

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 969 Session of 2013

INTRODUCED BY WHITE, STACK, SCHWANK, RAFFERTY AND MENSCH, MAY 29, 2013

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, JUNE 4, 2013

AN ACT

1 ~~Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as <--~~
2 ~~amended, "An act relating to insurance; establishing an~~
3 ~~insurance department; and amending, revising, and~~
4 ~~consolidating the law relating to the licensing,~~
5 ~~qualification, regulation, examination, suspension, and~~
6 ~~dissolution of insurance companies, Lloyds associations,~~
7 ~~reciprocal and inter insurance exchanges, and certain~~
8 ~~societies and orders, the examination and regulation of fire~~
9 ~~insurance rating bureaus, and the licensing and regulation of~~
10 ~~insurance agents and brokers; the service of legal process~~
11 ~~upon foreign insurance companies, associations or exchanges;~~
12 ~~providing penalties, and repealing existing laws," providing~~
13 ~~for risk management and own risk solvency assessment.~~

14 AMENDING THE ACT OF MAY 17, 1921 (P.L.682, NO.284), ENTITLED "AN <--
15 ACT RELATING TO INSURANCE; AMENDING, REVISING, AND
16 CONSOLIDATING THE LAW PROVIDING FOR THE INCORPORATION OF
17 INSURANCE COMPANIES, AND THE REGULATION, SUPERVISION, AND
18 PROTECTION OF HOME AND FOREIGN INSURANCE COMPANIES, LLOYDS
19 ASSOCIATIONS, RECIPROCAL AND INTER-INSURANCE EXCHANGES, AND
20 FIRE INSURANCE RATING BUREAUS, AND THE REGULATION AND
21 SUPERVISION OF INSURANCE CARRIED BY SUCH COMPANIES,
22 ASSOCIATIONS, AND EXCHANGES, INCLUDING INSURANCE CARRIED BY
23 THE STATE WORKMEN'S INSURANCE FUND; PROVIDING PENALTIES; AND
24 REPEALING EXISTING LAWS," PROVIDING FOR ELECTRONIC DELIVERY
25 OF INFORMATION AND POSTING OF POLICIES AND ENDORSEMENTS AND
26 FOR RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT.

27 The General Assembly of the Commonwealth of Pennsylvania
28 hereby enacts as follows:

29 ~~Section 1. The act of May 17, 1921 (P.L.789, No.285), known <--~~
30 ~~as The Insurance Department Act of 1921, is amended by adding an~~

1 ~~article to read:~~

2 ~~ARTICLE XIII~~

3 ~~RISK MANAGEMENT AND OWN RISK SOLVENCY ASSESSMENT~~

4 ~~Section 1301. Purpose and scope of article.~~

5 ~~(a) Purpose. The purpose of this article is to:~~

6 ~~(1) Require an insurer or insurance group to maintain a~~
7 ~~risk management framework and complete an own risk and~~
8 ~~solvency assessment (ORSA).~~

9 ~~(2) Set forth the requirements for filing an ORSA~~
10 ~~summary report with the Insurance Department.~~

11 ~~(3) Provide for the confidential treatment of the ORSA,~~
12 ~~the ORSA summary report and other ORSA related information,~~
13 ~~which contain trade secrets and other proprietary information~~
14 ~~that, if made public, could potentially cause the insurer or~~
15 ~~insurance group competitive harm or disadvantage.~~

16 ~~(b) Scope. The requirements of this article shall apply to~~
17 ~~all insurers domiciled in this Commonwealth unless exempt under~~
18 ~~section 1306.~~

19 ~~Section 1302. Definitions.~~

20 ~~The following words and phrases when used in this article~~
21 ~~shall have the meanings given to them in this section unless the~~
22 ~~context clearly indicates otherwise:~~

23 ~~"Commissioner." The Insurance Commissioner of the~~
24 ~~Commonwealth.~~

25 ~~"Department." The Insurance Department of the Commonwealth.~~

26 ~~"Domestic insurer." An insurer that is incorporated or~~
27 ~~organized under the laws of this Commonwealth.~~

28 ~~"Insurance group." The insurers and affiliates included~~
29 ~~within an insurance holding company system as defined in section~~
30 ~~1401 of the act of May 17, 1921 (P.L.682, No.284), known as The~~

1 ~~Insurance Company Law of 1921.~~

2 ~~"Insurer." Any fraternal benefit society, health maintenance~~
3 ~~organization, preferred provider organization, company,~~
4 ~~association, exchange, hospital plan corporation as defined in~~
5 ~~and subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan~~
6 ~~corporations) or professional health services plan corporation~~
7 ~~subject to 40 Pa.C.S. Ch. 63 (relating to professional health~~
8 ~~services plan corporations), authorized by the Insurance~~
9 ~~Commissioner to transact the business of insurance in this~~
10 ~~Commonwealth except that the term shall not include:~~

11 ~~(1) the Commonwealth or any agency or instrumentality~~
12 ~~thereof; or~~

13 ~~(2) agencies, authorities or instrumentalities of the~~
14 ~~United States, its possessions and territories, the~~
15 ~~Commonwealth of Puerto Rico, the District of Columbia or a~~
16 ~~state or political subdivision.~~

17 ~~"NAIC." The National Association of Insurance Commissioners~~
18 ~~or successor organization and its affiliates and subsidiaries.~~

19 ~~"ORSA guidance manual." The current version of the Own Risk~~
20 ~~and Solvency Assessment Guidance Manual developed and adopted by~~
21 ~~the NAIC and as amended. A change in the ORSA guidance manual~~
22 ~~will be effective on January 1 following the calendar year in~~
23 ~~which the change was adopted by the NAIC.~~

24 ~~"ORSA related information." The ORSA, ORSA summary report,~~
25 ~~risk management framework or any documents, materials or other~~
26 ~~information related to an insurer or insurer group's ORSA, ORSA~~
27 ~~summary or risk management framework.~~

28 ~~"ORSA summary report." The confidential high level summary~~
29 ~~of an insurer or insurance group's ORSA.~~

30 ~~"Own risk and solvency assessment" or "ORSA"." A~~

~~1 confidential internal assessment, appropriate to the nature,
2 scale and complexity of an insurer or insurance group, conducted
3 by that insurer or insurance group, of the material and relevant
4 risks associated with the insurer or insurance group's current
5 business plan and the sufficiency of capital resources to
6 support those risks.~~

~~7 Section 1303. Risk management framework.~~

~~8 An insurer shall maintain a risk management framework for
9 identifying, assessing, monitoring, managing and reporting its
10 material and relevant risks. This requirement may be satisfied
11 if the insurance group of which the insurer is a member
12 maintains a risk management framework applicable to the
13 operations of the insurer.~~

