

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 383*

Short Title: NAIC Model/Own Risk and Solvency Assessment.-AB (Public)

Sponsors: Representatives Setzer, Bumgardner, Henson, and Destin Hall (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Insurance

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO THE NORTH CAROLINA INSURANCE
3 LAWS REGARDING OWN RISK AND SOLVENCY ASSESSMENTS IN
4 ACCORDANCE WITH A MODEL ACT OF THE NATIONAL ASSOCIATION OF
5 INSURANCE COMMISSIONERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 10 of Chapter 58 of the General Statutes is amended by
8 adding a new Part to read:

9 "Part 10. Risk Management and Own Risk and Solvency Assessment.

10 **"§ 58-10-700. Purpose and Scope.**

11 (a) The purpose of this Part is to establish the requirements for maintaining a risk
12 management framework and completing an Own Risk and Solvency Assessment (ORSA) and
13 to establish guidance and instructions for filing an ORSA Summary Report with the
14 Commissioner.

15 (b) The requirements of this Part shall apply to all insurers domiciled in this State
16 unless exempt pursuant to G.S. 58-10-725.

17 **"§ 58-10-705. Definitions.**

18 The following definitions apply in this Part:

19 (1) Enterprise risk. – Defined in G.S. 58-19-5.

20 (2) Insurance group. – Those insurers and affiliates included within an insurance
21 holding company system as defined in G.S. 58-19-5.

22 (3) Insurer. – Shall have the same meaning as set forth in G.S. 58-1-5, and
23 includes a person subject to Article 65 or 67 of this Chapter. Insurer does not
24 include an agency, authority, or instrumentality of the United States; any of
25 its possessions and territories; the Commonwealth of Puerto Rico; the
26 District of Columbia; nor a state or political subdivision of a state.

27 (4) Own Risk and Solvency Assessment or ORSA. – A confidential internal
28 assessment, appropriate to the nature, scale, and complexity of an insurer or
29 insurance group, conducted by that insurer or insurance group of the material
30 and relevant risks associated with the insurer or insurance group's current
31 business plan, and the sufficiency of capital resources to support those risks.

32 (5) ORSA Guidance Manual. – The current version of the Own Risk and
33 Solvency Assessment Guidance Manual developed and adopted by the
34 NAIC and as amended from time to time. A change in the ORSA Guidance



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1 Manual shall be effective on the January 1 of the year following the calendar
2 year in which the changes have been adopted by the NAIC.

- 3 (6) ORSA Summary Report. – A confidential high-level summary of an insurer
4 or insurance group's ORSA, or a combination of reports, that contains the
5 information described in the ORSA Guidance Manual.

6 **"§ 58-10-710. Risk Management Framework.**

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

11 **"§ 58-10-715. ORSA Requirement.**

12 Subject to G.S. 58-10-725, an insurer, or the insurance group of which the insurer is a
13 member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA
14 Guidance Manual. The ORSA shall be conducted no less than annually but also at any time
15 when there are significant changes to the risk profile of the insurer or the insurance group of
16 which the insurer is a member.

17 **"§ 58-10-720. ORSA Summary Report.**

18 (a) No more than once each year, an insurer shall submit to the Commissioner an
19 ORSA Summary Report under the following circumstances:

- 20 (1) If the insurer is a member of an insurance group, and the Commissioner is
21 the lead state Commissioner of that insurance group as determined following
22 the procedures within the Financial Analysis Handbook adopted by the
23 NAIC, then the insurer shall submit the ORSA Summary Report to the
24 Commissioner.

- 25 (2) If subdivision (1) of this subsection does not apply to the insurer, then the
26 insurer shall submit the ORSA Summary Report upon the Commissioner's
27 request.

28 (b) The reports shall include a signature of the insurer or insurance group's chief risk
29 officer or other executive having responsibility for the oversight of the insurer's enterprise risk
30 management process attesting to the best of their belief and knowledge that the insurer applies
31 the enterprise risk management process described in the ORSA Summary Report and that a
32 copy of the report has been provided to the insurer's board of directors or to the appropriate
33 committee of the board of directors.

