

AMENDED IN SENATE JUNE 27, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

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 935.1) 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, 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 935.1)
2 is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code,
3 to read:

4

5 Article 10.6. Own Risk and Solvency Assessment

6

7 935.1. (a) The purpose of this article is to provide the
8 requirements for maintaining a risk management framework,
9 completing an Own Risk and Solvency Assessment (ORSA), and
10 provide guidance and instructions for filing an ORSA Summary
11 Report with the commissioner. The requirements of this article
12 shall apply to all insurers domiciled in this state unless exempt
13 pursuant to Section 935.6.

14 (b) The Legislature finds and declares that the ORSA Summary
15 Report will contain confidential and sensitive information related
16 to an insurer's or insurance group's identification of risks that are
17 material and relevant to the insurer or insurance group filing the
18 report. This information will include proprietary and trade secret
19 information that has the potential for harm and competitive
20 disadvantage to the insurer or insurance group if the information
21 is made public. It is the intent of the Legislature that the ORSA
22 Summary Report shall be a confidential document filed with the
23 commissioner, that the ORSA Summary Report shall be shared

1 only as stated in this article to assist the commissioner in the
2 performance of his or her duties, and that in no event shall the
3 ORSA Summary Report be subject to public disclosure.

4 935.2. For purposes of this article, the following definitions
5 apply:

6 (a) For the purpose of conducting an ORSA, the term “insurance
7 group” shall mean those insurers and affiliates included within an
8 insurance holding company system as defined in subdivision (e)
9 of Section 1215.

10 (b) The term “insurer” shall have the same meaning as set forth
11 in subdivision (f) of Section 1215, except that it shall not include
12 agencies, authorities, or instrumentalities of the United States, its
13 possessions and territories, the Commonwealth of Puerto Rico,
14 the District of Columbia, or a state or political subdivision of a
15 state.

16 (c) An “Own Risk and Solvency Assessment” or “ORSA” means
17 a confidential internal assessment that is appropriate to the nature,
18 scale, and complexity of an insurer or insurance group, conducted
19 by that insurer or insurance group, of the material and relevant
20 risks associated with the insurer’s or insurance group’s current
21 business plan and the sufficiency of capital resources to support
22 those risks.

23 (d) The term “ORSA Guidance Manual” means the current
24 version of the Own Risk and Solvency Assessment Guidance
25 Manual developed and adopted by the National Association of
26 Insurance Commissioners (NAIC) and as amended from time to
27 time. A change in the ORSA Guidance Manual shall be effective
28 on the January 1 following the calendar year in which the changes
29 have been adopted by the NAIC.

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

32 935.3. An insurer shall maintain a risk management framework
33 to assist the insurer with identifying, assessing, monitoring,
34 managing, and reporting on its material and relevant risks. This
35 requirement may be satisfied if the insurance group of which the
36 insurer is a member maintains a risk management framework
37 applicable to the operations of the insurer.

38 935.4. Subject to Section 935.6, an insurer, or the insurance
39 group of which the insurer is a member, shall regularly conduct
40 an ORSA consistent with a process comparable to the ORSA

1 Guidance Manual. The ORSA shall be conducted no less than
2 annually but also at any time when there are significant changes
3 to the risk profile of the insurer or the insurance group of which
4 the insurer is a member.

5 935.5. (a) Upon the commissioner's request, and no more
6 than once each year, an insurer shall submit to the commissioner
7 an ORSA Summary Report or any combination of reports that
8 together contain the information described in the ORSA Guidance
9 Manual, applicable to the insurer or the insurance group of which
10 it is a member. Notwithstanding any request from the
11 commissioner, if the insurer is a member of an insurance group,
12 the insurer shall submit the report or reports required by this
13 subdivision only if the commissioner is the lead state commissioner
14 of the insurance group as determined by the procedures within the
15 Financial Analysis Handbook adopted by the NAIC.

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

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

33 935.6. (a) An insurer shall be exempt from the requirements
34 of this article if both of the following apply:

35 (1) The insurer has annual direct written and unaffiliated
36 assumed premiums, including international direct and assumed
37 premiums, but excluding premiums reinsured with the Federal
38 Crop Insurance Corporation and Federal Flood Program, less than
39 five hundred million dollars (\$500,000,000).

1 (2) The insurance group of which the insurer is a member has
2 annual direct written and unaffiliated assumed premiums, including
3 international direct and assumed premiums, but excluding
4 premiums reinsured with the Federal Crop Insurance Corporation
5 and Federal Flood Program, less than one billion dollars
6 (\$1,000,000,000).

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

16 (c) If an insurer does not qualify for exemption pursuant to
17 paragraph (1) of subdivision (a), but the insurance group of which
18 it is a member qualifies for exemption pursuant to paragraph (2)
19 of subdivision (a), the only ORSA Summary Report that may be
20 required pursuant to Section 935.5 shall be the report applicable
21 to that insurer.

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

35 (e) Notwithstanding the exemptions stated in this section, the
36 commissioner may do either one or both of the following:

37 (1) The commissioner may require that an insurer maintain a
38 risk management framework, conduct an ORSA, and file an ORSA
39 Summary Report based on unique circumstances, which include,
40 but are not limited to, the type and volume of business written,

1 ownership and organizational structure, federal agency requests,
2 and international supervisor requests.

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

12 (f) If an insurer that qualifies for an exemption pursuant to
13 subdivision (a) subsequently no longer qualifies for that exemption
14 due to changes in premiums as reflected in the insurer's most recent
15 annual statement or in the most recent annual statements of the
16 insurers within the insurance group of which the insurer is a
17 member, the insurer shall have one year following the year the
18 threshold in subdivision (a) is exceeded to comply with the
19 requirements of this article.

