

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 10. The Illinois Insurance Code is amended by changing Sections 131.16, 131.20a, and 139 and adding Article VIII 1/4 as follows:

(215 ILCS 5/Art. VIII 1/4 heading new)

ARTICLE VIII 1/4. RISK MANAGEMENT AND
OWN RISK AND SOLVENCY ASSESSMENT

(215 ILCS 5/129 new)

Sec. 129. Short title. This Article may be cited as the
Risk Management and Own Risk and Solvency Assessment Law.

(215 ILCS 5/129.1 new)

Sec. 129.1. Purpose and scope. The purpose of this Article
is to provide the requirements for maintaining a risk
management framework and completing an own risk and solvency
assessment (ORSA) and provide guidance and instructions for
filing an ORSA summary report with the Director.

The requirements of this Article shall apply to all
insurers domiciled in this State unless exempt pursuant to
Section 129.7.

The General Assembly finds and declares that an ORSA summary report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of this General Assembly that the ORSA summary report shall be a confidential document filed with the Director, that the ORSA summary report shall be shared only as stated herein and to assist the Director in the performance of his or her duties, and that in no event shall an ORSA summary report be subject to public disclosure.

(215 ILCS 5/129.2 new)

Sec. 129.2. Definitions. In this Article:

"Insurance group", for the purpose of conducting an ORSA, means those insurers and affiliates included within an insurance holding company system as defined in Section 131.1 of this Code.

"Insurer" has the same meaning as set forth in Section 2 of this Code, except that it shall not include agencies, authorities, or instrumentalities of the United States or its possessions or territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision

of a state.

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

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

"ORSA summary report" means a confidential high-level summary of an insurer or insurance group's ORSA.

(215 ILCS 5/129.3 new)

Sec. 129.3. Risk management framework. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. The requirement of this Section may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

(215 ILCS 5/129.4 new)

Sec. 129.4. ORSA requirement. Subject to Section 129.7 of this Code, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

(215 ILCS 5/129.5 new)

Sec. 129.5. ORSA summary report.

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

(b) The report or reports shall include a signature of the

insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

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

(d) The first filing of the ORSA summary report shall be in 2015.

(215 ILCS 5/129.6 new)

Sec. 129.6. Contents of ORSA summary report.

(a) The ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (b) of this Section. Documentation and supporting

information shall be maintained and made available upon examination or upon the request of the Director.

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

(215 ILCS 5/129.7 new)

Sec. 129.7. Exemption.

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

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

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

(b) If an insurer qualifies for exemption pursuant to item (1) of subsection (a) of this Section, but the insurance group of which the insurer is a member does not qualify for exemption

pursuant to item (2) of subsection (a) of this Section, then the ORSA summary report that may be required pursuant to Section 129.5 of this Code shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers, provided any combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to item (1) of subsection (a) of this Section, but the insurance group of which it is a member qualifies for exemption pursuant to item (2) of subsection (a) of this Section, then the only ORSA summary report that may be required pursuant to Section 129.5 shall be the report applicable to that insurer.

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

(e) Notwithstanding the exemptions stated in this Section, the following provisions shall apply:

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

(2) The Director may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report if the insurer has risk-based capital for a company action level event as set forth in Section 35A-15 of this Code, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in Section 186.1 of this Code, or otherwise exhibits qualities of a troubled insurer as determined by the Director.

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

(215 ILCS 5/129.8 new)

Sec. 129.8. Confidentiality.

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

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

materials, or information subject to subsection (a) of this Section.

(c) In order to assist in the performance of regulatory duties, the Director may:

(1) upon request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this Section, including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in the Section 131.20c of this Code, with the NAIC, and with any third-party consultants designated by the Director, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in the Section 131.20c of this Code, and from the NAIC, and shall maintain as

confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(d) The Director shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this Article, consistent with this Section that shall:

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

(2) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this Article remains with the Director and the NAIC's or a third-party consultant's use of the information is subject to the direction of the Director;

(3) prohibit the NAIC or third-party consultant from

storing the information shared pursuant to this Article in a permanent database after the underlying analysis is completed;

(4) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Article is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(5) require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Article; and

(6) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(e) The sharing of information and documents by the Director pursuant to this Article shall not constitute a delegation of regulatory authority or rulemaking, and the Director is solely responsible for the administration, execution, and enforcement of the provisions of this Article.

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

sharing as authorized in this Article.

