



# HOUSE BILL 383: NAIC Models/ORSA & Credit for Reinsurance.

2017-2018 General Assembly

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| <b>Committee:</b>     | Senate Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate | <b>Date:</b>        | June 21, 2017                             |
| <b>Introduced by:</b> | Reps. Setzer, Bumgardner, Henson, Destin Hall   | <b>Prepared by:</b> | Kristen L. Harris<br>Committee Co-Counsel |
| <b>Analysis of:</b>   | PCS to First Edition<br>H383-CSTU-27  |                     |   |

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**OVERVIEW:** *The Proposed Committee Substitute to House Bill 383 would enact legislative changes to North Carolina's insurance laws to comply with the National Association of Insurance Commissioners (NAIC) and allow the North Carolina Department of Insurance (DOI) to maintain its NAIC accreditation.*

*Specifically, the PCS would 1) enact a new insurance regulation, Own Risk and Solvency Assessment (ORSA), which would require an insurer to perform an internal assessment of its material and relevant risks and the sufficiency of its capital resources to support its risks, 2) establish a certification program for foreign reinsurers, and 3) require DOI to adopt rules substantially similar to the most recent model regulation on suitability in annuity transactions issued by the NAIC.*

**[As introduced, this bill was identical to S295, as introduced by Sens. Meredith, Newton, Dunn, which is currently in Senate Rules and Operations of the Senate.]**

**BACKGROUND:** The National Association of Insurance Commissioners is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and the five U.S. territories. The formal certification program began in June 1990. North Carolina has been accredited since 1991. All fifty states, the District of Columbia, and Puerto Rico are currently accredited.

**CURRENT LAW:** Chapter 58 of the General Statutes governs North Carolina's insurance laws. Currently, the provisions in Chapter 58 meet NAIC requirements.

**BILL ANALYSIS:** **Section 1** of the PCS of House Bill 383 would create a new Part 10 in Article 10 [Miscellaneous Insurer Financial Provisions] of Chapter 58 of the General Statutes, entitled "Risk Management and Own Risk and Solvency Assessment". **Sections 2 and 3** would establish a certification program for foreign reinsurers which would allow for a reduction in the current collateral requirements imposed on them. **Sections 4 and 5** would require DOI to adopt rules on suitability in annuity transactions substantially similar to the NAIC's model regulation. Once those rules are adopted, North Carolina's current rules would be repealed.

**Section 1** would incorporate language from the NAIC's Risk Management and Own Risk and Solvency Assessment Model Act into Chapter 58.

G.S. 58-10-705 Definitions.

- Would set forth the definitions that apply in the new Part.

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- Would define "ORSA" as a confidential internal assessment conducted by an insurer or insurance group of the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of its capital resources to support those risks.
- Would define "ORSA Summary Report" as a confidential high-level summary of an insurer's or insurance group's ORSA, or a combination of reports, that contains the information contained in the ORSA Guidance Manual.

## G.S. 58-10-710 Risk Management Framework.

- Would require an insurer, or an insurer's insurance group, to maintain a risk management framework to assist in auditing its material and relevant risks.

## G.S. 58-10-715 ORSA Requirement.

- Would require an insurer to conduct an ORSA regularly and at least annually and when there are significant changes to its risk profile. The ORSA would have to be conducted in accordance with the ORSA Guidance Manual.

## G.S. 58-10-720 ORSA Summary Report.

- Would require an insurer to submit an ORSA summary report to the Commissioner no more than once a year only under certain circumstances.
- Would require the attestation that the proper process was followed in preparing the report and that a copy was given to the appropriate board of directors.
- Would authorize the submission of substantially similar and recent reports with comparable information as described in the ORSA Guidance Manual in lieu of the ORSA summary report.

## G.S. 58-10-725 Exemption.

- Would exempt an insurer from the ORSA requirements if the insurer has an annual direct written and unaffiliated assumed premium less than five hundred million dollars and the insurer's insurance group has an annual direct written and unaffiliated assumed premium less than one billion dollars.
- Would allow an insurer that does not qualify for an exemption to apply for a waiver from the ORSA requirements based upon unique circumstances. The Commissioner would be able to consider various factors in his determination.
- Would require an insurer that no longer qualifies for an exemption to comply with the ORSA requirements within one year following the year the premium threshold was exceeded.

## G.S. 58-10-730 Contents of ORSA Summary Report.

- Would require the ORSA summary report to be prepared in accordance with the ORSA Guidance Manual and the review of the report to be consistent with procedures used in the analysis and examination of multistate or global insurers and insurance groups.

## G.S. 58-10-735 Confidentiality.

- Would classify an ORSA summary report and related documents and information as proprietary, confidential, and not public records.
- Would authorize the Commissioner, under certain circumstances, to use, share, or receive ORSA-related documents and information. For example, the Commissioner would be able to

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use the documents or information as part of his official duties and share and receive documents with other regulatory agencies and the NAIC.

- Would direct the Commissioner to enter into a written agreement with the NAIC or a third-party consultant that governed the sharing and use of ORSA-related information.

