
HOUSE BILL 1172

State of Washington

64th Legislature

2015 Regular Session

By Representatives Stanford, Vick, and Ryu; by request of Insurance Commissioner

Read first time 01/14/15. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to the risk management and solvency assessment
2 act; amending RCW 42.56.400; reenacting and amending RCW 42.56.400;
3 adding a new chapter to Title 48 RCW; providing effective dates; and
4 providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to
7 provide the requirements for maintaining a risk management framework
8 and completing an own risk and solvency assessment and provide
9 guidance and instructions for filing an ORSA summary report with the
10 insurance commissioner of this state.

11 (2) The requirements of this chapter apply to all insurers
12 domiciled in this state unless exempt pursuant to section 6 of this
13 act.

14 (3) The legislature finds and declares that the ORSA summary
15 report contains confidential and sensitive information related to an
16 insurer or insurance group's identification of risks material and
17 relevant to the insurer or insurance group filing the report. This
18 information includes proprietary and trade secret information that
19 has the potential for harm and competitive disadvantage to the
20 insurer or insurance group if the information is made public. It is
21 the intent of this legislature that the ORSA summary report is a

1 confidential document filed with the commissioner, that the ORSA
2 summary report may be shared only as stated in this chapter and to
3 assist the commissioner in the performance of his or her duties, and
4 that in no event may the ORSA summary report be subject to public
5 disclosure.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Insurance group" means, for the purposes of conducting an
10 ORSA, those insurers and affiliates included within an insurance
11 holding company system as defined in RCW 48.31B.005.

12 (2) "Insurer" includes an insurer authorized under chapter 48.05
13 RCW, a fraternal mutual insurer or society holding a license under
14 RCW 48.36A.290, a health care service contractor registered under
15 chapter 48.44 RCW, a health maintenance organization registered under
16 chapter 48.46 RCW, and a self-funded multiple employer welfare
17 arrangement under chapter 48.125 RCW, as well as all persons engaged
18 as, or purporting to be engaged as insurers, fraternal benefit
19 societies, health care service contractors, health maintenance
20 organizations, or self-funded multiple employer welfare arrangements
21 in this state, and to persons in process of organization to become
22 insurers, fraternal benefit societies, health care service
23 contractors, health maintenance organizations, or self-funded
24 multiple employer welfare arrangements, except that it does not
25 include agencies, authorities, or instrumentalities of the United
26 States, its possessions and territories, the Commonwealth of Puerto
27 Rico, the District of Columbia, or a state or political subdivision
28 of a state.

29 (3) "ORSA guidance manual" means the own risk and solvency
30 assessment guidance manual developed and adopted by the national
31 association of insurance commissioners.

32 (4) "ORSA summary report" means a confidential high-level ORSA
33 summary of an insurer or insurance group.

34 (5) "Own risk and solvency assessment" or "ORSA" means a
35 confidential internal assessment, appropriate to the nature, scale,
36 and complexity of an insurer or insurance group, conducted by that
37 insurer or insurance group of the material and relevant risks
38 associated with the insurer or insurance group's current business

1 plan, and the sufficiency of capital resources to support those
2 risks.

3 NEW SECTION. **Sec. 3.** An insurer must maintain a risk management
4 framework to assist the insurer with identifying, assessing,
5 monitoring, managing, and reporting on its material and relevant
6 risks. This requirement is satisfied if the insurance group of which
7 the insurer is a member maintains a risk management framework
8 applicable to the operations of the insurer.

9 NEW SECTION. **Sec. 4.** Subject to section 6 of this act, an
10 insurer, or the insurance group of which the insurer is a member,
11 must regularly conduct an ORSA consistent with a process comparable
12 to the ORSA guidance manual. The ORSA must be conducted annually but
13 also at any time when there are significant changes to the risk
14 profile of the insurer or the insurance group of which the insurer is
15 a member.

