

SENATE BILL 8

C4

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(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Maryland Insurance Administration)**

Requested: September 22, 2016

Introduced and read first time: January 11, 2017

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 21, 2017

CHAPTER _____

1 AN ACT concerning

2 **Insurance – Risk Management and Own Risk and Solvency Assessment Act**

3 FOR the purpose of requiring certain ~~insurers~~ carriers to maintain a risk management
4 framework for certain purposes; requiring certain ~~insurers~~ carriers or certain
5 insurance groups to conduct an own risk and solvency assessment regularly or at
6 any time when there are significant changes to the ~~insurer's~~ carrier's or insurance
7 group's risk profile; requiring certain ~~insurers~~ carriers to ~~provide~~ submit to the
8 Maryland Insurance Commissioner ~~with~~ an own risk and solvency assessment report
9 or reports on request or if the Commissioner is the lead state commissioner of a
10 certain insurance group; requiring a carrier to determine a certain date of a certain
11 filing and notify the Commissioner of the anticipated date; requiring a certain
12 executive to sign a certain report and attest to certain facts; requiring certain reports
13 to be accompanied by a certain translation; establishing the manner in which certain
14 ~~insurers~~ carriers may comply with the reporting requirement; providing for certain
15 ~~insurers~~ carriers to be exempt from the own risk and solvency assessment reporting
16 requirement under certain circumstances; providing that certain ~~insurers~~ carriers
17 that are not exempt from the own risk and solvency assessment reporting
18 requirement may apply for a waiver under certain circumstances; describing certain
19 factors that the Commissioner may consider when determining whether to grant a
20 waiver; authorizing the Commissioner to require the own risk and solvency
21 assessment reporting for ~~an insurer~~ a carrier that has ~~a~~ a risk-based capital that is at
22 a certain level, meets certain standards ~~for~~ of an insurer a carrier deemed in a
23 financially hazardous condition, or exhibits qualities of a troubled ~~insurer~~ carrier;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 requiring ~~an insurer~~ a carrier that was exempt from the own risk and solvency
2 assessment reporting requirement but no longer qualifies for an exemption to comply
3 with the requirements of certain provisions of this Act within a certain period of
4 time; requiring the own risk and solvency assessment report to be prepared
5 consistent with a certain manual; requiring certain documentation and supporting
6 information for the own risk and solvency assessment report to be maintained by the
7 ~~insurer carrier in accordance with certain financial examination requirements and~~
8 made available on examination or request of the Commissioner; requiring the
9 Commissioner to review the report and request additional information using certain
10 procedures; requiring the report to include a certain summary; authorizing the
11 Commissioner to retain certain consultants for certain purposes; providing that
12 certain documents and information are is confidential and privileged and may not be
13 subject to certain provisions of law, subpoena, or discovery or admission in evidence
14 in a certain action; prohibiting the Commissioner, except under certain
15 circumstances, from making certain information public without the prior written
16 consent of a certain carrier; providing that certain confidential information may be
17 shared with certain entities and persons under certain circumstances; authorizing
18 the Commissioner to receive certain information under certain circumstances;
19 requiring the Commissioner to enter into a written agreement with certain persons
20 governing the sharing and use of certain information; requiring that certain
21 elements be included in a written the agreement governing the sharing of certain
22 information with certain entities; providing that the sharing of certain information
23 and documents by the Commissioner may not constitute a delegation of regulatory
24 authority or rulemaking; providing that the Commissioner is solely responsible for
25 the administration, execution, and enforcement of certain provisions of this Act;
26 providing that a waiver of a certain privilege or claim of confidentiality in certain
27 information may not occur as a result of the disclosure or sharing of the information
28 under certain circumstances; authorizing establishing certain penalties for the
29 violation of this Act failure to timely file a certain report; authorizing the
30 Commissioner to reduce a certain penalty under certain circumstances; providing
31 that a certain provision of this Act does not limit the authority of the Commissioner
32 to take certain actions; authorizing the Commissioner to adopt regulations to carry
33 consistent with out certain provisions of this Act; providing for the purposes and
34 application of certain provisions of this Act; defining certain terms; providing for a
35 delayed effective date; and generally relating to insurer carrier risk management
36 and solvency.

