

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide the requirements for maintaining a risk management framework and provide guidance and instructions for filing for an Own Risk and Solvency Assessment and report with the Commissioner; to provide for legislative intent; to provide for a purpose; to provide for definitions; to provide for standards and timing of reports; to provide for exemptions; to provide for confidentiality of reports; to provide for the Commissioner's duties and powers; to provide for penalties; to provide for the redesignation of certain code provisions and conforming changes; to provide for effectiveness and applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by designating the existing provisions of Chapter 13, relating to insurance holding company systems, as Article 1.

SECTION 2.

Said title is further amended in Chapter 13 by adding a new article to read as follows:

"ARTICLE 2

33-13-30.

(a) The General Assembly finds and declares that an Own Risk and Solvency Assessment Summary Report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public.

(b) It is the intent of the General Assembly that the Own Risk and Solvency Assessment Summary Report shall be a confidential document filed with the Commissioner, that the Own Risk and Solvency Assessment Summary Report will be shared only as stated in this article and to assist the Commissioner in the performance of his or her duties, and that in

no event shall the Own Risk and Solvency Assessment Summary Report be subject to public disclosure.

33-13-31.

The purpose of this article is to provide the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment and provide guidance and instructions for filing an Own Risk and Solvency Assessment Summary Report with the Commissioner. The requirements of this article shall apply to all insurers domiciled in this state unless exempt pursuant to Code Section 33-13-36.

33-13-32.

As used in this chapter, the term:

- (1) 'Insurance group' means those insurers and affiliates included within an insurance holding company system as defined in paragraph (5) of Code Section 33-13-1.
- (2) 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.
- (3) 'Own Risk and Solvency Assessment' or 'ORSA' means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.
- (4) '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 and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on January 1 following the calendar year in which the changes have been adopted by the National Association of Insurance Commissioners.
- (5) 'ORSA Summary Report' means a confidential high-level summary of an insurer or insurance group's ORSA.

33-13-33.

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.

33-13-34.

Subject to Code Section 33-13-36, 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.

33-13-35.

(a) Upon the Commissioner's request, and no more than once each year, an insurer shall submit to the Commissioner an ORSA Summary Report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the Commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report or reports required by this subsection if the Commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) The report or 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 his or her 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 the appropriate committee.

(c) An insurer may comply with subsection (a) of this Code section by providing the most recent and substantially similar report or 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.

33-13-36.

(a) An insurer shall be exempt from the requirements of this article, if:

- (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 \$500 million;
- and

(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 \$1 billion.

(b) If an insurer qualifies for exemption pursuant to paragraph (1) of subsection (a) of this Code section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to paragraph (2) of subsection (a) of this Code section, then the ORSA Summary Report that may be required pursuant to Code Section 33-13-35 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Summary Report for any combination of insurers, provided that any combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to paragraph (1) of subsection (a) of this Code section, but the insurance group of which it is a member qualifies for exemption pursuant to paragraph (2) of subsection (a) of this Code section, then the only ORSA Summary Report that may be required pursuant Code Section 33-13-35 shall be the report applicable to that insurer.

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

(e) Notwithstanding the exemptions stated in this Code section:

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

(2) The Commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report if the insurer has risk-based capital for company action level event as set forth in Chapter 56 of this title, meets one or more of the standards of an insurer deemed to be in hazardous financial

condition as provided for pursuant to Commissioner's rules and regulations, or otherwise exhibits qualities of a troubled insurer as determined by the Commissioner.

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

33-13-37.

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

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

33-13-38.

(a) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the Insurance Department that are obtained by, created by, or disclosed to the Commissioner or any other person under this article, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be subject to Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

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

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

(1) May upon request share documents, materials, or other ORSA related information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this Code section, including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in Code Section 33-13-7, with the National Association of Insurance Commissioners and with any third-party consultants designated by the Commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) May receive documents, materials or other ORSA related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in Code Section 33-13-7, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received 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 information; and

(3) Shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to this article, consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article remains with the Commissioner and the National Association of Insurance Commissioners's or a third-party consultant's use of the information is subject to the direction of the Commissioner;

- (C) Prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared pursuant to this article in a permanent data base after the underlying analysis is completed;
 - (D) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to this article is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;
 - (E) Require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article; and
 - (F) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.
- (d) The sharing of information and documents by the Commissioner pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this article.
- (e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other ORSA related information shall occur as a result of disclosure of such ORSA related information or documents to the Commissioner under this Code section or as a result of sharing as authorized in this article.
- (f) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this article shall be confidential by law and privileged, shall not be subject to Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

33-13-39.

Any insurer failing, without just cause, to timely file the ORSA Summary Report as required in this article may be subject to any penalty set forth in subsection (g) of Code Section 33-2-24. The Commissioner may reduce the monetary penalty if the insurer demonstrates to the Commissioner that the imposition of the monetary penalty would constitute a financial hardship to the insurer.

33-13-40.

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

33-13-41.

The requirements of this article shall become effective on July 1, 2015. The first filing of the ORSA Summary Report shall be required in 2015 pursuant to Code Section 33-13-35."

SECTION 3.

Said title is further amended by striking "this chapter" wherever such term occurs in the following Code sections and inserting in its place "this article":

- (1) Code Section 33-13-1, relating to definitions;
- (2) Code Section 33-13-4, relating to registration of insurers belonging to holding company systems;
- (3) Code Section 33-13-5, relating to standards governing transactions by registered insurers with affiliates generally, extraordinary distributions, and adequacy of surplus;
- (4) Code Section 33-13-6, relating to powers of the Commissioner to examine insurers, access to books and records, use of experts and consultants, payment of expenses, and compelling production;
- (5) Code Section 33-13-8, relating to confidentiality of information and documents obtained during examination or investigations, sharing certain information, not delegation of regulatory authority or rule making, and responsibility for enforcement;
- (6) Code Section 33-13-9, relating to rules and regulations and orders;
- (7) Code Section 33-13-10, relating to injunctions and seizure or sequestration of voting securities;
- (8) Code Section 33-13-11, relating to violations of this chapter;
- (9) Code Section 33-13-12, relating to receivership;
- (10) Code Section 33-13-13, relating to revocation, suspension, or nonrenewal of license or authority to do business; and
- (11) Code Section 33-13-15, relating to aggrieved persons, appeal of actions of the Commissioner, and mandamus.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

