

Chapter 48.05A RCW
RISK MANAGEMENT AND SOLVENCY ASSESSMENT

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RCW 48.05A.005 Purpose—Application—Findings—Intent. (1) The purpose of this chapter is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and provide guidance and instructions for filing an ORSA summary report with the insurance commissioner of this state.

(2) The requirements of this chapter apply to all insurers domiciled in this state unless exempt pursuant to RCW 48.05A.030.

(3) The legislature finds and declares that the ORSA summary report contains 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 includes 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 legislature that the ORSA summary report is a confidential document filed with the commissioner, that the ORSA summary report may be shared only as stated in this chapter and to assist the commissioner in the performance of his or her duties, and that in no event may the ORSA summary report be subject to public disclosure. [2015 c 17 s 1.]

RCW 48.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Insurance group" means, for the purposes of conducting an ORSA, those insurers and affiliates included within an insurance holding company system as defined in RCW 48.31B.005.

(2) "Insurer" includes an insurer authorized under chapter 48.05 RCW, a fraternal mutual insurer or society holding a license under RCW 48.36A.290, a health care service contractor registered under chapter 48.44 RCW, a health maintenance organization registered under chapter 48.46 RCW, and a self-funded multiple employer welfare arrangement

under chapter 48.125 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, fraternal benefit societies, health care service contractors, health maintenance organizations, or self-funded multiple employer welfare arrangements in this state, and to persons in process of organization to become insurers, fraternal benefit societies, health care service contractors, health maintenance organizations, or self-funded multiple employer welfare arrangements, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(3) "ORSA guidance manual" means the own risk and solvency assessment guidance manual developed and adopted by the national association of insurance commissioners.

(4) "ORSA summary report" means a confidential high-level ORSA summary of an insurer or insurance group.

(5) "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. [2015 c 17 s 2.]

RCW 48.05A.015 Risk management framework required. An insurer must maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement is satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer. [2015 c 17 s 3.]

RCW 48.05A.020 Must conduct an ORSA at least annually. Subject to RCW 48.05A.030, an insurer, or the insurance group of which the insurer is a member, must regularly conduct an ORSA consistent with a process comparable to the ORSA guidance manual. The ORSA must be conducted 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. [2015 c 17 s 4.]

RCW 48.05A.025 Submission of ORSA summary reports—Frequency—Requirements. (1) Upon the commissioner's request, and no more than once each year, an insurer must submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer must submit the report or set of reports required by this subsection if the commissioner 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.

(2) The report must 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 governing committee.

(3) An insurer may comply with subsection (1) 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. [2015 c 17 s 5.]

RCW 48.05A.030 Insurer exemptions from chapter—Qualifying conditions—Reports. (1) An insurer is exempt from the requirements of this chapter, if:

(a) The insurer has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premium reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars; and

(b) 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 premium reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars.

(2) If an insurer qualifies for exemption pursuant to subsection (1)(a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subsection (1)(b) of this section, then the ORSA summary report that may be required pursuant to RCW 48.05A.025 must include every insurer within the insurance group. This requirement is 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.

(3) If an insurer does not qualify for exemption pursuant to subsection (1)(a) of this section, but the insurance group of which the insurer is a member does qualify for exemption pursuant to subsection (1)(b) of this section, then the only ORSA summary report that may be required pursuant to RCW 48.05A.025 is the report applicable to that insurer.

(4) If an insurer does not qualify for exemption pursuant to subsection (1)(a) of this section, the insurer may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is a part 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.

(5) Notwithstanding the exemptions stated in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report (a) 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; and (b) if the insurer has risk-based capital at the company action level event as set forth in RCW 48.05.440 or 48.43.310, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-310, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(6) If an insurer that qualifies for exemption pursuant to subsection (1)(a) of this section subsequently no longer qualifies for that exemption due to changes in premium 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 has one year following the year the threshold is exceeded to comply with the requirement of this chapter. [2015 c 17 s 6.]

RCW 48.05A.035 ORSA summary report must be consistent with ORSA guidance manual. (1) The ORSA summary report shall be prepared consistent with the ORSA guidance manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information must be maintained and made available upon examination or upon the request of the commissioner.

(2) The review of the ORSA summary report, and any additional requests for information, must be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups. [2015 c 17 s 7.]

RCW 48.05A.040 Documents, materials, or other ORSA-related information considered confidential and privileged—Exceptions—Permitted uses. (1) Documents, materials, or other information, including the ORSA summary report, in the possession or control of the commissioner that are obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information is confidential by law and privileged, is not subject to chapter 42.56 RCW, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner 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 commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(2) Neither the commissioner nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other

information are [is] shared pursuant to this chapter, is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

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

(a) May share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, including proprietary and trade secret documents and materials with other state, federal, and international regulatory agencies, including members of any supervisory college recognized by the national association of insurance commissioners, with the national association of insurance commissioners, and with any third-party consultants designated by the commissioner, 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;

(b) May receive documents, materials, or 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 recognized by the national association of insurance commissioners, from the national association of insurance commissioners, and must maintain as confidential or privileged any document, material, 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;

(c) Shall enter into written agreements with the national association of insurance commissioners or a third-party consultant governing sharing and use of information provided pursuant to this chapter, consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement must 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;

(ii) Specify that ownership of information shared with the national association of insurance commissioners or third-party consultants pursuant to this chapter remains with the commissioner and the national association of insurance commissioners' or a third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) Prohibit the national association of insurance commissioners or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association

of insurance commissioners or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant for disclosure or production;

(v) Require the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners or a third-party consultant pursuant to this chapter; and

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

(4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rule making, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

(5) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in this chapter.

(6) Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant pursuant to this chapter are [is] confidential by law and privileged, are [is] not subject to chapter 42.56 RCW, are [is] not subject to subpoena, and are [is] not subject to discovery or admissible in evidence in any private civil action. [2015 c 17 s 8.]

RCW 48.05A.045 Failure to report—Fines. The commissioner must require any insurer failing, without just cause, to file the ORSA summary report as required in this chapter, after notice and hearing, to pay a fine of five hundred dollars for each day's delay, to be recovered by the commissioner and the fine collected must be transferred to the treasurer for deposit into the state general fund. The maximum fine under this section is one hundred thousand dollars. The commissioner may reduce the fine if the insurer demonstrates to the commissioner that the imposition of the fine would constitute a financial hardship to the insurer. [2015 c 17 s 9.]

RCW 48.05A.900 Short title. This chapter may be known and cited as the risk management and solvency assessment act. [2015 c 17 s 14.]

RCW 48.05A.901 Effective dates—2015 c 17. Except for section 11 of this act, which takes effect July 1, 2017, this act takes effect January 1, 2016. [2015 c 17 s 15.]