

ACT No. 196

2015 Regular Session

HOUSE BILL NO. 255

BY REPRESENTATIVE PIERRE

1 AN ACT

2 To amend and reenact R.S. 22:691.10(A) and 691.13(A) and R.S. 44:4.1(B)(11) and to enact
3 R.S. 22:691.2(11) and (12), 691.9.1, and Subpart G-2 of Part III of Chapter 2 of Title
4 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:691.31
5 through 691.39, relative to supervision of insurance holding company systems,
6 including risk management and corporate governance, by the commissioner of
7 insurance; to provide with respect to the authority of the commissioner to determine
8 or acknowledge a group supervisor for internationally active insurance groups; to
9 provide for the authority of the commissioner to require own risk and solvency
10 assessments; to provide for confidentiality of information; to provide for sanctions
11 for noncompliance; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 22:691.10(A) and 691.13(A) are hereby amended and reenacted and
14 R.S. 22:691.2(11) and (12), 691.9.1, and Subpart G-2 of Part III of Chapter 2 of Title 22 of
15 the Louisiana Revised Statutes of 1950, comprised of R.S. 22:691.31 through 691.39, are
16 hereby enacted to read as follows:

17 §691.2. Definitions

18 As used in this Subpart, the following terms shall have these meanings unless
19 the context shall otherwise require:

20 * * *

1 B and F of this Section that the other regulatory official is the appropriate
2 group-wide supervisor.

3 B. In cooperation with other state, federal, and international regulatory
4 agencies, the commissioner shall identify a single group-wide supervisor for an
5 internationally active insurance group. A commissioner identified under this Section
6 as the group-wide supervisor may determine that it is appropriate to acknowledge
7 another supervisor to serve as the group-wide supervisor. The acknowledgment of
8 the group-wide supervisor shall be made after consideration of the factors specified
9 in Paragraphs (1) through (5) of this Subsection and shall be made in cooperation
10 with and subject to the acknowledgment of other regulatory officials involved with
11 supervision of members of the internationally active insurance group, and in
12 consultation with the internationally active insurance group. The commissioner shall
13 consider the following factors and the relative scale of each when making a
14 determination or acknowledgment pursuant to this Subsection:

15 (1) The place of domicile of the insurers within the internationally active
16 insurance group that hold the largest share of the group's written premiums, assets,
17 or liabilities.

18 (2) The place of domicile of the top-tiered insurer or insurers in the insurance
19 holding company system of the internationally active insurance group.

20 (3) The location of the executive offices or largest operational offices of the
21 internationally active insurance group.

22 (4) Whether another regulatory official is acting or is seeking to act as the
23 group-wide supervisor under a regulatory system that the commissioner determines
24 to be one of the following:

25 (a) Substantially similar to the system of regulation provided pursuant to the
26 laws of this state.

27 (b) Otherwise sufficient in terms of providing for group-wide supervision,
28 enterprise risk analysis, and cooperation with other regulatory officials.

1 (5) Whether another regulatory official acting or seeking to act as the
2 group-wide supervisor provides the commissioner with reasonably reciprocal
3 recognition and cooperation.

4 C. Notwithstanding any other provision of law, when another regulatory
5 official is acting as the group-wide supervisor of an internationally active insurance
6 group, the commissioner shall acknowledge that regulatory official as the
7 group-wide supervisor. However, the commissioner shall make a determination or
8 acknowledgment pursuant to Subsection B of this Section in the event of material
9 change in the internationally active insurance group that results in one of the
10 following:

11 (1) The internationally active insurance group's insurers domiciled in this
12 state holding the largest share of the group's premiums, assets, or liabilities.

13 (2) This state being the place of domicile of the top-tiered insurer or insurers
14 in the insurance holding company system of the internationally active insurance
15 group.

16 D. Pursuant to R.S. 22:691.8, the commissioner is authorized to collect from
17 any insurer registered pursuant to R.S. 22:691.6 all information necessary to
18 determine whether the commissioner may act as the group-wide supervisor of an
19 internationally active insurance group or if the commissioner may acknowledge
20 another regulatory official to act as the group-wide supervisor. Prior to a
21 determination that an internationally active insurance group is subject to group-wide
22 supervision, the commissioner shall notify the insurer registered pursuant to R.S.
23 22:691.6 and the ultimate controlling person within the internationally active
24 insurance group. The internationally active insurance group shall have not less than
25 thirty days to provide the commissioner with additional information pertinent to the
26 pending determination. The commissioner shall publish in the Louisiana Register
27 and on the internet website of the Department of Insurance the identity of
28 internationally active insurance groups that the commissioner has determined are
29 subject to group-wide supervision by the commissioner.