~~14 Section 1304. ORSA requirement.~~

~~15 An insurer, or the insurance group of which the insurer is a
16 member, shall conduct an ORSA consistent with the guidelines set
17 forth in the ORSA guidance manual. The ORSA shall be conducted
18 regularly, but no less frequently than annually, and at any time
19 when there are significant changes to the risk profile of the
20 insurer or the insurance group of which the insurer is a member.~~

~~21 Section 1305. ORSA summary report.~~

~~22 (a) General rule. Beginning January 1, 2015, and every year
23 thereafter, a domestic insurer or an insurer that is a member of
24 an insurance group of which Pennsylvania is the lead state as
25 determined by the financial analysis handbook adopted by the
26 NAIC shall submit an ORSA summary report to the department once
27 per calendar year. The insurer or insurance group shall
28 determine the most appropriate date of filing based upon the
29 insurer or insurance group's internal strategic planning
30 processes and notify the department of the anticipated date of~~

1 ~~filing by June 1 of each year.~~

2 ~~(b) Exception. An insurer not required to submit an ORSA~~
3 ~~summary report under subsection (a) shall do so upon the~~
4 ~~department's request, but not more than once per calendar year.~~
5 ~~The insurer shall determine the most appropriate date of the~~
6 ~~filing based upon the insurer's internal strategic planning~~
7 ~~processes and notify the department of the anticipated date of~~
8 ~~filing within 30 days of the department's request.~~

9 ~~(c) Form of summary report. An insurer may comply with~~
10 ~~subsection (a) or (b) by providing to the department either of~~
11 ~~the following:~~

12 ~~(1) A combination of reports that together contain the~~
13 ~~information described in the ORSA guidance manual.~~

14 ~~(2) A copy of the most recent reports submitted by the~~
15 ~~insurer, or another member of an insurance group of which the~~
16 ~~insurer is a member, to the chief insurance regulatory~~
17 ~~official of another state or to a supervisor or regulator of~~
18 ~~a foreign jurisdiction, if that report is substantially~~
19 ~~similar to the ORSA summary report. For purposes of this~~
20 ~~section, "substantially similar" means containing information~~
21 ~~comparable to the information described in the ORSA guidance~~
22 ~~manual as determined by the commissioner. If the report is in~~
23 ~~a language other than English, it must be accompanied by a~~
24 ~~translation of that report into the English language.~~

25 ~~(d) Attestation. The ORSA summary report must include a~~
26 ~~signature of the insurer or insurance group's chief risk officer~~
27 ~~or other executive having responsibility for the oversight of~~
28 ~~the insurer's enterprise risk management process attesting to~~
29 ~~the best of that person's belief and knowledge that the insurer~~
30 ~~applies the enterprise risk management process described in the~~

1 ~~ORSA summary report and that a copy of the report has been~~
2 ~~provided to the insurer's board of directors or the appropriate~~
3 ~~committee thereof.~~

4 ~~(e) Compliance with ORSA guidance manual. The ORSA summary~~
5 ~~report must be prepared in accordance with the ORSA guidance~~
6 ~~manual. Documentation and supporting information must be~~
7 ~~maintained and made available upon request in an examination~~
8 ~~conducted pursuant to section 1406 of the act of May 17, 1921~~
9 ~~(P.L.682, No.284), known as The Insurance Company Law of 1921,~~
10 ~~or Article IX.~~

11 ~~(f) Review by department. The department shall review the~~
12 ~~ORSA summary report and make additional requests for information~~
13 ~~using procedures similar to current procedures for coordinating~~
14 ~~analysis and examination of multistate or global insurers and~~
15 ~~insurance groups.~~

16 ~~(g) Summary of material changes and updates. The ORSA~~
17 ~~summary report should also include a short summary of material~~
18 ~~changes and updates to the ORSA summary report since the prior~~
19 ~~year.~~

20 ~~Section 1306. Exemption.~~

21 ~~(a) General rule. An insurer is exempt from the~~
22 ~~requirements of this article, if:~~

23 ~~(1) the insurer has annual direct written and~~
24 ~~unaffiliated assumed premium, including international direct~~
25 ~~and assumed premium but excluding premiums reinsured with the~~
26 ~~Federal Crop Insurance Corporation and Federal Flood Program,~~
27 ~~less than \$500,000,000; and~~

28 ~~(2) the insurer is a member of an insurance group, the~~
29 ~~insurance group has annual direct written and unaffiliated~~
30 ~~assumed premium including international direct and assumed~~

~~premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.~~

~~(b) Partial exemption for insurer. If an insurer is exempt under subsection (a) (1), but the insurance group of which the insurer is a member is not exempt under subsection (a) (2), then the ORSA summary report must 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 if the reports include every insurer within the insurance group.~~

~~(c) Partial exemption for insurance group. If an insurer is not exempt under subsection (a) (1), but the insurance group of which the insurer is a member is exempt under subsection (a) (2), then the insurer shall file the ORSA summary report applicable only to the insurer.~~

~~(d) Waiver. An insurer that is not exempt under subsection (a) may apply to the commissioner for a waiver from the requirements of this article based upon unique circumstances. If the insurer is a member 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. In deciding whether to grant the insurer's request for waiver, the commissioner may consider:~~

~~(1) The type and volume of business written.~~

~~(2) Ownership and organizational structure.~~

~~(3) Material reduction in risk or risk exposures.~~

~~(4) Any other factor the commissioner determines to be relevant to whether a wavier should be granted.~~

~~(e) Additional requirements. Notwithstanding the exemptions under subsection (a):~~

~~(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 the type and volume of business written, ownership and organizational structure, Federal agency requests and international supervisor requests.~~

~~(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:~~

~~(i) has risk based capital for a company action level event as set forth in sections 506 A and 505 B;~~

~~(ii) meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in 31 Pa. Code Part VIII, Ch. 160 (relating to standards to define insurers deemed to be in hazardous financial condition); or~~

~~(iii) otherwise exhibits qualities of a troubled insurer as determined by the commissioner.~~

~~(3) If an insurer exempt under subsection (a) 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 after the year the threshold is exceeded to comply with the requirements of this article.~~

~~Section 1307. Third party consultants.~~

~~The department may retain, at the insurer's expense, third party consultants, including attorneys, actuaries, accountants~~

~~1 and other experts not otherwise a part of the department's staff
2 as may be reasonably necessary to assist the department in
3 reviewing the risk management framework, ORSA, ORSA summary
4 report or the insurer's compliance with this article. Any
5 persons so retained shall be under the direction and control of
6 the department and shall act in a purely advisory capacity.
7 Third party consultants are subject to the same confidentiality
8 standards and requirements as the department.~~

~~9 Section 1308. Confidentiality.~~

~~10 (a) General rule. The ORSA related information that is
11 produced by, obtained by or disclosed to, the department or any
12 other person under this article shall be privileged and given
13 confidential treatment and shall not be:~~