37 BY adding to

38 Article – Insurance

39 Section 32–101 through 32–110 to be under the new title “Title 32. Risk Management
40 and Own Risk and Solvency Assessment Act”

41 Annotated Code of Maryland

42 (2011 Replacement Volume and 2016 Supplement)

43 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

44 That the Laws of Maryland read as follows:

Article – Insurance

TITLE 32. RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT.

32-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CARRIER” MEANS:

(1) AN INSURER;

(2) A NONPROFIT HEALTH SERVICE PLAN;

(3) A HEALTH MAINTENANCE ORGANIZATION; OR

(4) A DENTAL PLAN ORGANIZATION.

~~(B)~~ (C) “INSURANCE GROUP” MEANS, FOR THE PURPOSE OF CONDUCTING AN ORSA, THOSE ~~INSURERS~~ CARRIERS AND AFFILIATES THAT ARE INCLUDED WITHIN AN INSURANCE HOLDING COMPANY SYSTEM AS DEFINED IN § 7-101 OF THIS ARTICLE.

~~(C)~~ (1) ~~“INSURER” HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE.~~

~~(2)~~ ~~“INSURER” DOES NOT INCLUDE AN AGENCY, AUTHORITY, OR INSTRUMENTALITY OF THE UNITED STATES, A STATE, OR A POLITICAL SUBDIVISION OF A STATE.~~

(D) “NAIC” MEANS THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(E) “OWN RISK AND SOLVENCY ASSESSMENT” OR “ORSA” MEANS A CONFIDENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE, AND COMPLEXITY OF ~~AN INSURER~~ A CARRIER OR INSURANCE GROUP, THAT THE ~~INSURER~~ CARRIER OR INSURANCE GROUP CONDUCTS, OF THE MATERIAL AND RELEVANT RISKS ASSOCIATED WITH THE ~~INSURER’S~~ CARRIER’S OR INSURANCE GROUP’S CURRENT BUSINESS PLAN AND THE SUFFICIENCY OF CAPITAL RESOURCES TO SUPPORT THOSE RISKS.

(F) “ORSA GUIDANCE MANUAL” MEANS THE CURRENT VERSION OF THE OWN RISK AND SOLVENCY ASSESSMENT GUIDANCE MANUAL DEVELOPED AND ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(G) “ORSA-RELATED INFORMATION” MEANS ANY DOCUMENT, MATERIAL, OR OTHER INFORMATION RELATED TO AN ORSA, AN ORSA SUMMARY REPORT, OR A RISK MANAGEMENT FRAMEWORK OF ~~AN INSURER~~ A CARRIER OR INSURANCE GROUP.

(H) “ORSA SUMMARY REPORT” MEANS A CONFIDENTIAL HIGH-LEVEL SUMMARY OF THE ORSA OF ~~AN INSURER~~ A CARRIER OR INSURANCE GROUP.

(I) “SUPERVISORY COLLEGE” HAS THE MEANING STATED IN § 2-209.1 OF THIS ARTICLE.

32-102.

(A) THE PURPOSES OF THIS TITLE ARE TO:

(1) REQUIRE ~~AN INSURER~~ A CARRIER OR INSURANCE GROUP TO MAINTAIN A RISK MANAGEMENT FRAMEWORK AND COMPLETE AN ORSA;

(2) SET THE REQUIREMENTS FOR FILING AN ORSA SUMMARY REPORT WITH THE COMMISSIONER; AND

(3) PROVIDE FOR THE CONFIDENTIAL TREATMENT OF THE ORSA, THE ORSA SUMMARY REPORT, AND OTHER ORSA-RELATED INFORMATION.

