

1 SENATE BILL 105

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Carroll H. Leavell

5
6
7
8
9
10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "59A-5B-1. [NEW MATERIAL] SHORT TITLE.--Chapter 59A,
21 Article 5B NMSA 1978 may be cited as the "Own Risk and Solvency
22 Assessment Act"."

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

25 "59A-5B-2. [NEW MATERIAL] PURPOSE AND SCOPE.--

.205753.1SA

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material]~~ = delete

1 A. The Own Risk and Solvency Assessment Act
2 establishes requirements for maintaining a risk management
3 framework and completing an own risk and solvency assessment
4 and provides guidance and instructions for filing an own risk
5 and solvency assessment summary report with the superintendent.
6 The requirements of the Own Risk and Solvency Assessment Act
7 shall apply to all insurers domiciled in New Mexico, except as
8 provided pursuant to Section 59A-5B-7 NMSA 1978.

9 B. An own risk and solvency assessment summary
10 report shall contain confidential and sensitive information
11 related to the identification of risks material and relevant to
12 the insurer or insurance group filing the report. This
13 information will include proprietary and trade secret
14 information that has the potential for harm and competitive
15 disadvantage to the insurer or insurance group if the
16 information is made public. The own risk and solvency
17 assessment summary report shall be a confidential document
18 filed with the superintendent. The own risk and solvency
19 assessment summary report shall be shared only in accordance
20 with the provisions of the Own Risk and Solvency Assessment Act
21 and to assist the superintendent in the performance of the
22 superintendents duties. In no event shall an own risk and
23 solvency assessment summary report be subject to public
24 disclosure."

25 **SECTION 3.** A new section of the New Mexico Insurance

.205753.1SA

underscored material = new
[bracketed material] = delete

1 Code, Section 59A-5B-3 NMSA 1978, is enacted to read:

2 "59A-5B-3. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Own Risk and Solvency Assessment Act:

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

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

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

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

20 (2) any state or political subdivision of a
21 state;

22 D. "own risk and solvency assessment" means a
23 confidential internal assessment, appropriate to the nature,
24 scale and complexity of an insurer or insurance group,
25 conducted by that insurer or insurance group of the material

.205753.1SA

underscored material = new
~~[bracketed material]~~ = delete

1 and relevant risks associated with the insurer's or insurance
2 groups current business plan and the sufficiency of capital
3 resources to support those risks; and

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

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

9 "59A-5B-4. [NEW MATERIAL] RISK MANAGEMENT FRAMEWORK.--An
10 insurer shall maintain a risk management framework to assist
11 the insurer with identifying, assessing, monitoring, managing
12 and reporting on its material and relevant risks. This
13 requirement may be satisfied if the insurance group of which an
14 insurer is a member maintains a risk management framework
15 applicable to the operations of the insurer."

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

18 "59A-5B-5. [NEW MATERIAL] OWN RISK AND SOLVENCY
19 ASSESSMENT--REQUIREMENT.--Except as provided pursuant to
20 Section 59A-5B-7 NMSA 1978, an insurer, or the insurance group
21 of which the insurer is a member, shall regularly conduct an
22 own risk and solvency assessment consistent with a process
23 comparable to the guidance manual. The own risk and solvency
24 assessment shall be conducted no less than annually but also at
25 any time when there are significant changes to the risk profile

.205753.1SA

underscored material = new
~~[bracketed material] = delete~~

1 of the insurer or the insurance group of which the insurer is a
2 member."

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

5 "59A-5B-6. [NEW MATERIAL] OWN RISK AND SOLVENCY
6 ASSESSMENT SUMMARY REPORT.--

7 A. Upon the superintendent's request, and no more
8 than once each year, an insurer shall submit to the
9 superintendent an own risk and solvency assessment summary
10 report or any combination of reports that together contain the
11 information described in the guidance manual applicable to the
12 insurer and the insurance group, if any, of which it is a
13 member. Notwithstanding any request from the superintendent,
14 if the insurer is a member of an insurance group, the insurer
15 shall submit the summary report or summary reports required by
16 this subsection if the superintendent is the lead state
17 commissioner of the insurance group as determined by the
18 procedures within the financial analysis handbook adopted by
19 the national association of insurance commissioners.

20 B. Each summary report shall include a signature of
21 the insurer or insurance group's chief risk officer or other
22 executive having responsibility for the oversight of the
23 insurer's enterprise risk management process attesting to the
24 best of the signator's belief and knowledge that the insurer
25 applies the enterprise risk management process described in the

.205753.1SA

underscored material = new
[bracketed material] = delete

1 summary report and that a copy of the summary report has been
2 provided to the insurer's board of directors or the appropriate
3 committee thereof.

