

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 105

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO INSURANCE; ENACTING THE OWN RISK AND SOLVENCY
ASSESSMENT ACT; ESTABLISHING A RISK MANAGEMENT FRAMEWORK;
REQUIRING INSURERS TO CONDUCT OWN RISK AND SOLVENCY ASSESSMENTS
AND MAKE ANNUAL SUMMARY REPORTS; PROVIDING FOR CONFIDENTIALITY
OF INFORMATION; ESTABLISHING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance
Code, Section 59A-5B-1 NMSA 1978, is enacted to read:

"59A-5B-1. [NEW MATERIAL] SHORT TITLE.--Chapter 59A,
Article 5B NMSA 1978 may be cited as the "Own Risk and Solvency
Assessment Act"."

SECTION 2. A new section of the New Mexico Insurance
Code, Section 59A-5B-2 NMSA 1978, is enacted to read:

"59A-5B-2. [NEW MATERIAL] DEFINITIONS.--As used in the

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underscored material = new
[bracketed material] = delete

1 Own Risk and Solvency Assessment Act:

2 A. "guidance manual" means the current version of
3 the own risk and solvency assessment guidance manual developed
4 and adopted by the national association of insurance
5 commissioners and as amended from time to time; provided that
6 a change in the guidance manual shall be effective on the
7 January 1 following the calendar year in which the changes have
8 been adopted by the national association of insurance
9 commissioners;

10 B. "insurance group" means two or more affiliated
11 persons, at least one of which is an insurer;

12 C. "insurer" means any person engaged as principal
13 and as indemnitor, surety or contractor entering into contracts
14 of insurance, except:

15 (1) any agency, authority or instrumentality
16 of the United States, its possessions and territories, the
17 Commonwealth of Puerto Rico or the District of Columbia; or

18 (2) any state or political subdivision of a
19 state;

20 D. "own risk and solvency assessment" means a
21 confidential internal assessment, appropriate to the nature,
22 scale and complexity of an insurer or insurance group,
23 conducted by that insurer or insurance group of the material
24 and relevant risks associated with the insurer's or insurance
25 groups current business plan and the sufficiency of capital

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1 resources to support those risks; and

2 E. "summary report" means a confidential high-level
3 summary of an insurer or insurance group's own risk and
4 solvency assessment."

5 SECTION 3. A new section of the New Mexico Insurance
6 Code, Section 59A-5B-3 NMSA 1978, is enacted to read:

7 "59A-5B-3. [NEW MATERIAL] RISK MANAGEMENT FRAMEWORK.--An
8 insurer shall maintain a risk management framework to assist
9 the insurer with identifying, assessing, monitoring, managing
10 and reporting on its material and relevant risks. This
11 requirement may be satisfied if the insurance group of which an
12 insurer is a member maintains a risk management framework
13 applicable to the operations of the insurer."

14 SECTION 4. A new section of the New Mexico Insurance
15 Code, Section 59A-5B-4 NMSA 1978, is enacted to read:

16 "59A-5B-4. [NEW MATERIAL] OWN RISK AND SOLVENCY
17 ASSESSMENT--REQUIREMENT.--Except as provided pursuant to
18 Section 59A-5B-6 NMSA 1978, an insurer, or the insurance group
19 of which the insurer is a member, shall regularly conduct an
20 own risk and solvency assessment consistent with a process
21 comparable to the guidance manual. The own risk and solvency
22 assessment shall be conducted no less than annually but also at
23 any time when there are significant changes to the risk profile
24 of the insurer or the insurance group of which the insurer is a
25 member."

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1 SECTION 5. A new section of the New Mexico Insurance
2 Code, Section 59A-5B-5 NMSA 1978, is enacted to read:

3 "59A-5B-5. [NEW MATERIAL] OWN RISK AND SOLVENCY
4 ASSESSMENT SUMMARY REPORT.--

5 A. Upon the superintendent's request, an insurer
6 shall submit to the superintendent an own risk and solvency
7 assessment summary report or any combination of reports that
8 together contain the information described in the guidance
9 manual applicable to the insurer and the insurance group, if
10 any, of which it is a member. The summary report, if
11 requested, shall be due thirty days after the completion of the
12 insurer's most recent own risk and solvency assessment that has
13 been performed in accordance with the insurer's or the
14 insurance group's internal strategic planning process. Upon
15 the superintendent's request, the insurer shall advise the
16 superintendent of the date, annual or otherwise, that the
17 insurer or the insurance group conducts its internal strategic
18 planning process. Notwithstanding any request from the
19 superintendent, if the insurer is a member of an insurance
20 group, the insurer shall submit the summary report or summary
21 reports required by this subsection if the superintendent is
22 the lead state commissioner of the insurance group as
23 determined by the procedures within the financial analysis
24 handbook adopted by the national association of insurance
25 commissioners.

