SENATE BILL 443

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

John M. Sapien

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 OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORTS; ESTABLISHING PENALTIES; AMENDING A SECTION OF THE NEW MEXICO INSURANCE CODE TO ESTABLISH FILING FEES FOR OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORTS.

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

SECTION 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Own Risk and Solvency Assessment Act"."

SECTION 2. A new section of the New Mexico Insurance Code .212950.2SA
is enacted to read:

"[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
group's current business plan and the sufficiency of capital
resources to support those risks; and

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

SECTION 3. A new section of the New Mexico Insurance Code
is enacted to read:

"[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 4. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT--
REQUIREMENT.--Except as provided pursuant to Section 6 of the
Own Risk and Solvency Assessment Act, 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 of the insurer or the insurance
group of which the insurer is a member."

SECTION 5. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT SUMMARY
REPORT.--

A. Pursuant to Chapter 59A, Article 4 NMSA 1978, 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. The own risk and
solvency assessment summary report, if requested, shall be due
thirty days after the completion of the insurer's most recent
own risk and solvency assessment that has been performed in
accordance with the insurer's or the insurance group's internal
strategic planning process. Upon the superintendent's request,
the insurer shall advise the superintendent of the date, annual
or otherwise, that the insurer or the insurance group conducts
its internal strategic planning process. Notwithstanding any
request from the superintendent, if the insurer is a member of
an insurance group, the insurer shall submit the own risk and
solvency assessment summary report or own risk and solvency
assessment 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 own risk and solvency assessment 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 own risk and solvency
assessment summary report and that a copy of the own risk and
solvency assessment 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 own risk and solvency assessment summary
report or own risk and solvency assessment 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
212950.2SA
SECTION 6. A new section of the New Mexico Insurance Code is enacted to read:

"[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 national flood insurance 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 national flood insurance 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 own risk and solvency assessment summary report that may be required pursuant to Section 5 of the Own Risk and Solvency Assessment Act shall include every insurer within the
insurance group. This requirement may be satisfied by the submission of more than one own risk and solvency assessment 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 own risk and solvency assessment summary report that may be required pursuant to Section 5 of the Own Risk and Solvency Assessment 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 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 a 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, the superintendent may require that an insurer
maintain a risk management framework, conduct an own risk and
solvency assessment and file an own risk and solvency
assessment summary report pursuant to Section 5 of the Own Risk
and Solvency Assessment Act:

(1) 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) if the insurer has risk-based capital for
a company action level event pursuant to the Risk-Based Capital
Act or otherwise exhibits 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 7. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORTS--CONTENTS.--

A. An own risk and solvency assessment 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 own risk and solvency assessment 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. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] CONFIDENTIALITY.--

A. Documents, materials or other information, including the own risk and solvency assessment summary report, in the possession or control of the superintendent that are obtained by, created by or disclosed to the superintendent pursuant to the Own Risk and Solvency Assessment Act shall be kept pursuant to the provisions of Chapter 59A, Article 4 NMSA 1978. 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 may not
otherwise make the documents, materials or other information
public without prior written notice to the insurer.

B. 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 documents,
materials or information pursuant to Section 5 of the Own Risk
and Solvency Assessment Act 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
confidential 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 confidential 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 any
documents, materials or information received with notice or the
understanding that it is confidential 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 confidential
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 when subject to a request or subpoena;

(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.

C. 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.

D. 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."

SECTION 9. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] SANCTIONS.--Any insurer failing, without just cause, to timely file the own risk and solvency assessment 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 10. Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect the following fees:

A. insurer's certificate of authority -

   (1) filing application for certificate of authority, and issuance of certificate of authority, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application. $1,000.00

   (2) annual continuation of certificate of authority, per kind of insurance ................ 200.00

   (3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978) ............. 150.00

   (4) amendment to certificate of authority ........................................ 200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978) 10.00

C. annual statement of insurer, filing ........ 200.00

D. own risk and solvency assessment summary report
filing ............................................. 200.00

[B-] E. service of process, acceptance by
superintendent and issuance of certificate of service . . . 10.00

[E-] F. producer licenses and appointments -

(1) filing application for original producer
license and issuance of license ............... 30.00

(2) biennial continuation of license . . . 60.00

(3) appointment of producer -

(a) filing appointment, per kind of
insurance, each insurer ................. 20.00

(b) annual continuation of appointment,
per kind of insurance, each insurer ........ 20.00

(4) temporary license filing
application ..................................... 30.00

[F-] G. agency business entity license and
affiliations -

(1) filing application for original agency
business entity license and issuance of license . . . . 30.00

(2) biennial continuation of license . . 60.00

(3) filing of individual affiliation . . . 20.00

(4) annual continuation of individual
affiliation ..................................... 20.00