~~14 (1) Subject to discovery or admissible as evidence in a
15 private civil action.~~

~~16 (2) Subject to subpoena.~~

~~17 (3) Subject to the act of February 14, 2008 (P.L.6,
18 No.3), known as the Right to Know Law.~~

~~19 (4) Made public by the department or any other person
20 without the prior written consent of the insurer to which it
21 pertains, except as provided in subsection (c).~~

~~22 (b) Private civil actions. The commissioner, department or
23 any individual or person who receives ORSA related information
24 while acting under the authority of the commissioner or
25 department or with whom the ORSA related information is shared
26 pursuant to this article shall not be permitted or required to
27 testify in any private civil action concerning the ORSA related
28 information.~~

~~29 (c) Use of ORSA related information by the department. To
30 assist in the performance of regulatory duties, the department:~~

1 ~~(1) May use ORSA related information in furtherance of~~
2 ~~any regulatory or legal action brought as part of the~~
3 ~~department's official duties.~~

4 ~~(2) May share ORSA related information with the NAIC,~~
5 ~~regulatory or law enforcement officials of this Commonwealth~~
6 ~~or other jurisdictions, group supervisors and members of any~~
7 ~~supervisory college under section 1406.1 of the act of May~~
8 ~~17, 1921 (P.L.682, No.284), known as The Insurance Company~~
9 ~~Law of 1921, provided that, prior to receiving the ORSA~~
10 ~~related information, the recipient demonstrates by written~~
11 ~~statement the necessary authority and intent to provide the~~
12 ~~same confidential treatment as required by this article.~~

13 ~~(3) May receive and maintain as confidential ORSA~~
14 ~~related information from the NAIC, regulatory or law~~
15 ~~enforcement officials of this Commonwealth or other~~
16 ~~jurisdictions, group supervisors and members of any~~
17 ~~supervisory college under section 1406.1 of The Insurance~~
18 ~~Company Law of 1921 in which the ORSA related information is~~
19 ~~confidential by law in those jurisdictions. ORSA related~~
20 ~~information obtained under this paragraph shall be given~~
21 ~~confidential treatment, may not be subject to subpoena and~~
22 ~~may not be made public by the department, commissioner or any~~
23 ~~other person.~~

24 ~~(4) Shall enter into written agreements with the NAIC or~~
25 ~~a third party consultant governing sharing and use of~~
26 ~~information provided under this article that includes all of~~
27 ~~the following:~~

28 ~~(i) Specific procedures and protocols for~~
29 ~~maintaining the confidentiality and security of ORSA~~
30 ~~related information.~~

1 ~~(ii) Procedures and protocols for sharing ORSA~~
2 ~~related information with regulators from other states in~~
3 ~~which the insurance group has domiciled insurers,~~
4 ~~including a written acknowledgment of the recipient's~~
5 ~~intent and legal authority to maintain the confidential~~
6 ~~and privileged status of the ORSA related information.~~

7 ~~(iii) A provision specifying that ownership of the~~
8 ~~ORSA related information shared remains with the~~
9 ~~department and that the use of the ORSA related~~
10 ~~information is subject to the direction and approval of~~
11 ~~the department.~~

12 ~~(iv) A provision that prohibits storing, in a~~
13 ~~permanent database after the underlying analysis is~~
14 ~~completed, ORSA related information shared pursuant to~~
15 ~~this article.~~

16 ~~(v) A provision requiring the NAIC or third party~~
17 ~~consultant, where permitted by law, to give prompt notice~~
18 ~~to the department and to the insurer regarding any~~
19 ~~subpoena, request for disclosure or request for~~
20 ~~production of the insurer's ORSA related information in~~
21 ~~the possession of the NAIC or third party consultant.~~

22 ~~(vi) A requirement that the NAIC or third party~~
23 ~~consultant would consent to intervention by an insurer in~~
24 ~~any judicial or administrative action in which the NAIC~~
25 ~~or third party consultant may be required to disclose~~
26 ~~ORSA related information or other confidential~~
27 ~~information about the insurer or insurer group that was~~
28 ~~shared under this article.~~

29 ~~(d) No delegation. The sharing of information by the~~
30 ~~department under this article shall not constitute a delegation~~

1 ~~of regulatory authority or rulemaking. The department is solely~~
2 ~~responsible for the administration, execution and enforcement of~~
3 ~~this article.~~

4 ~~(e) No waiver of privilege or confidentiality. The sharing~~
5 ~~of ORSA related information by the department as authorized by~~
6 ~~this article shall not constitute a waiver of any applicable~~
7 ~~privilege or claim of confidentiality.~~

8 ~~(f) Information with third parties. ORSA related~~
9 ~~information in the possession or control of the NAIC or a third~~
10 ~~party consultant as provided under this article shall:~~

11 ~~(1) Be confidential and privileged.~~

12 ~~(2) Not be subject to the Right to Know Law.~~

13 ~~(3) Not be subject to subpoena.~~

14 ~~(4) Not be subject to discovery or admissible in~~
15 ~~evidence in any private civil action.~~

16 ~~Section 1309. Sanctions.~~

17 ~~An insurer that fails to timely file an ORSA summary report~~
18 ~~as required under this article or by regulation shall be~~
19 ~~required to pay a penalty of \$200 for each day of delay. The~~
20 ~~maximum penalty under this section is \$25,000 per year.~~

21 ~~Section 1310. Regulations.~~

22 ~~The department may promulgate rules and regulations and issue~~
23 ~~such orders as are necessary to administer and enforce this~~
24 ~~article.~~

25 ~~Section 2. This act shall take effect January 1, 2015, or~~
26 ~~immediately, whichever is later.~~

27 SECTION 1. THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN
28 AS THE INSURANCE COMPANY LAW OF 1921, IS AMENDED BY ADDING A
29 SECTION TO READ:

30 SECTION 354.7. ELECTRONIC DELIVERY OF INFORMATION AND

1 POSTING OF POLICIES AND ENDORSEMENTS.--(A) (1) WITH REGARD TO
2 ANY LAW OR REGULATION OF THIS COMMONWEALTH REQUIRING AN INSURER
3 TO PROVIDE, SEND OR DELIVER INFORMATION, NOTICES OR DOCUMENTS IN
4 WRITING TO AN INSURED OR APPLICANT AS PART OF AN INSURANCE
5 TRANSACTION, IF THE INSURER AND THE INSURED OR APPLICANT HAVE
6 AGREED TO CONDUCT A TRANSACTION BY ELECTRONIC MEANS, THE
7 REQUIREMENT IS SATISFIED IF THE INFORMATION IS PROVIDED, SENT OR
8 DELIVERED, AS THE CASE MAY BE, IN AN ELECTRONIC RECORD CAPABLE
9 OF RETENTION BY THE RECIPIENT AT THE TIME OF RECEIPT. AN
10 ELECTRONIC RECORD IS NOT CAPABLE OF RETENTION BY THE RECIPIENT
11 IF THE SENDER OR ITS INFORMATION PROCESSING SYSTEM INHIBITS THE
12 ABILITY OF THE RECIPIENT TO PRINT OR STORE THE ELECTRONIC
13 RECORD. THE PROVISIONS OF THE ACT OF DECEMBER 16, 1999 (P.L.971,
14 NO.69), KNOWN AS THE "ELECTRONIC TRANSACTIONS ACT," SHALL
15 OTHERWISE APPLY TO THE INSURER AND THE INSURED OR APPLICANT WITH
16 RESPECT TO THE PROVIDING, SENDING OR DELIVERING OF THE
17 INFORMATION, NOTICES OR DOCUMENTS.

