

Senate Bill 108

By: Senators Martin of the 9th, McKoon of the 29th, Harbison of the 15th, Jones of the 25th, Ramsey, Sr. of the 43rd and others

A BILL TO BE ENTITLED
AN ACT

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

15 **SECTION 2.**

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

17 "ARTICLE 2

18 33-13-30.

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

25 (b) It is the intent of the General Assembly that the Own Risk and Solvency Assessment
 26 Summary Report shall be a confidential document filed with the Commissioner, that the
 27 Own Risk and Solvency Assessment Summary Report will be shared only as stated in this
 28 article and to assist the Commissioner in the performance of his or her duties, and that in
 29 no event shall the Own Risk and Solvency Assessment Summary Report be subject to
 30 public disclosure.

31 33-13-31.

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

37 33-13-32.

38 As used in this chapter, the term:

39 (1) 'Insurance group' means those insurers and affiliates included within an insurance
 40 holding company system as defined in paragraph (5) of Code Section 33-13-1.

41 (2) 'Insurer' shall have the same meaning as set forth in Code Section 33-1-2, except that
 42 it shall not include agencies, authorities, or instrumentalities of the United States, its
 43 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia,
 44 or a state or political subdivision of a state.

45 (3) 'Own Risk and Solvency Assessment' or 'ORSA' means a confidential internal
 46 assessment, appropriate to the nature, scale, and complexity of an insurer or insurance
 47 group, conducted by that insurer or insurance group of the material and relevant risks
 48 associated with the insurer or insurance group's current business plan and the sufficiency
 49 of capital resources to support those risks.

50 (4) 'ORSA Guidance Manual' means the current version of the Own Risk and Solvency
 51 Assessment Guidance Manual developed and adopted by the National Association of
 52 Insurance Commissioners and as amended from time to time. A change in the ORSA
 53 Guidance Manual shall be effective on January 1 following the calendar year in which
 54 the changes have been adopted by the National Association of Insurance Commissioners.

55 (5) 'ORSA Summary Report' means a confidential high-level summary of an insurer or
 56 insurance group's ORSA.

57 33-13-33.

58 An insurer shall maintain a risk management framework to assist the insurer with
59 identifying, assessing, monitoring, managing, and reporting on its material and relevant
60 risks. This requirement may be satisfied if the insurance group of which the insurer is a
61 member maintains a risk management framework applicable to the operations of the
62 insurer.

63 33-13-34.

64 Subject to Code Section 33-13-36, an insurer, or the insurance group of which the insurer
65 is a member, shall regularly conduct an ORSA consistent with a process comparable to the
66 ORSA Guidance Manual. The ORSA shall be conducted no less than annually, but also at
67 any time when there are significant changes to the risk profile of the insurer or the
68 insurance group of which the insurer is a member.

69 33-13-35.

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

78 (b) The report or reports shall include a signature of the insurer or insurance group's chief
79 risk officer or other executive having responsibility for the oversight of the insurer's
80 enterprise risk management process attesting to the best of his or her belief and knowledge
81 that the insurer applies the enterprise risk management process described in the ORSA
82 Summary Report and that a copy of the report has been provided to the insurer's board of
83 directors or the appropriate committee.

84 (c) An insurer may comply with subsection (a) of this Code section by providing the most
85 recent and substantially similar report or reports provided by the insurer or another member
86 of an insurance group of which the insurer is a member to the commissioner of another
87 state or to a supervisor or regulator of a foreign jurisdiction, if that report provides
88 information that is comparable to the information described in the ORSA Guidance
89 Manual. Any such report in a language other than English must be accompanied by a
90 translation of that report into the English language.

91 33-13-36.

- 92 (a) An insurer shall be exempt from the requirements of this article, if:
93 (1) The insurer has annual direct written and unaffiliated assumed premium, including
94 international direct and assumed premium, but excluding premiums reinsured with the
95 Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million;
96 and
97 (2) The insurance group of which the insurer is a member has annual direct written and
98 unaffiliated assumed premium, including international direct and assumed premium, but
99 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal
100 Flood Program, less than \$1 billion.
- 101 (b) If an insurer qualifies for exemption pursuant to paragraph (1) of subsection (a) of this
102 Code section, but the insurance group of which the insurer is a member does not qualify
103 for exemption pursuant to paragraph (2) of subsection (a) of this Code section, then the
104 ORSA Summary Report that may be required pursuant to Code Section 33-13-35 shall
105 include every insurer within the insurance group. This requirement may be satisfied by the
106 submission of more than one ORSA Summary Report for any combination of insurers,
107 provided that any combination of reports includes every insurer within the insurance group.
- 108 (c) If an insurer does not qualify for exemption pursuant to paragraph (1) of subsection (a)
109 of this Code section, but the insurance group of which it is a member qualifies for
110 exemption pursuant to paragraph (2) of subsection (a) of this Code section, then the only
111 ORSA Summary Report that may be required pursuant Code Section 33-13-35 shall be the
112 report applicable to that insurer.
- 113 (d) An insurer that does not qualify for exemption pursuant to subsection (a) of this Code
114 section may apply to the Commissioner for a waiver from the requirements of this article
115 based upon unique circumstances. In deciding whether to grant the insurer's request for
116 waiver, the Commissioner may consider the type and volume of business written,
117 ownership and organizational structure, and any other factor the Commissioner considers
118 relevant to the insurer or insurance group of which the insurer is a member. If the insurer
119 is part of an insurance group with insurers domiciled in more than one state, the
120 Commissioner shall coordinate with the lead state commissioner and with the other
121 domiciliary commissioners in considering whether to grant the insurer's request for a
122 waiver.
- 123 (e) Notwithstanding the exemptions stated in this Code section:
124 (1) The Commissioner may require that an insurer maintain a risk management
125 framework, conduct an ORSA and file an ORSA Summary Report based on unique
126 circumstances including, but not limited to, the type and volume of business written,
127 ownership and organizational structure, federal agency requests, and international
128 supervisor requests; and

