

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0809.01 Bart Miller x2173

SENATE BILL 16-029

SENATE SPONSORSHIP

Scheffel and Heath,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING CHANGES TO COLORADO INSURANCE LAWS NECESSARY
102 TO MAINTAIN ACCREDITATION WITH THE NATIONAL
103 ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC), AND, IN
104 CONNECTION THEREWITH, ADOPTING A NEW OWN RISK AND
105 SOLVENCY ASSESSMENT LAW (ORSA) IN A FORM
106 SUBSTANTIALLY SIMILAR TO THE NAIC MODEL AND ENHANCING
107 COLORADO'S INSURANCE HOLDING COMPANY SYSTEM LAW BY
108 ADDING A REQUIRED NAIC MODEL PROVISION SPECIFYING THE
109 INSURANCE COMMISSIONER'S POWER TO ISSUE SUBPOENAS AND
110 EXAMINE WITNESSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In 2014, Colorado's insurance company holding systems law was amended to comply with the National Association of Insurance Commissioners' (NAIC) model law. **Section 1** of the bill adds authority in this law from the NAIC model for the insurance commissioner to compel production of information because this authority was inadvertently omitted from the 2014 amendments.

Section 2 of the bill enacts the NAIC own risk and solvency assessment (ORSA) model law. This law requires the filing with the insurance commissioner of annual ORSA summary reports by insurers. The law requires insurers to maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-806, **add** (5) as
3 follows:

4 **10-3-806. Examination.** (5) IF THE INSURER FAILS TO COMPLY
5 WITH AN ORDER, THE COMMISSIONER MAY EXAMINE THE AFFILIATES TO
6 OBTAIN THE INFORMATION. THE COMMISSIONER MAY ALSO ISSUE
7 SUBPOENAS, ADMINISTER OATHS, AND EXAMINE UNDER OATH ANY PERSON
8 FOR PURPOSES OF DETERMINING COMPLIANCE WITH THIS SECTION. UPON
9 THE FAILURE OR REFUSAL OF ANY PERSON TO OBEY A SUBPOENA, THE
10 COMMISSIONER MAY PETITION A COURT OF COMPETENT JURISDICTION, AND
11 UPON PROPER SHOWING, THE COURT MAY ENTER AN ORDER COMPELLING
12 THE WITNESS TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY
13 EVIDENCE. FAILURE TO OBEY THE COURT ORDER IS PUNISHABLE AS
14 CONTEMPT OF COURT. EVERY PERSON SHALL ATTEND AS A WITNESS AT THE
15 PLACE SPECIFIED IN THE SUBPOENA, WHEN SUBPOENAED, ANYWHERE
16 WITHIN THE STATE. THE COMPANY BEING EXAMINED SHALL PAY

1 WITNESSES THE SAME FEES AND MILEAGE AS ARE PAID TO WITNESSES IN
2 THE COURTS OF THIS STATE, AND THE COMPANY BEING EXAMINED SHALL
3 ITEMIZE THE WITNESS FEES, MILEAGE, AND ACTUAL EXPENSE, IF ANY,
4 NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES
5 AND THEIR TESTIMONY.

6 **SECTION 2.** In Colorado Revised Statutes, **add** part 15 to article
7 3 of title 10 as follows:

8 **PART 15**

9 **OWN RISK AND SOLVENCY ASSESSMENT (ORSA)**

10 **10-3-1501. Purpose and scope - legislative declaration.** (1) THE
11 PURPOSE OF THIS PART 15 IS TO PROVIDE THE REQUIREMENTS FOR
12 MAINTAINING A RISK MANAGEMENT FRAMEWORK AND COMPLETING AN
13 OWN RISK AND SOLVENCY ASSESSMENT (ORSA) AND PROVIDE GUIDANCE
14 AND INSTRUCTIONS FOR FILING AN ORSA SUMMARY REPORT WITH THE
15 COMMISSIONER.

16 (2) THE REQUIREMENTS OF THIS PART 15 APPLY TO ALL INSURERS
17 DOMICILED IN THIS STATE UNLESS EXEMPT PURSUANT TO SECTION
18 10-3-1506.