1 E. If the commissioner is the group-wide supervisor for an internationally
2 active insurance group, the commissioner may engage in any of the following
3 group-wide supervision activities:

4 (1) Assess the enterprise risk within the internationally active insurance
5 group to ensure that both of the following conditions are met:

6 (a) The material financial condition and liquidity risks to the members of the
7 internationally active insurance group that are engaged in the business of insurance
8 are identified by management.

9 (b) Reasonable and effective mitigation measures are in place.

10 (2) Request, from any member of an internationally active insurance group
11 subject to the commissioner's supervision, information necessary and appropriate to
12 assess enterprise risk, including but not limited to information about the members of
13 the internationally active insurance group regarding:

14 (a) Governance, risk assessment, and management.

15 (b) Capital adequacy.

16 (c) Material intercompany transactions.

17 (3) Coordinate and, through the authority of the regulatory officials of the
18 jurisdictions where members of the internationally active insurance group are
19 domiciled, compel development and implementation of reasonable measures
20 designed to ensure that the internationally active insurance group is able to timely
21 recognize and mitigate enterprise risk to members of such internationally active
22 insurance groups that are engaged in the business of insurance.

23 (4) Communicate with other state, federal, and international regulatory
24 agencies for members within the internationally active insurance group and share
25 relevant information subject to the confidentiality provisions of R.S. 22:691.10
26 through supervisory colleges as set forth in R.S. 22:691.9.

27 (5) Enter into agreements with or obtain documentation from any insurer
28 registered pursuant to R.S. 22:691.6, any member of the internationally active
29 insurance group, and any other state, federal, and international regulatory agencies
30 for members of the internationally active insurance group, providing the basis for or

1 otherwise clarifying the commissioner's role as group-wide supervisor, including
2 provisions for resolving disputes with other regulatory officials. Such agreements or
3 documentation shall not serve as evidence in any proceeding that any insurer or
4 person within an insurance holding company system not domiciled or incorporated
5 in this state is doing business in this state or is otherwise subject to jurisdiction in
6 this state.

7 (6) Other group-wide supervision activities, consistent with the authorities
8 and purposes enumerated in this Subsection, as considered necessary by the
9 commissioner.

10 F. If the commissioner acknowledges that another chief insurance regulatory
11 official from a jurisdiction that is not accredited by the NAIC is the group-wide
12 supervisor, the commissioner may reasonably cooperate, through supervisory
13 colleges or otherwise, with group-wide supervision undertaken by the group-wide
14 supervisor, provided that both of the following conditions are met:

15 (1) The commissioner's cooperation is in compliance with the laws of this
16 state.

17 (2) The regulatory official acknowledged as the group-wide supervisor also
18 recognizes and cooperates with the commissioner's activities as a group-wide
19 supervisor for other internationally active insurance groups where applicable. When
20 such recognition and cooperation is not reasonably reciprocal, the commissioner may
21 refuse recognition and cooperation.

22 G. The commissioner may enter into agreements with or obtain
23 documentation from any insurer registered pursuant to R.S. 22:691.6, any affiliate
24 of the insurer, and other state, federal, and international regulatory agencies for
25 members of the internationally active insurance group, which provide the basis for
26 or otherwise clarify a regulatory official's role as group-wide supervisor.

27 H. The commissioner may promulgate rules and regulations necessary for
28 the administration of this Section.

29 I. A registered insurer subject to this Section shall be liable for and shall pay
30 the reasonable expenses of the commissioner's participation in the administration of

1 this Section, including the engagement of attorneys, actuaries, and any other
 2 professionals and all reasonable travel expenses.

3 §691.10. Confidential treatment

4 A. Documents, materials, or other information in the possession or control
 5 of the Department of Insurance that are obtained by or disclosed to the commissioner
 6 or any other person in the course of an examination or investigation made pursuant
 7 to R.S. 22:691.8 and all information reported or provided to the commissioner
 8 pursuant to R.S. 22:691.4(B)(12) and (13), 691.6, ~~and 691.7,~~ and 691.9.1 shall be
 9 confidential by law and privileged, shall not be subject to subpoena, and shall not be
 10 subject to discovery or admissible in evidence in any private civil action. However,
 11 the commissioner is authorized to use the documents, materials, or other information
 12 in the furtherance of any regulatory or legal action brought as a part of the
 13 commissioner's official duties. The commissioner shall not otherwise make the
 14 documents, materials, or other information public without the prior written consent
 15 of the insurer to which it pertains unless the commissioner, after giving the insurer
 16 and its affiliates who would be affected thereby notice and opportunity to be heard,
 17 determines that the interest of policyholders, shareholders, or the public will be
 18 served by the publication thereof, in which event the commissioner may publish all
 19 or any part in such manner as may be deemed appropriate.