129 (2) The Commissioner may require that an insurer maintain a risk management
130 framework, conduct an ORSA, and file an ORSA Summary Report if the insurer has
131 risk-based capital for company action level event as set forth in Chapter 56 of this title,
132 meets one or more of the standards of an insurer deemed to be in hazardous financial
133 condition as provided for pursuant to Commissioner's rules and regulations, or otherwise
134 exhibits qualities of a troubled insurer as determined by the Commissioner.

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

141 33-13-37.

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

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

149 33-13-38.

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

161 (b) Neither the Commissioner nor any person who received documents, materials, or other
162 ORSA related information, through examination or otherwise, while acting under the
163 authority of the Commissioner or with whom such documents, materials, or other

164 information are shared pursuant to this article shall be permitted or required to testify in
165 any private civil action concerning any confidential documents, materials, or information
166 subject to subsection (a) of this Code section.

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

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

179 (2) May receive documents, materials or other ORSA related information, including
180 otherwise confidential and privileged documents, materials, or information, including
181 proprietary and trade secret information or documents, from regulatory officials of other
182 foreign or domestic jurisdictions, including members of any supervisory college as
183 defined in Code Section 33-13-7, and from the National Association of Insurance
184 Commissioners, and shall maintain as confidential or privileged any documents,
185 materials, or information received with notice or the understanding that it is confidential
186 or privileged under the laws of the jurisdiction that is the source of the document,
187 material, or information; and

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

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

199 (B) Specify that ownership of information shared with the National Association of
200 Insurance Commissioners or a third-party consultant pursuant to this article remains

201 with the Commissioner and the National Association of Insurance Commissioners's or
202 a third-party consultant's use of the information is subject to the direction of the
203 Commissioner;

204 (C) Prohibit the National Association of Insurance Commissioners or third-party
205 consultant from storing the information shared pursuant to this article in a permanent
206 data base after the underlying analysis is completed;

207 (D) Require prompt notice to be given to an insurer whose confidential information in
208 the possession of the National Association of Insurance Commissioners or a third-party
209 consultant pursuant to this article is subject to a request or subpoena to the National
210 Association of Insurance Commissioners or a third-party consultant for disclosure or
211 production;

212 (E) Require the National Association of Insurance Commissioners or a third-party
213 consultant to consent to intervention by an insurer in any judicial or administrative
214 action in which the National Association of Insurance Commissioners or a third-party
215 consultant may be required to disclose confidential information about the insurer shared
216 with the National Association of Insurance Commissioners or a third-party consultant
217 pursuant to this article; and

218 (F) In the case of an agreement involving a third-party consultant, provide for the
219 insurer's written consent.

220 (d) The sharing of information and documents by the Commissioner pursuant to this article
221 shall not constitute a delegation of regulatory authority or rulemaking, and the
222 Commissioner is solely responsible for the administration, execution, and enforcement of
223 the provisions of this article.

224 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
225 proprietary and trade secret materials, or other ORSA related information shall occur as a
226 result of disclosure of such ORSA related information or documents to the Commissioner
227 under this Code section or as a result of sharing as authorized in this article.

228 (f) Documents, materials, or other information in the possession or control of the National
229 Association of Insurance Commissioners or a third-party consultant pursuant to this article
230 shall be confidential by law and privileged, shall not be subject to Article 4 of Chapter 18
231 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or
232 admissible in evidence in any private civil action.

233 33-13-39.

234 Any insurer failing, without just cause, to timely file the ORSA Summary Report as
235 required in this article may be subject to any penalty set forth in subsection (g) of Code
236 Section 33-2-24. The Commissioner may reduce the monetary penalty if the insurer

237 demonstrates to the Commissioner that the imposition of the monetary penalty would
 238 constitute a financial hardship to the insurer.

239 33-13-40.

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

244 33-13-41.

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

247 **SECTION 3.**

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

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

270

SECTION 4.

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