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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO INSURANCE

Introduced By: Senator Frank Lombardo

Date Introduced: March 13, 2013

Referred To: Senate Commerce

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended  
2 by adding thereto the following chapter:

3 CHAPTER 77

4 RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

5 **27-77-1. Purpose and Scope. --** The purpose of this chapter is to provide the  
6 requirements for maintaining a risk management framework, and completing an own risk and  
7 solvency assessment (ORSA) and provide guidance and instructions for filing an ORSA Summary  
8 Report with the insurance commissioner of this state.

9 The requirements of this chapter shall apply to all insurers domiciled in this state  
10 unless exempt pursuant to section 27-77-6.

11 The general assembly finds and declares that the ORSA Summary Report will contain  
12 confidential and sensitive information related to an insurer or insurance group's identification of  
13 risks material and relevant to the insurer or insurance group filing the report. This information  
14 will include proprietary and trade secret information that has the potential for harm and  
15 competitive disadvantage to the insurer or insurance group if the information is made public. It  
16 is the intent of this general assembly that the ORSA Summary Report shall be a confidential  
17 document filed with the commissioner, that the ORSA Summary Report will be shared only as  
18 stated herein and to assist the commissioner in the performance of his or her duties, and that in no  
19 event shall the ORSA Summary Report be subject to public disclosure.

1           **27-77-2. Definitions.** - (a) "Commissioner" means the director of the department of  
2 business regulation or his or her designee.

3           (b) "Insurance group" For the purpose of conducting an ORSA, the term "insurance  
4 group" means those insurers and affiliates included within an insurance holding company system  
5 as defined in chapter 27-35.

6           (c) "Insurer" The term "insurer" shall not include agencies, authorities or  
7 instrumentalities of the United States, its possessions and territories, the commonwealth of  
8 Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

9           (d) "NAIC" means the National Association of Insurance Commissioners.

10          (e) "Own Risk and Solvency Assessment" or "ORSA" An "Own Risk and Solvency  
11 Assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature,  
12 scale and complexity of an insurer or insurance group, conducted by that insurer or insurance  
13 group of the material and relevant risks associated with the insurer or insurance group's  
14 current business plan, and the sufficiency of capital resources to support those risks.

15          (f) "ORSA Guidance Manual" means the current version of the "Own Risk and  
16 Solvency Assessment Guidance Manual" developed and adopted by the NAIC and as amended  
17 from time to time. A change in the ORSA guidance manual shall be effective on January 1  
18 following the calendar year in which the changes have been adopted by the NAIC.

19          (g) "ORSA Summary Report" means a confidential high-level summary of an insurer or  
20 insurance group's ORSA.

21          **27-77-3. Risk Management Framework.** - An insurer shall maintain a risk  
22 management framework to assist the insurer with identifying, assessing, monitoring, managing  
23 and reporting on its material and relevant risks. This requirement may be satisfied if the  
24 insurance group of which the insurer is a member maintains a risk management framework  
25 applicable to the operations of the insurer.

26          **27-77-4. ORSA Requirement.** - Subject to section 27-77-6, an insurer, or the  
27 insurance group of which the insurer is a member, shall regularly conduct an ORSA  
28 consistent with a process comparable to the ORSA guidance manual. The ORSA shall be  
29 conducted no less than annually but also at any time when there are significant changes to the  
30 risk profile of the insurer or the insurance group of which the insurer is a member.

31          **27-77-5. ORSA Summary Report.** - (a) Upon the commissioner's request, and no more  
32 than once each year, an insurer shall submit to the commissioner an ORSA summary report or  
33 any combination of reports that together contain the information described in the ORSA  
34 guidance manual, applicable to the insurer and/or the insurance group of which it is a member.

1 Notwithstanding any request from the commissioner, if the insurer is a member of an insurance  
2 group, the insurer shall submit the report(s) required by this subsection if the commissioner is  
3 the lead state commissioner of the insurance group as determined by the procedures within the  
4 financial analysis handbook adopted by the NAIC.

5 (b) The report(s) shall include a signature of the insurer or insurance group's chief risk  
6 officer or other executive having responsibility for the oversight of the insurer's enterprise risk  
7 management process attesting to the best of his/her belief and knowledge that the insurer applies  
8 the enterprise risk management process described in the ORSA summary report and that a copy of  
9 the report has been provided to the insurer's board of directors or the appropriate committee  
10 thereof.