(B) THIS TITLE APPLIES TO ALL ~~INSURERS~~ CARRIERS DOMICILED IN THE STATE THAT ARE NOT EXEMPT UNDER § 32-106 OF THIS TITLE.

32-103.

(A) EACH ~~INSURER~~ CARRIER SUBJECT TO THIS TITLE SHALL MAINTAIN A RISK MANAGEMENT FRAMEWORK FOR IDENTIFYING, ASSESSING, MONITORING, MANAGING, AND REPORTING ITS MATERIAL AND RELEVANT RISKS.

(B) ~~AN INSURER~~ A CARRIER MAY SATISFY THIS REQUIREMENT IF THE INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS A MEMBER MAINTAINS A RISK MANAGEMENT FRAMEWORK THAT APPLIES TO THE OPERATIONS OF THE ~~INSURER~~ CARRIER.

32-104.

1 (A) SUBJECT TO § 32-106 OF THIS TITLE, ~~AN INSURER~~ A CARRIER, OR THE
2 INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER, SHALL REGULARLY
3 CONDUCT AN ORSA CONSISTENT WITH THE PROCESS OUTLINED IN THE ORSA
4 GUIDANCE MANUAL.

5 (B) THE ORSA SHALL BE CONDUCTED:

6 (1) REGULARLY, BUT NOT LESS THAN ONCE EACH YEAR; AND

7 (2) AT ANY TIME WHEN THERE IS A SIGNIFICANT CHANGE TO THE RISK
8 PROFILE OF THE ~~INSURER~~ CARRIER OR THE INSURANCE GROUP OF WHICH THE
9 ~~INSURER~~ CARRIER IS A MEMBER.

10 32-105.

11 (A) ON REQUEST OF THE COMMISSIONER, BUT NOT MORE THAN ONCE EACH
12 YEAR, ~~AN INSURER~~ A CARRIER SHALL SUBMIT TO THE COMMISSIONER AN ORSA
13 SUMMARY REPORT OR A COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE
14 INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE TO THE
15 ~~INSURER~~ CARRIER OR THE INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS
16 A MEMBER.

17 (B) NOTWITHSTANDING ANY REQUEST FROM THE COMMISSIONER, IF THE
18 ~~INSURER~~ CARRIER IS A MEMBER OF AN INSURANCE GROUP, THE ~~INSURER~~ CARRIER
19 SHALL SUBMIT THE REPORT REQUIRED BY THIS SECTION IF THE COMMISSIONER IS
20 THE LEAD STATE COMMISSIONER OF THE INSURANCE GROUP AS DETERMINED BY
21 THE PROCEDURES IN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE
22 NAIC.

23 (C) THE ~~INSURER~~ CARRIER SHALL:

24 (1) DETERMINE THE MOST APPROPRIATE DATE OF THE FILING BASED
25 ON THE ~~INSURER'S~~ CARRIER'S INTERNAL STRATEGIC PLANNING PROCESSES; AND

26 (2) NOTIFY THE COMMISSIONER OF THE ANTICIPATED DATE OF THE
27 FILING.

28 (D) THE ~~INSURER'S~~ CARRIER'S OR INSURANCE GROUP'S CHIEF RISK
29 OFFICER OR OTHER EXECUTIVE WITH RESPONSIBILITY FOR THE OVERSIGHT OF THE
30 ~~INSURER'S~~ CARRIER'S ENTERPRISE RISK MANAGEMENT PROCESS SHALL SIGN THE
31 REPORT AND ATTEST TO THE BEST OF THAT INDIVIDUAL'S BELIEF AND KNOWLEDGE
32 THAT:

(1) ~~THE INSURER~~ CARRIER APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT; AND

(2) A COPY OF THE REPORT HAS BEEN PROVIDED TO THE ~~INSURER'S~~ CARRIER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE OF THE BOARD.

