

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2619

BY DELEGATES WESTFALL, ROMINE, C., WHITE AND

FRICH

[Introduced February 21, 2017; Referred to the
Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-
3 40B-7, §33-40B-8, §33-40B-9 and §33-40B-10, all relating to insurer risk management
4 and solvency assessment; setting forth the purpose and scope of the article; defining
5 terms; setting forth the requirement that insurers must maintain a risk management
6 framework to assist the insurer with identifying, assessing, monitoring, managing and
7 reporting on its material and relevant risks; setting forth and providing requirements for the
8 own risk and assessment summary report; providing exemptions to the summary report
9 requirements; providing confidentiality requirements related to the summary report;
10 providing sanctions for failing to submit the summary report; and providing the effective
11 date of this article.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-
3 40B-7, §33-40B-8, §33-40B-9 and §33-40B-10, all to read as follows:

**ARTICLE 40B. RISK MANAGEMENT AND OWN RISK AND SOLVENCY
ASSESSMENT ACT.**

§33-40B-1. Purpose and Scope.

1 (a) The purpose of this article is to provide the requirements for maintaining a risk
2 management framework and completing an own risk and solvency assessment (ORSA) and
3 provide guidance and instructions for filing an ORSA summary report with the Insurance
4 Commissioner of this state.

5 (b) The requirements of this article apply to all insurers domiciled in this state unless
6 exempt pursuant to section six of this article.

7 (c) The Legislature finds and declares that the ORSA summary report shall contain

8 confidential and sensitive information related to an insurer or insurance group's identification of
9 risks material and relevant to the insurer or insurance group filing the report. This information shall
10 include proprietary and trade secret information that has the potential for harm and competitive
11 disadvantage to the insurer or insurance group if the information is made public. It is the intent of
12 this Legislature that the ORSA summary report shall be a confidential document filed with the
13 commissioner, that the ORSA summary report may be shared only as stated herein and to assist
14 the commissioner in the performance of his or her duties, and that in no event may the ORSA
15 summary report be subject to public disclosure.

§33-40B-2. Definitions.

1 (a) "Commissioner" means the Insurance Commissioner of the State of West Virginia, his
2 or her deputies or the insurance department, as appropriate.

3 (b) "Insurance group" means, for the purpose of conducting an ORSA, those insurers and
4 affiliates included within an insurance holding company system as defined in article twenty-seven
5 of this chapter.

6 (c) "Insurer" has the same meaning as set forth in section two, article one of this chapter,
7 except that it does not include agencies, authorities or instrumentalities of the United States, its
8 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state
9 or political subdivision of a state.

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

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

16 (f) "ORSA Guidance Manual" means the Own Risk and Solvency Assessment Guidance
17 Manual developed and adopted by the NAIC and as amended from time to time. A change in the

18 ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which
19 the changes have been adopted by the NAIC.

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

§33-40B-3. Risk Management Framework.

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

§33-40B-4. ORSA Requirement.

1 Subject to section six of this article, an insurer, or the insurance group of which the insurer
2 is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA
3 Guidance Manual. The ORSA shall be conducted no less than annually but also at any time when
4 there are significant changes to the risk profile of the insurer or the insurance group of which the
5 insurer is a member.

§33-40B-5. ORSA Summary Report.

1 (a) Upon the commissioner's request, and no more than once each year, an insurer shall
2 submit to the commissioner an ORSA summary report or any combination of reports that together
3 contain the information described in the ORSA Guidance Manual, applicable to the insurer and,
4 the insurance group, or both, of which it is a member. Notwithstanding any request from the
5 commissioner, if the insurer is a member of an insurance group, the insurer shall submit the
6 report(s) required by this subsection if the commissioner is the lead state commissioner of the
7 insurance group as determined by the procedures within the Financial Analysis Handbook
8 adopted by the NAIC.

9 (b) The report(s) shall include a signature of the insurer or insurance group's chief risk
10 officer or other executive having responsibility for the oversight of the insurer's enterprise risk

11 management process attesting to the best of his or her belief and knowledge that the insurer
12 applies the enterprise risk management process described in the ORSA summary report and that
13 a copy of the report has been provided to the insurer's board of directors or the appropriate
14 committee thereof.

15 (c) An insurer may comply with subsection (a) of this section by providing the most recent
16 and substantially similar report(s) provided by the insurer or another member of an insurance
17 group of which the insurer is a member to the commissioner of another state or to a supervisor or
18 regulator of a foreign jurisdiction, if that report provides information that is comparable to the
19 information described in the ORSA Guidance Manual. Any report in a language other than English
20 must be accompanied by a translation of that report into the English language.

§33-40B-6. Exemption.

1 (a) An insurer is exempt from the requirements of this article, if

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

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

9 (b) If an insurer qualifies for exemption pursuant to subdivision (1), subsection (a) of this
10 section, but the insurance group of which the insurer is a member does not qualify for exemption
11 pursuant to subdivision (2), subsection (a) of this section, then the ORSA summary report that
12 may be required pursuant to section five shall include every insurer within the insurance group.
13 This requirement may be satisfied by the submission of more than one ORSA summary report for
14 any combination of insurers provided any combination of reports includes every insurer within the
15 insurance group.

16 (c) If an insurer does not qualify for exemption pursuant to subdivision (1), subsection (a)
17 of this section, but the insurance group of which it is a member qualifies for exemption pursuant
18 to subdivision (2), subsection (a) of this section, then the only ORSA summary report that may be
19 required pursuant section five of this article is the report applicable to that insurer.