18 (2) ANY LAW OR REGULATION REQUIRING AN INSURER TO SEND
19 MULTIPLE COPIES OF THE INFORMATION, NOTICES OR DOCUMENTS SHALL
20 NOT APPLY WHERE THE INSURER PROVIDES, SENDS OR DELIVERS THE
21 INFORMATION, NOTICES OR DOCUMENTS IN ACCORDANCE WITH SUBSECTION
22 (A).

23 (3) AN INSURER PROVIDING, SENDING OR DELIVERING
24 INFORMATION, NOTICES OR DOCUMENTS SHALL SATISFY ANY FONT, SIZE,
25 SPACING OR OTHER FORMAT REQUIREMENTS IF THE ELECTRONIC
26 INFORMATION, NOTICES OR DOCUMENTS AS PROVIDED, SENT OR DELIVERED
27 BY THE INSURER MEET THOSE REQUIREMENTS AND MAY BE PRINTED OR
28 SAVED BY THE INSURED OR APPLICANT USING PROGRAMS OR APPLICATIONS
29 WIDELY AVAILABLE ON THE INTERNET AND FREE OF CHARGE TO USE.

30 (B) NOTWITHSTANDING SUBSECTION (A) OR ANY OTHER LAW OR

1 REGULATION OF THIS COMMONWEALTH REQUIRING AN INSURER TO PROVIDE,
2 SEND OR DELIVER AN INSURANCE POLICY OR ENDORSEMENT TO AN
3 INSURED, AN INSURER MAY ELECT TO POST A POLICY OR ENDORSEMENT
4 THAT DOES NOT CONTAIN PERSONALLY IDENTIFIABLE INFORMATION ON ITS
5 INTERNET WEBSITE PROVIDED IT COMPLIES WITH ALL OF THE FOLLOWING:

6 (1) THE POLICY OR ENDORSEMENT IS EASILY ACCESSIBLE ON THE
7 INTERNET WEBSITE SO LONG AS IT IS IN FORCE.

8 (2) THE POLICY OR ENDORSEMENT IS POSTED IN A MANNER THAT
9 ENABLES THE INSURED TO PRINT AND SAVE IT USING PROGRAMS OR
10 APPLICATIONS WIDELY AVAILABLE ON THE INTERNET AND FREE OF CHARGE
11 TO USE.

12 (3) THE INSURER PROVIDES NOTICE, IN THE MANNER IT NORMALLY
13 COMMUNICATES WITH THE INSURED, AT THE TIME OF ISSUANCE OR
14 RENEWAL OF THE POLICY OR ENDORSEMENT, OR AT THE TIME OF ANY
15 CHANGES TO THE POLICY OR ENDORSEMENT, OF A METHOD BY WHICH THE
16 INSURED MAY OBTAIN, UPON REQUEST AND WITHOUT CHARGE, A PAPER OR
17 ELECTRONIC COPY OF THE POLICY OR ENDORSEMENT, OR ANY CHANGES TO
18 THEM, AND THE INTERNET ADDRESS WHERE THE POLICY AND ENDORSEMENT
19 ARE POSTED.

20 (4) THE INSURER PROVIDES ALL OF THE FOLLOWING INFORMATION ON
21 EACH DECLARATIONS PAGE PROVIDED TO THE INSURED AT THE TIME OF
22 ISSUANCE OR RENEWAL:

23 (I) A DESCRIPTION OF THE EXACT POLICY AND ENDORSEMENT FORMS
24 PURCHASED BY THE INSURED.

25 (II) A METHOD BY WHICH THE INSURED MAY OBTAIN, UPON REQUEST
26 AND WITHOUT CHARGE, A PAPER OR ELECTRONIC COPY OF THE POLICY OR
27 ENDORSEMENT, OR ANY CHANGES TO THEM.

28 (III) THE INTERNET ADDRESS WHERE THE POLICY AND ENDORSEMENT
29 ARE POSTED.

30 (5) AFTER EXPIRATION OF THE POLICY OR ENDORSEMENT, THE

1 INSURER ARCHIVES THE EXPIRED POLICIES OR ENDORSEMENTS IN
2 ACCORDANCE WITH THE INSURANCE DEPARTMENT'S GENERAL RECORD
3 RETENTION REQUIREMENTS AND MAKES THEM AVAILABLE UPON REQUEST.

4 (C) UPON SATISFACTORY EVIDENCE OF THE VIOLATION OF THIS
5 SECTION BY AN INSURER, THE INSURANCE COMMISSIONER MAY, IN HIS
6 DISCRETION, PURSUE ONE OR MORE OF THE FOLLOWING COURSES OF
7 ACTION:

8 (1) SUSPEND OR REVOKE THE LICENSE OF THE INSURER.

9 (2) REFUSE, FOR A PERIOD NOT TO EXCEED ONE YEAR THEREAFTER,
10 TO ISSUE A NEW LICENSE TO THE INSURER.

11 (3) IMPOSE A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS
12 (\$1,000) FOR EACH ACT IN VIOLATION OF THIS SECTION.

13 SECTION 2. THE ACT IS AMENDED BY ADDING AN ARTICLE TO READ:

14 ARTICLE XXVI

15 RISK MANAGEMENT AND OWN RISK

16 SOLVENCY ASSESSMENT

17 SECTION 2601. PURPOSE AND SCOPE OF ARTICLE.

18 (A) PURPOSE.--THE PURPOSE OF THIS ARTICLE IS TO:

19 (1) REQUIRE AN INSURER OR INSURANCE GROUP TO MAINTAIN A
20 RISK MANAGEMENT FRAMEWORK AND COMPLETE AN OWN RISK AND
21 SOLVENCY ASSESSMENT (ORSA).

22 (2) SET FORTH THE REQUIREMENTS FOR FILING AN ORSA
23 SUMMARY REPORT WITH THE INSURANCE DEPARTMENT.

