

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



PA 14-107—sSB 194

*Insurance and Real Estate Committee*

*Judiciary Committee*

**AN ACT CONCERNING RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENTS FOR DOMESTIC INSURERS**

**SUMMARY:** This act requires each domestic (Connecticut) insurer to establish and maintain a framework to help it identify, assess, monitor, manage, and report on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a framework that applies to the insurer's operations.

The act requires each insurer or its insurance group to conduct an Own Risk and Solvency Assessment (ORSA) at least annually and whenever there are significant changes to its risk profile. It requires, starting January 1, 2015, Connecticut insurers to submit to the insurance commissioner, upon his request, an ORSA summary report containing the information described in the ORSA Guidance Manual applicable to the insurer and its group upon request. It allows the commissioner, after notice and hearing, to impose a civil penalty of \$1,000 on a Connecticut insurer for each day that it fails, without just cause, to timely file a summary report. He may reduce this fine if the insurer demonstrates that it would be a financial hardship.

The act exempts certain insurers from these requirements and allows others to seek a waiver from the commissioner.

Under the act, the ORSA summary report and related material in the Insurance Department's possession or control obtained by, created by, or disclosed to, the commissioner or any other person are generally confidential.

The act gives the commissioner various powers and duties in administering these provisions, including a requirement that he enter into a written agreement governing information sharing.

The act does not apply to agencies, authorities, or instrumentalities of (1) the federal government, (2) a state or its political subdivisions, (3) Puerto Rico, or (4) the District of Columbia.

EFFECTIVE DATE: January 1, 2015

§ 1(a) & (b) — ORSA

Under the act, an ORSA is a confidential internal assessment that an insurer or its insurance group conducts and that is appropriate to the (1) nature, scale, and complexity of the insurer or group; (2) material and relevant risks associated with its current business plan; and (3) sufficiency of capital resources to support those risks.

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The insurer or group must conduct the assessment consistent with procedures in the ORSA Guidance Manual, which the National Association of Insurance Commissioners (NAIC) produces. Under the act, any change in the manual becomes effective January 1 following the calendar year when NAIC adopted the change. The insurer or group must conduct the ORSA at (1) least annually and (2) any time its risk profile changes significantly.

### § 1 (c) to (f) — SUMMARY REPORT

#### *Preparation*

The act requires each insurer or its group to prepare an ORSA summary report consistent with the standards in the guidance manual. They must also maintain documentation and supporting information of an ORSA and make them available for examination by the commissioner on request.

The insurer's or group's chief risk officer or other executive responsible for overseeing the insurer's enterprise risk management process must sign the report. This executive must attest, to the best of his or her belief and knowledge, that (1) the insurer applied the enterprise risk management process described in the summary report and (2) a copy of the report has been provided to the insurer's board of directors or appropriate committee of the board.

#### *Submission to Commissioner*

The insurer must file with the commissioner the summary report and any combination of reports that together contain the information described in the manual that applies to the insurer and its group. It must do so at the commissioner's request, which cannot be more than once each year. The submission date depends on when the insurer or group conducts its internal strategic planning process. If Connecticut's commissioner is the lead commissioner (among a group of regulatory officials) for the insurer's group, as determined by NAIC's financial analysis handbook, the insurer must provide the summary and related information report once per year without being requested. (Insurance groups that operate in multiple states are subject to the jurisdiction of several regulatory officials, one of whom is designated the lead commissioner.)

A Connecticut insurer can comply with these requirements by providing the most recent and substantially similar report that it or a member of its group provided to the insurance regulatory official in another state or foreign jurisdiction. The report must contain information comparable to that described in the manual. If that report is not in English, it must be accompanied by an English translation.

*Commissioner's Review.* The commissioner or his designee must review the summary report and the documentation or information using procedures like those he uses to analyze and examine multistate or global insurers and insurance groups.

*Penalties.* The commissioner, after notice and hearing, may impose a civil penalty on an insurer that fails, without just cause, to timely file a summary report. The penalty is \$1,000 for each day the failure to file continues. If the

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insurer demonstrates that this would constitute a financial hardship, the commissioner may reduce the penalty.

### § 1(a)(2) & (g) — INSURERS

An insurer is exempt from the act's requirements if:

1. it has annual direct written and unaffiliated assumed premiums of less than \$500 million, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program and
2. its group has such premiums of less than \$1 billion, subject to the same inclusions and exclusions.

If an insurer qualifies for an exemption but its group does not, the ORSA summary report must include every insurer within the group. This requirement may be satisfied by submitting more than one summary report for any combination of insurers, so long as the combination of reports includes every insurer within the group. If the insurer does not qualify for an exemption, but its group does, the only summary report required is the insurer's report.

