



Sen. William R. Haine

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09800SB1412sam001

LRB098 06643 RPM 41704 a

1 AMENDMENT TO SENATE BILL 1412

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1412 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. If and only if House Bill 2290 becomes law, the  
5 Freedom of Information Act is amended by changing Section 7.5  
6 as follows:

7 (5 ILCS 140/7.5)

8 Sec. 7.5. Statutory Exemptions. To the extent provided for  
9 by the statutes referenced below, the following shall be exempt  
10 from inspection and copying:

11 (a) All information determined to be confidential under  
12 Section 4002 of the Technology Advancement and Development Act.

13 (b) Library circulation and order records identifying  
14 library users with specific materials under the Library Records  
15 Confidentiality Act.

16 (c) Applications, related documents, and medical records

1 received by the Experimental Organ Transplantation Procedures  
2 Board and any and all documents or other records prepared by  
3 the Experimental Organ Transplantation Procedures Board or its  
4 staff relating to applications it has received.

5 (d) Information and records held by the Department of  
6 Public Health and its authorized representatives relating to  
7 known or suspected cases of sexually transmissible disease or  
8 any information the disclosure of which is restricted under the  
9 Illinois Sexually Transmissible Disease Control Act.

10 (e) Information the disclosure of which is exempted under  
11 Section 30 of the Radon Industry Licensing Act.

12 (f) Firm performance evaluations under Section 55 of the  
13 Architectural, Engineering, and Land Surveying Qualifications  
14 Based Selection Act.

15 (g) Information the disclosure of which is restricted and  
16 exempted under Section 50 of the Illinois Prepaid Tuition Act.

17 (h) Information the disclosure of which is exempted under  
18 the State Officials and Employees Ethics Act, and records of  
19 any lawfully created State or local inspector general's office  
20 that would be exempt if created or obtained by an Executive  
21 Inspector General's office under that Act.

22 (i) Information contained in a local emergency energy plan  
23 submitted to a municipality in accordance with a local  
24 emergency energy plan ordinance that is adopted under Section  
25 11-21.5-5 of the Illinois Municipal Code.

26 (j) Information and data concerning the distribution of

1 surcharge moneys collected and remitted by wireless carriers  
2 under the Wireless Emergency Telephone Safety Act.

3 (k) Law enforcement officer identification information or  
4 driver identification information compiled by a law  
5 enforcement agency or the Department of Transportation under  
6 Section 11-212 of the Illinois Vehicle Code.

7 (l) Records and information provided to a residential  
8 health care facility resident sexual assault and death review  
9 team or the Executive Council under the Abuse Prevention Review  
10 Team Act.

11 (m) Information provided to the predatory lending database  
12 created pursuant to Article 3 of the Residential Real Property  
13 Disclosure Act, except to the extent authorized under that  
14 Article.

15 (n) Defense budgets and petitions for certification of  
16 compensation and expenses for court appointed trial counsel as  
17 provided under Sections 10 and 15 of the Capital Crimes  
18 Litigation Act. This subsection (n) shall apply until the  
19 conclusion of the trial of the case, even if the prosecution  
20 chooses not to pursue the death penalty prior to trial or  
21 sentencing.

22 (o) Information that is prohibited from being disclosed  
23 under Section 4 of the Illinois Health and Hazardous Substances  
24 Registry Act.

25 (p) Security portions of system safety program plans,  
26 investigation reports, surveys, schedules, lists, data, or

1 information compiled, collected, or prepared by or for the  
2 Regional Transportation Authority under Section 2.11 of the  
3 Regional Transportation Authority Act or the St. Clair County  
4 Transit District under the Bi-State Transit Safety Act.

5 (q) Information prohibited from being disclosed by the  
6 Personnel Records Review Act.

7 (r) Information prohibited from being disclosed by the  
8 Illinois School Student Records Act.

9 (s) Information the disclosure of which is restricted under  
10 Section 5-108 of the Public Utilities Act.

11 (t) All identified or deidentified health information in  
12 the form of health data or medical records contained in, stored  
13 in, submitted to, transferred by, or released from the Illinois  
14 Health Information Exchange, and identified or deidentified  
15 health information in the form of health data and medical  
16 records of the Illinois Health Information Exchange in the  
17 possession of the Illinois Health Information Exchange  
18 Authority due to its administration of the Illinois Health  
19 Information Exchange. The terms "identified" and  
20 "deidentified" shall be given the same meaning as in the Health  
21 Insurance Accountability and Portability Act of 1996, Public  
22 Law 104-191, or any subsequent amendments thereto, and any  
23 regulations promulgated thereunder.

24 (u) Records and information provided to an independent team  
25 of experts under Brian's Law.

26 (v) Names and information of people who have applied for or

1 received Firearm Owner's Identification Cards under the  
2 Firearm Owners Identification Card Act.