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

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

17 "59A-5B-7. [NEW MATERIAL] EXEMPTION.--

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

20 (1) the insurer has an annual direct written
21 and unaffiliated assumed premium, including international
22 direct and assumed premiums but excluding premiums reinsured
23 with the federal crop insurance corporation and federal flood
24 program, of less than five hundred million dollars
25 (\$500,000,000); and

.205753.1SA

underscoring material = new
~~[bracketed material] = delete~~

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

7 B. If an insurer qualifies for exemption pursuant
8 to Paragraph (1) of Subsection A of this section, but the
9 insurance group of which it is a member does not qualify for
10 exemption pursuant to Paragraph (2) of Subsection A of this
11 section, the summary report that may be required pursuant to
12 Section 59A-5B-6 NMSA 1978 shall include every insurer within
13 the insurance group. This requirement may be satisfied by the
14 submission of more than one summary report for any combination
15 of insurers; provided that any combination of reports includes
16 every insurer within the insurance group.

17 C. If an insurer does not qualify for exemption
18 pursuant to the provisions of Paragraph (1) of Subsection A of
19 this section, but the insurance group of which it is a member
20 qualifies for exemption pursuant to Paragraph (2) of Subsection
21 A of this section, the only summary report that may be required
22 pursuant to Section 59A-5B-6 NMSA 1978 shall be the report
23 applicable to that insurer.

24 D. An insurer that does not qualify for exemption
25 pursuant to Subsection A of this section may apply to the

.205753.1SA

underscoring material = new
~~[bracketed material] = delete~~

1 superintendent for a waiver from the requirements of the Own
2 Risk and Solvency Assessment Act based upon unique
3 circumstances. In deciding whether to grant the insurer's
4 request for waiver, the superintendent may consider the type
5 and volume of business written, ownership and organizational
6 structure and any other factor the superintendent considers
7 relevant to the insurer or insurance group of which it is a
8 member. If the insurer is part of an insurance group with
9 insurers domiciled in more than one state, the superintendent
10 shall coordinate with the lead state commissioner and with the
11 other domiciliary commissioners in considering whether to grant
12 the insurer's request for a waiver.

13 E. Notwithstanding the exemptions stated in this
14 section:

15 (1) the superintendent may require that an
16 insurer maintain a risk management framework, conduct an own
17 risk and solvency assessment and file a summary report based on
18 unique circumstances, including the type and volume of business
19 written, ownership and organizational structure, federal agency
20 requests and international supervisor requests; and

21 (2) 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 if the
24 insurer has risk-based capital for a company action level event
25 pursuant to the Risk-Based Capital Act or otherwise exhibits

.205753.1SA

underscoring material = new
~~[bracketed material] = delete~~

1 qualities of a troubled insurer as determined by the
2 superintendent.

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

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

14 "59A-5B-8. [NEW MATERIAL] OWN RISK AND SOLVENCY
15 ASSESSMENT SUMMARY REPORTS--CONTENTS.--

16 A. A summary report shall be prepared consistent
17 with the guidance manual, subject to the requirements of
18 Subsection B of this section. Documentation and supporting
19 information shall be maintained and made available upon
20 examination or upon request of the superintendent.

21 B. The review of the summary report, and any
22 additional requests for information, shall be made using
23 similar procedures currently used in the analysis and
24 examination of multistate or global insurers and insurance
25 groups."

.205753.1SA

underscored material = new
[bracketed material] = delete

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

3 "59A-5B-9. [NEW MATERIAL] CONFIDENTIALITY.--

4 A. Documents, materials or other information,
5 including the summary report, in the possession or control of
6 the office of superintendent of insurance that are obtained by,
7 created by or disclosed to the superintendent or any other
8 person pursuant to the Own Risk and Solvency Assessment Act are
9 proprietary and contain trade secrets. These documents,
10 materials or other information shall be confidential by law and
11 privileged, shall not be subject to the Inspection of Public
12 Records Act, shall not be subject to subpoena and shall not be
13 subject to discovery or admissible in evidence in any private
14 civil action. The superintendent is authorized to use the
15 documents, materials or other information in the furtherance of
16 any regulatory or legal action brought as a part of the
17 superintendent's official duties. The superintendent shall not
18 otherwise make the documents, materials or other information
19 public without the prior written consent of the insurer.

20 B. Neither the superintendent nor any person who
21 received documents, materials or other information related to
22 an own risk and solvency assessment, through examination or
23 otherwise, while acting under the authority of the
24 superintendent or with whom these documents, materials or other
25 information are shared pursuant to the Own Risk and Solvency

.205753.1SA

underscoring material = new
~~[bracketed material]~~ = delete

1 Assessment Act shall be permitted or required to testify in any
2 private civil action concerning any confidential documents,
3 materials or information subject to Subsection A of this
4 section.