(E) ~~AN INSURER~~ A CARRIER MAY COMPLY WITH SUBSECTION (A) OF THIS SECTION BY PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT THAT THE ~~INSURER~~ CARRIER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS A MEMBER PROVIDED 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.

(F) ANY REPORT THAT IS PROVIDED UNDER SUBSECTION (E) OF THIS SECTION IN A LANGUAGE OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO ENGLISH.

32-106.

(A) ~~AN INSURER~~ A CARRIER IS EXEMPT FROM THE REQUIREMENTS OF THIS TITLE IF:

(1) ~~THE INSURER~~ CARRIER HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED ASSUMED PREMIUM LESS THAN \$500,000,000, INCLUDING INTERNATIONAL DIRECT AND ASSUMED PREMIUM BUT EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM; AND

(2) THE INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS A MEMBER HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED ASSUMED PREMIUM LESS THAN \$1,000,000,000, INCLUDING INTERNATIONAL DIRECT AND ASSUMED PREMIUM BUT EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM.

(B) (1) IF ~~AN INSURER~~ A CARRIER QUALIFIES FOR EXEMPTION UNDER SUBSECTION (A)(1) OF THIS SECTION, BUT THE INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS A MEMBER DOES NOT QUALIFY FOR EXEMPTION UNDER SUBSECTION (A)(2) OF THIS SECTION, THEN THE ORSA SUMMARY REPORT THAT IS REQUIRED UNDER § 32-105 OF THIS TITLE SHALL INCLUDE EVERY ~~INSURER~~ CARRIER WITHIN THE INSURANCE GROUP.

1 (2) THE ORSA SUMMARY REPORT ~~IN~~ REQUIREMENT UNDER
2 PARAGRAPH (1) OF THIS SUBSECTION MAY BE SATISFIED BY SUBMITTING MORE
3 THAN ONE ORSA SUMMARY REPORT FOR ANY COMBINATION OF ~~INSURERS~~
4 CARRIERS IF THE COMBINATION OF REPORTS INCLUDES EVERY ~~INSURER~~ CARRIER
5 WITHIN THE INSURANCE GROUP.

6 (C) IF ~~AN INSURER~~ A CARRIER DOES NOT QUALIFY FOR EXEMPTION UNDER
7 SUBSECTION (A)(1) OF THIS SECTION, BUT THE INSURANCE GROUP OF WHICH IT IS
8 A MEMBER QUALIFIES FOR EXEMPTION UNDER SUBSECTION (A)(2) OF THIS
9 SECTION, THEN THE ONLY ORSA SUMMARY REPORT REQUIRED UNDER § 32-105
10 OF THIS TITLE IS THE REPORT THAT APPLIES TO THAT ~~INSURER~~ CARRIER.

11 (D) (1) ~~AN INSURER~~ A CARRIER THAT DOES NOT QUALIFY FOR
12 EXEMPTION UNDER SUBSECTION (A) OF THIS SECTION MAY APPLY TO THE
13 COMMISSIONER FOR A WAIVER FROM THE REQUIREMENTS OF THIS TITLE BASED ON
14 UNIQUE CIRCUMSTANCES.

15 (2) IF THE ~~INSURER~~ CARRIER APPLYING FOR A WAIVER IS PART OF AN
16 INSURANCE GROUP WITH ~~INSURERS~~ CARRIERS DOMICILED IN MORE THAN ONE
17 STATE, THE COMMISSIONER ~~MAY COORDINATE WITH~~ SHALL CONTACT THE LEAD
18 STATE COMMISSIONER AND ~~WITH~~ OTHER DOMICILIARY COMMISSIONERS IN
19 CONSIDERING WHETHER TO GRANT THE ~~INSURER'S~~ CARRIER'S REQUEST FOR A
20 WAIVER.

