

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 700

Introduced by Schumacher, 22.

Read first time January 08, 2014

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to insurance; to adopt the Risk Management and
- 2 Own Risk and Solvency Assessment Act; and to provide an
- 3 operative date.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Risk Management and Own Risk and Solvency
3 Assessment Act.

4 Sec. 2. (1) The purposes of the Risk Management and Own
5 Risk and Solvency Assessment Act are to provide requirements for
6 maintaining a risk management framework and completing an own risk
7 and solvency assessment and to provide guidance and instructions for
8 filing an own risk and solvency assessment summary report with the
9 director.

10 (2) The requirements of the act apply to all insurers
11 domiciled in this state unless exempt pursuant to section 8 of this
12 act.

13 Sec. 3. The Legislature finds and declares that the own
14 risk and solvency assessment summary report will contain confidential
15 and sensitive information related to an insurer's or insurance
16 group's identification of risks that is material and relevant to the
17 insurer or insurance group filing the report. The information will
18 include proprietary and trade secret information that has the
19 potential for harm and competitive disadvantage to the insurer or
20 insurance group if the information is made public. It is the intent
21 of this Legislature that the own risk and solvency assessment summary
22 report shall be a confidential document filed with the director, that
23 the own risk and solvency assessment summary report shall be shared
24 only as provided in the Risk Management and Own Risk and Solvency
25 Assessment Act and to assist the director in the performance of his

1 or her duties, and that in no event shall the own risk and solvency
2 assessment summary report be subject to public disclosure.

3 Sec. 4. For purposes of the Risk Management and Own Risk
4 and Solvency Assessment Act:

5 (1) Director mean the Director of Insurance;

6 (2) Insurance group means those insurers and affiliates
7 included within an insurance holding company system as defined in
8 subdivision (5) of section 44-2121;

9 (3) Insurer has the same meaning as in section 44-103,
10 except that it does not include agencies, authorities, or
11 instrumentalities of the United States, its possessions and
12 territories, the Commonwealth of Puerto Rico, the District of
13 Columbia, or a state or political subdivision of a state;

14 (4) Own risk and solvency assessment means a confidential
15 internal assessment, appropriate to the nature, scale, and complexity
16 of an insurer or insurance group, conducted by the insurer or
17 insurance group, of the material and relevant risks associated with
18 the insurer or insurance group's current business plan and the
19 sufficiency of capital resources to support those risks;

20 (5) Own risk and solvency assessment guidance manual
21 means the own risk and solvency assessment guidance manual prescribed
22 by the director which conforms substantially to the Own Risk and
23 Solvency Assessment Guidance Manual developed and adopted by the
24 National Association of Insurance Commissioners. A change in the own
25 risk and solvency assessment guidance manual shall be effective on

1 the January 1 following the calendar year in which the changes have
2 been adopted by the director; and

3 (6) Own risk and solvency assessment summary report means
4 a confidential, high-level summary of an insurer's or insurance
5 group's own risk and solvency assessment.

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

12 Sec. 6. Subject to section 8 of this act, an insurer, or
13 the insurance group of which the insurer is a member, shall regularly
14 conduct an own risk and solvency assessment consistent with a process
15 comparable to the own risk and solvency assessment guidance manual.
16 The own risk and solvency assessment shall be conducted no less than
17 annually but also at any time when there are significant changes to
18 the risk profile of the insurer or the insurance group of which the
19 insurer is a member.

20 Sec. 7. (1) Upon the director's request, and no more than
21 once each year, an insurer shall submit to the director an own risk
22 and solvency assessment summary report or any combination of reports
23 that together contain the information described in the own risk and
24 solvency assessment guidance manual applicable to the insurer or the
25 insurance group of which the insurer is a member. Notwithstanding any

1 request from the director, if the insurer is a member of an insurance
2 group, the insurer shall submit the report required by this
3 subsection if the director is the lead state insurance commissioner
4 of the insurance group.

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

13 (3) An insurer may comply with subsection (1) of this
14 section by providing the most recent and substantially similar report
15 provided by the insurer or another member of an insurance group of
16 which the insurer is a member to the insurance commissioner of
17 another state or to a supervisor or regulator of a foreign
18 jurisdiction if that report provides information that is comparable
19 to the information described in the own risk and solvency assessment
20 guidance manual. Any such report in a language other than English
21 must be accompanied by a translation of that report into the English
22 language.

23 (4) The first filing of the own risk and solvency
24 assessment summary report shall be in 2015.

