Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2131
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-10.2 of the North Dakota Century Code, relating to own risk and solvency assessments of insurers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-10.2 of the North Dakota Century Code is created and enacted as follows:

26.1-10.2-01. Definitions.

1. "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in chapter 26.1-10.

2. "Insurer" has the same meaning as set forth in section 26.1-29-02, except the term does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

3. "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 or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

4. "Own risk and solvency assessment 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 adopted by the commissioner and as amended from time to time. A change in the own risk and solvency assessment guidance manual is effective on the January first following the calendar year in which the changes have been adopted by the national association of insurance commissioners and the commissioner.

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

26.1-10.2-02. Risk management framework.

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

26.1-10.2-03. Own risk and solvency assessment requirement.

Subject to section 26.1-10.2-05, an insurer, or the insurance group of which the insurer is a member, regularly shall conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment must be conducted no less than annually but also at any time there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

26.1-10.2-04. Own risk and solvency assessment summary report.

1. Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subsection if the commissioner 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.

2. The report must 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 individual'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 report has been provided to the insurer's board of directors or the appropriate committee of the board.

3. An insurer may comply with subsection 1 by providing the most recent and substantially similar report provided by the insurer or another member of an 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 own risk and solvency assessment guidance manual. Any report in a language other than English must be accompanied by a translation of that report into the English language.

26.1-10.2-05. Exemption.

1. An insurer is exempt from the requirements of this chapter if:

   a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars; and

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

2. If an insurer qualifies for exemption under subdivision a of subsection 1, but the insurance group of which the insurer is a member does not qualify for exemption under subdivision b of subsection 1, then the own risk and solvency assessment summary report that may be required under section 26.1-10.2-04 must 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 any combination of reports includes every insurer within the insurance group.

3. If an insurer does not qualify for exemption under subdivision a of subsection 1, but the insurance group of which the insurer is a member qualifies for exemption under subdivision b of subsection 1, then the only own risk and solvency assessment summary report that may be required under section 26.1-10.2-04 must be the report applicable to that insurer.

4. An insurer that does not qualify for exemption under subsection 1 may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the request for waiver, the commissioner may consider the type and volume of business written, the ownership and organizational structure

of the insurer, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner 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.

5. Notwithstanding the exemptions stated in this section:

   a. The commissioner may require an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including the type and volume of business written, the ownership and organizational structure of the insurer, a federal agency request, or an international supervisor request.

   b. The commissioner may require an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for company action level event as set forth in section 26.1-03.1-03; meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in section 26.1-06.1-11; or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

6. If an insurer that qualifies for an exemption under subsection 1 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 the insurer is a member, the insurer has one year following the year the threshold is exceeded to comply with the requirements of this chapter.

26.1-10.2-06. Contents of an own risk and solvency assessment summary report.

1. The own risk and solvency assessment summary report must be prepared consistent with the own risk and solvency assessment guidance manual subject to the requirements of subsection 2. Documentation and supporting information must be maintained and made available upon examination or upon request of the commissioner.

2. The review of the own risk and solvency assessment summary report and any additional request for information must be made using similar procedures used in the analysis and examination of multi-state or global insurers and insurance groups.

26.1-10.2-07. Confidentiality.

1. Any document, material, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the insurance department which is obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. Any such document, material, or other information is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery and not admissible in evidence in any private civil action. However, the commissioner may use any document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer.

2. Neither the commissioner nor any person that received any document, material, or other own risk and solvency assessment-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such document, material, or other information is shared under this chapter may be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.

3. To assist in the performance of the commissioner's regulatory duties, the commissioner:

a. Upon request, may share any document, material, or other own risk and solvency assessment-related information, including any confidential and privileged document, material, or information subject to subsection 1 and any proprietary and trade secret document and material with any other state, federal, or international financial regulatory agency, including a member of any supervisory college as defined in section 26.1-10-06.1, the national association of insurance commissioners, or any third-party consultant designated by the commissioner, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment-related document, material, or other information and has verified in writing the legal authority to maintain confidentiality; and

b. May receive any document, material, or other own risk and solvency assessment-related information, including any otherwise confidential and privileged document, material, or information, and any proprietary and trade-secret information or document, from regulatory officials of other foreign or domestic jurisdictions, including a member of any supervisory college as defined in section 26.1-10-06.1 or from the national association of insurance commissioners, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

c. Shall enter a written agreement with the national association of insurance commissioners or a third-party consultant governing sharing and use of information provided under this chapter, consistent with this subsection which must:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant under this chapter, 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 must provide the recipient agrees in writing to maintain the confidentiality and privileged status of any own risk and solvency assessment-related document, material, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) Specify ownership of information shared with the national association of insurance commissioners or a third-party consultant under this chapter remains with the commissioner and the national association of insurance commissioner's or a third-party consultant's use of the information is subject to the direction of the commissioner;

(3) Prohibit the national association of insurance commissioners or third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed;

(4) Require prompt notice to be given to an insurer for which confidential information in the possession of the national association of insurance commissioners or a third-party consultant under this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant for disclosure or production;

(5) 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

shared with the national association of insurance commissioners or a third-party consultant under this chapter; and

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

4. The sharing of any information or document by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

5. A waiver of any applicable privilege or claim of confidentiality in any document, proprietary and trade-secret material, or other own risk and solvency assessment-related information does not occur as a result of disclosure of the own risk and solvency assessment-related information or document to the commissioner under this section or as a result of sharing as authorized in this chapter.

6. Any document, material, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery and not admissible in evidence in any private civil action.

26.1-10.2-08. Sanctions - Penalty.

Any insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter, after notice and hearing, shall pay a penalty of one thousand dollars for each day's delay. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner the imposition of the penalty would constitute a financial hardship to the insurer.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2131.

Senate Vote:	Yeas 45	Nays 0	Absent 2
House Vote:	Yeas 86	Nays 0	Absent 8

Secretary of the Senate

Received by the Governor at 10:23 A.M. on March 26, 2015.

Approved at 2:02 P.M. on March 27, 2015.

Governor

Filed in this office this 27th day of March, 2015,

at 3:03 o'clock P M.

Secretary of State