16 NEW SECTION. **Sec. 5.** (1) Upon the commissioner's request, and
17 no more than once each year, an insurer must submit to the
18 commissioner an ORSA summary report or any combination of reports
19 that together contain the information described in the ORSA guidance
20 manual, applicable to the insurer or the insurance group of which it
21 is a member. Notwithstanding any request from the commissioner, if
22 the insurer is a member of an insurance group, the insurer must
23 submit the report or set of reports required by this subsection if
24 the commissioner is the lead state commissioner of the insurance
25 group as determined by the procedures within the financial analysis
26 handbook adopted by the national association of insurance
27 commissioners.

28 (2) The report must include a signature of the insurer or
29 insurance group's chief risk officer or other executive having
30 responsibility for the oversight of the insurer's enterprise risk
31 management process attesting to the best of his or her belief and
32 knowledge that the insurer applies the enterprise risk management
33 process described in the ORSA summary report and that a copy of the
34 report has been provided to the insurer's board of directors or the
35 appropriate governing committee.

36 (3) An insurer may comply with subsection (1) of this section by
37 providing the most recent and substantially similar report or reports

1 provided by the insurer or another member of an insurance group of
2 which the insurer is a member to the commissioner of another state or
3 to a supervisor or regulator of a foreign jurisdiction, if that
4 report provides information that is comparable to the information
5 described in the ORSA guidance manual. Any such report in a language
6 other than English must be accompanied by a translation of that
7 report into the English language.

8 NEW SECTION. **Sec. 6.** (1) An insurer is exempt from the
9 requirements of this chapter, if:

10 (a) The insurer has annual direct written and unaffiliated
11 assumed premium including international direct and assumed premium,
12 but excluding premium reinsured with the federal crop insurance
13 corporation and federal flood program, less than five hundred million
14 dollars; and

15 (b) The insurance group of which the insurer is a member has
16 annual direct written and unaffiliated assumed premium including
17 international direct and assumed premium, but excluding premium
18 reinsured with the federal crop insurance corporation and federal
19 flood program, less than one billion dollars.

20 (2) If an insurer qualifies for exemption pursuant to subsection
21 (1)(a) of this section, but the insurance group of which the insurer
22 is a member does not qualify for exemption pursuant to subsection
23 (1)(b) of this section, then the ORSA summary report that may be
24 required pursuant to section 5 of this act must include every insurer
25 within the insurance group. This requirement is satisfied by the
26 submission of more than one ORSA summary report for any combination
27 of insurers, provided any combination of reports includes every
28 insurer within the insurance group.

29 (3) If an insurer does not qualify for exemption pursuant to
30 subsection (1)(a) of this section, but the insurance group of which
31 the insurer is a member does qualify for exemption pursuant to
32 subsection (1)(b) of this section, then the only ORSA summary report
33 that may be required pursuant to section 5 of this act is the report
34 applicable to that insurer.

35 (4) If an insurer does not qualify for exemption pursuant to
36 subsection (1)(a) of this section, the insurer may apply to the
37 commissioner for a waiver from the requirements of this chapter based
38 upon unique circumstances. In deciding whether to grant the insurer's
39 request for waiver, the commissioner may consider the type and volume

1 of business written, ownership and organizational structure, and any
2 other factor the commissioner considers relevant to the insurer or
3 insurance group of which the insurer is a member. If the insurer is a
4 part of an insurance group with insurers domiciled in more than one
5 state, the commissioner shall coordinate with the lead state
6 commissioner and with the other domiciliary commissioners in
7 considering whether to grant the insurer's request for a waiver.

8 (5) Notwithstanding the exemptions stated in this section, the
9 commissioner may require that an insurer maintain a risk management
10 framework, conduct an ORSA, and file an ORSA summary report (a) based
11 on unique circumstances including, but not limited to, the type and
12 volume of business written, ownership and organizational structure,
13 federal agency requests, and international supervisor requests; and
14 (b) if the insurer has risk-based capital at the company action level
15 event as set forth in RCW 48.05.440 or 48.43.310, meets one or more
16 of the standards of an insurer deemed to be in hazardous financial
17 condition as defined in WAC 284-16-310, or otherwise exhibits
18 qualities of a troubled insurer as determined by the commissioner.

