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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.