 section, 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 Insurance Commissioner pursuant to this act shall not constitute a delegation of regulatory authority or rulemaking, and the Insurance Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this act.

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 Insurance Commissioner under this section or as a result of sharing as authorized in this act.

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3309 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any insurer failing, without just cause, to timely file the ORSA Summary Report as required in this act shall be required, after notice and hearing, to pay a penalty of One Thousand Dollars ($1,000.00) for each day's delay, to be recovered by the Insurance Commissioner. The maximum penalty under this section is Twenty-five Thousand Dollars ($25,000.00). The Insurance Commissioner may reduce the penalty if the insurer demonstrates to the Insurance Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

SECTION 10. This act shall become effective January 1, 2016.

Passed the Senate the 27th day of April, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 28th day of April, 2015, at 3:35 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 1st day of May, 2015, at 12:05 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 1st day of May, 2015, at 2:25 o'clock P. M.

By: JeAnn McNaughton-Hayes