20 * * *

21 §691.13. Sanctions

22 A. Except as provided in R.S. 22:691.5(E)(3), any insurer failing, without
 23 just cause, to file any registration statement as required in this Subpart shall be
 24 required, after notice and ~~hearing,~~ an opportunity to be heard, to pay a penalty of one
 25 hundred dollars for each day's delay, to be recovered by the commissioner of
 26 insurance and the penalty so recovered shall be ~~paid into the general revenue fund~~
 27 ~~of this state.~~ deposited upon receipt in the state treasury. The maximum penalty
 28 under this Section is ten thousand dollars. The commissioner may reduce the penalty

1 if the insurer demonstrates to the commissioner that the imposition of the penalty
2 would constitute a financial hardship to the insurer.

3 * * *

4 SUBPART G-2. RISK MANAGEMENT AND OWN RISK
5 AND SOLVENCY ASSESSMENT

6 §691.31. Purpose and scope

7 A. The purpose of this Subpart is to provide the requirements for maintaining
8 a risk management framework and completing an own risk and solvency assessment
9 (ORSA) and the guidance and instructions for filing an ORSA summary report with
10 the commissioner.

11 B. The requirements of this Subpart shall apply to all domestic insurers
12 unless exempt pursuant to R.S. 22:691.36.

13 C. The legislature finds and declares that the ORSA summary report will
14 contain confidential and sensitive information related to the identification of risk
15 material and relevant to the insurer or insurance group filing the report. Public
16 disclosure of the information in the ORSA summary report will cause harm to and
17 competitive disadvantage for the insurer or insurance group. The legislature intends
18 that the ORSA summary report be filed with the commissioner as a confidential
19 document, shared only as stated in this Subpart to assist in the performance of the
20 commissioner's duties, and exempted from public disclosure.

21 §691.32. Definitions

22 For purposes of this Subpart:

23 (1) "Insurance group" means, for the purpose of conducting an ORSA, those
24 insurers and affiliates included within an insurance holding company system as
25 defined in R.S. 22:691.2(5).

26 (2) "Insurer" means an insurer as defined in R.S. 22:46 except that it shall
27 not include agencies, authorities, or instrumentalities of the United States, its
28 possessions and territories, the Commonwealth of Puerto Rico, the District of
29 Columbia, or a state or political subdivision of a state.

30 (3) "NAIC" means the National Association of Insurance Commissioners.

1 (4) "Own risk and solvency assessment" or "ORSA" means a confidential
 2 internal assessment, appropriate to the nature, scale, and complexity of an insurer or
 3 insurance group, conducted by that insurer or insurance group of the material and
 4 relevant risks associated with the insurer's or insurance group's current business plan,
 5 and the sufficiency of capital resources to support those risks.

6 (5) "ORSA Guidance Manual" means the current version of the "Own Risk
 7 and Solvency Assessment Guidance Manual" developed and adopted by the NAIC
 8 and as amended from time to time. A change in the ORSA Guidance Manual shall
 9 become effective on January first following the calendar year in which the changes
 10 are adopted by the NAIC.

11 (6) "ORSA summary report" means a confidential high-level summary of an
 12 insurer's or insurance group's ORSA.

13 §691.33. Risk management framework

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

19 §691.34. ORSA requirement

20 Subject to R.S. 22:691.36, an insurer, or the insurance group of which it is
 21 a member, shall regularly conduct an ORSA consistent with the ORSA Guidance
 22 Manual. An insurer, or the insurance group of which it is a member, shall conduct
 23 the ORSA no less than annually and any time there are significant changes to the risk
 24 profile of the insurer or the insurance group of which it is a member.

25 §691.35. ORSA summary report

26 A. Upon the commissioner's request, and no more than once each year, an
 27 insurer shall submit to the commissioner an ORSA summary report or any
 28 combination of reports that together contain the information described in the ORSA
 29 Guidance Manual, applicable to the insurer, the insurance group of which it is a
 30 member, or both. Notwithstanding any request from the commissioner, if the insurer

1 is a member of an insurance group, the insurer shall submit the report required by
2 this Subsection if the commissioner is the lead state commissioner of the insurance
3 group as determined by the procedures within the Financial Analysis Handbook
4 adopted by the National Association of Insurance Commissioners.

5 B. The report shall include a signature and an attestation based on the
6 knowledge, information, and belief of the insurer or insurance group's chief risk
7 officer or other executive having responsibility for the oversight of the insurer's
8 enterprise risk management process that the insurer applies the enterprise risk
9 management process described in the ORSA summary report and that a copy of the
10 report has been provided to the insurer's board of directors or the appropriate
11 committee of such board.