19 (3) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE
20 ORSA SUMMARY REPORT WILL CONTAIN CONFIDENTIAL AND SENSITIVE
21 INFORMATION RELATED TO AN INSURER'S OR INSURANCE GROUP'S
22 IDENTIFICATION OF RISKS MATERIAL AND RELEVANT TO THE INSURER OR
23 INSURANCE GROUP FILING THE REPORT. THIS INFORMATION WILL INCLUDE
24 PROPRIETARY AND TRADE SECRET INFORMATION THAT HAS THE POTENTIAL
25 FOR HARM AND COMPETITIVE DISADVANTAGE TO THE INSURER OR
26 INSURANCE GROUP IF THE INFORMATION IS MADE PUBLIC. IT IS THE INTENT
27 OF THE GENERAL ASSEMBLY THAT THE ORSA SUMMARY REPORT BE A

1 CONFIDENTIAL DOCUMENT FILED WITH THE COMMISSIONER, BE SHARED
2 ONLY AS STATED IN THIS PART 15 AND TO ASSIST THE COMMISSIONER IN
3 THE PERFORMANCE OF HIS OR HER DUTIES, AND NOT BE SUBJECT TO PUBLIC
4 DISCLOSURE.

5 **10-3-1502. Definitions.** AS USED IN THIS PART 15, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "INSURANCE GROUP" MEANS, FOR THE PURPOSE OF
8 CONDUCTING AN ORSA, THOSE INSURERS AND AFFILIATES INCLUDED
9 WITHIN AN INSURANCE HOLDING COMPANY SYSTEM AS DEFINED IN
10 SECTION 10-3-801 (5).

11 (2) "INSURER" HAS THE SAME MEANING AS SET FORTH IN SECTION
12 10-3-801 (6).

13 (3) "NAIC" OR "NATIONAL ASSOCIATION OF INSURANCE
14 COMMISSIONERS" MEANS THE ORGANIZATION OF INSURANCE REGULATORS
15 FROM THE FIFTY STATES, THE DISTRICT OF COLUMBIA, AND THE FOUR
16 UNITED STATES TERRITORIES.

17 (4) "ORSA GUIDANCE MANUAL" MEANS THE CURRENT VERSION OF
18 THE OWN RISK AND SOLVENCY ASSESSMENT GUIDANCE MANUAL
19 DEVELOPED AND ADOPTED BY THE NAIC AND AS AMENDED FROM TIME TO
20 TIME. A CHANGE IN THE ORSA GUIDANCE MANUAL IS EFFECTIVE ON THE
21 JANUARY 1 FOLLOWING THE CALENDAR YEAR IN WHICH THE CHANGE IS
22 ADOPTED BY THE NAIC.

23 (5) "ORSA SUMMARY REPORT" MEANS A CONFIDENTIAL,
24 HIGH-LEVEL SUMMARY OF AN INSURER'S OR INSURANCE GROUP'S ORSA.

25 (6) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA" MEANS
26 A CONFIDENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE,
27 SCALE, AND COMPLEXITY OF AN INSURER OR INSURANCE GROUP,

1 CONDUCTED BY THAT INSURER OR INSURANCE GROUP OF THE MATERIAL
2 AND RELEVANT RISKS ASSOCIATED WITH THE INSURER'S OR INSURANCE
3 GROUP'S CURRENT BUSINESS PLAN AND THE SUFFICIENCY OF CAPITAL
4 RESOURCES TO SUPPORT THOSE RISKS.

5 **10-3-1503. Risk management framework.** AN INSURER SHALL
6 MAINTAIN A RISK MANAGEMENT FRAMEWORK TO ASSIST THE INSURER
7 WITH IDENTIFYING, ASSESSING, MONITORING, MANAGING, AND REPORTING
8 ON ITS MATERIAL AND RELEVANT RISKS. THIS REQUIREMENT MAY BE
9 SATISFIED IF THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER
10 MAINTAINS A RISK MANAGEMENT FRAMEWORK APPLICABLE TO THE
11 OPERATIONS OF THE INSURER.

12 **10-3-1504. ORSA requirement.** SUBJECT TO SECTION 10-3-1506,
13 AN INSURER, OR THE INSURANCE GROUP OF WHICH THE INSURER IS A
14 MEMBER, SHALL REGULARLY CONDUCT AN ORSA CONSISTENT WITH A
15 PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL. THE ORSA
16 MUST BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME
17 WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE
18 INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