25 Sec. 8. (1) An insurer shall be exempt from the

1 requirements of the Risk Management and Own Risk and Solvency
2 Assessment Act if:

3 (a) The insurer has annual direct written and
4 unaffiliated assumed premium, including international direct and
5 assumed premium but excluding premiums reinsured with the Federal
6 Crop Insurance Corporation and National Flood Insurance Program, of
7 less than five hundred million dollars; and

8 (b) The insurance group of which the insurer is a member
9 has annual direct written and unaffiliated assumed premium, including
10 international direct and assumed premium but excluding premiums
11 reinsured with the Federal Crop Insurance Corporation and National
12 Flood Insurance Program, of less than one billion dollars.

13 (2) If an insurer qualifies for exemption pursuant to
14 subdivision (1)(a) of this section, but the insurance group of which
15 the insurer is a member does not qualify for exemption pursuant to
16 subdivision (1)(b) of this section, then the own risk and solvency
17 assessment summary report required pursuant to section 7 of this act
18 shall include every insurer within the insurance group. This
19 requirement may be satisfied by the submission of more than one own
20 risk and solvency assessment summary report for any combination of
21 insurers if the combination of reports includes every insurer within
22 the insurance group.

23 (3) If an insurer does not qualify for exemption pursuant
24 to subdivision (1)(a) of this section, but the insurance group of
25 which the insurer is a member qualifies for exemption pursuant to

1 subdivision (1)(b) of this section, then the only own risk and
2 solvency assessment summary report required pursuant to section 7 of
3 this act shall be the report applicable to that insurer.

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

16 (5) Notwithstanding the exemptions stated in this
17 section:

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

24 (b) The director may require that an insurer maintain a
25 risk management framework, conduct an own risk and solvency

1 assessment, and file an own risk and solvency assessment summary
2 report if the insurer has risk-based capital for company action level
3 event as set forth in section 44-6016, meets one or more of the
4 standards of an insurer deemed to be in hazardous financial condition
5 as defined by rule and regulation adopted and promulgated by the
6 director to define standards for companies deemed to be in hazardous
7 financial condition, or otherwise exhibits qualities of a troubled
8 insurer as determined by the director.

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

16 Sec. 9. (1) An own risk and solvency assessment summary
17 report shall be prepared consistent with the own risk and solvency
18 assessment guidance manual, subject to the requirements of subsection
19 (2) of this section. Documentation and supporting information shall
20 be maintained and made available upon examination or upon request of
21 the director.

22 (2) The review of the own risk and solvency assessment
23 summary report, and any additional requests for information, shall be
24 made using similar procedures currently used in the analysis and
25 examination of multistate or global insurers and insurance groups.

1 Sec. 10. (1) Documents, materials, or other information,
2 including the own risk and solvency assessment summary report, in the
3 possession or control of the director that are obtained by, created
4 by, or disclosed to the director or any other person under the Risk
5 Management and Own Risk and Solvency Assessment Act, is recognized by
6 this state as being proprietary and to contain trade secrets. All
7 such documents, materials, or other information shall be confidential
8 by law and privileged, shall not be a public record subject to
9 disclosure by the director pursuant to sections 84-712 to 84-712.09,
10 shall not be subject to subpoena, and shall not be subject to
11 discovery or admissible in evidence in any private civil action. The
12 director may use the documents, materials, or other information in
13 the furtherance of any regulatory or legal action brought as a part
14 of the director's official duties. The director shall not otherwise
15 make the documents, materials, or other information public without
16 the prior written consent of the insurer.

17 (2) Neither the director nor any person who received
18 documents, materials, or other own risk and solvency assessment
19 related information through examination or otherwise while acting
20 under the authority of the director or with whom such documents,
21 materials, or other information are shared pursuant to the act shall
22 be permitted or required to testify in any private civil action
23 concerning any confidential documents, materials, or information
24 subject to subsection (1) of this section.

25 (3) In order to assist in the performance of the

1 director's regulatory duties, the director:

2 (a) May, upon request, share documents, materials, or
3 other own risk and solvency assessment information, including the
4 confidential and privileged documents, materials, or information
5 subject to subsection (1) of this section, including proprietary and
6 trade secret documents and materials, with other state, federal, and
7 international financial regulatory agencies, including members of any
8 supervisory college under section 44-2137.01, with the National
9 Association of Insurance Commissioners, and with any third-party
10 consultants designated by the director, if the recipient agrees in
11 writing to maintain the confidentiality and privileged status of the
12 documents, materials, or other information and has verified in
13 writing the legal authority to maintain confidentiality; and

14 (b) May receive documents, materials, or other own risk
15 and solvency assessment information, including otherwise confidential
16 and privileged documents, materials, or information, including
17 proprietary and trade secret documents and materials, from regulatory
18 officials of other foreign or domestic jurisdictions, including
19 members of any supervisory college under section 44-2137.01 and from
20 the National Association of Insurance Commissioners, and shall
21 maintain as confidential or privileged any documents, materials, or
22 information received with notice or the understanding that it is
23 confidential or privileged under the laws of the jurisdiction that is
24 the source of the document, material, or information.