If an insurer becomes ineligible for an exemption due to changes in its premium, as reflected in its most recent annual statement or those of the insurers in its group, it has one year following the year the threshold is exceeded to comply with the act's requirements.

Notwithstanding the exemptions, the commissioner may require that an otherwise exempted insurer submit a report:

1. based on unique circumstances, such as the type and volume of business written, the insurer's ownership and organizational structure, and requests from a federal agency or the insurance regulatory official of a foreign jurisdiction, or
2. if it (a) has risk-based capital for a company action level event, as described in Connecticut law, (b) meets one or more of the standards for being considered to be in a hazardous financial condition, or (c) otherwise exhibits qualities of being a troubled insurer as determined by the commissioner.

### § 1(g)(6) — WAIVERS

An insurer that does not qualify for an exemption from the act's requirements can apply for a waiver based on unique circumstances. In deciding whether to grant a waiver, the commissioner may consider the type and volume of business written, the insurer's ownership and organizational structure, and any other factors he considers relevant to the insurer or its group. In considering whether to grant a waiver for an insurer that is part of a group with insurers domiciled in more than one state, the commissioner must coordinate with:

1. the lead state commissioner of the group, as determined by the procedures in NAIC's applicable financial analysis handbook, and
2. other insurance regulatory officials of member insurers' states of domicile.

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### § 1(h) — CONFIDENTIALITY

Under the act, the ORSA summary report and all other documents, material, and information in the Insurance Department's possession or control obtained by, created by, or disclosed to the commissioner or any other person under the act are:

1. confidential by law and privileged,
2. not subject to disclosure under the Freedom of Information Act,
3. not subject to subpoena or discovery, and
4. inadmissible in evidence in any civil action in Connecticut.

The same provisions apply to the ORSA summary report and other information that NAIC or the third party possesses or controls.

The commissioner may use the information he possesses or controls to further any regulatory or legal action brought as a part of his official duties. The act prohibits him from otherwise making this information public without the insurer's prior written consent.

Neither the commissioner nor anyone acting under his authority who obtains or creates this information or to whom it is disclosed, through examination or otherwise, may be permitted or required to testify in any civil action in Connecticut about it.

### § 1 — COMMISSIONER'S POWERS AND DUTIES

#### *Powers*

The act allows the commissioner to share, upon request, summary reports and other information, documents, or materials in his control, including those deemed confidential and privileged or not disclosable, with:

1. other state, federal, and international regulatory officials, including members of a supervisory college (a multi-jurisdiction group of insurance officials involved in a particular case);
2. NAIC; and
3. any third-party consultants the commissioner designates.

In each case, the recipient must agree, in writing, to maintain the confidentiality and privileged status of the information and must verify, in writing, its legal authority to maintain confidentiality. The commissioner must obtain the insurer's written consent before sharing any such information.

The commissioner may receive ORSA-related information, documents, material, or other information, including those that are confidential and privileged, from NAIC and the regulatory officials described above. The commissioner must maintain as confidential and privileged any documents, material, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is their source.

The disclosure or sharing of the information under the act does not waive any applicable privilege or claim of confidentiality. These provisions cannot be construed to delegate any of the commissioner's regulatory authority to any person or entity regarding any of the information that has been shared.

#### *Duties*

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The act requires the commissioner to enter into a written agreement with NAIC or a third-party consultant, governing the sharing and use of the above documents, material, and information. The agreement must:

1. specify procedures and protocols regarding the confidentiality and security of the information, documents, or material shared with NAIC or a third-party consultant, including procedures and protocols limiting sharing by NAIC only to regulatory officials of states where other member insurers of the group of which a Connecticut insurer is a member are domiciled;
2. require NAIC or the consultant to agree, in writing, to maintain the confidentiality and privileged status of this information;
3. where applicable, require NAIC to obtain, in writing, the same commitment from a regulatory official with whom this information is shared;
4. specify that the commissioner retains ownership of this information and has discretion over its use;
5. prohibit NAIC or the consultant from storing the information in a permanent database after completing the underlying analysis;
6. require that an insurer whose confidential information NAIC or the consultant possesses receive prompt notice if either entity is subject to a request or subpoena to disclose or produce such information; and
7. require NAIC or the consultant, if it is subject to disclosure of an insurer's confidential information in its possession, to allow the insurer to intervene in any judicial or administrative action regarding the disclosure.

### BACKGROUND

#### *NAIC*

NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

OLR Tracking: KM:KS:JKL:am