

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 584

Introduced by Assembly Members Perea and Cooley

February 20, 2013

An act to add Article 10.6 (commencing with Section ~~935~~) 935.1 to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 584, as amended, Perea. Insurance: risk and solvency assessment.

Existing law regulates the business of insurance, including, but not limited to, requiring that each domestic, foreign, and alien insurer doing business in this state annually, on or before the first day of March of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with any additional filings as prescribed by the Insurance Commissioner for the preceding year.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would ~~require all domestic, foreign, and alien insurers doing business in this state, on an annual basis, to submit to the commissioner an Own Risk and Solvency Assessment Summary Report applicable to the insurer or the insurer's insurance group, on and after January 1, 2015, require an insurer to maintain a risk management framework, to conduct no less than annually an Own Risk and Solvency Assessment (ORSA), as specified, and to submit to the commissioner, upon request~~

and no more than once each year, an ORSA Summary Report. The bill would exempt certain insurance companies from these provisions. The bill would provide that the documents, materials, and other information in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to these provisions are confidential, are not subject to disclosure pursuant to the California Public Records Act, and are not subject to subpoena or discovery in a civil action, as specified. The bill would make related findings on the confidentiality of these records. The bill would provide that an insurer who fails, without just cause, to timely file the ORSA Summary Report as required by these provisions would be subject to specified late filing fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.6 (commencing with Section ~~935~~)
 2 935.1) is added to Chapter 1 of Part 2 of Division 1 of the Insurance
 3 Code, to read:

4
 5 Article 10.6. Own Risk and Solvency Assessment

6
 7 ~~935. The provisions of this article shall apply to all domestic,~~
 8 ~~foreign, and alien insurers doing business in this state.~~

9 ~~936. On an annual basis, an insurer shall submit to the~~
 10 ~~commissioner an Own Risk and Solvency Assessment Summary~~
 11 ~~Report applicable to the insurer or the insurance group of which~~
 12 ~~the insurer is a member.~~

13 935.1. (a) *The purpose of this article is to provide the*
 14 *requirements for maintaining a risk management framework,*
 15 *completing an Own Risk and Solvency Assessment (ORSA), and*
 16 *provide guidance and instructions for filing an ORSA Summary*
 17 *Report with the commissioner. The requirements of this article*
 18 *shall apply to all insurers domiciled in this state unless exempt*
 19 *pursuant to Section 935.6.*

20 (b) *The Legislature finds and declares that the ORSA Summary*
 21 *Report will contain confidential and sensitive information related*
 22 *to an insurer’s or insurance group’s identification of risks that*
 23 *are material and relevant to the insurer or insurance group filing*

1 *the report. This information will include proprietary and trade*
2 *secret information that has the potential for harm and competitive*
3 *disadvantage to the insurer or insurance group if the information*
4 *is made public. It is the intent of the Legislature that the ORSA*
5 *Summary Report shall be a confidential document filed with the*
6 *commissioner, that the ORSA Summary Report shall be shared*
7 *only as stated in this article to assist the commissioner in the*
8 *performance of his or her duties, and that in no event shall the*
9 *ORSA Summary Report be subject to public disclosure.*

10 935.2. *For purposes of this article, the following definitions*
11 *apply:*

12 (a) *For the purpose of conducting an ORSA, the term “insurance*
13 *group” shall mean those insurers and affiliates included within*
14 *an insurance holding company system as defined in subdivision*
15 *(e) of Section 1215.*

16 (b) *The term “insurer” shall have the same meaning as set forth*
17 *in subdivision (f) of Section 1215, except that it shall not include*
18 *agencies, authorities, or instrumentalities of the United States, its*
19 *possessions and territories, the Commonwealth of Puerto Rico,*
20 *the District of Columbia, or a state or political subdivision of a*
21 *state.*

22 (c) *An “Own Risk and Solvency Assessment” or “ORSA” means*
23 *a confidential internal assessment that is appropriate to the nature,*
24 *scale, and complexity of an insurer or insurance group, conducted*
25 *by that insurer or insurance group, of the material and relevant*
26 *risks associated with the insurer’s or insurance group’s current*
27 *business plan and the sufficiency of capital resources to support*
28 *those risks.*