19 **10-3-1505. ORSA summary report.** (1) UPON THE
20 COMMISSIONER'S REQUEST, AND NO MORE THAN ONCE EACH YEAR, AN
21 INSURER SHALL SUBMIT TO THE COMMISSIONER AN ORSA SUMMARY
22 REPORT OR ANY COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE
23 INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE
24 TO THE INSURER OR THE INSURANCE GROUP OF WHICH IT IS A MEMBER OR
25 TO BOTH THE INSURER AND INSURANCE GROUP. NOTWITHSTANDING ANY
26 REQUEST FROM THE COMMISSIONER, IF THE INSURER IS A MEMBER OF AN
27 INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT REQUIRED BY

1 THIS SECTION IF THE COMMISSIONER IS THE LEAD STATE COMMISSIONER OF
2 THE INSURANCE GROUP AS DETERMINED BY THE PROCEDURES WITHIN THE
3 FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL
4 ASSOCIATION OF INSURANCE COMMISSIONERS.

5 (2) THE REPORT SHALL INCLUDE A SIGNATURE OF THE INSURER'S
6 OR INSURANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING
7 RESPONSIBILITY FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK
8 MANAGEMENT PROCESS, ATTESTING TO THE BEST OF HIS OR HER BELIEF
9 AND KNOWLEDGE THAT THE INSURER APPLIES THE ENTERPRISE RISK
10 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 OF THE BOARD OF
13 DIRECTORS.

14 (3) AN INSURER MAY COMPLY WITH SUBSECTION (1) OF THIS
15 SECTION BY PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR
16 REPORT PROVIDED BY THE INSURER OR ANOTHER MEMBER OF AN
17 INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER TO THE
18 COMMISSIONER OF ANOTHER STATE OR TO A SUPERVISOR OR REGULATOR
19 OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES INFORMATION
20 THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA
21 GUIDANCE MANUAL. ANY REPORT IN A LANGUAGE OTHER THAN ENGLISH
22 MUST BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE
23 ENGLISH LANGUAGE.

24 **10-3-1506. Exemption.** (1) AN INSURER IS EXEMPT FROM THE
25 REQUIREMENTS OF THIS PART 15 IF:

26 (a) THE INSURER HAS AN ANNUAL DIRECT WRITTEN AND
27 UNAFFILIATED ASSUMED PREMIUM, INCLUDING AN INTERNATIONAL DIRECT

1 AND ASSUMED PREMIUM, BUT EXCLUDING PREMIUMS REINSURED WITH THE
2 FEDERAL CROP INSURANCE CORPORATION AND NATIONAL FLOOD
3 INSURANCE PROGRAM, LESS THAN FIVE HUNDRED MILLION DOLLARS; AND

4 (b) THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER
5 HAS AN ANNUAL DIRECT WRITTEN AND UNAFFILIATED ASSUMED PREMIUM,
6 INCLUDING AN INTERNATIONAL DIRECT AND ASSUMED PREMIUM, BUT
7 EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE
8 CORPORATION AND NATIONAL FLOOD INSURANCE PROGRAM, LESS THAN
9 ONE BILLION DOLLARS.

10 (2) IF AN INSURER QUALIFIES FOR EXEMPTION UNDER PARAGRAPH
11 (a) OF SUBSECTION (1) OF THIS SECTION, BUT THE INSURANCE GROUP OF
12 WHICH THE INSURER IS A MEMBER DOES NOT QUALIFY FOR EXEMPTION
13 UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THEN THE
14 ORSA SUMMARY REPORT REQUIRED UNDER SECTION 10-3-1505 MUST
15 INCLUDE EVERY INSURER WITHIN THE INSURANCE GROUP. THIS
16 REQUIREMENT MAY BE SATISFIED BY THE SUBMISSION OF MORE THAN ONE
17 ORSA SUMMARY REPORT FOR ANY COMBINATION OF INSURERS IF ANY
18 COMBINATION OF REPORTS INCLUDES EVERY INSURER WITHIN THE
19 INSURANCE GROUP.

20 (3) IF AN INSURER DOES NOT QUALIFY FOR EXEMPTION UNDER
21 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, BUT THE INSURANCE
22 GROUP OF WHICH IT IS A MEMBER QUALIFIES FOR EXEMPTION UNDER
23 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THEN THE ONLY
24 ORSA SUMMARY REPORT REQUIRED UNDER SECTION 10-3-1505 IS THE
25 REPORT APPLICABLE TO THAT INSURER.