21 (3) IN DECIDING WHETHER TO GRANT THE ~~INSURER'S~~ CARRIER'S
22 REQUEST FOR A WAIVER, THE COMMISSIONER MAY CONSIDER:

23 (I) THE TYPE AND VOLUME OF BUSINESS WRITTEN;

24 (II) OWNERSHIP AND ORGANIZATIONAL STRUCTURE; AND

25 (III) ANY OTHER FACTOR THE COMMISSIONER CONSIDERS
26 RELEVANT TO THE ~~INSURER~~ CARRIER OR INSURANCE GROUP OF WHICH THE
27 ~~INSURER~~ CARRIER IS A MEMBER.

28 (E) NOTWITHSTANDING THE EXEMPTIONS PROVIDED FOR IN THIS SECTION,
29 THE COMMISSIONER MAY REQUIRE THAT ~~AN INSURER~~ A CARRIER:

30 (1) MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN
31 ORSA, AND FILE AN ORSA SUMMARY REPORT BASED ON UNIQUE
32 CIRCUMSTANCES, INCLUDING THE TYPE AND VOLUME OF BUSINESS WRITTEN,
33 OWNERSHIP AND ORGANIZATIONAL STRUCTURE, FEDERAL AGENCY REQUESTS, AND
34 INTERNATIONAL SUPERVISOR REQUESTS; OR

(2) MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN ORSA, AND FILE AN ORSA SUMMARY REPORT IF THE ~~INSURER~~ CARRIER:

(I) HAS RISK-BASED CAPITAL AT A COMPANY ACTION LEVEL EVENT AS SET FORTH IN § 4-305 OF THIS ARTICLE;

(II) MEETS ONE OR MORE OF THE STANDARDS OF ~~AN INSURER~~ A CARRIER DEEMED TO BE IN FINANCIALLY HAZARDOUS CONDITION AS DESCRIBED IN § 9-102 OF THIS ARTICLE; OR

(III) OTHERWISE EXHIBITS QUALITIES OF A TROUBLED ~~INSURER~~ CARRIER AS DETERMINED BY THE COMMISSIONER.

(F) IF ~~AN INSURER~~ A CARRIER THAT QUALIFIES FOR AN EXEMPTION UNDER SUBSECTION (A) OF THIS SECTION SUBSEQUENTLY NO LONGER QUALIFIES FOR THAT EXEMPTION DUE TO CHANGES IN PREMIUM AS REFLECTED IN THE ~~INSURER'S~~ CARRIER'S MOST RECENT ANNUAL STATEMENT OR IN THE MOST RECENT ANNUAL STATEMENTS OF THE ~~INSURERS~~ CARRIERS WITHIN THE INSURANCE GROUP OF WHICH THE ~~INSURER~~ CARRIER IS A MEMBER, THE ~~INSURER~~ CARRIER SHALL HAVE 1 YEAR FOLLOWING THE YEAR THE THRESHOLD IS EXCEEDED TO COMPLY WITH THIS TITLE.

32-107.

(A) THE ORSA SUMMARY REPORT SHALL BE PREPARED CONSISTENT WITH THE ORSA GUIDANCE MANUAL.

(B) DOCUMENTATION AND SUPPORTING INFORMATION FOR THE ORSA SUMMARY REPORT SHALL BE MAINTAINED AND MADE AVAILABLE ON EXAMINATION OR REQUEST OF THE COMMISSIONER.

(C) (1) THE COMMISSIONER SHALL REVIEW THE ORSA SUMMARY REPORT.

(2) THE COMMISSIONER SHALL MAKE ANY REQUESTS FOR ADDITIONAL INFORMATION USING PROCEDURES SIMILAR TO THOSE CURRENTLY USED IN THE ANALYSIS AND EXAMINATION OF MULTI-STATE OR GLOBAL ~~INSURERS~~ CARRIERS AND INSURANCE GROUPS.

(D) THE ORSA SUMMARY REPORT SHALL INCLUDE A SHORT SUMMARY OF MATERIAL CHANGES AND UPDATES TO THE ORSA SUMMARY REPORT SINCE THE PRIOR YEAR.