19 (6) If an insurer that qualifies for exemption pursuant to
20 subsection (1)(a) of this section subsequently no longer qualifies
21 for that exemption due to changes in premium reflected in the
22 insurer's most recent annual statement or in the most recent annual
23 statements of the insurers within the insurance group of which the
24 insurer is a member, the insurer has one year following the year the
25 threshold is exceeded to comply with the requirement of this chapter.

26 NEW SECTION. **Sec. 7.** (1) The ORSA summary report shall be
27 prepared consistent with the ORSA guidance manual, subject to the
28 requirements of subsection (2) of this section. Documentation and
29 supporting information must be maintained and made available upon
30 examination or upon the request of the commissioner.

31 (2) The review of the ORSA summary report, and any additional
32 requests for information, must be made using similar procedures
33 currently used in the analysis and examination of multistate or
34 global insurers and insurance groups.

35 NEW SECTION. **Sec. 8.** (1) Documents, materials, or other
36 information, including the ORSA summary report, in the possession or
37 control of the commissioner that are obtained by, created by, or
38 disclosed to the commissioner or any other person under this chapter,

1 is recognized by this state as being proprietary and to contain trade
2 secrets. All such documents, materials, or other information is
3 confidential by law and privileged, is not subject to chapter 42.56
4 RCW, is not subject to subpoena, and is not subject to discovery or
5 admissible in evidence in any private civil action. However, the
6 commissioner is authorized to use the documents, materials, or other
7 information in the furtherance of any regulatory or legal action
8 brought as a part of the commissioner's official duties. The
9 commissioner may not otherwise make the documents, materials, or
10 other information public without the prior written consent of the
11 insurer.

12 (2) Neither the commissioner nor any person who received
13 documents, materials, or other ORSA-related information, through
14 examination or otherwise, while acting under the authority of the
15 commissioner or with whom such documents, materials, or other
16 information are shared pursuant to this chapter, is permitted or
17 required to testify in any private civil action concerning any
18 confidential documents, materials, or information subject to
19 subsection (1) of this section.

20 (3) In order to assist in the performance of the commissioner's
21 regulatory duties, the commissioner:

22 (a) May share documents, materials, or other ORSA-related
23 information, including the confidential and privileged documents,
24 materials, or information subject to subsection (1) of this section,
25 including proprietary and trade secret documents and materials with
26 other state, federal, and international regulatory agencies,
27 including members of any supervisory college recognized by the
28 national association of insurance commissioners, with the national
29 association of insurance commissioners, and with any third-party
30 consultants designated by the commissioner, provided that the
31 recipient agrees in writing to maintain the confidentiality and
32 privileged status of the ORSA-related documents, materials, or other
33 information and has verified in writing the legal authority to
34 maintain confidentiality;

35 (b) May receive documents, materials, or ORSA-related
36 information, including otherwise confidential and privileged
37 documents, materials, or information, including proprietary and trade
38 secret information or documents, from regulatory officials of other
39 foreign or domestic jurisdictions, including members of any
40 supervisory college recognized by the national association of

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

7 (c) Shall enter into written agreements with the national
8 association of insurance commissioners or a third-party consultant
9 governing sharing and use of information provided pursuant to this
10 chapter, consistent with this subsection that shall:

11 (i) Specify procedures and protocols regarding the
12 confidentiality and security of information shared with the national
13 association of insurance commissioners or third-party consultant
14 pursuant to this chapter, including procedures and protocols for
15 sharing by the national association of insurance commissioners with
16 other state regulators from states in which the insurance group has
17 domiciled insurers. The agreement must provide that the recipient
18 agrees in writing to maintain the confidentiality and privileged
19 status of the ORSA-related documents, materials, or other information
20 and has verified in writing the legal authority to maintain
21 confidentiality;