20 935.7. (a) The ORSA Summary Report shall be prepared
21 consistent with the ORSA Guidance Manual, subject to the
22 requirements of this section. Documentation and supporting
23 information shall be maintained and made available upon
24 examination or upon request of the commissioner.

25 (b) The commissioner shall review the ORSA Summary Report
26 submitted pursuant to Section 935.5 and any additional requests
27 for information, using procedures similar to those currently used
28 in the analysis and examination of multistate or global insurers
29 and insurance groups.

30 935.8. (a) Documents, materials, or other information,
31 including the ORSA Summary Report, in the possession of or
32 control of the Department of Insurance that are obtained by, created
33 by, or disclosed to the commissioner or any other person under
34 this article, are recognized by this state as being proprietary and
35 contain trade secrets. These documents, materials, or other
36 information shall be confidential by law and privileged, shall not
37 be subject to disclosure pursuant to the California Public Records
38 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
39 of Title 1 of the Government Code), and shall not be subject to
40 subpoena or discovery, or admissible in evidence, in any private

1 civil action. However, the commissioner is authorized to use those
2 documents, materials, or other information in the furtherance of
3 any regulatory or legal action brought as a part of the
4 commissioner's official duties. The commissioner shall not
5 otherwise make those documents, materials, or other information
6 public without the prior written consent of the insurer.

7 (b) Neither the commissioner nor any other person who received
8 documents, materials, or other ORSA-related information,
9 including the ORSA Summary Report, through examination or
10 otherwise, while acting under the authority of the commissioner,
11 or with whom those documents, materials, or other information
12 are shared pursuant to this article, shall be permitted or required
13 to testify in any private civil action concerning those confidential
14 documents, materials, or information, subject to subdivision (a).

15 (c) In order to assist in the performance of the commissioner's
16 regulatory duties, the commissioner:

17 (1) May, upon request, share documents, materials, or other
18 ORSA-related information, including the confidential and
19 privileged documents, materials, or information subject to
20 subdivision (a), including proprietary and trade secret documents
21 and materials, with other state, federal, and international financial
22 regulatory agencies, including members of any supervisory college
23 as described in Section 1215.7, with the NAIC, and with any
24 third-party consultants designated by the commissioner, provided
25 that the recipient agrees in writing to maintain the confidentiality
26 and privileged status of the ORSA-related documents, materials,
27 or other information and has verified in writing the legal authority
28 to maintain confidentiality.

29 (2) May receive documents, materials, or other ORSA-related
30 information, including otherwise confidential and privileged
31 documents, materials, or information, including proprietary and
32 ~~trade-secret~~ *trade secret* information or documents, from regulatory
33 officials of other foreign or domestic jurisdictions, including
34 members of any supervisory college as described in Section 1215.7,
35 and from the NAIC, and shall maintain as confidential or privileged
36 any documents, materials, or information received with notice or
37 the understanding that it is confidential or privileged under the
38 laws of the jurisdiction that is the source of the document, material,
39 or information.

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

5 (A) Specify procedures and protocols regarding the
6 confidentiality and security of information shared with the NAIC
7 or a third-party consultant pursuant to this article, including
8 procedures and protocols for sharing by the NAIC with other state
9 regulators from states in which the insurance group has domiciled
10 insurers. The agreement shall provide that the recipient agrees in
11 writing to maintain the confidentiality and privileged status of the
12 ORSA-related documents, materials, or other information and has
13 verified in writing the legal authority to maintain confidentiality.

14 (B) Specify that ownership of information shared with the NAIC
15 or a third-party consultant pursuant to this article remains with the
16 commissioner and that the NAIC's or a third-party consultant's
17 use of the information is subject to the direction of the
18 commissioner.

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

22 (D) Require prompt notice to be given to an insurer whose
23 confidential information in the possession of the NAIC or a
24 third-party consultant pursuant to this article when that information
25 is subject to a request or subpoena to the NAIC or a third-party
26 consultant for disclosure or production.

27 (E) Require the NAIC or a third-party consultant to consent to
28 intervention by an insurer in any judicial or administrative action
29 in which the NAIC or a third-party consultant may be required to
30 disclose confidential information about the insurer shared with the
31 NAIC or a third-party consultant pursuant to this article.

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

34 (d) The sharing of information and documents by the
35 commissioner pursuant to this article shall not constitute a
36 delegation of regulatory authority or rulemaking, and the
37 commissioner is solely responsible for the administration,
38 execution, and enforcement of the provisions of this article.

39 (e) No waiver of any applicable privilege or claim of
40 confidentiality in the documents, proprietary and trade-secret

1 materials, or other ORSA-related information shall occur as a result
2 of disclosure of ~~such~~ *the* ORSA-related information or documents
3 to the commissioner under this section or as a result of sharing as
4 authorized in this article.

5 (f) Documents, materials, or other information in the possession
6 or control of the NAIC or a third-party consultant pursuant to this
7 article shall be confidential by law and privileged, shall not be
8 subject to disclosure pursuant to the California Public Records Act
9 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
10 Title 1 of the Government Code), and shall not be subject to
11 subpoena or discovery, or admissible in evidence, in any private
12 civil action.

13 935.9. Any insurer failing, without just cause, to timely file
14 the ORSA Summary Report as required in this article shall be
15 subject to the late filing fees set forth in Section 924. The
16 commissioner may reduce the penalty if the insurer demonstrates
17 to the commissioner that the imposition of the penalty would
18 constitute a financial hardship to the insurer.

19 935.10. If any provision of this article, or the application thereof
20 to any person or circumstance, is held invalid, that determination
21 shall not affect the provisions or applications of this article that
22 can be given effect without the invalid provision or application,
23 and to that end the provisions of this article are severable.

24 935.11. This article shall become operative on January 1, 2015.