11 (c) An insurer may comply with subsection (a) by providing the most recent and  
12 substantially similar report(s) provided by the insurer or another member of an insurance group  
13 of which the insurer is a member to the commissioner of another state or to a supervisor or  
14 regulator of a foreign jurisdiction, if that report provides information that is comparable to the  
15 information described in the ORSA guidance manual. Any such report in a language other than  
16 english must be accompanied by a translation of that report into the english language.

17 **27-77-6. Exemption.** - (a) An insurer shall be exempt from the requirements of this  
18 chapter, if:

19 (1) The insurer has annual direct written and unaffiliated assumed premium, including  
20 international direct and assumed premium but excluding premiums reinsured with the Federal  
21 Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars  
22 (\$500,000,000); and,

23 (2) The insurance group of which the insurer is a member has annual direct written and  
24 unaffiliated assumed premium, including international direct and assumed premium, but  
25 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood  
26 Program, less than one billion dollars (\$1,000,000,000).

27 (b) If an insurer qualifies for exemption pursuant to subdivision 27-77-6(a)(1), but  
28 the insurance group of which the insurer is a member does not qualify for exemption pursuant to  
29 subdivision 27-77-6(a)(2), then the ORSA summary report that may be required pursuant to  
30 section 27-77-5 shall include every insurer within the insurance group. This requirement may be  
31 satisfied by the submission of more than one ORSA summary report for any combination of  
32 insurers provided any combination of reports includes every insurer within the insurance group.

33 (c) If an insurer does not qualify for exemption pursuant to subdivision 27-77-  
34 6(a)(1), but the insurance group of which it is a member qualifies for exemption pursuant to

1 subdivision 27-77-6(a)(2), then the only ORSA summary report that may be required  
2 pursuant to section 27-77-5 shall be the report applicable to that insurer.

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

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

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

17 (2) The commissioner may require that an insurer maintain a risk management  
18 framework, conduct an ORSA and file an ORSA summary report if the insurer has risk-based  
19 capital for company action level event as defined and governed by chapter 27-4.6, meets one or  
20 more of the standards of an insurer deemed to be in hazardous financial condition as defined in  
21 chapter 27-14.2, or otherwise exhibits qualities of a troubled insurer as determined by the  
22 commissioner.

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

28 **27-77-7. Contents of ORSA Summary Report. - (a) The ORSA summary report shall**  
29 **be prepared consistent with the ORSA guidance manual, subject to the requirements of**  
30 **subsection (b) of this section. Documentation and supporting information shall be maintained**  
31 **and made available upon examination or upon request of the commissioner.**

32 (b) The review of the ORSA summary report, and any additional requests for  
33 information, shall be made using similar procedures currently used in the analysis and  
34 examination of multi- state or global insurers and insurance groups.

1           **27-77-8. Confidentiality.** - (a) Documents, materials or other information, including  
2 the ORSA summary report, in the possession of or control of the department of business  
3 regulation that are obtained by, created by or disclosed to the commissioner or any other person  
4 under this chapter, is recognized by this state as being proprietary and to contain trade secrets.  
5 All such documents, materials or other information shall be confidential by law and privileged,  
6 shall not be subject to chapter 38-2 (Access to Public Records), shall not be subject to  
7 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil  
8 action. However, the commissioner is authorized to use the documents, materials or other  
9 information in the furtherance of any regulatory or legal action brought as a part of the  
10 commissioner's official duties. The commissioner shall not otherwise make the documents,  
11 materials or other information public without the prior written consent of the insurer.