[G-] H. insurance vending machine license -

(1) filing application for original license
and issuance of license, each machine ....... 25.00
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<th>Item</th>
<th>Description</th>
<th>Fee</th>
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<tr>
<td>(2)</td>
<td>Biennial continuation of license, each machine</td>
<td>$50.00</td>
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<td>[H]</td>
<td>Examination for license, application for examination conducted directly by the superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules, and payable as to each instance of examination</td>
<td>$75.00</td>
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<td>[J]</td>
<td>Surplus lines insurer - filing application for qualification as eligible surplus lines insurer</td>
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<td>[K]</td>
<td>Surplus lines broker license - (1) Filing application for original license and issuance of license</td>
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<td>(2) Biennial continuation of license</td>
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<td>Surplus lines brokerage business entity license and affiliations - (1) Filing application for original surplus lines brokerage business entity license and issuance of license</td>
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<td>(2) Filing of individual affiliation</td>
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<tr>
<td>[M]</td>
<td>Adjuster license - (1) Filing application for original license and issuance of license</td>
<td>$30.00</td>
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<td></td>
<td>(2) Biennial continuation of</td>
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license ......................................................... 60.00

[M-] insurance consultant license -

(1) filing application for original license
and issuance of license .............................. 50.00

(2) application examination ........................ 75.00

(3) biennial continuation of license .......... 100.00

[N-] viatical settlements license -

(1) providers -

(a) filing application for original license
and issuance of license ............................ 1,000.00

(b) biennial continuation of license ........... 400.00

(2) brokers -

(a) filing application for original license
and issuance of license ............................ 100.00

(b) biennial continuation of license .......... 200.00

(3) brokerages -

(a) filing application for original business entity license and issuance of license ... 100.00

(b) biennial continuation of license .......... 200.00

(c) filing of individual affiliation .............. 20.00

(d) annual continuation of individual
affiliation ........................................ 20.00

[Θ-] P. advisory organization license -
  (1) filing application for license and
issuance of license .................................. 100.00
  (2) annual continuation of
license .................................................. 100.00

[Θ-] Q. nonprofit health care plans -
  (1) filing application for preliminary permit
and issuance of permit ............................. 100.00
  (2) certificate of authority, application,
issuance, continuation, reinstatement, charter documents - same
as for insurers
  (3) annual statement, filing ................... 200.00

[Θ-] Q. prepaid dental plans -
  (1) certificate of authority, application,
issuance, continuation, reinstatement, charter documents - same
as for insurers
  (2) annual report, filing ...................... 200.00

[Θ-] S. prearranged funeral insurance - application
for certificate of authority, issuance, continuation,
reinstatement, charter documents, filing annual statement,
licensing of sales representatives - same as for insurers

[Θ-] T. premium finance companies -
  (1) filing application for original license
and issuance of license ............................ 100.00
(2) annual renewal of license . . . . 100.00

[T-] U. motor clubs -
(1) certificate of authority -
  (a) filing application for original
  certificate of authority and issuance of certificate of
  authority . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 200.00
  (b) annual continuation of certificate
  of authority . . . . . . . . . . . . . . . . . . . . . . . . . . . . 100.00
(2) sales representatives -
  (a) filing application for registration
  or license and issuance of registration or license, each
  representative . . . . . . . . . . . . . . . . . . . . . . . . . . . . 30.00
  (b) biennial continuation of
  registration or license, each representative . . . . . . . . . 60.00

[U-] V. bail bondsmen -
(1) filing application for original license as
  bail bondsman or solicitor, and issuance of license . . 30.00
(2) examination for license, each instance of
  examination . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 50.00
(3) biennial continuation of license . 60.00

[V-] W. required filing of forms or rates - by all
  lines of business other than property or casualty -
(1) rates . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 50.00
(2) major form - each new policy and each
  package submission, which can include multiple policy forms,
application forms, rider forms, endorsement forms or amendment forms .......................... 30.00

(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes .......................... 15.00

[WR] X. health maintenance organizations -

(1) filing an application for a certificate of authority ............................................. 1,000.00

(2) annual continuation of certificate of authority ..................................................... 200.00

(3) filing each annual report ........ 200.00

(4) filing an amendment to organizational documents requiring approval .................. 200.00

(5) filing informational amendments . . 50.00

[XR] Y. purchasing groups and foreign risk retention groups -

(1) original registration ............ 500.00

(2) annual continuation of registration ...... 200.00

(3) producer fees - same as for authorized insurers

[YR] Z. third party administrators -

(1) filing application for original business

.212950.2SA

- 20 -
entity insurance administrator license ........ 100.00

(2) biennial continuation or renewal of license

(3) examination for license, each examination

(4) filing of annual report ....... 50.00

[ZZ] AA. miscellaneous fees -

(1) duplicate license ............ 30.00

(2) name change ............... 30.00

(3) for each signature and seal of superintendent affixed to any instrument .... 10.00

[AA] BB. pharmacy benefits managers -

(1) filing an application for a license .................. 1,000.00

(2) annual continuation of license, each year continued ........... 500.00

(3) filing each annual report ..... 200.00

(4) filing an amendment to organizational documents requiring approval ............ 200.00

(5) filing informational amendments . 100.00

[BB] CC. independent review organizations

(1) filing an application for a license ....

(2) biennial continuation of license 100.00

[CC] DD. continuing education providers

.212950.2SA
(1) filing an application for a course of instruction ....................... 80.00

(2) biennial continuation of course of instruction ...................... 40.00.

An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer does not comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent may refuse to grant or may withdraw approval of the tendered form or rate filing.

All fees are earned when paid and are not refundable."