

A BILL

22-814

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



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To require an insurer to maintain a risk management framework and internal risk and solvency assessment, to submit a summary report relating to the risk and solvency assessment to the Commissioner of the Department of Insurance, Securities and Banking, and to authorize the Commissioner to share the information contained in the summary report with the National Association of Insurance Commissioners or other designated third party and to receive related information from regulatory agencies.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as “The Risk Management and Own Risk and Solvency Assessment Act of 2018”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Commissioner” means the Commissioner of the Department of Insurance, Securities and Banking.

(2) “Department” means the Department of Insurance, Securities and Banking.

(3) “Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in section 2(4) of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701(4)).

(4) “Insurer” means the same as provided in section 2(3) of the Annual Audited Financial Reports Act of 1993, effective October 21, 1993 (D.C. Law 10-48; D.C. Official Code

31 § 31-301(3)), except that it shall not include, agencies, authorities, or instrumentalities of the
32 United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of
33 Columbia, or a state or political subdivision of a state.

34 (5) “Own Risk and Solvency Assessment” or “ORSA” means a confidential
35 internal assessment appropriate to the nature, scale, and complexity of an insurer or insurance
36 group, conducted by that insurer or insurance group, of the material and relevant risks associated
37 with the insurer or insurance group’s current business plan and the sufficiency of capital
38 resources to support those risks.

39 (6) “ORSA Guidance Manual” means the current version of the Own Risk and
40 Solvency Assessment Guidance Manual developed and adopted by NAIC.

41 (7) “ORSA Summary Report” means a confidential high-level summary of an
42 insurer or insurance group’s ORSA.

43 (8) “NAIC” means the National Association of Insurance Commissioners.

44 Sec. 3. Risk management framework.

45 (a)(1) An insurer shall maintain a risk management framework, as described in the ORSA
46 Guidance Manual, to assist the insurer with identifying, assessing, monitoring, managing, and
47 reporting on its material and relevant risks.

48 (2) A change in the ORSA Guidance Manual shall be effective on the January 1
49 following the calendar year in which the changes are adopted by NAIC.

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51 (b) The requirement set forth in subsection (a) of this section may be satisfied if the
52 insurance group of which the insurer is a member maintains a risk management framework
53 applicable to the operations of the insurer.

54 Sec. 4. ORSA requirement.

55 Except as provided in section 6, an insurer, or the insurance group of which the insurer is
56 a member, shall conduct an ORSA using a process comparable to the applicable process
57 contained in the ORSA Guidance Manual annually and any time there is significant change to
58 the risk profile of the insurer or the insurance group of which the insurer is a member.

59 Sec. 5. ORSA Summary Report.

60 (a) Upon the Commissioner's request, and no more than once each year, an insurer shall
61 submit to the Commissioner an ORSA Summary Report or any combination of reports
62 applicable to the insurer or the insurance group of which it is a member that together contain the
63 information described in the ORSA Guidance Manual ("reports"). If the insurer is a member of
64 an insurance group, the insurer shall annually submit the reports required by this subsection to
65 the lead state commissioner of the insurance group as determined by the procedures within the
66 Financial Analysis Handbook adopted by the NAIC regardless of whether the Commissioner has
67 made a request.

68 (b) The reports shall be signed by the insurer or insurance group's chief risk officer or
69 other executive having responsibility for the oversight of the insurer's enterprise risk
70 management process. The executive shall attest that, to the best of the executive's belief and
71 knowledge, the insurer has applied the enterprise risk management process described in the

72 ORSA Summary Report and that a copy of the report has been provided to the insurer's board of
73 directors or the appropriate committee of the board.

74 (c) An insurer may comply with subsection (a) of this section by providing the most
75 recent and substantially similar report provided by the insurer or another member of an insurance
76 group of which the insurer is a member to the commissioner of another state or to a supervisor or
77 regulator of a foreign jurisdiction; provided, that the report provides information that is
78 comparable to the information described in the ORSA Guidance Manual; provided further, that a
79 report in a language other than English shall be accompanied by a English translation of the
80 report.

81 Sec. 6. Exemptions.

82 (a) An insurer shall be exempt from the requirements of this act if:

83 (1) The insurer has annual direct written and unaffiliated assumed premiums,
84 including international direct and assumed premiums but excluding premiums reinsured with the
85 Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million; and

86 (2) The insurance group of which the insurer is a member has annual direct
87 written and unaffiliated assumed premiums, including international direct and assumed
88 premiums, but excluding premiums reinsured with the Federal Crop Insurance Corporation and
89 Federal Flood Program, of less than \$1 billion.

