SENATE BILL 105

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

INTRODUCED BY

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

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

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

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

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

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

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

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

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

D. "own risk and solvency assessment" means 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's or insurance
groups current business plan and the sufficiency of capital
resources to support those risks; and

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

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

"59A-5B-4. [NEW MATERIAL] RISK MANAGEMENT FRAMEWORK.--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 an
insurer is a member maintains a risk management framework
applicable to the operations of the insurer."

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

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

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

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

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

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

B. Each summary report 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 the signator's belief and knowledge that the insurer applies the enterprise risk management process described in the
summary report and that a copy of the summary report has been provided to the insurer's board of directors or the appropriate committee thereof.

C. An insurer may comply with the provisions of Subsection A of this section by providing the most recent and substantially similar summary report or summary reports provided by the insurer or another member of the insurance group of which the insurer is a member to the 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 guidance manual. Any such report in a language other than English shall be accompanied by a translation of that report into the English language.

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

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

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

(1) the insurer has an annual direct written and unaffiliated assumed premium, 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); and
(2) the insurance group of which the insurer is a member has an annual direct written and unaffiliated assumed premium, 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).

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

C. If an insurer does not qualify for exemption pursuant to the provisions of 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, the only summary report that may be required pursuant to Section 59A-5B-6 NMSA 1978 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
superintendent for a waiver from the requirements of the Own
Risk and Solvency Assessment Act based upon unique
circumstances. In deciding whether to grant the insurer's
request for waiver, the superintendent may consider the type
and volume of business written, ownership and organizational
structure and any other factor the superintendent considers
relevant to the insurer or insurance group of which it is a
member. If the insurer is part of an insurance group with
insurers domiciled in more than one state, the superintendent
shall coordinate with the lead state commissioner and with the
other domiciliary commissioners in considering whether to grant
the insurer's request for a waiver.

E. Notwithstanding the exemptions stated in this
section:

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

(2) the superintendent may require that an
insurer maintain a risk management framework, conduct an own
risk and solvency assessment and file a summary report if the
insurer has risk-based capital for a company action level event
pursuant to the Risk-Based Capital Act or otherwise exhibits

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qualities of a troubled insurer as determined by the superintendent.

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 it is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of the Own Risk and Solvency Assessment Act."

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

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

A. A summary report shall be prepared consistent with the 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 superintendent.

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

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

A. Documents, materials or other information, including the summary report, in the possession or control of the office of superintendent of insurance that are obtained by, created by or disclosed to the superintendent or any other person pursuant to the Own Risk and Solvency Assessment Act are proprietary and contain trade secrets. These documents, materials or other information shall be confidential by law and privileged, shall not be subject to the Inspection of Public Records Act, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The superintendent 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 superintendent's official duties. The superintendent shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

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

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Assessment 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 superintendent's regulatory duties, the superintendent:

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

(2) may receive documents, materials or other information related to an own risk and solvency assessment, including otherwise confidential and privileged documents, materials or information and including proprietary and trade-secret information or documents, from regulatory officials of
other foreign or domestic jurisdictions and from the national
association of insurance commissioners, 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 national association of insurance commissioners or a third-
party consultant governing sharing and use of information
provided pursuant to the Own Risk and Solvency Assessment Act
consistent with this subsection that shall:

(a) specify procedures and protocols
regarding the confidentiality and security of information
shared with the national association of insurance commissioners
or a third-party consultant pursuant to the Own Risk and
Solvency Assessment Act, including procedures and protocols for
sharing by the national association of insurance commissioners
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 documents, materials or other
information related to an own risk and solvency assessment and
has verified in writing the legal authority to maintain
confidentiality;
(b) specify that ownership of information shared with the national association of insurance commissioners or a third-party consultant pursuant to the Own Risk and Solvency Assessment Act remains with the superintendent and that the national association of insurance commissioners' or a third-party consultant's use of the information is subject to the direction of the superintendent;

(c) prohibit the national association of insurance commissioners or third-party consultant from storing the information shared pursuant to the Own Risk and Solvency Assessment 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 national association of insurance commissioners or a third-party consultant pursuant to the Own Risk and Solvency Assessment Act is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant for disclosure or production;

(e) require the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or a third-party consultant may be required to disclose confidential information about the insurer that has
been shared with the national association of insurance
commissioners or a third-party consultant pursuant to the Own
Risk and Solvency Assessment Act; 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
superintendent pursuant to the Own Risk and Solvency Assessment
Act shall not constitute a delegation of regulatory authority
or rulemaking, and the superintendent is solely responsible for
the administration, execution and enforcement of the provisions
of the Own Risk and Solvency Assessment Act.

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

F. Documents, material or other information in the
possession or control of the national association of insurance
commissioners or a third-party consultant pursuant to the Own
Risk and Solvency Assessment Act shall be confidential by law
or privileged, shall not be subject to the Inspection of Public
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 10. A new section of the New Mexico Insurance
Code, Section 59A-5B-10 NMSA 1978, is enacted to read:

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

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

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