25 (4) The director shall enter into a written agreement

1 with the National Association of Insurance Commissioners or a third-
2 party consultant governing sharing and use of information provided
3 pursuant to the act that:

4 (a) Specifies procedures and protocols regarding the
5 confidentiality and security of information shared with the National
6 Association of Insurance Commissioners or a third-party consultant
7 pursuant to the act, including procedures and protocols for sharing
8 by the National Association of Insurance Commissioners with other
9 state regulators from states in which the insurance group has
10 domiciled insurers. The agreement shall provide that the recipient
11 agrees in writing to maintain the confidentiality and privileged
12 status of the documents, materials, or other information and has
13 verified in writing the legal authority to maintain confidentiality;

14 (b) Specifies that ownership of information shared with
15 the National Association of Insurance Commissioners or a third-party
16 consultant pursuant to the act remains with the director and that the
17 National Association of Insurance Commissioners' or a third-party
18 consultant's use of the information is subject to the direction of
19 the director;

20 (c) Prohibits the National Association of Insurance
21 Commissioners or a third-party consultant from storing the
22 information shared pursuant to the act in a permanent data base after
23 the underlying analysis is completed;

24 (d) Requires prompt notice to be given to an insurer
25 whose confidential information in the possession of the National

1 Association of Insurance Commissioners or a third-party consultant
2 pursuant to the act is subject to a request or subpoena to the
3 National Association of Insurance Commissioners or a third-party
4 consultant for disclosure or production;

5 (e) Requires the National Association of Insurance
6 Commissioners or a third-party consultant to consent to intervention
7 by an insurer in any judicial or administrative action in which the
8 National Association of Insurance Commissioners or a third-party
9 consultant may be required to disclose confidential information about
10 the insurer shared with the National Association of Insurance
11 Commissioners or a third-party consultant pursuant to the act; and

12 (f) As part of the retention process, requires a third-
13 party consultant to verify to the director, with notice to the
14 insurer, that it is free of any conflict of interest and that it has
15 internal procedures in place to monitor compliance with any conflicts
16 and to comply with the act's confidentiality standards and
17 requirements. The retention agreement with a third-party consultant
18 shall require prior written consent of the insurer before making
19 public any information provided pursuant to the act as required in
20 subsection (1) of this section.

21 (5) The sharing of information and documents by the
22 director pursuant to the act shall not constitute a delegation of
23 regulatory authority or rulemaking, and the director is solely
24 responsible for the administration, execution, and enforcement of the
25 provisions of the act.

1 (6) No waiver of any applicable privilege or claim of
2 confidentiality in the documents, materials, or other own risk and
3 solvency assessment information shall occur as a result of disclosure
4 of such documents, materials, or other information to the director
5 under this section or as a result of sharing as authorized in the
6 act.

7 (7) Documents, materials, or other information in the
8 possession or control of the National Association of Insurance
9 Commissioners or a third-party consultant pursuant to the act shall
10 be confidential by law and privileged, shall not be a public record
11 subject to disclosure by the director pursuant to sections 84-712 to
12 84-712.09, shall not be subject to subpoena, and shall not be subject
13 to discovery or admissible in evidence in any private civil action.

14 Sec. 11. Any insurer failing, without just cause, to
15 timely file its own risk and solvency assessment summary report as
16 required in the Risk Management and Own Risk and Solvency Assessment
17 Act shall be required, after notice and hearing, to pay a penalty of
18 not to exceed two hundred dollars for each day's delay. The maximum
19 penalty under this section is ten thousand dollars. The director may
20 reduce the penalty if the insurer demonstrates to the director that
21 the imposition of the penalty would constitute a financial hardship
22 to the insurer. The director shall remit any penalties collected
23 under this section to the State Treasurer for distribution in
24 accordance with Article VII, section 5, of the Constitution of
25 Nebraska.

1 Sec. 12. This act becomes operative on January 1, 2015.