CHAPTER 622

OWN RISK AND SOLVENCY ASSESSMENT

622.03 Definitions.
622.05 Risk management framework.
622.07 Own risk and solvency assessment requirement.
622.09 Own risk and solvency assessment summary report.
622.11 Exemption.
622.13 Contents of summary report.
622.15 Confidentiality.
622.17 Penalty.

Cross-reference: See definitions in ss. 600.03 and 628.02.

622.03 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Guidance manual" means the most current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners as of January 1, 2015, subject to the adoption of any amendments by the commissioner under s. 601.415 (11).

(2) "Insurance holding company system" means 2 or more persons that are affiliates, at least one of which is an insurer.

(3) "Insurer" means an insurer domiciled in this state, except that "insurer" 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.

(4) "Lead state" means the state in which an insurer member of an insurance holding company system is domiciled and that is determined to be the lead state under the procedures in the financial analysis handbook most recently adopted by the National Association of Insurance Commissioners.

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

(6) "Summary report" means a confidential high-level summary of an insurer's or insurance holding company system's own risk and solvency assessment.

History: 2013 a. 279.

622.05 Risk management framework. An insurer shall maintain a risk management framework to assist the insurer in identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement is satisfied if the insurer is a member of an insurance holding company system that maintains a risk management framework applicable to the operations of the insurer.

History: 2013 a. 279.

622.07 Own risk and solvency assessment requirement. Subject to s. 622.11, an insurer, or the insurance holding company system of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with the process specified in the guidance manual. The own risk and solvency assessment must be conducted whenever there are significant changes to the risk profile of the insurer or the insurance holding company system of which the insurer is a member, but in no case less often than annually.

History: 2013 a. 279.

622.09 Own risk and solvency assessment summary report. (1) FILING WITH THE COMMISSIONER. An insurer must file with the commissioner a summary report or any combination of reports that together contain the information described in the guidance manual applicable to the insurer and, if applicable, the insurance holding company system of which the insurer is a member as follows:

(a) Within 45 days after the date on which the final summary report is provided to the insurer's board of directors or the appropriate committee of that board, but no more than once each year if either of the following applies:

1. The insurer is domiciled in Wisconsin and is not a member of an insurance holding company system.

2. The insurer is a member of an insurance holding company system and the commissioner is the lead state commissioner.

(b) Within 45 days after the date on which the final summary report is filed with the commissioner of the insurer's lead state if all of the following apply:

1. The insurer is domiciled in Wisconsin.

2. The insurer is a member of an insurance holding company system for which the commissioner is not the lead state commissioner.

(2) ATTESTATION. The summary report shall include the signature of the insurer's, or insurance holding company system'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 summary report and that a copy of the summary report has been provided to the insurer's board of directors or the appropriate committee of that board.

(3) ALTERNATE FILING. An insurer may satisfy sub. (1) by providing the most recent summary report provided by the insurer or another member of the insurance holding company system of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a jurisdiction not located in the United States or any of its territories, if that summary report provides information that is substantially comparable to the information described in the guidance manual. Any such summary report in a language other than English must be accompanied by a translation of that summary report into English.

History: 2013 a. 279.

622.11 Exemption. (1) EXEMPT INSURERS. An insurer is exempt from the requirements of this chapter, if all of the following apply:

(a) The insurer has annual direct written premium and assumed premium from unaffiliated insurers, including international direct and assumed premium but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than $500,000,000.

(b) If the insurer is a member of an insurance holding company system, the insurance holding company system of which the insurer is a member has annual direct written premium and assumed premium from unaffiliated insurers, including international direct and assumed premium but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than $1,000,000,000.

(2) PARTIAL EXEMPTION. (a) If an insurer that is a member

of an insurance holding company system qualifies for exemption under sub. (1) (a), but the insurance holding company system of which the insurer is a member does not qualify for exemption under sub. (1) (b), the summary report required under s. 622.09 shall include every insurer within the insurance holding company system. An insurer may satisfy this requirement by submitting more than one summary report for any combination of insurers, provided that any combination of summary reports includes every insurer within the insurance holding company system.

(b) If an insurer that is a member of an insurance holding company system does not qualify for exemption under sub. (1) (a), but the insurance holding company system of which the insurer is a member qualifies for exemption under sub. (1) (b), the only summary report that is required under s. 622.09 is the summary report applicable to that insurer.

(3) WAIVER. An insurer that does not qualify for exemption under sub. (1) may apply to the commissioner for a waiver from the requirements of this chapter. In determining whether to grant the waiver, the commissioner may consider the type and volume of business written by the insurer, the ownership and organizational structure of the insurer, and any other factor the commissioner considers relevant to the insurer or insurance holding company system of which the insurer is a member. If the insurer is part of an insurance holding company system that includes insurers domiciled in more than one state, the commissioner shall coordinate with the commissioner of the lead state and with the commissioners of each of the other states in which insurer members of the insurance holding company system are domiciled in determining whether to grant the insurer's request for a waiver.