(E) THE COMMISSIONER MAY RETAIN, AT THE ~~INSURER'S~~ CARRIER'S EXPENSE, THIRD-PARTY CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES, ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE ADMINISTRATION'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE ADMINISTRATION IN REVIEWING THE ~~INSURER'S~~ CARRIER'S RISK MANAGEMENT FRAMEWORK, ORSA, ORSA SUMMARY REPORT, OR COMPLIANCE WITH THIS TITLE.

32-108.

(A) (1) ~~DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION, INCLUDING THE ORSA SUMMARY REPORT, IN THE POSSESSION OR CONTROL OF THE COMMISSIONER THAT ~~ARE~~ IS OBTAINED BY, CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON UNDER THIS TITLE:

(I) ~~ARE~~ IS CONFIDENTIAL AND PRIVILEGED;

(II) ~~ARE~~ IS NOT SUBJECT TO TITLE 4 OF THE GENERAL PROVISIONS ARTICLE;

(III) ~~ARE~~ IS NOT SUBJECT TO SUBPOENA; AND

(IV) ~~ARE~~ IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION.

(2) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (D) OF THIS SECTION, THE COMMISSIONER MAY NOT OTHERWISE MAKE ~~THE DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION PUBLIC WITHOUT PRIOR WRITTEN CONSENT OF THE ~~INSURER~~ CARRIER TO WHICH ~~THEY PERTAIN~~ IT PERTAINS.

(B) ~~NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE~~ THE COMMISSIONER MAY USE ~~THE DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS PART OF THE DUTIES OF THE COMMISSIONER.

(C) THE COMMISSIONER, AND ANY PERSON WHO RECEIVES ~~DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER OR WITH WHOM ~~THE DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION ~~ARE~~ IS SHARED UNDER THIS TITLE, MAY NOT BE ALLOWED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY ~~DOCUMENT, MATERIAL, OR ORSA-RELATED~~ INFORMATION THAT IS SUBJECT TO SUBSECTION (A) OF THIS SECTION.

(D) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S REGULATORY DUTIES, THE COMMISSIONER:

(1) MAY, ON REQUEST, SHARE ~~DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION, INCLUDING CONFIDENTIAL AND PRIVILEGED ~~DOCUMENTS, MATERIAL, OR~~ ORSA-RELATED INFORMATION THAT ~~ARE~~ IS SUBJECT TO SUBSECTION (A) OF THIS SECTION, WITH:

(I) OTHER STATE, FEDERAL, AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE;

(II) THE NAIC; AND

(III) ANY THIRD-PARTY CONSULTANTS THE COMMISSIONER DESIGNATES.

(2) THE COMMISSIONER MAY SHARE ~~DOCUMENTS, MATERIAL, OR~~ ORSA-RELATED INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE RECIPIENT:

(I) AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE ~~DOCUMENTS, MATERIAL, OR~~ ORSA-RELATED INFORMATION; AND

(II) VERIFIES IN WRITING THAT IT HAS THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY OF THE ~~DOCUMENTS, MATERIAL, OR~~ ORSA-RELATED INFORMATION.

(E) (1) THE COMMISSIONER MAY RECEIVE ~~DOCUMENTS, MATERIAL, OR~~ ~~OTHER~~ ORSA-RELATED INFORMATION FROM:

(I) OTHER STATE, FEDERAL, AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES, INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE; AND

(II) THE NAIC.

(2) THE COMMISSIONER SHALL MAINTAIN AS CONFIDENTIAL AND PRIVILEGED ANY ~~DOCUMENTS, MATERIAL, OR~~ ORSA-RELATED INFORMATION RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT THE COMMISSIONER RECEIVES 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~~ ORSA-RELATED INFORMATION.

1 (F) (1) THE COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT
2 WITH THE NAIC OR A THIRD-PARTY CONSULTANT GOVERNING THE SHARING AND
3 USE OF INFORMATION PROVIDED UNDER THIS TITLE, CONSISTENT WITH THIS
4 SECTION.