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1 B. Each summary report shall include a signature of
2 the insurer or insurance group's chief risk officer or other
3 executive having responsibility for the oversight of the
4 insurer's enterprise risk management process attesting to the
5 best of the signator's belief and knowledge that the insurer
6 applies the enterprise risk management process described in the
7 summary report and that a copy of the summary report has been
8 provided to the insurer's board of directors or the appropriate
9 committee thereof.

10 C. An insurer may comply with the provisions of
11 Subsection A of this section by providing the most recent and
12 substantially similar summary report or summary reports
13 provided by the insurer or another member of the insurance
14 group of which the insurer is a member to the commissioner of
15 another state or to a supervisor or regulator of a foreign
16 jurisdiction, if that report provides information that is
17 comparable to the information described in the guidance manual.
18 Any such report in a language other than English shall be
19 accompanied by a translation of that report into the English
20 language."

21 **SECTION 6.** A new section of the New Mexico Insurance
22 Code, Section 59A-5B-6 NMSA 1978, is enacted to read:

23 "59A-5B-6. [NEW MATERIAL] EXEMPTION.--

24 A. An insurer shall be exempt from the provisions
25 of the Own Risk and Solvency Assessment Act if:

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1 (1) the insurer has an annual direct written
2 and unaffiliated assumed premium, including international
3 direct and assumed premiums but excluding premiums reinsured
4 with the federal crop insurance corporation and federal flood
5 program, of less than five hundred million dollars
6 (\$500,000,000); and

7 (2) the insurance group of which the insurer
8 is a member has an annual direct written and unaffiliated
9 assumed premium, including international direct and assumed
10 premiums but excluding premiums reinsured with the federal crop
11 insurance corporation and federal flood program, of less than
12 one billion dollars (\$1,000,000,000).

13 B. If an insurer qualifies for exemption pursuant
14 to Paragraph (1) of Subsection A of this section, but the
15 insurance group of which it is a member does not qualify for
16 exemption pursuant to Paragraph (2) of Subsection A of this
17 section, the summary report that may be required pursuant to
18 Section 59A-5B-5 NMSA 1978 shall include every insurer within
19 the insurance group. This requirement may be satisfied by the
20 submission of more than one summary report for any combination
21 of insurers; provided that any combination of reports includes
22 every insurer within the insurance group.

23 C. If an insurer does not qualify for exemption
24 pursuant to the provisions of Paragraph (1) of Subsection A of
25 this section, but the insurance group of which it is a member

1 qualifies for exemption pursuant to Paragraph (2) of Subsection
2 A of this section, the only summary report that may be required
3 pursuant to Section 59A-5B-5 NMSA 1978 shall be the report
4 applicable to that insurer.

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

19 E. Notwithstanding the exemptions stated in this
20 section:

21 (1) the superintendent may require that an
22 insurer maintain a risk management framework, conduct an own
23 risk and solvency assessment and file a summary report based on
24 unique circumstances, including the type and volume of business
25 written, ownership and organizational structure, federal agency

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1 requests and international supervisor requests; and

2 (2) the superintendent may require that an
3 insurer maintain a risk management framework, conduct an own
4 risk and solvency assessment and file a summary report if the
5 insurer has risk-based capital for a company action level event
6 pursuant to the Risk-Based Capital Act or otherwise exhibits
7 qualities of a troubled insurer as determined by the
8 superintendent.

9 F. If an insurer that qualifies for an exemption
10 pursuant to Subsection A of this section subsequently no longer
11 qualifies for that exemption due to changes in premium as
12 reflected in the insurer's most recent annual statement or in
13 the most recent annual statements of the insurers within the
14 insurance group of which it is a member, the insurer shall have
15 one year following the year the threshold is exceeded to comply
16 with the requirements of the Own Risk and Solvency Assessment
17 Act."

18 SECTION 7. A new section of the New Mexico Insurance
19 Code, Section 59A-5B-7 NMSA 1978, is enacted to read:

20 "59A-5B-7. [NEW MATERIAL] OWN RISK AND SOLVENCY
21 ASSESSMENT SUMMARY REPORTS--CONTENTS.--

22 A. A summary report shall be prepared consistent
23 with the guidance manual, subject to the requirements of
24 Subsection B of this section. Documentation and supporting
25 information shall be maintained and made available upon

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1 examination or upon request of the superintendent.

2 B. The review of the summary report, and any
3 additional requests for information, shall be made using
4 similar procedures currently used in the analysis and
5 examination of multistate or global insurers and insurance
6 groups."

7 SECTION 8. A new section of the New Mexico Insurance
8 Code, Section 59A-5B-8 NMSA 1978, is enacted to read:

9 "59A-5B-8. [NEW MATERIAL] CONFIDENTIALITY.--

10 A. Documents, materials or other information,
11 including the summary report, in the possession or control of
12 the office of superintendent of insurance that are obtained by,
13 created by or disclosed to the superintendent or any other
14 person pursuant to the Own Risk and Solvency Assessment Act
15 shall constitute trade secrets. The superintendent is
16 authorized to use the documents, materials or other information
17 in the furtherance of any regulatory or legal action brought as
18 a part of the superintendent's official duties. The
19 superintendent may not otherwise make the documents, materials
20 or other information public without prior written notice to the
21 insurer.