24 (3) PROVIDE FOR THE CONFIDENTIAL TREATMENT OF THE ORSA,
25 THE ORSA SUMMARY REPORT AND OTHER ORSA-RELATED INFORMATION,
26 WHICH CONTAIN TRADE SECRETS AND OTHER PROPRIETARY INFORMATION
27 THAT, IF MADE PUBLIC, COULD POTENTIALLY CAUSE THE INSURER OR
28 INSURANCE GROUP COMPETITIVE HARM OR DISADVANTAGE.

29 (B) SCOPE.--THE REQUIREMENTS OF THIS ARTICLE SHALL APPLY TO
30 ALL INSURERS DOMICILED IN THIS COMMONWEALTH UNLESS EXEMPT UNDER

1 SECTION 2606.

2 SECTION 2602. DEFINITIONS.

3 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE
4 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
5 CONTEXT CLEARLY INDICATES OTHERWISE:

6 "COMMISSIONER." THE INSURANCE COMMISSIONER OF THE
7 COMMONWEALTH.

8 "DEPARTMENT." THE INSURANCE DEPARTMENT OF THE COMMONWEALTH.

9 "INSURANCE GROUP." THE INSURERS AND AFFILIATES INCLUDED
10 WITHIN AN INSURANCE HOLDING COMPANY SYSTEM AS DEFINED IN SECTION
11 1401.

12 "INSURER." ANY FRATERNAL BENEFIT SOCIETY, HEALTH MAINTENANCE
13 ORGANIZATION, PREFERRED PROVIDER ORGANIZATION, COMPANY,
14 ASSOCIATION, EXCHANGE, HOSPITAL PLAN CORPORATION AS DEFINED IN
15 AND SUBJECT TO 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN
16 CORPORATIONS) OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION
17 SUBJECT TO 40 PA.C.S. CH. 63 (RELATING TO PROFESSIONAL HEALTH
18 SERVICES PLAN CORPORATIONS), AUTHORIZED BY THE INSURANCE
19 COMMISSIONER TO TRANSACT THE BUSINESS OF INSURANCE IN THIS
20 COMMONWEALTH EXCEPT THAT THE TERM SHALL NOT INCLUDE:

21 (1) THE COMMONWEALTH OR ANY AGENCY OR INSTRUMENTALITY
22 THEREOF; OR

23 (2) AGENCIES, AUTHORITIES OR INSTRUMENTALITIES OF THE
24 UNITED STATES, ITS POSSESSIONS AND TERRITORIES, THE
25 COMMONWEALTH OF PUERTO RICO, THE DISTRICT OF COLUMBIA OR A
26 STATE OR POLITICAL SUBDIVISION.

27 "NAIC." THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
28 OR SUCCESSOR ORGANIZATION AND ITS AFFILIATES AND SUBSIDIARIES.

29 "ORSA GUIDANCE MANUAL." THE CURRENT VERSION OF THE OWN RISK
30 AND SOLVENCY ASSESSMENT GUIDANCE MANUAL DEVELOPED AND ADOPTED BY

1 THE NAIC AND AS AMENDED. A CHANGE IN THE ORSA GUIDANCE MANUAL
2 WILL BE EFFECTIVE ON JANUARY 1 FOLLOWING THE CALENDAR YEAR IN
3 WHICH THE CHANGE WAS ADOPTED BY THE NAIC.

4 "ORSA-RELATED INFORMATION." THE ORSA, ORSA SUMMARY REPORT,
5 RISK MANAGEMENT FRAMEWORK OR ANY DOCUMENTS, MATERIALS OR OTHER
6 INFORMATION RELATED TO AN INSURER OR INSURER GROUP'S ORSA, ORSA
7 SUMMARY OR RISK MANAGEMENT FRAMEWORK.

8 "ORSA SUMMARY REPORT." THE CONFIDENTIAL HIGH-LEVEL SUMMARY
9 OF AN INSURER OR INSURANCE GROUP'S ORSA.

10 "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA." A CONFIDENTIAL
11 INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE AND
12 COMPLEXITY OF AN INSURER OR INSURANCE GROUP, CONDUCTED BY THAT
13 INSURER OR INSURANCE GROUP, OF THE MATERIAL AND RELEVANT RISKS
14 ASSOCIATED WITH THE INSURER OR INSURANCE GROUP'S CURRENT
15 BUSINESS PLAN AND THE SUFFICIENCY OF CAPITAL RESOURCES TO
16 SUPPORT THOSE RISKS.

17 SECTION 2603. RISK MANAGEMENT FRAMEWORK.

18 AN INSURER SHALL MAINTAIN A RISK MANAGEMENT FRAMEWORK FOR
19 IDENTIFYING, ASSESSING, MONITORING, MANAGING AND REPORTING ITS
20 MATERIAL AND RELEVANT RISKS. THIS REQUIREMENT MAY BE SATISFIED
21 IF THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER
22 MAINTAINS A RISK MANAGEMENT FRAMEWORK APPLICABLE TO THE
23 OPERATIONS OF THE INSURER.

24 SECTION 2604. ORSA REQUIREMENT.

25 AN INSURER, OR THE INSURANCE GROUP OF WHICH THE INSURER IS A
26 MEMBER, SHALL CONDUCT AN ORSA CONSISTENT WITH THE GUIDELINES SET
27 FORTH IN THE ORSA GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED
28 REGULARLY, BUT NO LESS FREQUENTLY THAN ANNUALLY, AND AT ANY TIME
29 WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE
30 INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

1 SECTION 2605. ORSA SUMMARY REPORT.

2 (A) GENERAL RULE.--BEGINNING JANUARY 1, 2015, AND EVERY YEAR
3 THEREAFTER, A DOMESTIC INSURER OR AN INSURER THAT IS A MEMBER OF
4 AN INSURANCE GROUP OF WHICH PENNSYLVANIA IS THE LEAD STATE AS
5 DETERMINED BY THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE
6 NAIC SHALL SUBMIT AN ORSA SUMMARY REPORT TO THE DEPARTMENT ONCE
7 PER CALENDAR YEAR. THE INSURER OR INSURANCE GROUP SHALL
8 DETERMINE THE MOST APPROPRIATE DATE OF FILING BASED UPON THE
9 INSURER OR INSURANCE GROUP'S INTERNAL STRATEGIC PLANNING
10 PROCESSES AND NOTIFY THE DEPARTMENT OF THE ANTICIPATED DATE OF
11 FILING BY JUNE 1 OF EACH YEAR.

12 (B) EXCEPTION.--AN INSURER NOT REQUIRED TO SUBMIT AN ORSA
13 SUMMARY REPORT UNDER SUBSECTION (A) SHALL DO SO UPON THE
14 DEPARTMENT'S REQUEST, BUT NOT MORE THAN ONCE PER CALENDAR YEAR.
15 THE INSURER SHALL DETERMINE THE MOST APPROPRIATE DATE OF THE
16 FILING BASED UPON THE INSURER'S INTERNAL STRATEGIC PLANNING
17 PROCESSES AND NOTIFY THE DEPARTMENT OF THE ANTICIPATED DATE OF
18 FILING WITHIN 30 DAYS OF THE DEPARTMENT'S REQUEST.