29 (d) *The term “ORSA Guidance Manual” means the current*
30 *version of the Own Risk and Solvency Assessment Guidance*
31 *Manual developed and adopted by the National Association of*
32 *Insurance Commissioners (NAIC) and as amended from time to*
33 *time. A change in the ORSA Guidance Manual shall be effective*
34 *on the January 1 following the calendar year in which the changes*
35 *have been adopted by the NAIC.*

36 (e) *An “ORSA Summary Report” means a confidential high-level*
37 *summary of an insurer’s or insurance group’s ORSA.*

38 935.3. *An insurer shall maintain a risk management framework*
39 *to assist the insurer with identifying, assessing, monitoring,*
40 *managing, and reporting on its material and relevant risks. This*

1 requirement may be satisfied if the insurance group of which the
2 insurer is a member maintains a risk management framework
3 applicable to the operations of the insurer.

4 935.4. Subject to Section 935.6, an insurer, or the insurance
5 group of which the insurer is a member, shall regularly conduct
6 an ORSA consistent with a process comparable to the ORSA
7 Guidance Manual. The ORSA shall be conducted no less than
8 annually but also at any time when there are significant changes
9 to the risk profile of the insurer or the insurance group of which
10 the insurer is a member.

11 935.5. (a) On and after January 1, 2015, upon the
12 commissioner's request, and no more than once each year, an
13 insurer shall submit to the commissioner, and the commissioner
14 shall review, an ORSA Summary Report or any combination of
15 reports that together contain the information described in the
16 ORSA Guidance Manual, applicable to the insurer or the insurance
17 group of which it is a member. Notwithstanding any request from
18 the commissioner, if the insurer is a member of an insurance group,
19 the insurer shall submit the report or reports required by this
20 subdivision only if the commissioner is the lead state commissioner
21 of the insurance group as determined by the procedures within the
22 Financial Analysis Handbook adopted by the NAIC.

23 (b) The report shall include a signature of the insurer's or
24 insurance group's chief risk officer or other executive having
25 responsibility for the oversight of the insurer's enterprise risk
26 management process, attesting to the best of his or her belief and
27 knowledge that the insurer applies the enterprise risk management
28 process described in the ORSA Summary Report and that a copy
29 of the report has been provided to the insurer's board of directors
30 or the appropriate committee thereof.

31 (c) An insurer may comply with subdivision (a) by providing
32 the most recent and substantially similar report provided by the
33 insurer, or by another member of an insurance group of which the
34 insurer is a member, to the commissioner of another state, or to
35 a supervisor or regulator of a foreign jurisdiction, provided that
36 the report provides information that is comparable to the
37 information described in the ORSA Guidance Manual. A report
38 in a language other than English shall be accompanied by a
39 translation of that report into the English language.

1 935.6. (a) An insurer shall be exempt from the requirements
2 of this article if both of the following apply:

3 (1) The insurer has annual direct written and unaffiliated
4 assumed premiums, including international direct and assumed
5 premiums, but excluding premiums reinsured with the Federal
6 Crop Insurance Corporation and Federal Flood Program, less
7 than five hundred million dollars (\$500,000,000).

8 (2) The insurance group of which the insurer is a member has
9 annual direct written and unaffiliated assumed premiums, including
10 international direct and assumed premiums, but excluding
11 premiums reinsured with the Federal Crop Insurance Corporation
12 and Federal Flood Program, less than one billion dollars
13 (\$1,000,000,000).

14 (b) If an insurer qualifies for exemption pursuant to paragraph
15 (1) of subdivision (a), but the insurance group of which the insurer
16 is a member does not qualify for exemption pursuant to paragraph
17 (2) of subdivision (a), then the ORSA Summary Report that may
18 be required pursuant to Section 935.5 shall include every insurer
19 within the insurance group. This requirement may be satisfied by
20 the submission of more than one ORSA Summary Report for any
21 combination of insurers provided any combination of reports
22 includes every insurer within the insurance group.

23 (c) If an insurer does not qualify for exemption pursuant to
24 paragraph (1) of subdivision (a), but the insurance group of which
25 it is a member qualifies for exemption pursuant to paragraph (2)
26 of subdivision (a), the only ORSA Summary Report that may be
27 required pursuant to Section 935.5 shall be the report applicable
28 to that insurer.