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

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

19           (1) May, upon request, share documents, materials or other ORSA-related information,  
20 including the confidential and privileged documents, materials or information subject to  
21 subsection (a), including proprietary and trade secret documents and materials with other state,  
22 federal and international financial regulatory agencies, including members of any supervisory  
23 college as defined in chapter 27-35, with the NAIC and with any third-party consultants  
24 designated by the commissioner, provided that the recipient agrees in writing to maintain the  
25 confidentiality and privileged status of the ORSA-related documents, materials or other  
26 information and has verified in writing the legal authority to maintain confidentiality; and

27           (2) May receive documents, materials or other ORSA-related information, including  
28 otherwise confidential and privileged documents, materials or information, including proprietary  
29 and trade-secret information or documents, from regulatory officials of other foreign or  
30 domestic jurisdictions, including members of any supervisory college as defined in chapter 27-  
31 35, and from the NAIC, and shall maintain as confidential or privileged any documents,  
32 materials or information received with notice or the understanding that it is confidential or  
33 privileged under the laws of the jurisdiction that is the source of the document, material or  
34 information.

1           (3) Shall enter into a written agreement with the NAIC or a third-party consultant  
2 governing sharing and use of information provided pursuant to this chapter, consistent with this  
3 subsection that shall:

4           (i) Specify procedures and protocols regarding the confidentiality and security of  
5 information shared with the NAIC or a third-party consultant pursuant to this chapter,  
6 including procedures and protocols for sharing by the NAIC with other state regulators from  
7 states in which the insurance group has domiciled insurers. The agreement shall provide that the  
8 recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-  
9 related documents, materials or other information and has verified in writing the legal authority  
10 to maintain confidentiality:

11           (ii) Specify that ownership of information shared with the NAIC or a third-party  
12 consultant pursuant to this chapter remains with the commissioner and the NAIC's or a third-  
13 party consultant's use of the information is subject to the direction of the commissioner;

14           (iii) Prohibit the NAIC or third-party consultant from storing the information shared  
15 pursuant to this chapter in a permanent database after the underlying analysis is completed;

16           (iv) Require prompt notice to be given to an insurer whose confidential information in  
17 the possession of the NAIC or a third-party consultant pursuant to this chapter is subject to a  
18 request or subpoena to the NAIC or a third-party consultant for disclosure or production;

19           (v) Require the NAIC or a third-party consultant to consent to intervention by an insurer  
20 in any judicial or administrative action in which the NAIC or a third-party consultant may be  
21 required to disclose confidential information about the insurer shared with the NAIC or a third-  
22 party consultant pursuant to this chapter; and

23           (vi) In the case of an agreement involving a third-party consultant, provide for the  
24 insurer's written consent.

25           (d) The sharing of information and documents by the commissioner pursuant to this  
26 chapter shall not constitute a delegation of regulatory authority or rulemaking, and the  
27 commissioner is solely responsible for the administration, execution and enforcement of the  
28 provisions of this chapter.

29           (e) No waiver of any applicable privilege or claim of confidentiality in the documents,  
30 proprietary and trade-secret materials or other ORSA-related information shall occur as a result  
31 of disclosure of such ORSA-related information or documents to the commissioner under this  
32 section or as a result of sharing as authorized in this chapter.

33           (f) Documents, materials or other information in the possession or control of the  
34 NAIC or third-party consultants pursuant to this chapter shall be confidential by law and

1 privileged, shall not be subject to chapter 38-2, shall not be subject to subpoena, and shall not be  
2 subject to discovery or admissible in evidence in any private civil action.

3 **27-77-9. Sanctions.** - Any insurer failing, without just cause, to timely file the ORSA  
4 summary report as required in this chapter shall be required, after notice and hearing, to pay a  
5 penalty of one thousand dollars (\$1,000) for each day's delay, to be recovered by the  
6 commissioner and the penalty so recovered shall be paid into the general fund. The maximum  
7 penalty under this section is three hundred sixty-five thousand dollars (\$365,000). The  
8 commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the  
9 imposition of the penalty would constitute a financial hardship to the insurer.

10 **27-77-10. Severability Clause.** - If any provision of this chapter, or the application  
11 thereof to any person or circumstance, is held invalid, such determination shall not affect the  
12 provisions or applications of this chapter which can be given effect without the invalid  
13 provision or application, and to that end the provisions of this chapter are severable.

14 SECTION 2. This act shall take effect on January 1, 2015.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE

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1           This act would enact the National Association of Insurance Commissioners Risk  
2 Management and Own Risk and Solvency Assessment Model Act, and would, among other  
3 things, require insurers to file reports, no more than once a year, to assist in evaluation of the  
4 solvency of the insurer.

5           This act would take effect on January 1, 2015.

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