

House Bill 2469

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Consumer and Business Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements for certain insurers to conduct own risk and solvency assessment and to file report of assessment with Department of Consumer and Business Services. Specifies conditions for sharing reports and related information. Requires reports and related information to be privileged and held confidentially by department and others in possession of information.

Becomes operative January 1, 2016. Requires affected insurers to file first reports on or before April 30, 2017, for calendar year ending December 31, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to risk management for financial solvency of insurers; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 9 of this 2015 Act are added to and made a part of the Insur-**
5 **ance Code.**

6 **SECTION 2. As used in sections 2 to 9 of this 2015 Act:**

7 (1) **“Insurance group” means those insurers and affiliates included with an insurance**
8 **holding company system as defined in ORS 732.548.**

9 (2) **“Insurer” has the meaning given that term in ORS 732.548.**

10 (3) **“Own risk and solvency assessment” or “assessment” means a confidential internal**
11 **assessment, appropriate to the nature, scale and complexity of an insurer or insurance**
12 **group, conducted by that insurer or insurance group of the material and relevant risks as-**
13 **sociated with the insurer or insurance group’s current business plan and the sufficiency of**
14 **capital resources to support those risks.**

15 (4) **“Own Risk and Solvency Assessment Guidance Manual” means the Own Risk and**
16 **Solvency Assessment Guidance Manual developed and adopted by the National Association**
17 **of Insurance Commissioners and designated by rule or order by the Director of the Depart-**
18 **ment of Consumer and Business Services to be the guidance and standard for completing the**
19 **assessment. A change in the Own Risk and Solvency Assessment Guidance Manual takes**
20 **effect on the date specified by the director.**

21 (5) **“Own risk and solvency assessment summary report” or “report” means a confiden-**
22 **tial high-level summary of an insurer or insurance group’s own risk and solvency assess-**
23 **ment.**

24 **SECTION 3. (1) The purpose of sections 2 to 9 of this 2015 Act is to provide the require-**
25 **ments for maintaining a risk management framework and completing an own risk and**
26 **solvency assessment and to provide guidance and instructions for filing an own risk and**
27 **solvency assessment summary report with the Director of the Department of Consumer and**
28 **Business Services.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) The requirements of sections 2 to 9 of this 2015 Act apply to all insurers domiciled in
2 this state unless exempt under section 7 of this 2015 Act.

3 **SECTION 4.** An insurer shall maintain a risk management framework to assist the
4 insurer with identifying, assessing, monitoring, managing and reporting on the insurer's
5 material and relevant risks. The insurer satisfies this requirement if the insurance group
6 of which the insurer is a member maintains a risk management framework applicable to the
7 operations of the insurer.

8 **SECTION 5.** Subject to the provisions of section 7 of this 2015 Act, an insurer, or the
9 insurance group of which the insurer is a member, shall regularly conduct an own risk and
10 solvency assessment consistent with a process comparable to that described in the Own Risk
11 and Solvency Assessment Guidance Manual. The insurer or the insurance group of which the
12 insurer is a member shall conduct the assessment at least annually but also at any time
13 when there are significant changes to the risk profile of the insurer or insurance group.

14 **SECTION 6.** (1) Upon the request of the Director of the Department of Consumer and
15 Business Services, and no more than once each year, an insurer shall submit to the director
16 an own risk and solvency assessment summary report, or any combination of reports that
17 together contain the information described in the Own Risk and Solvency Assessment Guid-
18 ance Manual, applicable to the insurer or the insurance group of which the insurer is a
19 member. Notwithstanding any request from the director, if the insurer is a member of an
20 insurance group, the insurer shall submit the report required by this subsection if the di-
21 rector is the lead state director of that group.

22 (2) The report must include a signature of the insurer or insurance group's chief risk
23 officer or other executive having responsibility for the oversight of the insurer's enterprise
24 risk management process, attesting to the best of the officer's belief and knowledge that the
25 insurer applies the enterprise risk management process described in the insurer's own risk
26 and solvency assessment summary report and that a copy of the report has been provided
27 to the insurer's board of directors or the appropriate committee of the board of directors.

28 (3) An insurer may comply with subsection (1) of this section by providing the most re-
29 cent and substantially similar report provided by the insurer or another member of an in-
30 surance group of which the insurer is a member to the director of another state or to a
31 supervisor or regulator of a foreign jurisdiction, if that report provides information that is
32 comparable to the information described in the Own Risk and Solvency Assessment Guidance
33 Manual. Any such report in a language other than English must be accompanied by a
34 translation of that report into the English language.

35 (4) An insurer required to submit a report under this section shall submit the report for
36 the previous calendar year on or before April 30, unless the director for good cause shown
37 extends the time for submitting the report.

38 **SECTION 7.** (1) An insurer is exempt from the requirements of sections 2 to 9 of this 2015
39 Act if:

40 (a) The insurer has annual direct written and unaffiliated assumed premium, including
41 international direct and assumed premium but excluding premiums reinsured with the Fed-
42 eral Crop Insurance Corporation and National Flood Insurance Program, of less than \$500
43 million; and

44 (b) The insurance group of which the insurer is a member has annual direct written and
45 unaffiliated assumed premium, including international direct and assumed premium but ex-

1 cluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood
 2 Insurance Program, of less than \$1 billion.

3 (2) If an insurer satisfies the requirement for exemption under subsection (1)(a) of this
 4 section, but the insurance group of which the insurer is a member does not qualify for ex-
 5 emption under subsection (1)(b) of this section, the own risk and solvency assessment sum-
 6 mary report that may be required under section 6 of this 2015 Act must include every insurer
 7 within the insurance group. The insurer may satisfy this requirement by submitting more
 8 than one own risk and solvency assessment summary report for any combination of insurers
 9 provided the combination of reports includes every insurer within the insurance group.