29 (d) An insurer that does not qualify for exemption pursuant to
30 subdivision (a) may apply to the commissioner for a waiver from
31 the requirements of this article based upon unique circumstances.
32 In deciding whether to grant the insurer's request for waiver, the
33 commissioner may consider the type and volume of business
34 written, ownership and organizational structure of the insurer,
35 and any other factor the commissioner considers relevant to the
36 insurer or insurance group of which the insurer is a member. If
37 the insurer is part of an insurance group with insurers domiciled
38 in more than one state, the commissioner shall coordinate with
39 the lead state commissioner and with the other domiciliary

1 *commissioners in considering whether to grant the insurer's*
2 *request for a waiver.*

3 *(e) Notwithstanding the exemptions stated in this section, the*
4 *commissioner may do both of the following:*

5 *(1) The commissioner may require that an insurer maintain a*
6 *risk management framework, conduct an ORSA, and file an ORSA*
7 *Summary Report based on unique circumstances, which include,*
8 *but are not limited to, the type and volume of business written,*
9 *ownership and organizational structure, federal agency requests,*
10 *and international supervisor requests.*

11 *(2) The commissioner may require that an insurer maintain a*
12 *risk management framework, conduct an ORSA, and file an ORSA*
13 *Summary Report if the insurer (A) has Risk-Based Capital for a*
14 *Company Action Level Event as described in Section 739.3, (B)*
15 *meets one or more of the standards of an insurer that may be*
16 *determined to be in hazardous financial condition as provided in*
17 *Article 14.5 (commencing with Section 1065.1), and in regulations,*
18 *or (C) otherwise exhibits qualities of a troubled insurer as*
19 *determined by the commissioner.*

20 *(f) If an insurer that qualifies for an exemption pursuant to*
21 *subdivision (a) subsequently no longer qualifies for that exemption*
22 *due to changes in premiums as reflected in the insurer's most*
23 *recent annual statement or in the most recent annual statements*
24 *of the insurers within the insurance group of which the insurer is*
25 *a member, the insurer shall have one year following the year the*
26 *threshold in subdivision (a) is exceeded to comply with the*
27 *requirements of this article.*

28 *935.7. (a) The ORSA Summary Report shall be prepared*
29 *consistent with the ORSA Guidance Manual, subject to the*
30 *requirements of this section. Documentation and supporting*
31 *information shall be maintained and made available upon*
32 *examination or upon request of the commissioner.*

33 *(b) The commissioner shall review the ORSA Summary Report*
34 *submitted pursuant to Section 935.5 and any additional requests*
35 *for information, using procedures similar to those currently used*
36 *in the analysis and examination of multistate or global insurers*
37 *and insurance groups.*

38 *935.8. (a) Documents, materials, or other information,*
39 *including the ORSA Summary Report, in the possession of or*
40 *control of the Department of Insurance that are obtained by,*

1 *created by, or disclosed to the commissioner or any other person*
2 *under this article, are recognized by this state as being proprietary*
3 *and contain trade secrets. These documents, materials, or other*
4 *information shall be confidential by law and privileged, shall not*
5 *be subject to disclosure pursuant to the California Public Records*
6 *Act (Chapter 3.5 (commencing with Section 6250) of Division 7*
7 *of Title 1 of the Government Code), and shall not be subject to*
8 *subpoena or discovery, or admissible in evidence, in any private*
9 *civil action. However, the commissioner is authorized to use those*
10 *documents, materials, or other information in the furtherance of*
11 *any regulatory or legal action brought as a part of the*
12 *commissioner's official duties. The commissioner shall not*
13 *otherwise make those documents, materials, or other information*
14 *public without the prior written consent of the insurer.*

15 *(b) Neither the commissioner nor any other person who received*
16 *documents, materials, or other ORSA-related information,*
17 *including the ORSA Summary Report, through examination or*
18 *otherwise, while acting under the authority of the commissioner,*
19 *or with whom those documents, materials, or other information*
20 *are shared pursuant to this article, shall be permitted or required*
21 *to testify in any private civil action concerning those confidential*
22 *documents, materials, or information, subject to subdivision (a).*