22 (ii) Specify that ownership of information shared with the
23 national association of insurance commissioners or third-party
24 consultants pursuant to this chapter remains with the commissioner
25 and the national association of insurance commissioners' or a third-
26 party consultant's use of the information is subject to the direction
27 of the commissioner;

28 (iii) Prohibit the national association of insurance
29 commissioners or third-party consultant from storing the information
30 shared pursuant to this chapter in a permanent database after the
31 underlying analysis is completed;

32 (iv) Require prompt notice to be given to an insurer whose
33 confidential information in the possession of the national
34 association of insurance commissioners or a third-party consultant
35 pursuant to this chapter is subject to a request or subpoena to the
36 national association of insurance commissioners or a third-party
37 consultant for disclosure or production;

38 (v) Require the national association of insurance commissioners
39 or a third-party consultant to consent to intervention by an insurer
40 in any judicial or administrative action in which the national

1 association of insurance commissioners or a third-party consultant
2 may be required to disclose confidential information about the
3 insurer shared with the national association of insurance
4 commissioners or a third-party consultant pursuant to this chapter;
5 and

6 (vi) In the case of an agreement involving a third-party
7 consultant, provide the insurer's written consent.

8 (4) The sharing of information by the commissioner pursuant to
9 this chapter does not constitute a delegation of regulatory authority
10 or rule making, and the commissioner is solely responsible for the
11 administration, execution, and enforcement of the provisions of this
12 chapter.

13 (5) A waiver of any applicable privilege or claim of
14 confidentiality in the documents, materials, or information does not
15 occur as a result of disclosure to the commissioner under this
16 section or as a result of sharing as authorized in this chapter.

17 (6) Documents, materials, or other information in the possession
18 or control of the national association of insurance commissioners or
19 a third-party consultant pursuant to this chapter are confidential by
20 law and privileged, are not subject to chapter 42.56 RCW, are not
21 subject to subpoena, and are not subject to discovery or admissible
22 in evidence in any private civil action.

23 NEW SECTION. **Sec. 9.** The commissioner must require any insurer
24 failing, without just cause, to file the ORSA summary report as
25 required in this chapter, after notice and hearing, to pay a fine of
26 five hundred dollars for each day's delay, to be recovered by the
27 commissioner and the fine collected must be transferred to the
28 treasurer for deposit into the state general fund. The maximum fine
29 under this section is one hundred thousand dollars. The commissioner
30 may reduce the fine if the insurer demonstrates to the commissioner
31 that the imposition of the fine would constitute a financial hardship
32 to the insurer.

33 **Sec. 10.** RCW 42.56.400 and 2013 c 277 s 5 and 2013 c 65 s 5 are
34 each reenacted and amended to read as follows:

35 The following information relating to insurance and financial
36 institutions is exempt from disclosure under this chapter:

1 (1) Records maintained by the board of industrial insurance
2 appeals that are related to appeals of crime victims' compensation
3 claims filed with the board under RCW 7.68.110;

4 (2) Information obtained and exempted or withheld from public
5 inspection by the health care authority under RCW 41.05.026, whether
6 retained by the authority, transferred to another state purchased
7 health care program by the authority, or transferred by the authority
8 to a technical review committee created to facilitate the
9 development, acquisition, or implementation of state purchased health
10 care under chapter 41.05 RCW;

11 (3) The names and individual identification data of either all
12 owners or all insureds, or both, received by the insurance
13 commissioner under chapter 48.102 RCW;

14 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

15 (5) Information provided under RCW 48.05.510 through 48.05.535,
16 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
17 48.46.600 through 48.46.625;