12 C. An insurer may comply with Subsection A of this Section by providing
13 the most recent and substantially similar report provided by the insurer or another
14 member of an insurance group of which it is a member to the commissioner of
15 another state or to a supervisor or regulator of a foreign jurisdiction, if that report
16 provides information that is comparable to the information described in the ORSA
17 Guidance Manual. Any such report in a language other than English must be
18 accompanied by a translation of that report into the English language.

19 §691.36. Exemption

20 A. An insurer shall be exempt from the requirements of this Subpart, if both
21 of the following apply:

22 (1) The insurer has annual direct written and unaffiliated assumed premium,
23 including international direct and assumed premium but excluding premiums
24 reinsured with the Federal Crop Insurance Corporation and National Flood
25 Insurance Program, less than five hundred million dollars.

26 (2) The insurance group of which the insurer is a member has annual direct
27 written and unaffiliated assumed premium, including international direct and
28 assumed premium but excluding premiums reinsured with the Federal Crop
29 Insurance Corporation and National Flood Insurance Program, less than one billion
30 dollars.

1 B. If an insurer qualifies for exemption pursuant to Paragraph (1) of
2 Subsection A of this Section, but the insurance group of which it is a member does
3 not qualify for exemption pursuant to Paragraph (2) of Subsection A of this Section,
4 the ORSA summary report that may be required pursuant to R.S. 22:691.35 shall
5 include every insurer within the insurance group. This requirement may be satisfied
6 by the submission of more than one ORSA summary report for any combination of
7 insurers provided any combination of reports includes every insurer within the
8 insurance group.

9 C. If an insurer does not qualify for exemption pursuant to Paragraph (1) of
10 Subsection A of this Section, but the insurance group of which it is a member
11 qualifies for exemption pursuant to Paragraph (2) of Subsection A of this Section,
12 then the only ORSA summary report that may be required pursuant to R.S. 22:691.35
13 shall be the report applicable to that insurer.

14 D. An insurer that does not qualify for exemption pursuant to Subsection A
15 of this Section may apply to the commissioner for a waiver from the requirements
16 of this Subpart based upon unique circumstances. In deciding whether to grant the
17 insurer's request for waiver, the commissioner may consider the type and volume of
18 business written, ownership, and organizational structure, and any other factor the
19 commissioner considers relevant to the insurer or insurance group of which it is a
20 member. If the insurer is part of an insurance group with insurers domiciled in more
21 than one state, the commissioner shall coordinate with the lead state commissioner
22 and with the other domiciliary commissioners in considering whether to grant the
23 insurer's request for a waiver.

24 E. Notwithstanding the exemptions stated in this Section:

25 (1) The commissioner may require that an insurer maintain a risk
26 management framework, conduct an ORSA, and file an ORSA summary report
27 based on unique circumstances, including but not limited to the type and volume of
28 business written, ownership, and organizational structure, federal agency requests,
29 and international supervisor requests.

1 (2) The commissioner may require that an insurer maintain a risk
 2 management framework, conduct an ORSA, and file an ORSA summary report if the
 3 insurer has a risk-based capital company-action level event as set forth in R.S.
 4 22:611 et seq. or 631 et seq., meets one or more of the standards of an insurer
 5 deemed to be in hazardous financial condition as defined in regulations promulgated
 6 by the commissioner, or otherwise exhibits qualities of a troubled insurer as
 7 determined by the commissioner.

8 F. If an insurer ceases to qualify for an exemption pursuant to Subsection A
 9 of this Section due to changes in premium as reflected in the insurer's most recent
 10 annual statement or in the most recent annual statements of the insurers within the
 11 insurance group of which it is a member, the insurer shall have one year following
 12 the year the premium threshold is exceeded to comply with the requirements of this
 13 Subpart.

14 §691.37. Contents of ORSA summary report

15 A. The ORSA summary report shall be prepared consistent with the ORSA
 16 Guidance Manual, subject to the requirements of Subsection B of this Section.
 17 Documentation and supporting information shall be maintained and made available
 18 upon examination by or request of the commissioner.

19 B. The review of the ORSA summary report, and any additional requests for
 20 information, shall be made using similar procedures currently used in the analysis
 21 and examination of multistate or global insurers and insurance groups.