23 *(c) In order to assist in the performance of the commissioner's*
24 *regulatory duties, the commissioner:*

25 *(1) May, upon request, share documents, materials, or other*
26 *ORSA-related information, including the confidential and*
27 *privileged documents, materials, or information subject to*
28 *subdivision (a), including proprietary and trade secret documents*
29 *and materials, with other state, federal, and international financial*
30 *regulatory agencies, including members of any supervisory college*
31 *as described in Section 1215.7, with the NAIC, and with any*
32 *third-party consultants designated by the commissioner, provided*
33 *that, to the extent not otherwise prohibited by federal law or treaty,*
34 *the recipient agrees in writing to maintain the confidentiality and*
35 *privileged status of the ORSA-related documents, materials, or*
36 *other information and has verified in writing the legal authority*
37 *to maintain confidentiality.*

38 *(2) May receive documents, materials, or other ORSA-related*
39 *information, including otherwise confidential and privileged*
40 *documents, materials, or information, including proprietary and*

1 *trade-secret information or documents, from regulatory officials*
2 *of other foreign or domestic jurisdictions, including members of*
3 *any supervisory college as described in Section 1215.7, and from*
4 *the NAIC, and shall maintain as confidential or privileged any*
5 *documents, materials, or information received with notice or the*
6 *understanding that it is confidential or privileged under the laws*
7 *of the jurisdiction that is the source of the document, material, or*
8 *information.*

9 *(3) Shall enter into a written agreement with the NAIC or a*
10 *third-party consultant governing the sharing and the use of*
11 *information provided pursuant to this article, consistent with this*
12 *subdivision that shall do all of the following:*

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

22 *(B) Specify that ownership of information shared with the NAIC*
23 *or a third-party consultant pursuant to this article remains with*
24 *the commissioner and that the NAIC's or a third-party consultant's*
25 *use of the information is subject to the direction of the*
26 *commissioner.*

27 *(C) Prohibit the NAIC or third-party consultant from storing*
28 *the information shared pursuant to this article in a permanent*
29 *database after the underlying analysis is completed.*

30 *(D) Require prompt notice to be given to an insurer whose*
31 *confidential information in the possession of the NAIC or a*
32 *third-party consultant pursuant to this article when that*
33 *information is subject to a request or subpoena to the NAIC or a*
34 *third-party consultant for disclosure or production.*

35 *(E) Require the NAIC or a third-party consultant to consent to*
36 *intervention by an insurer in any judicial or administrative action*
37 *in which the NAIC or a third-party consultant may be required to*
38 *disclose confidential information about the insurer shared with*
39 *the NAIC or a third-party consultant pursuant to this article.*

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

3 (d) The sharing of information and documents by the
4 commissioner pursuant to this article shall not constitute a
5 delegation of regulatory authority or rulemaking, and the
6 commissioner is solely responsible for the administration,
7 execution, and enforcement of the provisions of this article.

8 (e) No waiver of any applicable privilege or claim of
9 confidentiality in the documents, proprietary and trade-secret
10 materials, or other ORSA-related information shall occur as a
11 result of disclosure of such ORSA-related information or documents
12 to the commissioner under this section or as a result of sharing
13 as authorized in this article.

14 (f) Documents, materials, or other information in the possession
15 or control of the NAIC or a third-party consultant pursuant to this
16 article shall be confidential by law and privileged, shall not be
17 subject to disclosure pursuant to the California Public Records
18 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
19 of Title 1 of the Government Code), and shall not be subject to
20 subpoena or discovery, or admissible in evidence, in any private
21 civil action.

22 935.9. Any insurer failing, without just cause, to timely file the
23 ORSA Summary Report as required in this article shall be subject
24 to the late filing fees set forth in Section 924. The commissioner
25 may reduce the penalty if the insurer demonstrates to the
26 commissioner that the imposition of the penalty would constitute
27 a financial hardship to the insurer.

28 935.10. If any provision of this article, or the application
29 thereof to any person or circumstance, is held invalid, that
30 determination shall not affect the provisions or applications of
31 this article that can be given effect without the invalid provision
32 or application, and to that end the provisions of this article are
33 severable.

34 935.11. This article shall become operative on January 1, 2015.