26 (4) AN INSURER THAT DOES NOT QUALIFY FOR EXEMPTION UNDER
27 SUBSECTION (1) OF THIS SECTION MAY APPLY TO THE COMMISSIONER FOR

1 A WAIVER FROM THE REQUIREMENTS OF THIS PART 15 BASED UPON UNIQUE
2 CIRCUMSTANCES. IN DECIDING WHETHER TO GRANT THE INSURER'S
3 REQUEST FOR WAIVER, THE COMMISSIONER MAY CONSIDER THE TYPE AND
4 VOLUME OF BUSINESS WRITTEN, OWNERSHIP AND ORGANIZATIONAL
5 STRUCTURE, AND ANY OTHER FACTOR THE COMMISSIONER CONSIDERS
6 RELEVANT TO THE INSURER OR INSURANCE GROUP OF WHICH THE INSURER
7 IS A MEMBER. IF THE INSURER IS PART OF AN INSURANCE GROUP WITH
8 INSURERS DOMICILED IN MORE THAN ONE STATE, THE COMMISSIONER
9 SHALL COORDINATE WITH THE LEAD STATE COMMISSIONER AND WITH THE
10 OTHER DOMICILIARY COMMISSIONERS IN CONSIDERING WHETHER TO
11 GRANT THE INSURER'S REQUEST FOR A WAIVER.

12 (5) NOTWITHSTANDING THE EXEMPTIONS PROVIDED IN THIS
13 SECTION:

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

20 (b) THE COMMISSIONER MAY REQUIRE THAT AN INSURER MAINTAIN
21 A RISK MANAGEMENT FRAMEWORK, CONDUCT AN ORSA, AND FILE AN
22 ORSA SUMMARY REPORT IF THE INSURER HAS RISK-BASED CAPITAL FOR
23 A COMPANY ACTION LEVEL EVENT AS SET FORTH IN THE APPLICABLE RULES
24 PROMULGATED BY THE COMMISSIONER RELATING TO INSURERS'
25 RISK-BASED CAPITAL, MEETS ONE OR MORE OF THE STANDARDS OF AN
26 INSURER DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION AS DEFINED
27 IN THE APPLICABLE RULES PROMULGATED BY THE COMMISSIONER TO

1 DEFINE STANDARDS AND THE COMMISSIONER'S AUTHORITY FOR
2 COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION, OR
3 OTHERWISE EXHIBITS QUALITIES OF A TROUBLED INSURER AS DETERMINED
4 BY THE COMMISSIONER.

5 (6) IF AN INSURER THAT QUALIFIES FOR AN EXEMPTION UNDER
6 SUBSECTION (1) OF THIS SECTION SUBSEQUENTLY NO LONGER QUALIFIES
7 FOR THAT EXEMPTION DUE TO CHANGES IN PREMIUM AS REFLECTED IN THE
8 INSURER'S MOST RECENT ANNUAL STATEMENT OR IN THE MOST RECENT
9 ANNUAL STATEMENTS OF THE INSURERS WITHIN THE INSURANCE GROUP OF
10 WHICH THE INSURER IS A MEMBER, THE INSURER HAS ONE YEAR AFTER THE
11 YEAR THE THRESHOLD IS EXCEEDED TO COMPLY WITH THE REQUIREMENTS
12 OF THIS PART 15.

13 **10-3-1507. Contents of ORSA summary report.** (1) THE ORSA
14 SUMMARY REPORT MUST BE PREPARED TO BE CONSISTENT WITH THE
15 ORSA GUIDANCE MANUAL, SUBJECT TO THE REQUIREMENTS OF
16 SUBSECTION (2) OF THIS SECTION. DOCUMENTATION AND SUPPORTING
17 INFORMATION MUST BE MAINTAINED AND MADE AVAILABLE UPON
18 EXAMINATION OR UPON REQUEST OF THE COMMISSIONER.

19 (2) THE REVIEW OF THE ORSA SUMMARY REPORT AND ANY
20 ADDITIONAL REQUESTS FOR INFORMATION MUST BE MADE USING SIMILAR
21 PROCEDURES CURRENTLY USED IN THE ANALYSIS AND EXAMINATION OF
22 MULTISTATE OR GLOBAL INSURERS AND INSURANCE GROUPS.