## G.S. 58-10-740 Sanctions.

- Would subject an insurer that failed to file a timely ORSA report to a \$100.00 per day fine for each day's delay, not to exceed a total penalty of \$1,000.

## G.S. 58-10-745 Severability Clause.

- Would make the provisions of the new Part severable.

**Sections 2 and 3** would incorporate language from the NAIC's Credit for Reinsurance Model Act into Chapter 58. Substantive provisions are summarized below.

## G.S. 58-7-21(b)(4)c.1.a. Credit for Reinsurance Maintaining Trust Funds.

- Would allow an assuming insurer to reduce the amount of required surplus after having permanently discontinued underwriting new business for at least three years if the new level of surplus is adequate to protect U.S. ceding insurers, policyholders, and claimants.

## G.S. 58-7-21(b)(4)c.3. Credit for Reinsurance Maintaining Trust Funds.

- Would establish requirements for the trust fund for a group of incorporated insurers which has transacted business outside the U.S. for three years prior to application for accreditation.

## G.S. 58-7-21(b)(4a)a. Credit for Reinsurance – Certified Reinsurers.

- To be certified as a reinsurer in North Carolina, an insurer would have to:
  1. Be domiciled and licensed in a qualified jurisdiction.
  2. Maintain a certain amount of capital and surplus.
  3. Maintain financial strength ratings from two or more rating agencies.
  4. Submit to the jurisdiction of North Carolina.
  5. Meet information filing requirements and any other requirements the Commissioner deems relevant.

## G.S. 58-7-21(b)(4a)c. Certification Procedure and G.S. 58-7-21(b)(4a)d. Certified Reinsurer Rating.

- Upon receipt of an application for certification, the Commissioner would post notice on the Department's website and allow 30 days for public comment.
- In the notice approving certification, the Commissioner would include the rating assigned to the reinsurer.
- The reinsurer's rating could be based on factors such as its financial strength ratings from two or more rating agencies, its business practices and reputation for prompt payment of claims, and any regulatory actions taken against it.

## G.S. 58-7-21(b)(4a)e. Credit Allowed a Ceding Insurer.

- The credit allowed a ceding insurer would be based on the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer by the Commissioner.

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## G.S. 58-7-21(b)(4a)f. Qualified Jurisdictions and G.S. 58-7-21(b)(4a)g. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

- Would require the Commissioner to publish a list of qualified jurisdictions from which an assuming insurer is eligible to be considered for certification and lists the factors to be considered in determining if a jurisdiction is qualified.
- If an application has been certified by an NAIC accredited jurisdiction, the Commissioner could defer to its certification and rating.

## G.S. 58-7-21(b)(4a)h. Inactive Certified Reinsurer.

- Would allow a reinsurer to be "inactive" if not assuming any new business, but maintain its certification for its existing business.

## G.S. 58-7-21(b)(4a)i. Change in Rating or Revocation of Certification.

- Would allow the Commissioner to change a reinsurer's rating or suspend, revoke, or modify a reinsurer's certification if it failed to meet its obligations.

## G.S. 58-7-21(b)(4a)j. Mandatory Funding Clause.

- Would require contracts to contain a clause requiring reinsurers to maintain security sufficient to avoid the imposition of a penalty on the ceding insurer.

## G.S. 58-7-21(b)(4a)k. NAIC Reporting and Notification Requirements.

- Would require the Commissioner to follow all NAIC reporting and notification requirements with respect to certified reinsurers and qualified jurisdictions.

## G.S. 58-7-21(b)(8). Failure to Meet Requirements.

- Would allow the Commissioner to suspend or revoke a reinsurer's accreditation or certification, after notice and opportunity for a hearing, if it fails to meet the requirements for accreditation or certification.

## G.S. 58-7-21(b)(9). Concentration Risk.

- Would require ceding insurers to notify the Commissioner regarding reinsurance recoverables of a certain amount and to take steps to diversify its reinsurance program.

**Sections 4 and 5** would incorporate language from the NAIC's Suitability in Annuity Transactions Model Regulation into Chapter 58.

- The model regulation language required to be adopted by DOI in **Section 4** would set standards and procedures for suitable annuity recommendations and require insurers to establish a system to supervise recommendations so that the insurance needs and financial objectives of consumers are appropriately addressed. These rules would not require review by the Rules Review Commission.
- **Section 5** would repeal Part 4 of Article 60 of Chapter 58 of the General Statutes, which sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products, once rules are adopted in accordance with **Section 4**.

**EFFECTIVE DATE:** Sections 2 and 3 of this act becomes effective on January 1, 2019. Section 1 of this act becomes effective January 1, 2018, and the Commissioner may request filing of a report under G.S. 58-10-720, as enacted by Section 1 of this act, on or after that date. Section 5 of this act becomes

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effective on the date that rules adopted pursuant to Section 4 of this act become effective. The remainder of this act is effective when it becomes law. The Codifier of Rules shall notify the Revisor of Statutes of the effective date of the rules adopted as required by this act. Except as otherwise provided, the remainder of this act is effective when it becomes law.

*\* The Department of Insurance contributed to this summary.*