

FIRST REGULAR SESSION

HOUSE BILL NO. 529

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

1347H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 382, RSMo, by adding thereto eleven new sections relating to own risk and solvency assessment in connection with the business of insurance, with a delayed effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 382, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 382.500, 382.505, 382.510, 382.515, 382.520, 382.525, 382.530, 382.535,
3 382.540, 382.545, and 382.550, to read as follows:

**382.500. 1. The provisions of sections 382.500 to 382.550 shall apply to all insurers
2 domiciled in this state that are not exempt under section 382.525.**

**3 2. The general assembly finds and declares that an own risk and solvency
4 assessment (ORSA) summary report contains confidential and sensitive information
5 related to an insurer or insurance group's identification of risks material and relevant to
6 the insurer or insurance group filing such report. Such information includes proprietary
7 and trade secret information that has the potential for harm and competitive disadvantage
8 to the insurer or insurance group if such information is made public. An ORSA summary
9 report shall be a confidential document filed with the director, shall be shared only as
10 stated in sections 382.500 to 382.550 to assist the director in the performance of the
11 director's duties, and shall not be subject to public disclosure.**

382.505. As used in sections 382.500 to 382.550, the following terms shall mean:

**2 (1) "Director", the director of the department of insurance, financial institutions
3 and professional registration;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 (2) "Insurance group", those insurers and affiliates included within an insurance
5 holding company system as defined in sections 382.010 to 382.300;

6 (3) "Insurer", the same meaning as such term is defined in section 382.010; except
7 that, insurer shall not include agencies, authorities, or instrumentalities of the United
8 States, its possessions and territories, the Commonwealth of Puerto Rico, the District of
9 Columbia, or a state or political subdivision of a state;

10 (4) "NAIC", the National Association of Insurance Commissioners;

11 (5) "Own risk and solvency assessment" or "ORSA", a confidential internal
12 assessment appropriate to the nature, scale, and complexity of an insurer or insurance
13 group conducted by such insurer or insurance group of the material and relevant risks
14 associated with the insurer's or insurance group's current business plan, and the
15 sufficiency of capital resources to support such risks;

16 (6) "ORSA guidance manual", the current version of the Own Risk and Solvency
17 Assessment Guidance Manual developed and adopted by the National Association of
18 Insurance Commissioners (NAIC), as amended. A change in the ORSA guidance manual
19 shall be effective on January first following the calendar year in which the changes have
20 been adopted by the NAIC;

21 (7) "ORSA summary report", a confidential high-level summary of an insurer's or
22 insurance group's own risk and solvency assessment.

382.510. An insurer shall maintain a risk management framework to assist the
2 insurer with identifying, assessing, monitoring, managing, and reporting on its material
3 and relevant risks. Such requirement may be satisfied if the insurance group of which the
4 insurer is a member maintains a risk management framework applicable to the operations
5 of the insurer.

382.515. Subject to the provisions of section 382.525, an insurer or the insurance
2 group of which the insurer is a member shall conduct an ORSA consistent with a process
3 comparable to the ORSA guidance manual. An ORSA shall be conducted no less than
4 annually and additionally at any time when there are significant changes to the risk profile
5 of the insurer or the insurance group of which the insurer is a member, as determined by
6 the insurer or the insurance group.

382.520. 1. Upon the director's request and no more than once each year, an
2 insurer shall submit to the director an ORSA summary report or any combination of
3 reports that together contain the information described in the ORSA guidance manual
4 applicable to the insurer and to the insurance group of which the insurer is a member.
5 Notwithstanding any request from the director, if the insurer is a member of an insurance
6 group, the insurer shall submit the report or reports required under this subsection if the

7 director is the lead state regulator of the insurance group as determined by the procedures
8 within the Financial Analysis Handbook adopted by the NAIC.

9 2. The report or reports shall include a signature of the insurer's or insurance
10 group's chief risk officer or other executive having responsibility for the oversight of the
11 insurer's enterprise risk management process attesting to the best of his or her belief and
12 knowledge that the insurer applies the enterprise risk management process described in
13 the ORSA summary report and that a copy of the report has been provided to the insurer's
14 board of directors or the appropriate committee thereof.

15 3. An insurer may comply with subsection 1 of this section by providing the most
16 recent and substantially similar report or reports provided by the insurer or another
17 member of an insurance group of which the insurer is a member to the director of another
18 state or to a supervisor or regulator of a foreign jurisdiction if such report or reports
19 provide information that is comparable to the information described in the ORSA
20 guidance manual. Any such report or reports in a language other than English shall be
21 accompanied by a translation of such report or reports into the English language.