23 **10-3-1508. Confidentiality.** (1) DOCUMENTS, MATERIALS, OR
24 OTHER INFORMATION, INCLUDING THE ORSA SUMMARY REPORT, IN THE
25 POSSESSION OR CONTROL OF THE DIVISION OF INSURANCE THAT ARE
26 OBTAINED BY, CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY
27 OTHER PERSON UNDER THIS PART 15, ARE RECOGNIZED BY THIS STATE AS

1 BEING PROPRIETARY AND CONTAINING TRADE SECRETS. ALL DOCUMENTS,
2 MATERIALS, OR OTHER INFORMATION, INCLUDING THE ORSA SUMMARY
3 REPORT, ARE CONFIDENTIAL BY LAW AND PRIVILEGED; ARE NOT SUBJECT
4 TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE
5 24, C.R.S., OR OTHER OPEN RECORDS, FREEDOM OF INFORMATION,
6 SUNSHINE, OR OTHER SIMILAR LAW OF THIS STATE; ARE NOT SUBJECT TO
7 SUBPOENA; AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN
8 EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE COMMISSIONER
9 MAY USE THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
10 FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A
11 PART OF THE COMMISSIONER'S OFFICIAL DUTIES. THE COMMISSIONER
12 SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR OTHER
13 INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE
14 INSURER.

15 (2) NEITHER THE COMMISSIONER NOR ANY PERSON WHO RECEIVED
16 DOCUMENTS, MATERIALS, OR OTHER ORSA-RELATED INFORMATION,
17 THROUGH EXAMINATION OR OTHERWISE, WHILE ACTING UNDER THE
18 AUTHORITY OF THE COMMISSIONER OR WITH WHOM SUCH DOCUMENTS,
19 MATERIALS, OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS
20 PART 15 IS PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL
21 ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR
22 INFORMATION SUBJECT TO SUBSECTION (1) OF THIS SECTION.

23 (3) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE
24 COMMISSIONER'S REGULATORY DUTIES, THE COMMISSIONER:

25 (a) MAY, UPON REQUEST, SHARE DOCUMENTS, MATERIALS, OR
26 OTHER ORSA-RELATED INFORMATION, INCLUDING THE CONFIDENTIAL
27 AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO

1 SUBSECTION (1) OF THIS SECTION, INCLUDING PROPRIETARY AND
2 TRADE-SECRET DOCUMENTS AND MATERIALS, WITH OTHER STATE,
3 FEDERAL, AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES,
4 INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE AS DEFINED IN
5 SECTION 10-3-807, WITH THE NAIC AND WITH ANY THIRD-PARTY
6 CONSULTANTS DESIGNATED BY THE COMMISSIONER, IF THE RECIPIENT
7 AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
8 STATUS OF THE ORSA-RELATED DOCUMENTS, MATERIALS, OR OTHER
9 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO
10 MAINTAIN CONFIDENTIALITY; AND

11 (b) MAY RECEIVE DOCUMENTS, MATERIALS, OR OTHER
12 ORSA-RELATED INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL
13 AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING
14 PROPRIETARY AND TRADE-SECRET INFORMATION OR DOCUMENTS, FROM
15 REGULATORY OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS,
16 INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE AS DEFINED IN
17 SECTION 10-3-807, AND FROM THE NAIC, AND SHALL MAINTAIN AS
18 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENTS, MATERIALS, OR
19 INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT
20 IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION
21 THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR INFORMATION;

22 (c) SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE NAIC OR
23 A THIRD-PARTY CONSULTANT GOVERNING SHARING AND USE OF
24 INFORMATION PROVIDED PURSUANT TO THIS PART 15, CONSISTENT WITH
25 THIS SUBSECTION (3), WHICH AGREEMENT MUST:

26 (I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE
27 CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE

1 NAIC OR A THIRD-PARTY CONSULTANT PURSUANT TO THIS PART 15,
2 INCLUDING PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC
3 WITH OTHER STATE REGULATORS FROM STATES IN WHICH THE INSURANCE
4 GROUP HAS DOMICILED INSURERS. THE AGREEMENT MUST PROVIDE THAT
5 THE RECIPIENT AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY
6 AND PRIVILEGED STATUS OF THE ORSA-RELATED DOCUMENTS,
7 MATERIALS, OR OTHER INFORMATION AND HAS VERIFIED IN WRITING THE
8 LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

9 (II) SPECIFY THAT OWNERSHIP OF INFORMATION SHARED WITH THE
10 NAIC OR A THIRD-PARTY CONSULTANT PURSUANT TO THIS PART 15
11 REMAINS WITH THE COMMISSIONER AND THAT THE NAIC'S OR
12 THIRD-PARTY CONSULTANT'S USE OF THE INFORMATION IS SUBJECT TO THE
13 DIRECTION OF THE COMMISSIONER;