(g) Documents, materials, or other information in the possession or control of the NAIC or any third-party consultants pursuant to this Article shall be confidential by law and privileged, shall not be subject to the Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(215 ILCS 5/129.9 new)

Sec. 129.9. Sanctions. Any insurer failing, without just cause, to timely file the ORSA summary report as required in this Article shall be required, after notice and hearing, to pay a penalty of \$200 for each day's delay, to be recovered by the Director, and the penalty so recovered shall be paid into the General Revenue Fund of this State. The Director may reduce the penalty if the insurer demonstrates to the Director that the imposition of the penalty would constitute a financial hardship to the insurer.

(215 ILCS 5/131.16) (from Ch. 73, par. 743.16)

Sec. 131.16. Reporting material changes or additions; penalty for late registration statement.

(1) Each registered company must keep current the information required to be included in its registration statement by reporting all material changes or additions on

amendment forms designated by the Director within 15 days after the end of the month in which it learns of each change or addition, or within a longer time thereafter as the Director may establish. Any transaction which has been submitted to the Director pursuant to Section 131.20a need not be reported to the Director under this subsection; except each registered company must report all dividends and other distributions to shareholders within 5 ~~15~~ business days following the declaration, and no less than 10 business days prior to payment thereof.

(2) On or before May 1 each year, each company subject to registration under this Article shall file a statement in a format as designated by the Director. This statement shall include information previously included in an amendment under subsection (1) of this Section, transactions and agreements submitted under Section 131.20a, and any other material transactions which are required to be reported.

(2.5) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to a company where the information is reasonably necessary to enable the company to comply with the provisions of this Article.

(3) Any company failing, without just cause, to file any registration statement, any summary of changes to a registration statement, or any Enterprise Risk Filing or any person within an insurance holding company system who fails to

provide complete and accurate information to a company as required in this Code shall be required, ~~after notice and hearing,~~ to pay a penalty of up to \$1,000 for each day's delay, to be recovered by the Director of Insurance of the State of Illinois, using the notice and hearing procedure in subsection (2) of Section 403A of this Code, and the penalty so recovered shall be paid into the General Revenue Fund of the State of Illinois. The maximum penalty under this section is \$50,000. The Director may reduce the penalty if the company demonstrates to the Director that the imposition of the penalty would constitute a financial hardship to the company.

(Source: P.A. 98-609, eff. 1-1-14.)

(215 ILCS 5/131.20a) (from Ch. 73, par. 743.20a)

Sec. 131.20a. Prior notification of transactions; dividends and distributions.

(1) (a) The following transactions listed in items (i) through (vii) involving a domestic company and any person in its insurance holding company system, including amendments or modifications (other than termination) of affiliate agreements previously filed pursuant to this Section, which are subject to any materiality standards contained in this Section, may not be entered into unless the company has notified the Director in writing of its intention to enter into such transaction at least 30 days prior thereto, or such ~~shorter~~ period as the Director may permit, and the Director has not disapproved it

within such period. The notice for amendments or modifications (other than termination) shall include the reasons for the change and the financial impact on the domestic company. Informal notice shall be reported, within 30 days after a termination of a previously filed agreement, to the Director for determination of the type of filing required, if any.

(i) Sales, purchases, exchanges of assets, loans or extensions of credit, guarantees, investments, or any other transaction, except dividends, that involves the transfer of assets from or liabilities to a company (A) equal to or exceeding the lesser of 3% of the company's admitted assets or 25% of its surplus as regards policyholders as of the 31st day of December next preceding or (B) that is proposed when the domestic company is not eligible to declare and pay a dividend or other distribution pursuant to the provisions of Section 27.

(ii) Loans or extensions of credit to any person that is not an affiliate (A) that involve the lesser of 3% of the company's admitted assets or 25% of the company's surplus, each as of the 31st day of December next preceding, made with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the company making such loans or extensions of credit or (B) that are proposed when

the domestic company is not eligible to declare and pay a dividend or other distribution pursuant to the provisions of Section 27.

(iii) Reinsurance agreements or modifications thereto, including all reinsurance pooling agreements, reinsurance agreements in which the reinsurance premium or a change in the company's liabilities, or the projected reinsurance premium or a change in the company's liabilities in any of the next 3 years, equals or exceeds 5% of the company's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements that may require as consideration the transfer of assets from a company to a nonaffiliate, if an agreement or understanding exists between the company and nonaffiliate that any portion of those assets will be transferred to one or more affiliates of the company.

(iv) All management agreements; service contracts, other than agency contracts; tax allocation agreements; all reinsurance allocation agreements related to reinsurance agreements required to be filed under this Section; and all cost-sharing arrangements.

(v) Direct or indirect acquisitions or investments in a person that controls the company, or in an affiliate of the company, in an amount which, together with its present holdings in such investments, exceeds 2.5% of the company's surplus as regards policyholders. Direct or indirect

acquisitions or investments in subsidiaries acquired pursuant to Section 131.2 of this Article (or authorized under any other Section of this Code), or in non-sub subsidiary insurance affiliates that are subject to the provisions of this Article, are exempt from this requirement.