(4) WITHDRAWAL OF EXEMPTION OR WAIVER. Notwithstanding subs. (1) and (3), the commissioner may issue an order requiring an insurer to create and maintain a risk management framework, conduct an own risk and solvency assessment, and file a summary report if either of the following applies:

(a) The commissioner finds that the insurer's unique circumstances, including the type and volume of business written, the ownership and organizational structure, federal agency requests, or international supervisor requests, warrant withdrawal of the exemption or waiver. If the commissioner withdraws the exemption or waiver, the insurer or the insurance holding company system is subject to the requirement under s. 622.09 until the commissioner reinstates the exemption under sub. (1) or the waiver under sub. (3).

(b) The insurer has a risk-based capital company action level event, as defined in s. Ins 51.01 (4), Wis. Adm. Code, meets one or more of the standards for an insurer in hazardous financial condition as described in s. 623.11, 645.31, or 645.41, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(5) COMPLIANCE AFTER LOSS OF EXEMPTION. If an insurer no longer qualifies for an exemption under sub. (1) due to increased premium, as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance holding company system of which the insurer is a member, the insurer shall have one year following the year in which the premium threshold is exceeded to comply with the requirements of this chapter.

History: 2013 a. 279.

622.13 Contents of summary report. (1) PREPARATION. The summary report shall be prepared consistently with the guidance manual. Documentation and supporting information shall be maintained and made available upon examination or upon request of the commissioner.

(2) REVIEW. The commissioner's review of the summary report, and any additional requests for information, shall be made using similar procedures used in the analysis and examination of multistate or global insurers and insurance holding company systems.

History: 2013 a. 279.

622.15 Confidentiality. (1) CONFIDENTIAL TREATMENT. Documents, materials, or other information, including summary reports, in the possession or control of the commissioner that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, are confidential and privileged, are not subject to inspection or copying under s. 19.35 (1), are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the commissioner's regulation of the insurer or insurance holding company system but may not make the documents, materials, or other information public without the prior written consent of the insurer.

(2) PROHIBITION ON TESTIMONY. Neither the commissioner nor any person who received documents, materials, or other information related to own risk and solvency assessments, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared in accordance with this chapter, may testify in any private civil action concerning any confidential documents, materials, or information subject to sub. (1).

(3) PERMITTED DISCLOSURES. In furtherance of the performance of the commissioner's regulatory duties, all of the following apply:

(a) The commissioner may, upon request, share documents, materials, or other information related to own risk and solvency assessments, including the confidential and privileged documents, materials, or information subject to sub. (1), 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 s. 617.215, with the National Association of Insurance Commissioners, and with any 3rd-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information required by this section related to own risk and solvency assessments and has verified in writing its legal authority to maintain confidentiality.

(b) The commissioner may receive documents, materials, or other information related to own risk and solvency assessments, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other jurisdictions, including members of any supervisory college as described in s. 617.215, and 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 that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) The commissioner shall enter into a written agreement with the National Association of Insurance Commissioners or any 3rd party consulted formally or informally by the commissioner governing the sharing and use of information provided under this chapter, consistent with this subsection, that does all of the following:

1. Specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or 3rd-party consultants in accordance with 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 holding company system has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to own risk and solvency assessments and has verified in writing its legal authority to maintain confidentiality.

2. Specifies that ownership of information shared with the National Association of Insurance Commissioners or 3rd-party consultants in accordance with this chapter remains with the commissioner and that the use of the information by the National Association of Insurance Commissioners, regulatory officials, or 3rd-party consultants is subject to the direction of the commissioner.

3. Prohibits the National Association of Insurance Commissioners or a 3rd-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed, and provides that the National Association of Insurance Commissioners or 3rd-party consultant will either destroy or return the information to the insurer within 2 years of completion of the underlying analysis.

4. Requires prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a 3rd-party consultant under this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or 3rd-party consultant for disclosure or production.

5. Requires the National Association of Insurance Commissioners or a 3rd-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or 3rd-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or 3rd-party consultant under this chapter.

6. In the case of an agreement involving a 3rd-party consultant, provides for the insurer's written consent before sharing any of the insurer's information with the 3rd-party consultant.

(d) The sharing of information and documents by the commissioner under this chapter does not constitute a delegation of regulatory authority or rule making, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other information related to own risk and solvency assessments obtained or developed under this chapter shall occur as a result of disclosure of such information or documents to the commissioner under this section or as a result of the commissioner sharing such information or documents as authorized in this section.

(f) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or 3rd-party consultants under this chapter are confidential and privileged, are not subject to inspection or copying under s. 19.35 (1), are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

History: 2013 a. 279; 2015 a. 195 s. 83.

622.17 Penalty. Notwithstanding s. 601.64 (1) and (4), an insurer that is subject to this chapter that fails, without just cause, to timely file the summary report required under s. 622.09 is subject to the penalties under s. 601.64 (2) and (3).

History: 2013 a. 279.