19 (C) FORM OF SUMMARY REPORT.--AN INSURER MAY COMPLY WITH
20 SUBSECTION (A) OR (B) BY PROVIDING TO THE DEPARTMENT EITHER OF
21 THE FOLLOWING:

22 (1) A COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE
23 INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL.

24 (2) A COPY OF THE MOST RECENT REPORTS SUBMITTED BY THE
25 INSURER, OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE
26 INSURER IS A MEMBER, TO THE CHIEF INSURANCE REGULATORY
27 OFFICIAL OF ANOTHER STATE OR TO A SUPERVISOR OR REGULATOR OF
28 A FOREIGN JURISDICTION, IF THAT REPORT IS SUBSTANTIALLY
29 SIMILAR TO THE ORSA SUMMARY REPORT. FOR PURPOSES OF THIS
30 SECTION, "SUBSTANTIALLY SIMILAR" MEANS CONTAINING INFORMATION

1 COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE
2 MANUAL AS DETERMINED BY THE COMMISSIONER. IF THE REPORT IS IN
3 A LANGUAGE OTHER THAN ENGLISH, IT MUST BE ACCOMPANIED BY A
4 TRANSLATION OF THAT REPORT INTO THE ENGLISH LANGUAGE.

5 (D) ATTESTATION.--THE ORSA SUMMARY REPORT MUST INCLUDE A
6 SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF RISK OFFICER
7 OR OTHER EXECUTIVE HAVING RESPONSIBILITY FOR THE OVERSIGHT OF
8 THE INSURER'S RISK MANAGEMENT PROCESS ATTESTING TO THE BEST OF
9 THAT PERSON'S BELIEF AND KNOWLEDGE THAT THE INSURER APPLIES THE
10 RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT AND
11 THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE INSURER'S
12 BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

13 (E) COMPLIANCE WITH ORSA GUIDANCE MANUAL.--THE ORSA SUMMARY
14 REPORT MUST BE PREPARED IN ACCORDANCE WITH THE ORSA GUIDANCE
15 MANUAL. DOCUMENTATION AND SUPPORTING INFORMATION MUST BE
16 MAINTAINED AND MADE AVAILABLE UPON REQUEST IN AN EXAMINATION
17 CONDUCTED PURSUANT TO SECTION 1406 OR ARTICLE IX OF THE ACT OF
18 MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE INSURANCE
19 DEPARTMENT ACT OF 1921.

20 (F) REVIEW BY DEPARTMENT.--THE DEPARTMENT SHALL REVIEW THE
21 ORSA SUMMARY REPORT AND MAKE ADDITIONAL REQUESTS FOR INFORMATION
22 USING PROCEDURES SIMILAR TO CURRENT PROCEDURES FOR COORDINATING
23 ANALYSIS AND EXAMINATION OF MULTISTATE OR GLOBAL INSURERS AND
24 INSURANCE GROUPS.

25 (G) SUMMARY OF MATERIAL CHANGES AND UPDATES.--THE ORSA
26 SUMMARY REPORT SHOULD ALSO INCLUDE A SHORT SUMMARY OF MATERIAL
27 CHANGES AND UPDATES TO THE ORSA SUMMARY REPORT SINCE THE PRIOR
28 YEAR.

29 SECTION 2606. EXEMPTION.

30 (A) GENERAL RULE.--AN INSURER IS EXEMPT FROM THE

1 REQUIREMENTS OF THIS ARTICLE, IF:

2 (1) THE INSURER HAS ANNUAL DIRECT WRITTEN AND
3 UNAFFILIATED ASSUMED PREMIUM, INCLUDING INTERNATIONAL DIRECT
4 AND ASSUMED PREMIUM BUT EXCLUDING PREMIUMS REINSURED WITH THE
5 FEDERAL CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM,
6 LESS THAN \$500,000,000; AND

7 (2) THE INSURER IS A MEMBER OF AN INSURANCE GROUP, THE
8 INSURANCE GROUP HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED
9 ASSUMED PREMIUM INCLUDING INTERNATIONAL DIRECT AND ASSUMED
10 PREMIUM, BUT EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL
11 CROP INSURANCE CORPORATION AND FEDERAL FLOOD PROGRAM, LESS
12 THAN \$1,000,000,000.

13 (B) PARTIAL EXEMPTION FOR INSURER.--IF AN INSURER IS EXEMPT
14 UNDER SUBSECTION (A) (1), BUT THE INSURANCE GROUP OF WHICH THE
15 INSURER IS A MEMBER IS NOT EXEMPT UNDER SUBSECTION (A) (2), THEN
16 THE ORSA SUMMARY REPORT MUST INCLUDE EVERY INSURER WITHIN THE
17 INSURANCE GROUP. THIS REQUIREMENT MAY BE SATISFIED BY THE
18 SUBMISSION OF MORE THAN ONE ORSA SUMMARY REPORT FOR ANY
19 COMBINATION OF INSURERS IF THE REPORTS INCLUDE EVERY INSURER
20 WITHIN THE INSURANCE GROUP.

21 (C) PARTIAL EXEMPTION FOR INSURANCE GROUP.--IF AN INSURER IS
22 NOT EXEMPT UNDER SUBSECTION (A) (1), BUT THE INSURANCE GROUP OF
23 WHICH THE INSURER IS A MEMBER IS EXEMPT UNDER SUBSECTION (A) (2),
24 THEN THE INSURER SHALL FILE THE ORSA SUMMARY REPORT APPLICABLE
25 ONLY TO THE INSURER.

26 (D) WAIVER.--AN INSURER THAT IS NOT EXEMPT UNDER SUBSECTION
27 (A) MAY APPLY TO THE COMMISSIONER FOR A WAIVER FROM THE
28 REQUIREMENTS OF THIS ARTICLE BASED UPON UNIQUE CIRCUMSTANCES. IF
29 THE INSURER IS A MEMBER OF AN INSURANCE GROUP WITH INSURERS
30 DOMICILED IN MORE THAN ONE STATE, THE COMMISSIONER SHALL

1 COORDINATE WITH THE LEAD STATE COMMISSIONER AND WITH THE OTHER
2 DOMICILIARY COMMISSIONERS IN CONSIDERING WHETHER TO GRANT THE
3 INSURER'S REQUEST FOR A WAIVER. IN DECIDING WHETHER TO GRANT THE
4 INSURER'S REQUEST FOR WAIVER, THE COMMISSIONER MAY CONSIDER:

5 (1) THE TYPE AND VOLUME OF BUSINESS WRITTEN.

6 (2) OWNERSHIP AND ORGANIZATIONAL STRUCTURE.