22 §691.38. Confidentiality

23 A. Documents, materials, or other information, including the ORSA
 24 summary report, in the possession or control of the commissioner that are obtained
 25 by, created by, or disclosed to the commissioner or any other person pursuant to this
 26 Subpart are proprietary and contain trade secrets. All such documents, materials, or
 27 other information shall be confidential and privileged, shall not be subject to
 28 disclosure under the Public Records Law, shall not be subject to subpoena, and shall
 29 not be subject to discovery or admissible in evidence in any private civil action.
 30 However, the commissioner may use the documents, materials, or other information

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

5 B. Neither the commissioner nor any person who receives documents,
6 materials, or other ORSA-related information, through examination or otherwise,
7 while acting pursuant to the authority of the commissioner or with whom such
8 documents, materials, or other information are shared pursuant to this Subpart shall
9 be permitted or required to testify in any private civil action concerning any
10 confidential documents, materials, or information subject to Subsection A of this
11 Section.

12 C. In order to assist in the performance of the commissioner's regulatory
13 duties, the commissioner:

14 (1) May, upon request, share documents, materials, or other ORSA-related
15 information, including the confidential and privileged documents, materials, or
16 information subject to Subsection A of this Section, including proprietary and trade
17 secret documents and materials, with other state, federal, and international financial
18 regulatory agencies, including members of any supervisory college as defined in R.S.
19 22:691.9, with the NAIC, and with any third-party consultants designated by the
20 commissioner, provided that the recipient agrees in writing to maintain the
21 confidentiality and privileged status of the ORSA-related documents, materials, or
22 other information and has verified in writing the legal authority to maintain
23 confidentiality.

24 (2) May receive documents, materials, or other ORSA-related information,
25 including otherwise confidential and privileged documents, materials, or
26 information, including proprietary and trade-secret information or documents, from
27 regulatory officials of other foreign or domestic jurisdictions, including members of
28 any supervisory college as defined in R.S. 22:691.9, and from the NAIC, and shall
29 maintain as confidential or privileged any documents, materials, or information
30 received with notice or the understanding that it is confidential or privileged pursuant

1 to the laws of the jurisdiction that is the source of the document, material, or
2 information.

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

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

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

18 (c) Prohibit the NAIC or third-party consultant from storing the information
19 shared pursuant to this Subpart in a permanent database after the underlying analysis
20 is complete.

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

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

29 (f) Provide for the insurer's written consent in the case of an agreement
30 involving a third-party consultant.

1 D. The sharing of information and documents by the commissioner pursuant
2 to this Subpart shall not constitute a delegation of regulatory authority or rulemaking,
3 and the commissioner is solely responsible for the administration, execution, and
4 enforcement of the provisions of this Subpart.

5 E. No waiver of any applicable privilege or claim of confidentiality in the
6 documents, proprietary and trade-secret materials, or other ORSA-related
7 information shall occur as a result of disclosure of such ORSA-related information
8 or documents to the commissioner pursuant to this Section or as a result of sharing
9 as authorized in this Subpart.

10 F. Documents, materials, or other information in the possession or control
11 of the NAIC or third-party consultants pursuant to this Subpart shall be confidential
12 and privileged, shall not be subject to disclosure pursuant to the Public Records Law,
13 shall not be subject to subpoena, and shall not be subject to discovery or admissible
14 in evidence in any private civil action.

15 §691.39. Sanctions

16 Any insurer failing, without just cause, to timely file the ORSA summary
17 report as required by this Subpart shall be required, after notice and an opportunity
18 to be heard, to pay a penalty of one hundred dollars for each day's delay, to be
19 recovered by the commissioner and the penalty so recovered shall be deposited upon
20 receipt in the state treasury. The maximum penalty under this Section shall be ten
21 thousand dollars. The commissioner may reduce the penalty if the insurer
22 demonstrates to the commissioner that the imposition of the penalty would constitute
23 a financial hardship to the insurer.

24 Section 2. R.S. 44:4.1(B)(11) is hereby amended and reenacted to read as follows:

25 §4.1. Exceptions

26 * * *

27 B. The legislature further recognizes that there exist exceptions, exemptions,
28 and limitations to the laws pertaining to public records throughout the revised
29 statutes and codes of this state. Therefore, the following exceptions, exemptions, and

1 limitations are hereby continued in effect by incorporation into this Chapter by
2 citation:

3 * * *

4 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
5 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.9.1, 691.10, 691.38, 732,
6 752, 753, 771, 834, 972(D), 1008, 1019.2, 1203, 1460, 1464, 1466, 1488, 1546,
7 1559, 1566(D), 1644, 1656, 1723, 1796, 1801, 1927, 1929, 1983, 1984, 2036, 2056,
8 2085, 2091, 2293, 2303.

9 * * *

10 Section 3. This Act shall become effective on January 1, 2016.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____