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SENATE BILL DRS25035-MH-73A* (03/02)

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

Sponsors: Senators Meredith, Newton, and Dunn (Primary Sponsors).

Referred to:

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



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

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

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.

"§ 58-10-715. ORSA Requirement.

Subject to G.S. 58-10-725, 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.

"§ 58-10-720. ORSA Summary Report.

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

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

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

(b) The reports shall include a signature of the insurer 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 their 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 to the appropriate committee of the board of directors.

(c) An insurer may comply with subsection (a) of this section by providing the most recent and substantially similar reports provided by the insurer or 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, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

"§ 58-10-725. Exemption.

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

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

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

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

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

23 **(e) Notwithstanding the exemptions stated in this section:**

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

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

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

40 **"§ 58-10-730. Contents of ORSA Summary Report.**

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

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

48 **"§ 58-10-735. Confidentiality.**

49 **(a) Documents, materials, or other information, including the ORSA Summary Report,**
50 **in the possession of or control of the Commissioner that are obtained by, created by, or**
51 **disclosed to the Commissioner or any other person under this Part, is recognized by this State**

1 as being proprietary and to contain trade secrets. All such documents, materials, or other
2 information shall be confidential by law and privileged, shall not be considered a public record
3 under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to
4 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
5 action. However, the Commissioner is authorized to use the documents, materials, or other
6 information in the furtherance of any regulatory or legal action brought as a part of the
7 Commissioner's official duties. The Commissioner shall not otherwise make the documents,
8 materials, or other information public without the prior written consent of the insurer.

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

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

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

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

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

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

- 1 b. Specify that ownership of information shared with the NAIC or a
2 third-party consultant pursuant to this Part remains with the
3 Commissioner, and the NAIC's or a third-party consultant's use of the
4 information is subject to the direction of the Commissioner.
- 5 c. Prohibit the NAIC or third-party consultant from storing the
6 information shared pursuant to this Part in a permanent database after
7 the underlying analysis is completed.
- 8 d. Require prompt notice be given to an insurer whose confidential
9 information in the possession of the NAIC or a third-party consultant
10 pursuant to this Part is subject to a request or subpoena to the NAIC
11 or a third-party consultant for disclosure or production.
- 12 e. Require the NAIC or a third-party consultant to consent to
13 intervention by an insurer in any judicial or administrative action in
14 which the NAIC or a third-party consultant may be required to
15 disclose confidential information about the insurer shared with the
16 NAIC or a third-party consultant pursuant to this Part.
- 17 f. In the case of an agreement involving a third-party consultant,
18 provide for the insurer's written consent.

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

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

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

32 **"§ 58-10-740. Sanctions.**

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

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

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

42 **"§ 58-10-745. Severability Clause.**

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

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