18 (6) Examination reports and information obtained by the
19 department of financial institutions from banks under RCW
20 (~~30.04.075~~) 30A.04.075, from savings banks under RCW 32.04.220,
21 from savings and loan associations under RCW 33.04.110, from credit
22 unions under RCW 31.12.565, from check cashers and sellers under RCW
23 31.45.030(3), and from securities brokers and investment advisers
24 under RCW 21.20.100, all of which is confidential and privileged
25 information;

26 (7) Information provided to the insurance commissioner under RCW
27 48.110.040(3);

28 (8) Documents, materials, or information obtained by the
29 insurance commissioner under RCW 48.02.065, all of which are
30 confidential and privileged;

31 (9) Confidential proprietary and trade secret information
32 provided to the commissioner under RCW 48.31C.020 through 48.31C.050
33 and 48.31C.070;

34 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
35 7.70.140 that, alone or in combination with any other data, may
36 reveal the identity of a claimant, health care provider, health care
37 facility, insuring entity, or self-insurer involved in a particular
38 claim or a collection of claims. For the purposes of this subsection:

39 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

1 (b) "Health care facility" has the same meaning as in RCW
2 48.140.010(6).

3 (c) "Health care provider" has the same meaning as in RCW
4 48.140.010(7).

5 (d) "Insuring entity" has the same meaning as in RCW
6 48.140.010(8).

7 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

8 (11) Documents, materials, or information obtained by the
9 insurance commissioner under RCW 48.135.060;

10 (12) Documents, materials, or information obtained by the
11 insurance commissioner under RCW 48.37.060;

12 (13) Confidential and privileged documents obtained or produced
13 by the insurance commissioner and identified in RCW 48.37.080;

14 (14) Documents, materials, or information obtained by the
15 insurance commissioner under RCW 48.37.140;

16 (15) Documents, materials, or information obtained by the
17 insurance commissioner under RCW 48.17.595;

18 (16) Documents, materials, or information obtained by the
19 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
20 (7)(a)(ii);

21 (17) Documents, materials, or information obtained by the
22 insurance commissioner in the commissioner's capacity as receiver
23 under RCW 48.31.025 and 48.99.017, which are records under the
24 jurisdiction and control of the receivership court. The commissioner
25 is not required to search for, log, produce, or otherwise comply with
26 the public records act for any records that the commissioner obtains
27 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as
28 a receiver, except as directed by the receivership court;

29 (18) Documents, materials, or information obtained by the
30 insurance commissioner under RCW 48.13.151;

31 (19) Data, information, and documents provided by a carrier
32 pursuant to section 1, chapter 172, Laws of 2010;

33 (20) Information in a filing of usage-based insurance about the
34 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

35 (21) Data, information, and documents, other than those described
36 in RCW 48.02.210(2), that are submitted to the office of the
37 insurance commissioner by an entity providing health care coverage
38 pursuant to RCW 28A.400.275 and 48.02.210; (~~and~~)

39 (22) Data, information, and documents obtained by the insurance
40 commissioner under RCW 48.29.017; (~~and~~)

1 (23) Information not subject to public inspection or public
2 disclosure under RCW 48.43.730(5); and

3 (23) Documents, materials, or information obtained by the
4 insurance commissioner under chapter 48.--- RCW (the new chapter
5 created in section 13 of this act).

6 **Sec. 11.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to
7 read as follows:

8 The following information relating to insurance and financial
9 institutions is exempt from disclosure under this chapter:

10 (1) Records maintained by the board of industrial insurance
11 appeals that are related to appeals of crime victims' compensation
12 claims filed with the board under RCW 7.68.110;

13 (2) Information obtained and exempted or withheld from public
14 inspection by the health care authority under RCW 41.05.026, whether
15 retained by the authority, transferred to another state purchased
16 health care program by the authority, or transferred by the authority
17 to a technical review committee created to facilitate the
18 development, acquisition, or implementation of state purchased health
19 care under chapter 41.05 RCW;

20 (3) The names and individual identification data of either all
21 owners or all insureds, or both, received by the insurance
22 commissioner under chapter 48.102 RCW;