7 (3) MATERIAL REDUCTION IN RISK OR RISK EXPOSURES.

8 (4) ANY OTHER FACTOR THE COMMISSIONER DETERMINES TO BE
9 RELEVANT TO WHETHER A WAVIER SHOULD BE GRANTED.

10 (E) ADDITIONAL REQUIREMENTS.--NOTWITHSTANDING THE EXEMPTIONS
11 UNDER SUBSECTION (A):

12 (1) THE COMMISSIONER MAY REQUIRE THAT AN INSURER
13 MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN ORSA AND
14 FILE AN ORSA SUMMARY REPORT BASED ON UNIQUE CIRCUMSTANCES,
15 INCLUDING THE TYPE AND VOLUME OF BUSINESS WRITTEN, OWNERSHIP
16 AND ORGANIZATIONAL STRUCTURE, FEDERAL AGENCY REQUESTS AND
17 INTERNATIONAL SUPERVISOR REQUESTS.

18 (2) THE COMMISSIONER MAY REQUIRE THAT AN INSURER
19 MAINTAIN A RISK MANAGEMENT FRAMEWORK, CONDUCT AN ORSA AND
20 FILE AN ORSA SUMMARY REPORT IF THE INSURER:

21 (I) HAS RISK-BASED CAPITAL FOR A COMPANY ACTION
22 LEVEL EVENT AS SET FORTH IN SECTIONS 506-A AND 505-B;

23 (II) MEETS ONE OR MORE OF THE STANDARDS OF AN
24 INSURER DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION AS
25 DEFINED IN 31 PA. CODE PT. VIII CH. 160 (RELATING TO
26 STANDARDS TO DEFINE INSURERS DEEMED TO BE IN HAZARDOUS
27 FINANCIAL CONDITION); OR

28 (III) OTHERWISE EXHIBITS QUALITIES OF A TROUBLED
29 INSURER AS DETERMINED BY THE COMMISSIONER.

30 (3) IF AN INSURER EXEMPT UNDER SUBSECTION (A) NO LONGER

1 QUALIFIES FOR THAT EXEMPTION DUE TO CHANGES IN PREMIUM AS
2 REFLECTED IN THE INSURER'S MOST RECENT ANNUAL STATEMENT OR IN
3 THE MOST RECENT ANNUAL STATEMENTS OF THE INSURERS WITHIN THE
4 INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER, THE INSURER
5 SHALL HAVE ONE YEAR AFTER THE YEAR THE THRESHOLD IS EXCEEDED
6 TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE.

7 SECTION 2607. THIRD-PARTY CONSULTANTS.

8 THE DEPARTMENT MAY RETAIN, AT THE INSURER'S EXPENSE, THIRD-
9 PARTY CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES, ACCOUNTANTS
10 AND OTHER EXPERTS NOT OTHERWISE A PART OF THE DEPARTMENT'S STAFF
11 AS MAY BE REASONABLY NECESSARY TO ASSIST THE DEPARTMENT IN
12 REVIEWING THE RISK MANAGEMENT FRAMEWORK, ORSA, ORSA SUMMARY
13 REPORT OR THE INSURER'S COMPLIANCE WITH THIS ARTICLE. ANY
14 PERSONS SO RETAINED SHALL BE UNDER THE DIRECTION AND CONTROL OF
15 THE DEPARTMENT AND SHALL ACT IN A PURELY ADVISORY CAPACITY.
16 THIRD-PARTY CONSULTANTS ARE SUBJECT TO THE SAME CONFIDENTIALITY
17 STANDARDS AND REQUIREMENTS AS THE DEPARTMENT. AS PART OF THE
18 RETENTION PROCESS, A THIRD-PARTY CONSULTANT SHALL VERIFY TO THE
19 DEPARTMENT, WITH NOTICE TO THE INSURER, THAT IT IS FREE OF ANY
20 CONFLICT OF INTEREST AND THAT IT HAS INTERNAL PROCEDURES IN
21 PLACE TO MONITOR COMPLIANCE WITH ANY CONFLICTS AND TO COMPLY
22 WITH THIS ARTICLE'S CONFIDENTIALITY STANDARDS AND REQUIREMENTS.
23 THE RETENTION AGREEMENT WITH A THIRD-PARTY CONSULTANT SHALL
24 EXPRESSLY REQUIRE THE WRITTEN CONSENT OF THE INSURER PRIOR TO
25 MAKING PUBLIC ANY INFORMATION PROVIDED PURSUANT TO THIS ACT, AS
26 REQUIRED UNDER SECTION 2608 (A).

27 SECTION 2608. CONFIDENTIALITY.

28 (A) GENERAL RULE.--THE ORSA-RELATED INFORMATION IN THE
29 POSSESSION OF OR THE CONTROL OF THE DEPARTMENT THAT IS PRODUCED
30 BY, OBTAINED BY OR DISCLOSED TO, THE DEPARTMENT OR ANY OTHER

1 PERSON UNDER THIS ARTICLE SHALL BE PRIVILEGED AND GIVEN

2 CONFIDENTIAL TREATMENT AND SHALL NOT BE:

3 (1) SUBJECT TO DISCOVERY OR ADMISSIBLE AS EVIDENCE, IN A
4 PRIVATE CIVIL ACTION.

5 (2) SUBJECT TO SUBPOENA.

6 (3) SUBJECT TO THE ACT OF FEBRUARY 14, 2008 (P.L.6,
7 NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

8 (4) MADE PUBLIC BY THE DEPARTMENT OR ANY OTHER PERSON
9 WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER TO WHICH IT
10 PERTAINS, EXCEPT AS PROVIDED IN SUBSECTION (C).

11 (B) PRIVATE CIVIL ACTIONS.--THE COMMISSIONER, DEPARTMENT OR
12 ANY INDIVIDUAL OR PERSON WHO RECEIVES ORSA-RELATED INFORMATION
13 WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER OR
14 DEPARTMENT OR WITH WHOM THE ORSA-RELATED INFORMATION IS SHARED
15 PURSUANT TO THIS ARTICLE SHALL NOT BE PERMITTED OR REQUIRED TO
16 TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING THE ORSA-RELATED
17 INFORMATION.

18 (C) USE OF ORSA-RELATED INFORMATION BY THE DEPARTMENT.--TO
19 ASSIST IN THE PERFORMANCE OF REGULATORY DUTIES, THE DEPARTMENT:

20 (1) MAY USE ORSA-RELATED INFORMATION IN FURTHERANCE OF
21 ANY REGULATORY OR LEGAL ACTION BROUGHT AS PART OF THE
22 DEPARTMENT'S OFFICIAL DUTIES.