5 C. In order to assist in the performance of the
6 superintendent's regulatory duties, the superintendent:

7 (1) may, upon request, share documents,
8 materials or other information related to an own risk and
9 solvency assessment, including the confidential and privileged
10 documents, materials or information subject to Subsection A of
11 this section and including proprietary and trade-secret
12 documents and materials, with other state, federal and
13 international financial regulatory agencies, with the national
14 association of insurance commissioners and with any third-party
15 consultants designated by the superintendent; provided that the
16 recipient agrees in writing to maintain the confidentiality and
17 privileged status of the documents, materials or other
18 information related to an own risk and solvency assessment and
19 has verified in writing the legal authority to maintain
20 confidentiality;

21 (2) may receive documents, materials or other
22 information related to an own risk and solvency assessment,
23 including otherwise confidential and privileged documents,
24 materials or information and including proprietary and trade-
25 secret information or documents, from regulatory officials of

.205753.1SA

underscored material = new
~~[bracketed material] = delete~~

1 other foreign or domestic jurisdictions and from the national
2 association of insurance commissioners, and shall maintain as
3 confidential or privileged any documents, materials or
4 information received with notice or the understanding that it
5 is confidential or privileged under the laws of the
6 jurisdiction that is the source of the document, material or
7 information; and

8 (3) shall enter into a written agreement with
9 the national association of insurance commissioners or a third-
10 party consultant governing sharing and use of information
11 provided pursuant to the Own Risk and Solvency Assessment Act
12 consistent with this subsection that shall:

13 (a) specify procedures and protocols
14 regarding the confidentiality and security of information
15 shared with the national association of insurance commissioners
16 or a third-party consultant pursuant to the Own Risk and
17 Solvency Assessment Act, including procedures and protocols for
18 sharing by the national association of insurance commissioners
19 with other state regulators from states in which the insurance
20 group has domiciled insurers. The agreement shall provide that
21 the recipient agrees in writing to maintain the confidentiality
22 and privileged status of the documents, materials or other
23 information related to an own risk and solvency assessment and
24 has verified in writing the legal authority to maintain
25 confidentiality;

.205753.1SA

underscoring material = new
~~[bracketed material] = delete~~

1 (b) specify that ownership of
2 information shared with the national association of insurance
3 commissioners or a third-party consultant pursuant to the Own
4 Risk and Solvency Assessment Act remains with the
5 superintendent and that the national association of insurance
6 commissioners' or a third-party consultant's use of the
7 information is subject to the direction of the superintendent;

8 (c) prohibit the national association of
9 insurance commissioners or third-party consultant from storing
10 the information shared pursuant to the Own Risk and Solvency
11 Assessment Act in a permanent database after the underlying
12 analysis is completed;

13 (d) require prompt notice to be given to
14 an insurer whose confidential information in the possession of
15 the national association of insurance commissioners or a third-
16 party consultant pursuant to the Own Risk and Solvency
17 Assessment Act is subject to a request or subpoena to the
18 national association of insurance commissioners or a third-
19 party consultant for disclosure or production;

20 (e) require the national association of
21 insurance commissioners or a third-party consultant to consent
22 to intervention by an insurer in any judicial or administrative
23 action in which the national association of insurance
24 commissioners or a third-party consultant may be required to
25 disclose confidential information about the insurer that has

.205753.1SA

underscoring material = new
~~[bracketed material]~~ = delete

1 been shared with the national association of insurance
2 commissioners or a third-party consultant pursuant to the Own
3 Risk and Solvency Assessment Act; and

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

7 D. The sharing of information and documents by the
8 superintendent pursuant to the Own Risk and Solvency Assessment
9 Act shall not constitute a delegation of regulatory authority
10 or rulemaking, and the superintendent is solely responsible for
11 the administration, execution and enforcement of the provisions
12 of the Own Risk and Solvency Assessment Act.

13 E. No waiver of any applicable privilege or claim
14 of confidentiality of documents, proprietary and trade-secret
15 materials or other information related to an own risk and
16 solvency assessment shall occur as a result of disclosure of
17 that related information, materials or documents to the
18 superintendent under this section or as a result of sharing as
19 authorized in the Own Risk and Solvency Assessment Act.

20 F. Documents, material or other information in the
21 possession or control of the national association of insurance
22 commissioners or a third-party consultant pursuant to the Own
23 Risk and Solvency Assessment Act shall be confidential by law
24 or privileged, shall not be subject to the Inspection of Public
25 Records Act, shall not be subject to subpoena and shall not be

underscoring material = new
[bracketed material] = delete

1 subject to discovery or admissible in evidence in any private
2 civil action."

3 SECTION 10. A new section of the New Mexico Insurance
4 Code, Section 59A-5B-10 NMSA 1978, is enacted to read:

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

16 SECTION 11. A new section of the New Mexico Insurance
17 Code, Section 59A-5B-11 NMSA 1978, is enacted to read:

18 "59A-5B-11. [NEW MATERIAL] SEVERABILITY.--If any part or
19 application of the Own Risk and Solvency Assessment Act is held
20 invalid, the remainder or its application to other situations
21 or persons shall not be affected."