382.525. 1. An insurer shall be exempt from the requirements of sections 382.500
2 to 382.550 if:

3 (1) The insurer has annual direct written and unaffiliated assumed premiums,
4 including international direct and assumed premiums but excluding premiums reinsured
5 with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five
6 hundred million dollars; and

7 (2) The insurance group of which the insurer is a member has annual direct written
8 and unaffiliated assumed premiums, including international direct and assumed premiums
9 but excluding premiums reinsured with the Federal Crop Insurance Corporation and the
10 Federal Flood Program, of less than one billion dollars.

11 2. If an insurer qualifies for exemption under subdivision (1) of subsection 1 of this
12 section, but the insurance group of which the insurer is a member does not qualify for
13 exemption under subdivision (2) of subsection 1 of this section, the ORSA summary report
14 that may be required under section 382.520 shall include every insurer within the
15 insurance group. Such requirement may be satisfied by the submission of more than one
16 ORSA summary report for any combination of insurers, provided any combination of
17 reports includes every insurer within the insurance group.

18 3. If an insurer does not qualify for exemption under subdivision (1) of subsection
19 1 of this section, but the insurance group of which the insurer is a member qualifies for
20 exemption under subdivision (2) of subsection 1 of this section, the only ORSA summary
21 report that may be required under section 382.520 is the report applicable to such insurer.

22 **4. An insurer that does not qualify for exemption under subsection 1 of this section**
23 **may apply to the director for a waiver from the requirements of sections 382.500 to 382.550**
24 **based upon unique circumstances. In deciding whether to grant the insurer's request for**
25 **waiver, the director may consider the type and volume of business written, ownership and**
26 **organizational structure, and any other factor the director considers relevant to the insurer**
27 **or insurance group of which the insurer is a member. If the insurer is part of an insurance**
28 **group with insurers domiciled in more than one state, the director shall coordinate with**
29 **the lead state director or regulator and with the other domiciliary state directors or**
30 **regulators in considering whether to grant the insurer's request for a waiver.**

31 **5. Notwithstanding the exemptions in this section, the director may require that an**
32 **insurer maintain a risk management framework, conduct an ORSA, and file an ORSA**
33 **summary report:**

34 **(1) Based on unique circumstances including, but not limited to, the type and**
35 **volume of business written, ownership and organization structure, federal agency requests,**
36 **and international supervisor requests;**

37 **(2) If the insurer has risk-based capital for company action level event as set forth**
38 **in section 375.1255 or other applicable risk-based capital law, meets one or more of the**
39 **standards of an insurer deemed to be in hazardous financial condition as defined in section**
40 **375.539, or otherwise exhibits qualities of a troubled insurer as determined by the director.**

41 **6. If an insurer that qualifies for an exemption under subsection 1 of this section**
42 **subsequently no longer qualifies for such exemption due to changes in premiums as**
43 **reflected in the insurer's most recent annual statement or in the most recent annual**
44 **statements of the insurers within the insurance group of which the insurer is a member,**
45 **the insurer shall have one year following the year in which the threshold is exceeded to**
46 **comply with the requirements of sections 382.500 to 382.550.**

382.530. 1. An ORSA summary report shall be prepared consistent with the ORSA
2 **guidance manual, subject to the requirements of subsection 2 of this section.**
3 **Documentation and supporting information shall be maintained and made available upon**
4 **examination or upon request of the director.**

5 **2. The review of an ORSA summary report and any additional requests for**
6 **information shall be made using similar procedures currently used in the analysis and**
7 **examination of multistate or global insurers and insurance groups.**

382.535. 1. Documents, materials, or other information, including the ORSA
2 **summary report, in the possession of or control of the department of insurance, financial**
3 **institutions and professional registration that are obtained by, created by, or disclosed to**
4 **the director or any other person under sections 382.500 to 382.550 is recognized by this**

5 state as being proprietary and to contain trade secrets. All such documents, materials, or
6 other information shall be confidential by law and privileged, shall not be subject to
7 disclosure under chapter 610, shall not be subject to subpoena, and shall not be subject to
8 discovery or admissible in evidence in any private civil action; except that, the director is
9 authorized to use such documents, materials, or other information in the furtherance of
10 any regulatory or legal action brought as a part of the director's official duties. The
11 director shall not otherwise make such documents, materials, or other information public
12 without the prior written consent of the insurer.

13 2. Neither the director nor any person who receives documents, materials, or other
14 ORSA-related information, through examination or otherwise, while acting under the
15 authority of the director or with whom such documents, materials, or other ORSA-related
16 information are shared under sections 382.500 to 382.550 shall be permitted or required
17 to testify in any private civil action concerning any confidential documents, materials, or
18 other ORSA-related information subject to subsection 1 of this section.