22 B. In order to assist in the performance of the
23 superintendent's regulatory duties, the superintendent:

24 (1) may, upon request, share documents,
25 materials or other information related to an own risk and

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1 solvency assessment, including the confidential documents,
2 materials or information subject to Subsection A of this
3 section and including proprietary and trade-secret documents
4 and materials, with other state, federal and international
5 financial regulatory agencies, with the national association of
6 insurance commissioners and with any third-party consultants
7 designated by the superintendent; provided that the recipient
8 agrees in writing to maintain the confidential status of the
9 documents, materials or other information related to an own
10 risk and solvency assessment and has verified in writing the
11 legal authority to maintain confidentiality;

12 (2) may receive documents, materials or other
13 information related to an own risk and solvency assessment,
14 including confidential documents, materials or information and
15 including proprietary and trade-secret information or
16 documents, from regulatory officials of other foreign or
17 domestic jurisdictions and from the national association of
18 insurance commissioners, and shall maintain as confidential any
19 documents, materials or information received with notice or the
20 understanding that it is confidential under the laws of the
21 jurisdiction that is the source of the document, material or
22 information; and

23 (3) shall enter into a written agreement with
24 the national association of insurance commissioners or a third-
25 party consultant governing sharing and use of information

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1 provided pursuant to the Own Risk and Solvency Assessment Act
2 consistent with this subsection that shall:

3 (a) specify procedures and protocols
4 regarding the confidentiality and security of information
5 shared with the national association of insurance commissioners
6 or a third-party consultant pursuant to the Own Risk and
7 Solvency Assessment Act, including procedures and protocols for
8 sharing by the national association of insurance commissioners
9 with other state regulators from states in which the insurance
10 group has domiciled insurers. The agreement shall provide that
11 the recipient agrees in writing to maintain the confidential
12 status of the documents, materials or other information related
13 to an own risk and solvency assessment and has verified in
14 writing the legal authority to maintain confidentiality;

15 (b) specify that ownership of
16 information shared with the national association of insurance
17 commissioners or a third-party consultant pursuant to the Own
18 Risk and Solvency Assessment Act remains with the
19 superintendent and that the national association of insurance
20 commissioners' or a third-party consultant's use of the
21 information is subject to the direction of the superintendent;

22 (c) prohibit the national association of
23 insurance commissioners or third-party consultant from storing
24 the information shared pursuant to the Own Risk and Solvency
25 Assessment Act in a permanent database after the underlying

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1 analysis is completed;

2 (d) require prompt notice to be given to
3 an insurer whose confidential information in the possession of
4 the national association of insurance commissioners or a third-
5 party consultant pursuant to the Own Risk and Solvency
6 Assessment Act when subject to a request or subpoena;

7 (e) require the national association of
8 insurance commissioners or a third-party consultant to consent
9 to intervention by an insurer in any judicial or administrative
10 action in which the national association of insurance
11 commissioners or a third-party consultant may be required to
12 disclose confidential information about the insurer that has
13 been shared with the national association of insurance
14 commissioners or a third-party consultant pursuant to the Own
15 Risk and Solvency Assessment Act; and

16 (f) in the case of an agreement
17 involving a third-party consultant, provide for the insurer's
18 written consent.

19 C. The sharing of information and documents by the
20 superintendent pursuant to the Own Risk and Solvency Assessment
21 Act shall not constitute a delegation of regulatory authority
22 or rulemaking, and the superintendent is solely responsible for
23 the administration, execution and enforcement of the provisions
24 of the Own Risk and Solvency Assessment Act.

25 D. No waiver of any applicable privilege or claim

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1 of confidentiality of documents, proprietary and trade-secret
 2 materials or other information related to an own risk and
 3 solvency assessment shall occur as a result of disclosure of
 4 that related information, materials or documents to the
 5 superintendent under this section or as a result of sharing as
 6 authorized in the Own Risk and Solvency Assessment Act."

7 **SECTION 9.** A new section of the New Mexico Insurance
 8 Code, Section 59A-5B-9 NMSA 1978, is enacted to read:

9 "59A-5B-9. [NEW MATERIAL] SANCTIONS.--Any insurer
 10 failing, without just cause, to timely file the summary report
 11 as required in the Own Risk and Solvency Assessment Act shall
 12 be required, after notice and hearing, to pay a penalty of one
 13 thousand dollars (\$1,000) for each day's delay to be recovered
 14 by the superintendent, and the penalty so recovered shall be
 15 paid into the general fund. The maximum penalty under this
 16 section is one hundred thousand dollars (\$100,000). The
 17 superintendent may reduce the penalty if the insurer
 18 demonstrates to the superintendent that the imposition of the
 19 penalty would constitute a financial hardship to the insurer."

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