CHAPTER 119

(HB 126)

AN ACT relating to insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act and Section 9 of this Act:

(1) "Insurance group" means, for the purpose of conducting an ORSA, those insurers and affiliates included within an insurance holding company system as defined in KRS 304.37-010.

(2) "Insurer" has the same meaning as in KRS 304.37-010.

(3) "Own Risk and Solvency Assessment" (ORSA) means a confidential internal assessment, 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.

(4) "ORSA Guidance Manual" means the current version of the Own Risk and Solvency Guidance Manual developed and adopted by the National Association of Insurance Commissioner (NAIC) and as may be amended from time to time. A change in the ORSA Guidance Manual shall be effective on January 1 following the calendar year in which the changes have been adopted by the NAIC.

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

➔SECTION 2. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

The requirements of Sections 1 to 8 of this Act and Section 9 of this Act shall apply to all insurers domiciled in this state, unless exempt pursuant to Section 6 of this Act.

➔SECTION 3. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) 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.

(2) The requirement of subsection (1) of this section 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.

➔SECTION 4. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided in Section 6 of this Act, 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.

(2) The ORSA shall be conducted no less often 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.

➔SECTION 5. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) (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 the insurer is a member.

(b) Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report required by paragraph (a) of this subsection 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.

(2) The report shall include the 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.

(3) An insurer may comply with subsection (1) of this section by providing the most recent and substantially similar report, provided by the insurer or another member of an insurance group of which the insurer is a member, to the commissioner of insurance of another state or to a supervisor or regulator of a foreign jurisdiction, if the report provides information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English shall be accompanied by a translation of the report into the English language.

➔SECTION 6. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) An insurer shall be exempt from the requirements of Sections 1 to 8 of this Act and Section 9 of this Act if:

(a) The insurer has annual direct written and unaffiliated assumed premium in an amount less than five hundred million dollars ($500,000,000), including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation or the Federal Flood Program; and

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

(2) If an insurer qualifies for exemption pursuant to subsection (1)(a) of this section, but the insurance group of which the insurer is a member does not qualify for the exemption pursuant to subsection (1)(b) of this section, the ORSA Summary Report that may be required pursuant to Section 5 of this Act shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Report for any combination of insurers, provided any combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to subsection (1)(a) of this section, but the insurance group of which it is a member qualifies for exemption pursuant to subsection (1)(b) of this section, the only ORSA Summary Report that may be required pursuant to Section 5 of this Act shall be the report applicable to the insurer that does not qualify for the exemption.

(4) An insurer that does not qualify for exemption pursuant to subsection (1) of this section may apply to the commissioner for a waiver from the requirements of Sections 1 to 8 of this Act and Section 9 of this Act, 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, 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.

(5) Notwithstanding the exemptions stated in this section:

(a) 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 including but not limited to the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(b) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report if the insurer:

1. Has risk-based capital for a company action level event as set forth in KRS 304.3-120, 304.3-190, and 304.38-070, and any applicable administrative regulations;

2. Meets one (1) or more of the standards of an insurer deemed to be in hazardous financial condition as defined in KRS 304.2-065 and any applicable administrative regulations; or

3. Otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(6) If an insurer that qualifies for an exemption pursuant to subsection (1) of this section then subsequently does not qualify for that exemption due to changes in premium 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 (1) year, following the year the threshold is exceeded, to comply with the requirements of Sections 1 to 8 and Section 9 of this Act.

➔SECTION 7. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) The ORSA Summary Report shall be prepared in accordance with the ORSA Guidance Manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information shall be maintained and made available upon examination or request by the commissioner.

(2) The review of the ORSA Summary Report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multi-state or global insurers and insurance groups.

➔SECTION 8. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to Sections 1 to 8 of this Act and Section 9 of this Act, are recognized as being proprietary and containing trade secrets. All documents, materials, or other information shall be confidential by law and privileged, and shall not be subject to disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall not be subject to subpoena, discovery, or admission as evidence in any private civil action. However, the commissioner is authorized to use the 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 the documents, materials, or other information public without the prior written consent of the insurer.

