

Assembly Bill No. 584

CHAPTER 238

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.

[Approved by Governor September 6, 2013. Filed with
Secretary of State September 6, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 584, 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.

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

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

Article 10.6. Own Risk and Solvency Assessment

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

(b) The Legislature finds and declares that the ORSA Summary Report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks that are material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the Legislature that the ORSA Summary Report shall be a confidential document filed with the commissioner, that the ORSA Summary Report shall be shared only as stated in this article to assist the commissioner in the performance of his or her duties, and that in no event shall the ORSA Summary Report be subject to public disclosure.

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

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

(b) The term "insurer" shall have the same meaning as set forth in subdivision (f) of Section 1215, except that it shall 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.

(c) An "Own Risk and Solvency Assessment" or "ORSA" means a confidential internal assessment that is 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's or insurance group's current business plan and the sufficiency of capital resources to support those risks.

(d) The term "ORSA 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 (NAIC) and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC.

(e) An "ORSA Summary Report" means a confidential high-level summary of an insurer's or insurance group's ORSA.

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

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

935.5. (a) Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an ORSA Summary Report or any combination of reports that together contain the information described in the ORSA 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 report or reports required by this subdivision only 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 NAIC.

(b) The report shall include a signature of the insurer's 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 his or her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(c) An insurer may comply with subdivision (a) by providing the most recent and substantially similar report provided by the insurer, or by 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, provided that the report provides information that is comparable to the information described in the ORSA Guidance Manual. A report in a language other than English shall be accompanied by a translation of that report into the English language.

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

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

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

(b) If an insurer qualifies for exemption pursuant to paragraph (1) of subdivision (a), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to paragraph (2) of subdivision (a), then the ORSA Summary Report that may be required pursuant to Section

935.5 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Summary Report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

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

(d) An insurer that does not qualify for exemption pursuant to subdivision (a) may apply to the commissioner for a waiver from the requirements of this article based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure of the insurer or insurance group, 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.

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

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

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

(f) If an insurer that qualifies for an exemption pursuant to subdivision (a) subsequently no longer qualifies for that exemption due to changes in premiums 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 shall have one year following the year the threshold in subdivision (a) is exceeded to comply with the requirements of this article.

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

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

935.8. (a) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the Department of Insurance that are obtained by, created by, or disclosed to the commissioner or any other person under this article, are recognized by this state as being proprietary and contain trade secrets. These documents, materials, or other information shall be confidential by law and privileged, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be subject to subpoena or discovery, or admissible in evidence, in any private civil action. However, the commissioner is authorized to use those documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make those documents, materials, or other information public without the prior written consent of the insurer.

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

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

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

(2) May receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as described in Section 1215.7, and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice

or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

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

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

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

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

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

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

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

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

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

(f) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this article shall be confidential by law and privileged, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be

subject to subpoena or discovery, or admissible in evidence, in any private civil action.

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

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

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

CORRECTIONS:

Date—Page 1.