10 (3) If an insurer does not qualify for exemption under subsection (1)(a) of this section but
 11 the insurance group of which it is a member qualifies for exemption under subsection (1)(b)
 12 of this section, the only own risk and solvency assessment summary report required under
 13 section 6 of this 2015 Act is the report applicable to that insurer.

14 (4) An insurer that does not qualify for exemption under subsection (1) of this section
 15 may apply to the Director of the Department of Consumer and Business Services for a
 16 waiver from the requirements of sections 2 to 9 of this 2015 Act based upon unique circum-
 17 stances. In deciding whether to grant the insurer's request for waiver, the director may
 18 consider the type and volume of business written, ownership and organizational structure
 19 and any other factor the director considers relevant to the insurer or insurance group of
 20 which the insurer is a member. If the insurer is part of an insurance group with insurers
 21 domiciled in more than one state, the director shall coordinate with the lead state director
 22 and with the other domiciliary directors in considering whether to grant the insurer's re-
 23 quest for a waiver.

24 (5) Notwithstanding the exemptions stated in this section, the director may require an
 25 insurer to maintain a risk management framework, conduct an own risk and solvency as-
 26 sessment and file an own risk and solvency assessment summary report:

27 (a) Based on unique circumstances including but not limited to the type and volume of
 28 business written, ownership and organizational structure, federal agency requests and
 29 international supervisor requests; or

30 (b) If the insurer has risk-based capital that falls into company action level, meets one
 31 or more of the standards of an insurer deemed to be in hazardous financial condition, as
 32 determined under ORS 731.385, or otherwise exhibits qualities of a troubled insurer as de-
 33 termined by the director.

34 (6) If an insurer that qualifies for an exemption under subsection (1) of this section
 35 subsequently no longer qualifies for that exemption due to changes in premium as reflected
 36 in the insurer's most recent annual statement or in the most recent annual statements of
 37 insurers within the insurance group of which the insurer is a member, the insurer has one
 38 year following the year the threshold is exceeded to comply with the requirements of
 39 sections 2 to 9 of this 2015 Act.

40 **SECTION 8.** (1) Each insurer required to prepare an own risk and solvency assessment
 41 summary report shall prepare the report consistent with the Own Risk and Solvency As-
 42 sessment Guidance Manual, subject to the requirements of subsection (2) of this section. The
 43 insurer shall maintain documentation and supporting information and make the documenta-
 44 tion and supporting information available upon examination by or upon request of the Di-
 45 rector of the Department of Consumer and Business Services.

1 (2) The director shall review an own risk and solvency assessment summary report, and
 2 make any additional requests for information, using procedures currently used in the analy-
 3 sis and examination of multistate or global insurers and insurance groups.

4 **SECTION 9.** (1) All documents, materials or other information, including any own risk
 5 and solvency assessment summary report, in the possession of or control of the Department
 6 of Consumer and Business Services that are obtained by, created by or disclosed to the Di-
 7 rector of the Department of Consumer and Business Services or any other person in the
 8 course of implementing sections 2 to 9 of this 2015 Act are proprietary and recognized as
 9 containing trade secrets and therefore subject to the provisions of ORS 705.137, 705.138,
 10 705.139 and 731.312. All documents, materials or other information described in this sub-
 11 section are privileged and confidential and are not subject to disclosure under ORS 192.410
 12 to 192.505.

13 (2) Notwithstanding subsection (1) of this section, the director may:

14 (a) Use the documents, materials or other information in the furtherance of any regula-
 15 tory or legal action brought as a part of the director's official duties.

16 (b) Upon request, share documents, materials or other information related to an own risk
 17 and solvency assessment, including confidential and privileged documents.

18 (c) Share documents or materials or other information related to an own risk and
 19 solvency assessment with any third-party consultants designated by the director, provided
 20 that the recipient agrees in writing to maintain the confidentiality and privileged status of
 21 the documents, materials or other information and has verified in writing the legal authority
 22 to maintain confidentiality and privilege.

23 (3) The director may disclose documents, materials or other information under sub-
 24 section (2)(a) or (b) of this section only upon receiving the written consent of the affected
 25 insurer.

26 (4) In addition to the requirements of ORS 705.137, 705.138 and 731.312, the director shall
 27 enter into a written agreement with the National Association of Insurance Commissioners
 28 or a third-party consultant that:

29 (a) Prohibits the National Association of Insurance Commissioners or a third-party con-
 30 sultant from storing the information shared under sections 2 to 9 of this 2015 Act in a per-
 31 manent database after the underlying analysis is complete; and

32 (b) In the case of an agreement involving a third-party consultant, provides for the
 33 insurer's written consent to be given before any disclosure may occur.

34 **SECTION 10.** Each insurer required to do so shall file the first own risk and solvency
 35 assessment summary report due under section 6 of this 2015 Act on or before April 30, 2017,
 36 for the calendar year ending December 31, 2016.

37 **SECTION 11.** (1) Sections 2 to 10 of this 2015 Act become operative on January 1, 2016.

38 (2) The Director of the Department of Consumer and Business Services may take any
 39 action before the operative date specified in subsection (1) of this section that is necessary
 40 to enable the director to exercise, on and after the operative date specified in subsection (1)
 41 of this section, all of the duties, functions and powers conferred on the director by sections
 42 2 to 10 of this 2015 Act.

43 **SECTION 12.** This 2015 Act being necessary for the immediate preservation of the public
 44 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
 45 on its passage.