23 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

24 (5) Information provided under RCW 48.05.510 through 48.05.535,
25 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
26 48.46.600 through 48.46.625;

27 (6) Examination reports and information obtained by the
28 department of financial institutions from banks under RCW
29 (~~(30.04.075)~~) 30A.04.075, from savings banks under RCW 32.04.220,
30 from savings and loan associations under RCW 33.04.110, from credit
31 unions under RCW 31.12.565, from check cashers and sellers under RCW
32 31.45.030(3), and from securities brokers and investment advisers
33 under RCW 21.20.100, all of which is confidential and privileged
34 information;

35 (7) Information provided to the insurance commissioner under RCW
36 48.110.040(3);

37 (8) Documents, materials, or information obtained by the
38 insurance commissioner under RCW 48.02.065, all of which are
39 confidential and privileged;

1 (9) Confidential proprietary and trade secret information
2 provided to the commissioner under RCW 48.31C.020 through 48.31C.050
3 and 48.31C.070;

4 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
5 7.70.140 that, alone or in combination with any other data, may
6 reveal the identity of a claimant, health care provider, health care
7 facility, insuring entity, or self-insurer involved in a particular
8 claim or a collection of claims. For the purposes of this subsection:

9 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

10 (b) "Health care facility" has the same meaning as in RCW
11 48.140.010(6).

12 (c) "Health care provider" has the same meaning as in RCW
13 48.140.010(7).

14 (d) "Insuring entity" has the same meaning as in RCW
15 48.140.010(8).

16 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

17 (11) Documents, materials, or information obtained by the
18 insurance commissioner under RCW 48.135.060;

19 (12) Documents, materials, or information obtained by the
20 insurance commissioner under RCW 48.37.060;

21 (13) Confidential and privileged documents obtained or produced
22 by the insurance commissioner and identified in RCW 48.37.080;

23 (14) Documents, materials, or information obtained by the
24 insurance commissioner under RCW 48.37.140;

25 (15) Documents, materials, or information obtained by the
26 insurance commissioner under RCW 48.17.595;

27 (16) Documents, materials, or information obtained by the
28 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
29 (7)(a)(ii);

30 (17) Documents, materials, or information obtained by the
31 insurance commissioner in the commissioner's capacity as receiver
32 under RCW 48.31.025 and 48.99.017, which are records under the
33 jurisdiction and control of the receivership court. The commissioner
34 is not required to search for, log, produce, or otherwise comply with
35 the public records act for any records that the commissioner obtains
36 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as
37 a receiver, except as directed by the receivership court;

38 (18) Documents, materials, or information obtained by the
39 insurance commissioner under RCW 48.13.151;

1 (19) Data, information, and documents provided by a carrier
2 pursuant to section 1, chapter 172, Laws of 2010;

3 (20) Information in a filing of usage-based insurance about the
4 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

5 (21) Data, information, and documents, other than those described
6 in RCW 48.02.210(2), that are submitted to the office of the
7 insurance commissioner by an entity providing health care coverage
8 pursuant to RCW 28A.400.275 and 48.02.210; (~~and~~)

9 (22) Data, information, and documents obtained by the insurance
10 commissioner under RCW 48.29.017; and

11 (23) Documents, materials, or information obtained by the
12 insurance commissioner under chapter 48.--- RCW (the new chapter
13 created in section 13 of this act).

14 NEW SECTION. Sec. 12. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 13. Sections 1 through 9 and 14 of this act
19 constitute a new chapter in Title 48 RCW.

20 NEW SECTION. Sec. 14. This chapter may be known and cited as
21 the risk management and solvency assessment act.

22 NEW SECTION. Sec. 15. Except for section 11 of this act, which
23 takes effect July 1, 2017, this act takes effect January 1, 2016.

24 NEW SECTION. Sec. 16. Section 10 of this act expires July 1,
25 2017.

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