5 (2) THE AGREEMENT REQUIRED UNDER PARAGRAPH (1) OF THIS
6 SUBSECTION THAT SHALL:

7 ~~(1)~~ (I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE
8 CONFIDENTIALITY AND SECURITY OF ORSA-RELATED INFORMATION SHARED WITH
9 THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS TITLE, INCLUDING
10 PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC WITH OTHER STATE
11 REGULATORS FROM STATES IN WHICH THE INSURANCE GROUP HAS DOMICILED
12 ~~INSURERS~~ CARRIERS;

13 ~~(2)~~ (II) SPECIFY THAT THE RECIPIENT AGREES IN WRITING TO
14 MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE
15 ORSA-RELATED ~~DOCUMENTS, MATERIAL, OR OTHER~~ INFORMATION AND HAS
16 VERIFIED IN WRITING THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY;

17 ~~(3)~~ (III) SPECIFY THAT OWNERSHIP OF THE ORSA-RELATED
18 INFORMATION SHARED UNDER THIS TITLE REMAINS WITH THE COMMISSIONER AND
19 THAT THE USE OF THE ORSA-RELATED INFORMATION BY THE NAIC OR A
20 THIRD-PARTY CONSULTANT IS SUBJECT TO THE DIRECTION OF THE
21 COMMISSIONER;

22 ~~(4)~~ (IV) PROHIBIT THE NAIC OR A THIRD-PARTY CONSULTANT
23 FROM STORING THE ORSA-RELATED INFORMATION SHARED UNDER THIS TITLE IN
24 A PERMANENT DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED;

25 ~~(5)~~ (V) REQUIRE PROMPT NOTICE TO BE GIVEN TO ~~AN INSURER~~ A
26 CARRIER WHOSE CONFIDENTIAL ORSA-RELATED INFORMATION IN THE
27 POSSESSION OF THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS TITLE IS
28 SUBJECT TO A REQUEST OR SUBPOENA FOR DISCLOSURE OR PRODUCTION;

29 ~~(6)~~ (VI) REQUIRE THE NAIC OR A THIRD-PARTY CONSULTANT TO
30 CONSENT TO INTERVENTION BY ~~AN INSURER~~ A CARRIER IN ANY JUDICIAL OR
31 ADMINISTRATIVE ACTION IN WHICH THE NAIC OR A THIRD-PARTY CONSULTANT
32 MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL ORSA-RELATED INFORMATION
33 ABOUT THE ~~INSURER~~ CARRIER SHARED WITH THE NAIC OR A THIRD-PARTY
34 CONSULTANT UNDER THIS TITLE; AND

35 ~~(7)~~ (VII) IN THE CASE OF AN AGREEMENT INVOLVING A
36 THIRD-PARTY CONSULTANT, PROVIDE:

1 1. THAT THE THIRD-PARTY CONSULTANT SHALL BE
2 UNDER THE DIRECTION AND CONTROL OF THE COMMISSIONER AND ACT IN A
3 PURELY ADVISORY CAPACITY;

4 2. THAT THE THIRD-PARTY CONSULTANT IS SUBJECT TO
5 THE SAME CONFIDENTIALITY STANDARDS AND REQUIREMENTS AS THE
6 COMMISSIONER;

7 3. THAT THE THIRD-PARTY CONSULTANT SHALL VERIFY
8 TO THE COMMISSIONER, WITH NOTICE TO THE CARRIER, THAT THE THIRD-PARTY
9 CONSULTANT:

10 A. IS FREE OF ANY CONFLICT OF INTEREST;

11 B. HAS INTERNAL PROCEDURES IN PLACE TO ENSURE
12 THAT IT REMAINS FREE OF ANY CONFLICT OF INTEREST; AND

13 C. WILL COMPLY WITH THE CONFIDENTIALITY
14 STANDARDS AND REQUIREMENTS OF THIS ARTICLE;

15 4. THAT, BEFORE USING A CARRIER'S ORSA-RELATED
16 INFORMATION IN A MANNER INCONSISTENT WITH THE AGREEMENT WITH THE
17 COMMISSIONER OR SHARING THE CARRIER'S ORSA-RELATED INFORMATION WITH
18 A PERSON OTHER THAN THE COMMISSIONER, THE THIRD-PARTY CONSULTANT
19 SHALL OBTAIN WRITTEN CONSENT OF THE CARRIER; AND

20 5. FOR WRITTEN NOTIFICATION TO THE ~~INSURER~~
21 CARRIER.