14 (III) PROHIBIT THE NAIC OR THIRD-PARTY CONSULTANT FROM
15 STORING THE INFORMATION SHARED PURSUANT TO THIS PART 15 IN A
16 PERMANENT DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED;

17 (IV) REQUIRE PROMPT NOTICE BE GIVEN TO AN INSURER WHOSE
18 CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NAIC OR A
19 THIRD-PARTY CONSULTANT PURSUANT TO THIS PART 15 IS SUBJECT TO A
20 REQUEST OR SUBPOENA TO THE NAIC OR THIRD-PARTY CONSULTANT FOR
21 DISCLOSURE OR PRODUCTION;

22 (V) REQUIRE THE NAIC OR A THIRD-PARTY CONSULTANT TO
23 CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR
24 ADMINISTRATIVE ACTION IN WHICH THE NAIC OR THIRD-PARTY
25 CONSULTANT MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL
26 INFORMATION ABOUT THE INSURER SHARED WITH THE NAIC OR
27 THIRD-PARTY CONSULTANT PURSUANT TO THIS PART 15; AND

1 (VI) IN THE CASE OF AN AGREEMENT INVOLVING A THIRD-PARTY
2 CONSULTANT, PROVIDE FOR THE INSURER'S WRITTEN CONSENT.

3 (4) THE SHARING OF INFORMATION AND DOCUMENTS BY THE
4 COMMISSIONER UNDER THIS PART 15 DOES NOT CONSTITUTE A
5 DELEGATION OF REGULATORY AUTHORITY OR RULE-MAKING, AND THE
6 COMMISSIONER IS SOLELY RESPONSIBLE FOR THE ADMINISTRATION,
7 EXECUTION, AND ENFORCEMENT OF THIS PART 15.

8 (5) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF
9 CONFIDENTIALITY IN THE DOCUMENTS, PROPRIETARY AND TRADE-SECRET
10 MATERIALS, OR OTHER ORSA-RELATED INFORMATION MAY OCCUR AS A
11 RESULT OF DISCLOSURE OF SUCH ORSA-RELATED INFORMATION OR
12 DOCUMENTS TO THE COMMISSIONER UNDER THIS SECTION OR AS A RESULT
13 OF SHARING AS AUTHORIZED IN THIS PART 15.

14 (6) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
15 POSSESSION OR CONTROL OF THE NAIC OR A THIRD-PARTY CONSULTANT
16 UNDER THIS PART 15 IS CONFIDENTIAL BY LAW AND PRIVILEGED; IS NOT
17 SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72
18 OF TITLE 24, C.R.S., OR OTHER OPEN RECORDS, FREEDOM OF
19 INFORMATION, SUNSHINE, OR OTHER SIMILAR LAW OF THIS STATE; IS NOT
20 SUBJECT TO SUBPOENA; AND IS NOT SUBJECT TO DISCOVERY OR
21 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.

22 **10-3-1509. Sanctions.** ANY INSURER FAILING, WITHOUT JUST
23 CAUSE, TO TIMELY FILE THE ORSA SUMMARY REPORT AS REQUIRED IN
24 THIS PART 15 SHALL, AFTER NOTICE AND HEARING, PAY A PENALTY OF TWO
25 HUNDRED DOLLARS FOR EACH DAY'S DELAY. THE MAXIMUM PENALTY
26 UNDER THIS SECTION IS TWENTY-FIVE THOUSAND DOLLARS. THE
27 COMMISSIONER MAY REDUCE THE PENALTY IF THE INSURER

1 DEMONSTRATES TO THE COMMISSIONER THAT THE IMPOSITION OF THE
2 PENALTY WOULD CONSTITUTE A FINANCIAL HARDSHIP TO THE INSURER.

3 **10-3-1510. Rules.** THE COMMISSIONER MAY, UPON NOTICE AND
4 OPPORTUNITY FOR ALL INTERESTED PERSONS TO BE HEARD, ISSUE RULES
5 AND ORDERS AS ARE NECESSARY TO CARRY OUT THIS PART 15.

6 **10-3-1511. Effective date.** THE REQUIREMENTS OF THIS PART 15
7 ARE EFFECTIVE ON JANUARY 1, 2017. THE FIRST FILING OF THE ORSA
8 SUMMARY REPORT IS IN 2017 AS SPECIFIED IN SECTION 10-3-1505.

9 **SECTION 3. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2016 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.