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

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

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

34 (2) The commissioner may require that an insurer maintain a risk management framework,
35 conduct an ORSA and file an ORSA summary report if the insurer has risk-based capital for
36 company action level event as set forth in section three, article forty of this chapter, meets one or
37 more of the standards of an insurer considered to be in hazardous financial condition as defined
38 in section three-a, article thirty-four of this chapter, or otherwise exhibits qualities of a troubled
39 insurer as determined by the commissioner.

40 (f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section
41 subsequently no longer qualifies for that exemption due to changes in premium as reflected in the

42 insurer's most recent annual statement or in the most recent annual statements of the insurers
43 within the insurance group of which the insurer is a member, the insurer has one year following
44 the year the threshold is exceeded to comply with the requirements of this article.

§33-40B-7. Contents of ORSA Summary Report.

1 (a) The ORSA summary report shall be prepared consistent with the ORSA Guidance
2 Manual, subject to the requirements of subsection (b) of this section. Documentation and
3 supporting information shall be maintained and made available upon examination or upon request
4 of the commissioner.

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

§33-40B-8. Confidentiality.

1 (a) Documents, materials or other information, including the ORSA summary report, in the
2 possession of or control of the Insurance Commissioner that are obtained by, created by or
3 disclosed to the commissioner or any other person under this article, is recognized by this state
4 as being proprietary and to contain trade secrets. All such documents, materials or other
5 information shall be confidential by law and privileged, are not subject to article one, chapter
6 twenty-nine-b of this code, are not subject to subpoena and are not subject to discovery or
7 admissible in evidence in any private civil action. However, the commissioner may use the
8 documents, materials or other information in the furtherance of any regulatory or legal action
9 brought as a part of the commissioner's official duties. The commissioner shall not otherwise
10 make the documents, materials or other information public without the prior written consent of the
11 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 of
14 the commissioner or with whom the documents, materials or other information are shared

15 pursuant to this article shall be permitted or required to testify in any private civil action concerning
16 any confidential documents, materials, or information subject to subsection (a) of this section.

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 subsection
21 (a) of this section, 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 section six-a, article twenty-seven of this chapter, with the NAIC and with
24 any third-party consultants designated by the commissioner: *Provided*, That the recipient agrees
25 in writing to maintain the confidentiality and privileged status of the ORSA-related documents,
26 materials or other information and has verified in writing the legal authority to maintain
27 confidentiality;

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

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

39 (A) Specify procedures and protocols regarding the confidentiality and security of
40 information shared with the NAIC or a third-party consultant pursuant to this article, including

41 procedures and protocols for sharing by the NAIC with other state regulators from states in which
42 the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees
43 in writing to maintain the confidentiality and privileged status of the ORSA-related documents,
44 materials or other information and has verified in writing the legal authority to maintain
45 confidentiality;

46 (B) Specify that ownership of information shared with the NAIC or a third-party consultant
47 pursuant to this article remains with the commissioner and the NAIC's or a third-party consultant's
48 use of the information is subject to the direction of the commissioner;

49 (C) Prohibit the NAIC or third-party consultant from storing the information shared
50 pursuant to this article in a permanent database after the underlying analysis is completed;

51 (D) Require prompt notice to be given to an insurer whose confidential information in the
52 possession of the NAIC or a third-party consultant pursuant to this article is subject to a request
53 or subpoena to the NAIC or a third-party consultant for disclosure or production;

54 (E) Require the NAIC or a third-party consultant to consent to intervention by an insurer in
55 any judicial or administrative action in which the NAIC or a third-party consultant may be required
56 to disclose confidential information about the insurer shared with the NAIC or a third-party
57 consultant pursuant to this article; and

58 (F) If there is an agreement involving a third-party consultant, provide for the insurer's
59 written consent.

60 (d) The sharing of information and documents by the commissioner pursuant to this article
61 does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is
62 solely responsible for the administration, execution and enforcement of the provisions of this
63 article.

64 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
65 proprietary and trade-secret materials or other ORSA-related information shall occur as a result
66 of disclosure of such ORSA-related information or documents to the commissioner under this

67 section or as a result of sharing as authorized in this article.

68 (f) Documents, materials or other information in the possession or control of the NAIC or
69 a third-party consultant pursuant to this article shall be confidential by law and privileged, shall
70 not be subject to article one, chapter twenty-nine-b of this code, shall not be subject to subpoena
71 and shall not be subject to discovery or admissible in evidence in any private civil action.

§33-40B-9. Sanctions.

1 Any insurer failing, without just cause, to timely file the ORSA summary report as required
2 in this article shall, after notice and hearing, pay a penalty of \$2,500 for each day's delay, to be
3 recovered by the commissioner and the penalty so recovered shall be paid into the General
4 Revenue Fund of this state. The maximum penalty under this section is \$75,000. The
5 commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the
6 imposition of the penalty would constitute a financial hardship to the insurer.

§33-40B-10. Effective Date.

1 The requirements of this article shall become effective on January 1, 2018. The first filing
2 of the ORSA summary report shall be in 2018 pursuant to section five of this article.

NOTE: The purpose of this bill is to adopt the National Association of Insurance Commissioners' Risk Management and Own Risk Solvency Assessment Model Act (Model #505) for implementation by West Virginia insurers so that they are better equipped to assess their financial condition and remain solvent.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.