22 (G) (1) THE SHARING OF ORSA-RELATED INFORMATION AND
23 DOCUMENTS BY THE COMMISSIONER UNDER THIS TITLE MAY NOT CONSTITUTE A
24 DELEGATION OF REGULATORY AUTHORITY OR RULEMAKING.

25 (2) THE COMMISSIONER IS SOLELY RESPONSIBLE FOR THE
26 ADMINISTRATION, EXECUTION, AND ENFORCEMENT OF THIS TITLE.

27 (H) A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF
28 CONFIDENTIALITY IN ORSA-RELATED INFORMATION MAY NOT OCCUR AS A RESULT
29 OF DISCLOSURE OF THE ORSA-RELATED INFORMATION ~~OR DOCUMENTS~~ TO THE
30 COMMISSIONER UNDER THIS SECTION OR AS A RESULT OF SHARING THE
31 ORSA-RELATED INFORMATION AS AUTHORIZED UNDER THIS TITLE.

(I) ~~DOCUMENTS, MATERIAL, OR OTHER~~ ORSA-RELATED INFORMATION IN THE POSSESSION OR CONTROL OF THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS TITLE:

(1) ~~ARE~~ IS CONFIDENTIAL AND PRIVILEGED;

(2) ~~MAY~~ IS NOT ~~BE~~ SUBJECT TO TITLE 4 OF THE GENERAL PROVISIONS ARTICLE;

(3) ~~MAY~~ IS NOT ~~BE~~ SUBJECT TO SUBPOENA; AND

(4) ~~MAY~~ IS NOT ~~BE~~ SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY ~~PRIVATE~~ CIVIL ACTION.

32-109.

(A) ~~(1) AN INSURER~~ SUBJECT TO § 2-210 OF THIS ARTICLE, A CARRIER THAT, WITHOUT JUST CAUSE, FAILS TO TIMELY FILE AN ORSA SUMMARY REPORT AS REQUIRED BY THIS TITLE IS SUBJECT TO A PENALTY OF \$200 FOR EACH DAY THE VIOLATION CONTINUES, UP TO A MAXIMUM OF \$25,000.

~~(2) THE COMMISSIONER SHALL PROVIDE NOTICE AND AN OPPORTUNITY FOR HEARING BEFORE IMPOSING A PENALTY UNDER THIS SECTION.~~

(B) THE COMMISSIONER MAY REDUCE THE PENALTY UNDER SUBSECTION (A) OF THIS SECTION IF THE ~~INSURER~~ CARRIER DEMONSTRATES TO THE COMMISSIONER THAT THE IMPOSITION OF THE PENALTY WOULD CONSTITUTE A FINANCIAL HARDSHIP TO THE ~~INSURER~~ CARRIER.

(C) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE COMMISSIONER TO TAKE ANY OTHER ACTION AUTHORIZED BY THIS ARTICLE.

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THE COMMISSIONER MAY ADOPT REGULATIONS CONSISTENT WITH THIS TITLE ~~TO:~~

~~(1) CARRY OUT THIS TITLE;~~

~~(2) PROVIDE FOR THE PERIODIC REVIEW, NOT LESS THAN ONCE EACH YEAR, OF ORSA-RELATED INFORMATION FROM INSURERS; AND~~

~~(3) ENFORCE COMPLIANCE WITH THIS TITLE.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 January 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.