90 (b) If an insurer qualifies for exemption pursuant to subsection (a)(1) of this section, but
91 the insurance group of which the insurer is a member does not qualify for exemption pursuant to
92 subsection (a)(2) of this section, then the ORSA Summary Report that may be required pursuant

93 to section 5 shall include every insurer within the insurance group; which requirement may be
94 satisfied by the submission of more than one ORSA Summary Report for any combination of
95 insurers; provided, that the combination of reports includes every insurer within the insurance
96 group.

97 (c) If an insurer does not qualify for exemption pursuant to subsection (a)(1) of this
98 section, but the insurance group of which it is a member qualifies for exemption pursuant to
99 subsection (a)(2) of this section, then the only ORSA Summary Report that may be required
100 pursuant to section 5 shall be the report applicable to that insurer.

101 (d)(1) An insurer that does not qualify for exemption pursuant to subsection (a) of this
102 section may apply to the Commissioner for a waiver from the requirements of this act based
103 upon unique circumstances.

104 (2)(A) In deciding whether to grant an insurer's request for waiver, the
105 Commissioner may consider:

- 106 (i) The type and volume of business written;
- 107 (ii) The ownership;
- 108 (iii) The organizational structure; and
- 109 (iv) Any other factor the Commissioner considers relevant to the
110 insurer or insurance group of which the insurer is a member.

111 (B) If the insurer is part of an insurance group with insurers domiciled in
112 more than one state, the Commissioner shall coordinate with the lead state commissioner and

113 with other domiciliary commissioners of the other states in considering whether to grant the
114 insurer's request for a waiver.

115 (e) Notwithstanding the exemptions stated in this section, the Commissioner may require
116 an insurer to:

117 (1) Maintain a risk management framework, conduct an ORSA, and file an ORSA
118 Summary Report based on unique circumstances, including the type and volume of business
119 written, ownership, and organizational structure, and federal agency and international supervisor
120 requests; or

121 (2) Maintain a risk management framework, conduct an ORSA, and file an ORSA
122 Summary Report if:

123 (A) The insurer has risk-based capital for a Company Action Level Event,
124 as defined in section 4 of the Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C. Law
125 11-233; D.C. Official Code § 31-2003);

126 (B) Meets one or more of the standards of an insurer deemed to be in
127 hazardous financial condition, as defined in section 2 of the Standards to Identify Insurance
128 Companies Deemed to Be in Hazardous Financial Condition Act of 1993, effective October 21,
129 1993 (D.C. Law 10-43; D.C. Official Code § 31-2101); or

130 (C) As determined by the Commissioner, exhibits other qualities of a
131 troubled insurer.

132 (f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section
133 no longer qualifies for that exemption due to changes in premiums as reflected in the insurer's

134 most recent annual statement or in the most recent annual statements of the insurers within the
135 insurance group of which the insurer is a member, the insurer shall have one year following the
136 loss of exemption qualification to comply with the requirements of this act.

137 Sec. 7. Contents of ORSA Summary Report.

138 (a) The ORSA Summary Report, and any additional requests for information, shall be
139 prepared:

140 (1) In consistence with the ORSA Guidance Manual; and

141 (2) Using procedures consistent with section 8 of the Holding Company System

142 Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-707)

143 (“Holding Company System Act”), and the Law on Examinations Act of 1993, effective October

144 21, 1993 (D.C. Law 10-49; D.C. Official Code § 31-1401 *et. seq.*).

145 (b) Documentation and supporting information shall be maintained for a period to be

146 determined by the Commissioner and made available upon request of the Commissioner.

147 Sec. 8. Confidentiality.

148 (a) Documents, materials, or other information, including the ORSA Summary Report,

149 (“ORSA-related information”) in the possession or control of the Department that are obtained

150 by, created by, or disclosed to the Commissioner or other person acting under the authority of the

151 Commissioner shall be deemed by the District as proprietary, to contain trade secrets,

152 confidential, and privileged, not subject to the Freedom of Information Act of 1976, effective

153 March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), not subject to subpoena,

154 and not subject to discovery or admissible in evidence in any private civil action.

155 (b) Notwithstanding subsection (a) of this section, the Commissioner may use the ORSA-
156 related information in the furtherance of any regulatory or legal action brought as part of the
157 Commissioner's official duties; provided, that the Commissioner shall not otherwise make the
158 ORSA-related information public without the prior written consent of the insurer.