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

41 **"§ 58-10-725. Exemption.**

42 (a) An insurer shall be exempt from the requirements of this Part if it meets both of the
43 following standards:

- 44 (1) The insurer has annual direct written and unaffiliated assumed premium,
45 including international direct and assumed premium, but excluding
46 premiums reinsured with the Federal Crop Insurance Corporation and
47 Federal Flood Program, less than five hundred million dollars
48 (\$500,000,000).

- 49 (2) The insurance group of which the insurer is a member has annual direct
50 written and unaffiliated assumed premium, including international direct and
51 assumed premium, but excluding premiums reinsured with the Federal Crop

1 Insurance Corporation and Federal Flood Program, less than one billion
2 dollars (\$1,000,000,000).

3 (b) If an insurer qualifies for exemption pursuant to subdivision (1) of subsection (a) of
4 this section, but the insurance group of which the insurer is a member does not qualify for
5 exemption pursuant to subdivision (2) of subsection (a) of this section, then the ORSA
6 Summary Report that may be required pursuant to G.S. 58-10-720 shall include every insurer
7 within the insurance group, regardless of whether an insurer meets the standard of subdivision
8 (1) of subsection (a) of this section. This requirement may be satisfied by the submission of
9 more than one ORSA Summary Report for any combination of insurers within the group,
10 provided that the reports, taken together, include every insurer within the insurance group.

11 (c) If an insurer does not qualify for exemption pursuant to subdivision (1) of
12 subsection (a) of this section, but the insurance group of which it is a member qualifies for
13 exemption pursuant to subdivision (2) of subsection (a) of this section, then the only ORSA
14 Summary Report that may be required pursuant to G.S. 58-10-720 shall be the report applicable
15 to that insurer.

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

25 (e) Notwithstanding the exemptions stated in this section:

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

31 (2) The Commissioner may require that an insurer maintain a risk management
32 framework, conduct an ORSA, and file an ORSA Summary Report if the
33 insurer has a risk-based capital company action level event as set forth in
34 G.S. 58-12-11, meets one or more of the standards of an insurer deemed to
35 be in hazardous financial condition as defined in G.S. 58-30-60, or otherwise
36 exhibits qualities of a troubled insurer as determined by the Commissioner.

37 (f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section
38 subsequently no longer qualifies for that exemption due to changes in premium as reflected in
39 the insurer's most recent annual statement or in the most recent annual statements of the
40 insurers within the insurance group of which the insurer is a member, the insurer shall have one
41 year following the year the threshold is exceeded to comply with the requirements of this Part.

42 **"§ 58-10-730. Contents of ORSA Summary Report.**

43 (a) The ORSA Summary Report shall be prepared consistent with the ORSA Guidance
44 Manual, subject to the requirements of subsection (b) of this section. Documentation and
45 supporting information shall be maintained and made available upon examination or upon
46 request of the Commissioner.

47 (b) The review of the ORSA Summary Report, and any additional requests for
48 information, shall be made using procedures similar to those currently used in the analysis and
49 examination of multistate or global insurers and insurance groups.

50 **"§ 58-10-735. Confidentiality.**

1 (a) Documents, materials, or other information, including the ORSA Summary Report,
2 in the possession of or control of the Commissioner that are obtained by, created by, or
3 disclosed to the Commissioner or any other person under this Part, is recognized by this State
4 as being proprietary and to contain trade secrets. All such documents, materials, or other
5 information shall be confidential by law and privileged, shall not be considered a public record
6 under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to
7 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
8 action. However, the Commissioner is authorized to use the documents, materials, or other
9 information in the furtherance of any regulatory or legal action brought as a part of the
10 Commissioner's official duties. The Commissioner shall not otherwise make the documents,
11 materials, or other information public without the prior written consent of the insurer.

12 (b) Neither the Commissioner nor any person who received documents, materials, or
13 other ORSA-related information, through examination or otherwise, while acting under the
14 authority of the Commissioner or with whom such documents, materials, or other information
15 are shared pursuant to this Part shall be permitted or required to testify in any private civil
16 action concerning any confidential documents, materials, or information subject to subsection
17 (a) of this section.