19 3. In order to assist in the performance of the director's regulatory duties, the
20 director:

21 (1) May, upon request, share documents, materials, or other ORSA-related
22 information, including the confidential and privileged documents, materials, or other
23 ORSA-related information subject to subsection 1 of this section, including proprietary
24 and trade secret documents and materials with other state, federal, and international
25 financial regulatory agencies, including members of any supervisory college authorized
26 under this chapter, with the NAIC, and with any third-party consultants designated by the
27 director; provided that, the recipient agrees in writing prior to receiving any such
28 documents, materials, or other ORSA-related information to maintain the confidentiality
29 and privileged status of such documents, materials, or other ORSA-related information
30 and has verified in writing the legal authority to maintain confidentiality;

31 (2) May receive documents, materials, or other ORSA-related information,
32 including otherwise confidential and privileged documents, materials, or information,
33 including proprietary and trade secret information or documents, from regulatory officials
34 of other foreign or domestic jurisdictions, including members of any supervisory college
35 authorized under this chapter, and from the NAIC, and shall maintain as confidential or
36 privileged any documents, materials, or other ORSA-related information received with
37 notice or the understanding that it is confidential or privileged under the laws of the
38 jurisdiction that is the source of the document, material, or other ORSA-related
39 information; and

40 **(3) Shall enter into a written agreement with the NAIC or a third-party consultant**
41 **governing sharing and use of ORSA-related information provided under sections 382.500**
42 **to 382.550 that is consistent with this subsection and that shall:**

43 **(a) Specify procedures and protocols regarding the confidentiality and security of**
44 **information shared with the NAIC or a third-party consultant under sections 382.500 to**
45 **382.550, including procedures and protocols for sharing by the NAIC with other state**
46 **regulators from states in which the insurance group has domiciled insurers. The**
47 **agreement shall provide that the recipient agrees in writing to maintain the confidentiality**
48 **and privileged status of ORSA-related documents, materials, or other ORSA-related**
49 **information and has verified in writing the legal authority to maintain confidentiality;**

50 **(b) Specify that ownership of information shared with the NAIC or third-party**
51 **consultant under sections 382.500 to 382.550 remains with the director and that the NAIC's**
52 **or a third-party consultant's use of such information is subject to the direction of the**
53 **director;**

54 **(c) Prohibit the NAIC or third-party consultant from storing any information**
55 **shared under sections 382.500 to 382.550 in a permanent database after the underlying**
56 **analysis is completed;**

57 **(d) Require prompt notice to be given to an insurer whose confidential information**
58 **in the possession of the NAIC or a third-party consultant under sections 382.500 to 382.550**
59 **is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure**
60 **or production;**

61 **(e) Require the NAIC or a third-party consultant to consent to intervention by an**
62 **insurer in any judicial or administrative action in which the NAIC or a third-party**
63 **consultant may be required to disclose confidential information about the insurer shared**
64 **with the NAIC or a third-party consultant under sections 382.500 to 382.550; and**

65 **(f) In the case of an agreement involving a third-party consultant, provide for the**
66 **insurer's written consent.**

67 **4. The sharing of information and documents by the director under sections**
68 **382.500 to 382.550 shall not constitute a delegation of regulatory or rulemaking authority,**
69 **and the director is solely responsible for the administration, execution, and enforcement**
70 **of the provisions of sections 382.500 to 382.550.**

71 **5. No waiver of any applicable privilege or claim of confidentiality in the**
72 **documents, proprietary and trade secret materials, or other ORSA-related information**
73 **shall occur as a result of disclosure of such documents, materials, or ORSA-related**
74 **information to the director under this section or as a result of sharing as authorized in**
75 **sections 382.500 to 382.550.**

76 **6. Documents, materials, or other ORSA-related information in the possession or**
77 **control of the NAIC or third-party consultants under sections 382.500 to 382.550 shall be**
78 **confidential by law and privileged, shall not be subject to disclosure under chapter 610,**
79 **shall not be subject to subpoena, and shall not be subject to discovery or admissible in**
80 **evidence in any private civil action.**

382.540. 1. Subject to subsection 1 of section 374.215, any insurer failing without
2 **just cause to timely file an ORSA summary report as required in sections 382.500 to**
3 **382.550 commits a level two violation under section 374.049 with respect to each day's**
4 **delay.**

5 **2. The director may enforce the provisions of sections 382.500 to 382.550 under**
6 **sections 374.046 to 374.049.**

382.545. If any provision of sections 382.500 to 382.550 or the application thereof
2 **to any person or circumstance is held invalid, such determination shall not affect the**
3 **provisions or applications of sections 382.500 to 382.550 which may be given effect without**
4 **the invalid provision or application, and to that end the provisions of sections 382.500 to**
5 **382.550 are severable.**

382.550. The first filing of ORSA summary reports shall be in 2016 in accordance
2 **with section 382.520.**

 Section B. The enactment of sections 382.500, 382.505, 382.510, 382.515, 382.520,
2 382.525, 382.530, 382.535, 382.540, 382.545, and 382.550 of this act shall become effective on
3 January 1, 2016.

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