159 (c) Neither the Commissioner nor any other person acting under the authority of the
160 Commissioner who has received ORSA-related information, through examination or otherwise,
161 shall be permitted or required to testify in any private civil action concerning any ORSA-related
162 information.

163 (d)(1) To assist in the performance of the Commissioner's regulatory duties, the
164 Commissioner may:

165 (A) Upon request, share ORSA-related information with other District,
166 state, federal, or international financial regulatory agencies, including members of any
167 supervisory college in accordance with the Holding Company System Act of 1993, with NAIC,
168 or a third-party consultant designated by the Commissioner; provided, that the recipient agrees in
169 writing to maintain the confidentiality and privileged status of the ORSA-related information and
170 verifies in writing that it has the legal authority to maintain the confidentiality and privileged
171 status of the ORSA-related information under all applicable laws and regulations; and

172 (B) Receive ORSA-related information, including otherwise confidential
173 and privileged documents, materials or information, from state, federal, or international financial
174 regulatory agencies, including members of any supervisory college in accordance with the
175 Holding Company System Act of 1993, and from NAIC, and shall maintain as confidential or

176 privileged any documents, materials, or information received with notice that it is confidential or
177 privileged under the laws of the jurisdiction that is the source of the ORSA-related information.

178 (2) The Commissioner shall enter into a written agreement with NAIC or a third-
179 party consultant (“recipient”) governing the sharing and use of this information provided
180 pursuant to this act, which shall:

181 (A) Specify procedures and protocols to be used to protect the
182 confidentiality and security of information, and, in the case of an agreement with NAIC,
183 including procedures and protocols for sharing the information with other state regulators from
184 states in which an insurance group has domiciled insurers;

185 (B) Require the recipient to maintain the confidentiality and privileged
186 status of the ORSA-related information or other information and to verify that the recipient has
187 the legal authority to maintain confidentiality and privileged status of the ORSA-related
188 information or other information under all applicable laws and regulations;

189 (C) Specify that the Commissioner retains ownership of information and
190 that the use of the information is subject to the direction of the Commissioner;

191 (D) Prohibit the recipient from storing the information in a permanent
192 database after the underlying analysis is completed;

193 (E) Require the Department to give prompt notice to an insurer whose
194 confidential information is in the possession the recipient and is subject to a request or subpoena
195 for disclosure or production in a judicial or administrative action;

196 (F) Require the recipient to consent to intervention by an insurer in a
197 judicial or administrative action in which the recipient may be required to disclose confidential
198 information about the insurer shared with the recipient; and

199 (G) In the case of an agreement with a third-party consultant, provide for
200 the insurer's written consent.

201 (e) The Commissioner is solely responsible for the administration and execution of this
202 act, and sharing ORSA-related information by the Commissioner with another regulatory
203 authority shall not constitute a delegation of regulatory authority.

204 (e) No waiver of any applicable privilege or claim of confidentiality in the ORSA-related
205 information shall occur as a result of disclosure of the ORSA-related information to the
206 Commissioner under this section or as a result of sharing the ORSA-related information, as
207 authorized in this act. The ORSA-related information shall retain the confidential status
208 specified in subsection (a) of this section notwithstanding its lawful disclosure to the
209 Commissioner, NAIC, or a third-party consultant.

210 Sec. 9. Sanctions.

211 An insurer failing without just cause, as defined by the Commissioner by rule, to timely
212 file an ORSA Summary Report required by this act shall, after notice and hearing conducted
213 according to the rules for contested cases set forth in Chapter 38 of Title 26 of the District of
214 Columbia Municipal Regulations, be subject to a penalty in an amount not to exceed \$1,000 per
215 day. The maximum penalty assessed under this section shall be \$25,000. The Commissioner
216 shall recover this penalty.

217 Sec. 10. Rulemaking.

218 The Commissioner may promulgate rules necessary to implement the provisions of this
219 act.

220 Sec. 11. Fiscal impact statement.

221 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
222 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
223 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

224 Sec. 12. Effective date.

225 This Act shall take effect following approval by the Mayor (or in the event of veto by the
226 Mayor, action by the Council to override the veto), and a 30-day period of Congressional review
227 as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
228 24, 1973 (87 Stat. 813; D.C. Code § 1-206(c)(1)), and publication in the District of Columbia
229 Register.