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

20 (1) May, upon request, share documents, materials, or other ORSA-related
21 information, including the confidential and privileged documents, materials,
22 or information subject to subsection (a) of this section and any proprietary
23 and trade secret documents and materials, with other state, federal, and
24 international financial regulatory agencies. For purposes of this subdivision,
25 financial regulatory agencies shall include members of any supervisory
26 college as defined in G.S. 58-19-37, the NAIC, and any third-party
27 consultants designated by the Commissioner. Recipients of information
28 under this subdivision must agree in writing to maintain the confidentiality
29 and privileged status of the ORSA-related documents, materials, or other
30 information and verify in writing the recipient's legal authority to maintain
31 confidentiality.

32 (2) May receive documents, materials, or other ORSA-related information,
33 including otherwise confidential and privileged documents, materials, or
34 information and proprietary and trade secret information or documents, from
35 regulatory officials of other foreign or domestic jurisdictions, including
36 members of any supervisory college as defined in the G.S. 58-19-37, and
37 from the NAIC. The Commissioner shall maintain as confidential or
38 privileged any documents, materials, or information received pursuant to this
39 subdivision with notice or the understanding that it is confidential or
40 privileged under the laws of the jurisdiction that is the source of the
41 document, material, or information.

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

45 a. Specify procedures and protocols regarding the confidentiality and
46 security of information shared with the NAIC or a third-party
47 consultant pursuant to this Part, including procedures and protocols
48 for sharing by the NAIC with other state regulators from states in
49 which the insurance group has domiciled insurers. The agreement
50 shall provide that the recipient agrees in writing to maintain the
51 confidentiality and privileged status of the ORSA-related documents,

1 materials, or other information and has verified in writing the legal
2 authority to maintain confidentiality.

3 b. Specify that ownership of information shared with the NAIC or a
4 third-party consultant pursuant to this Part remains with the
5 Commissioner, and the NAIC's or a third-party consultant's use of the
6 information is subject to the direction of the Commissioner.

7 c. Prohibit the NAIC or third-party consultant from storing the
8 information shared pursuant to this Part in a permanent database after
9 the underlying analysis is completed.

10 d. Require prompt notice be given to an insurer whose confidential
11 information in the possession of the NAIC or a third-party consultant
12 pursuant to this Part is subject to a request or subpoena to the NAIC
13 or a third-party consultant for disclosure or production.

14 e. Require the NAIC or a third-party consultant to consent to
15 intervention by an insurer in any judicial or administrative action in
16 which the NAIC or a third-party consultant may be required to
17 disclose confidential information about the insurer shared with the
18 NAIC or a third-party consultant pursuant to this Part.

19 f. In the case of an agreement involving a third-party consultant,
20 provide for the insurer's written consent.

21 (d) The sharing of information and documents by the Commissioner pursuant to this
22 Part shall not constitute a delegation of regulatory authority or rule making, and the
23 Commissioner is solely responsible for the administration, execution, and enforcement of the
24 provisions of this Part.

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

29 (f) Documents, materials, or other information in the possession or control of the NAIC
30 or a third-party consultant pursuant to this Part shall be confidential by law and privileged, shall
31 not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General
32 Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
33 evidence in any private civil action.

34 **"§ 58-10-740. Sanctions.**

35 (a) Any insurer failing, without just cause, to timely file the ORSA Summary Report as
36 required in this Part shall be subject to a civil penalty of one hundred dollars (\$100.00) for each
37 day's delay, not to exceed a total penalty of one thousand dollars (\$1,000).

38 (b) Notice and Opportunity to Be Heard Required. – After providing notice and
39 opportunity to be heard in accordance with the provisions of Chapter 150B of the General
40 Statutes, the Commissioner may order the respondent to pay the assessment and civil penalty
41 imposed by this section.

42 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to
43 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

44 **"§ 58-10-745. Severability Clause.**

45 If any provision of this Part or the application thereof to any person or circumstance is held
46 invalid, such determination shall not affect the provisions or applications of this Part which can
47 be given effect without the invalid provision or application, and to that end, the provisions of
48 this Part are severable."

49 **SECTION 2.** This act becomes effective January 1, 2018. The Commissioner may
50 request filing of a report under G.S. 58-10-720, as enacted by Section 1 of this act, on or after
51 that date.