(2) Neither the commissioner nor any person who received documents, materials, or other ORSA-related information through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to Sections 1 to 8 of this Act and Section 9 of this Act, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) To assist in the performance of the commissioner's regulatory duties, the commissioner:

(a) May share documents, materials, or information, upon request, subject to subsection (1) of this section, including proprietary information or trade secrets, with other state, federal, and international financial regulatory agencies, including members of any supervisory college, as defined in KRS 304.37-010, the NAIC, and 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;

(b) May receive documents, materials, or other ORSA-related information including 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 defined in KRS 304.37-010, and 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; and

(c) Shall enter into a written agreement with the NAIC or a third-party consultant governing the sharing and use of information provided pursuant to this section that shall:

1. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this section, 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;

2. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this section shall remain with the commissioner, and that the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

3. Prohibit the NAIC or third-party consultant from storing the shared information pursuant to this section in a permanent database after the analysis is completed;

4. Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this section is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

5. 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 that was shared with the NAIC or a third-party consultant pursuant to this section; and

6. If an agreement involves a third-party consultant, provide for the insurer's written consent.

(4) The sharing of information and documents by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority and the commissioner shall be solely responsible for the administration, execution, and enforcement of the provisions of this section.

(5) 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 section.

(6) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this section shall be confidential by law and privileged, shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

➔SECTION 9. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Any insurer failing, without just cause, to timely file the ORSA Summary Report as required by Section 5 of this Act shall be required, after notice and hearing, to pay a penalty of one hundred dollars ($100) for each day's delay. The maximum penalty under this section is one thousand dollars ($1,000). 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.

➔Section 10. KRS 304.32-130 is amended to read as follows:

The commissioner shall not issue or renew a certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, dental, or other health service plan unless:

(1) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members, or the formula for developing dues or fees, has been filed with the commissioner in accordance with the provisions of KRS 304.32-160.

(2) The schedule of the dues and fees to be paid by subscribers or members is one which will enable the corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without impairing the guarantee fund required by KRS 304.32-140, and one which will not result in an accumulation of excess reserves over and above reserves established for claims in process, unreported and unbilled claims, retroactive cost adjustment to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. ~~[So long as a corporation's unencumbered reserve or surplus over and above the required reserves~~

~~specified in this section do not exceed a sum equal to one-half (1/2) of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, the unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.]~~

➔SECTION 11. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of this section:

(a) "Anticancer medications" means drugs and biologics that are used to kill, slow, or prevent the growth of cancerous cells; and

(b) "Cost sharing" means the cost to an individual insured under an individual or group health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

(2) A health benefit plan that covers anticancer medications that are injected or intravenously administered by a health care provider and patient-administered anticancer medications, including but not limited to those orally administered or self-injected, shall not require a higher copayment, deductible, or coinsurance amount for patient-administered anticancer medications than it requires for injected or intravenously administered anticancer medications, regardless of the formulation or benefit category determination by the health benefit plan.

(3) A health benefit plan shall not comply with subsection (2) of this section by:

(a) Increasing the copayment, deductible, or coinsurance amount required for injected or intravenously administered anticancer medications that are covered under the health benefit plan; or

(b) Reclassifying benefits with respect to anticancer medications.

(4) Notwithstanding any provision of this section to the contrary, an individual or group health benefit plan shall be deemed to be in compliance with this section if the cost sharing imposed under such a policy does not exceed one hundred dollars ($100) per prescription fill for a thirty (30) day period.

(5) For a health benefit plan that meets the definition of a high deductible health plan as defined by 26 U.S.C. 223(c)(2), to be used in conjunction with a health savings account as defined by 26 U.S.C. 223(d)(1), the provisions of subsection (4) of this section shall only apply after an insured's deductible has been satisfied for the year.

➔Section 12. Sections 1 to 9 and 11 of this Act take effect January 1, 2015.

Signed by Governor April 11, 2014.