23 (2) MAY SHARE ORSA-RELATED INFORMATION WITH THE NAIC,
24 REGULATORY OR LAW ENFORCEMENT OFFICIALS OF THIS COMMONWEALTH
25 OR OTHER JURISDICTIONS, GROUP SUPERVISORS, MEMBERS OF ANY
26 SUPERVISORY COLLEGE UNDER SECTION 1406.1 AND THIRD-PARTY
27 CONSULTANTS PURSUANT TO SECTION 2607, PROVIDED THAT, PRIOR TO
28 RECEIVING THE ORSA-RELATED INFORMATION, THE RECIPIENT
29 DEMONSTRATES BY WRITTEN STATEMENT THE NECESSARY AUTHORITY AND
30 INTENT TO PROVIDE THE SAME CONFIDENTIAL TREATMENT AS REQUIRED

1 BY THIS ARTICLE.

2 (3) MAY RECEIVE AND MAINTAIN AS CONFIDENTIAL ORSA-
3 RELATED INFORMATION FROM THE NAIC, REGULATORY OR LAW
4 ENFORCEMENT OFFICIALS OF THIS COMMONWEALTH OR OTHER
5 JURISDICTIONS, GROUP SUPERVISORS AND MEMBERS OF ANY
6 SUPERVISORY COLLEGE UNDER SECTION 1406.1 IN WHICH THE ORSA-
7 RELATED INFORMATION IS CONFIDENTIAL BY LAW IN THOSE
8 JURISDICTIONS. ORSA-RELATED INFORMATION OBTAINED UNDER THIS
9 PARAGRAPH SHALL BE GIVEN CONFIDENTIAL TREATMENT, MAY NOT BE
10 SUBJECT TO SUBPOENA AND MAY NOT BE MADE PUBLIC BY THE
11 DEPARTMENT, COMMISSIONER OR ANY OTHER PERSON.

12 (D) AGREEMENTS FOR USE OF ORSA-RELATED INFORMATION.--THE
13 DEPARTMENT SHALL ENTER INTO WRITTEN AGREEMENTS WITH THE NAIC OR
14 A THIRD-PARTY CONSULTANT GOVERNING SHARING AND USE OF
15 INFORMATION PROVIDED UNDER THIS ARTICLE THAT INCLUDES ALL OF THE
16 FOLLOWING:

17 (1) SPECIFIC PROCEDURES AND PROTOCOLS FOR MAINTAINING
18 THE CONFIDENTIALITY AND SECURITY OF ORSA-RELATED INFORMATION.

19 (2) PROCEDURES AND PROTOCOLS FOR SHARING ORSA-RELATED
20 INFORMATION WITH REGULATORS FROM OTHER STATES IN WHICH THE
21 INSURANCE GROUP HAS DOMICILED INSURERS, INCLUDING A WRITTEN
22 ACKNOWLEDGMENT OF THE RECIPIENT'S INTENT AND LEGAL AUTHORITY
23 TO MAINTAIN THE CONFIDENTIAL AND PRIVILEGED STATUS OF THE
24 ORSA-RELATED INFORMATION.

25 (3) A PROVISION SPECIFYING THAT OWNERSHIP OF THE ORSA-
26 RELATED INFORMATION SHARED REMAINS WITH THE DEPARTMENT AND
27 THAT THE USE OF THE ORSA-RELATED INFORMATION IS SUBJECT TO
28 THE DIRECTION AND APPROVAL OF THE DEPARTMENT.

29 (4) A PROVISION THAT PROHIBITS STORING, IN A PERMANENT
30 DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED, ORSA-

1 RELATED INFORMATION SHARED PURSUANT TO THIS ARTICLE.

2 (5) A PROVISION REQUIRING THE NAIC OR THIRD-PARTY
3 CONSULTANT, WHERE PERMITTED BY LAW, TO GIVE PROMPT NOTICE TO
4 THE DEPARTMENT AND TO THE INSURER REGARDING ANY SUBPOENA,
5 REQUEST FOR DISCLOSURE OR REQUEST FOR PRODUCTION OF THE
6 INSURER'S ORSA-RELATED INFORMATION IN THE POSSESSION OF THE
7 NAIC OR THIRD-PARTY CONSULTANT.

8 (6) A REQUIREMENT THAT THE NAIC OR THIRD-PARTY
9 CONSULTANT WOULD CONSENT TO INTERVENTION BY AN INSURER IN ANY
10 JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NAIC OR THIRD-
11 PARTY CONSULTANT MAY BE REQUIRED TO DISCLOSE ORSA-RELATED
12 INFORMATION OR OTHER CONFIDENTIAL INFORMATION ABOUT THE
13 INSURER OR INSURER GROUP THAT WAS SHARED UNDER THIS ARTICLE.

14 (E) NO DELEGATION.--THE SHARING OF INFORMATION BY THE
15 DEPARTMENT UNDER THIS ARTICLE SHALL NOT CONSTITUTE A DELEGATION
16 OF REGULATORY AUTHORITY OR RULEMAKING. THE DEPARTMENT IS SOLELY
17 RESPONSIBLE FOR THE ADMINISTRATION, EXECUTION AND ENFORCEMENT OF
18 THIS ARTICLE.

19 (F) NO WAIVER OF PRIVILEGE OR CONFIDENTIALITY.--THE SHARING
20 OF ORSA-RELATED INFORMATION BY THE DEPARTMENT AS AUTHORIZED BY
21 THIS ARTICLE SHALL NOT CONSTITUTE A WAIVER OF ANY APPLICABLE
22 PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

23 (G) INFORMATION WITH THIRD PARTIES.--ORSA-RELATED
24 INFORMATION IN THE POSSESSION OR CONTROL OF THE NAIC OR A THIRD-
25 PARTY CONSULTANT AS PROVIDED UNDER THIS ARTICLE SHALL:

26 (1) BE CONFIDENTIAL AND PRIVILEGED.

27 (2) NOT BE SUBJECT TO THE RIGHT-TO-KNOW LAW.

28 (3) NOT BE SUBJECT TO SUBPOENA.

29 (4) NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE AS
30 EVIDENCE, IN ANY PRIVATE CIVIL ACTION.

1 SECTION 2609. SANCTIONS.

2 AN INSURER THAT FAILS TO TIMELY FILE AN ORSA SUMMARY REPORT
3 AS REQUIRED UNDER THIS ARTICLE OR BY REGULATION SHALL BE
4 REQUIRED TO PAY A PENALTY OF \$200 FOR EACH DAY OF DELAY. THE
5 MAXIMUM PENALTY UNDER THIS SECTION IS \$25,000 PER YEAR.

6 SECTION 2610. REGULATIONS.

7 THE DEPARTMENT MAY PROMULGATE RULES AND REGULATIONS AND ISSUE
8 SUCH ORDERS AS ARE NECESSARY TO ADMINISTER AND ENFORCE THIS
9 ARTICLE.

10 SECTION 3. THIS ACT SHALL TAKE EFFECT JANUARY 1, 2015.