(vi) Any series of the previously described transactions that are substantially similar to each other, that take place within any 180 day period, and that in total are equal to or exceed the lesser of 3% of the domestic company's admitted assets or 25% of its policyholders surplus, as of the 31st day of the December next preceding.

(vii) Any other material transaction that the Director by rule determines might render the company's surplus as regards policyholders unreasonable in relation to the company's outstanding liabilities and inadequate to its financial needs or may otherwise adversely affect the interests of the company's policyholders or shareholders.

Nothing herein contained shall be deemed to authorize or permit any transactions that, in the case of a company not a member of the same holding company system, would be otherwise contrary to law.

(b) Any transaction or contract otherwise described in paragraph (a) of this subsection that is between a domestic company and any person that is not its affiliate and that precedes or follows within 180 days or is concurrent with a

similar transaction between that nonaffiliate and an affiliate of the domestic company and that involves amounts that are equal to or exceed the lesser of 3% of the domestic company's admitted assets or 25% of its surplus as regards policyholders at the end of the prior year may not be entered into unless the company has notified the Director in writing of its intention to enter into the transaction at least 30 days prior thereto or such shorter period as the Director may permit, and the Director has not disapproved it within such period.

(c) A company may not enter into transactions which are part of a plan or series of like transactions with any person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Director determines that such separate transactions were entered into for such purpose, he may exercise his authority under subsection (2) of Section 131.24.

(d) The Director, in reviewing transactions pursuant to paragraph (a), shall consider whether the transactions comply with the standards set forth in Section 131.20 and whether they may adversely affect the interests of policyholders.

(e) The Director shall be notified within 30 days of any investment of the domestic company in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10% of that corporation's voting securities.

(f) Except for those transactions subject to approval under other Sections of this Code, any such transaction or agreements which are not disapproved by the Director may be effective as of the date set forth in the notice required under this Section.

(g) If a domestic company enters into a transaction described in this subsection without having given the required notification, the Director, using the notice and hearing procedure in subsection (2) of Section 403A of this Code, may cause the company to pay a civil forfeiture of not more than \$250,000. Each transaction so entered shall be considered a separate offense.

(2) No domestic company subject to registration under Section 131.13 may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until: (a) 30 days after the Director has received notice of the declaration thereof and has not within such period disapproved the payment, or (b) the Director approves such payment within the 30-day period. For purposes of this subsection, an extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions, made within the period of 12 consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution exceeds the greater of: (a) 10% of the company's surplus as regards policyholders as of the 31st day of December

next preceding, or (b) the net income of the company for the 12-month period ending the 31st day of December next preceding, but does not include pro rata distributions of any class of the company's own securities.

Notwithstanding any other provision of law, the company may declare an extraordinary dividend or distribution which is conditional upon the Director's approval, and such a declaration confers no rights upon security holders until: (a) the Director has approved the payment of the dividend or distribution, or (b) the Director has not disapproved the payment within the 30-day period referred to above.

(Source: P.A. 98-609, eff. 1-1-14.)

(215 ILCS 5/139) (from Ch. 73, par. 751)

Sec. 139. Penalties for late or false annual statement.

(1) Any company failing, without just cause, to file its financial statements as required in this Code shall be required, after notice and hearing, to pay a penalty of up to \$1,000 for each day's delay, to be recovered by the Director of Insurance of the State of Illinois using the notice and hearing procedure in subsection (2) of Section 403A of this Code, and the penalty so recovered shall be paid into the General Revenue fund of the State of Illinois. The Director may reduce the penalty if the company demonstrates to the Director that the imposition of the penalty would constitute a financial hardship to the company.

Any statement which is not materially complete when filed shall not be considered to have been properly filed until those deficiencies which make the filing incomplete have been corrected and filed.

(2) Any director, officer, agent or employee of any company, who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false shall, after notice and hearing, be guilty of a business offense and shall be fined not more than \$50,000.

The penalty shall be paid into the General Revenue fund of the State of Illinois.

(Source: P.A. 88-364.)

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect July 1, 2015.

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Statutes amended in order of appearance

5 ILCS 140/7.5

215 ILCS 5/Art. VIII 1/4

heading new

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215 ILCS 5/129.1 new

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215 ILCS 5/129.6 new

215 ILCS 5/129.7 new

215 ILCS 5/129.8 new

215 ILCS 5/129.9 new

215 ILCS 5/131.16 from Ch. 73, par. 743.16

215 ILCS 5/131.20a from Ch. 73, par. 743.20a

215 ILCS 5/139 from Ch. 73, par. 751