3 (w) Personally identifiable information which is exempted  
4 from disclosure under subsection (g) of Section 19.1 of the  
5 Toll Highway Act.

6 (x) Information which is exempted from disclosure under  
7 Section 5-1014.3 of the Counties Code or Section 8-11-21 of the  
8 Illinois Municipal Code.

9 (y) Information that is exempted from disclosure under  
10 Section 129.8 of the Illinois Insurance Code.

11 (Source: P.A. 96-542, eff. 1-1-10; 96-1235, eff. 1-1-11;  
12 96-1331, eff. 7-27-10; 97-80, eff. 7-5-11; 97-333, eff.  
13 8-12-11; 97-342, eff. 8-12-11; 97-813, eff. 7-13-12; 97-976,  
14 eff. 1-1-13.)

15 Section 10. If and only if House Bill 2290 becomes law, the  
16 Illinois Insurance Code is amended by adding Article VIII 1/4  
17 as follows:

18 (215 ILCS 5/Art. VIII 1/4 heading new)

19 ARTICLE VIII 1/4. RISK MANAGEMENT AND

20 OWN RISK AND SOLVENCY ASSESSMENT

21 (215 ILCS 5/129 new)

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

1 (215 ILCS 5/129.1 new)

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

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

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

24 (215 ILCS 5/129.2 new)

1       Sec. 129.2. Definitions. In this Article:

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

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

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

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

26       "ORSA summary report" means a confidential high-level

1 summary of an insurer or insurance group's ORSA.

2 (215 ILCS 5/129.3 new)

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

10 (215 ILCS 5/129.4 new)

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

19 (215 ILCS 5/129.5 new)

20 Sec. 129.5. ORSA summary report.

21 (a) Upon the Director's request, and no more than once each  
22 year, an insurer shall submit to the Director an ORSA summary  
23 report or any combination of reports that together contain the



1 information described in the ORSA Guidance Manual, applicable  
2 to the insurer and the insurance group of which it is a member.  
3 Notwithstanding any request from the Director, if the insurer  
4 is a member of an insurance group, the insurer shall submit the  
5 report or reports required by this subsection (a) if the  
6 Director is the lead state commissioner of the insurance group  
7 as determined by the procedures within the Financial Analysis  
8 Handbook adopted by the National Association of Insurance  
9 Commissioners.

10 (b) The report or reports shall include a signature of the  
11 insurer or insurance group's chief risk officer or other  
12 executive having responsibility for the oversight of the  
13 insurer's enterprise risk management process attesting to the  
14 best of his or her belief and knowledge that the insurer  
15 applies the enterprise risk management process described in the  
16 ORSA summary report and that a copy of the report has been  
17 provided to the insurer's board of directors or the appropriate  
18 committee thereof.

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

1 English must be accompanied by a translation of that report  
2 into the English language.

3 (d) The first filing of the ORSA summary report shall be in  
4 2015.

5 (215 ILCS 5/129.6 new)

6 Sec. 129.6. Contents of ORSA summary report.

7 (a) The ORSA summary report shall be prepared consistent  
8 with the ORSA Guidance Manual, subject to the requirements of  
9 subsection (b) of this Section. Documentation and supporting  
10 information shall be maintained and made available upon  
11 examination or upon the request of the Director.

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

17 (215 ILCS 5/129.7 new)

18 Sec. 129.7. Exemption.

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

21 (1) the insurer has annual direct written and  
22 unaffiliated assumed premium, including international  
23 direct and assumed premium, but excluding premiums  
24 reinsured with the Federal Crop Insurance Corporation and

1 Federal Flood Program, less than \$500,000,000; and

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

8 (b) If an insurer qualifies for exemption pursuant to item  
9 (1) of subsection (a) of this Section, but the insurance group  
10 of which the insurer is a member does not qualify for exemption  
11 pursuant to item (2) of subsection (a) of this Section, then  
12 the ORSA summary report that may be required pursuant to  
13 Section 129.5 of this Code shall include every insurer within  
14 the insurance group. This requirement may be satisfied by the  
15 submission of more than one ORSA summary report for any  
16 combination of insurers, provided any combination of reports  
17 includes every insurer within the insurance group.

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

24 (d) An insurer that does not qualify for exemption pursuant  
25 to subsection (a) of this Section may apply to the Director for  
26 a waiver from the requirements of this Article based upon

1 unique circumstances. In deciding whether to grant the  
2 insurer's request for waiver, the Director may consider the  
3 type and volume of business written, ownership and  
4 organizational structure, and any other factor the Director  
5 considers relevant to the insurer or insurance group of which  
6 the insurer is a member. If the insurer is part of an insurance  
7 group with insurers domiciled in more than one state, the  
8 Director shall coordinate with the lead state commissioner and  
9 with the other domiciliary commissioners in considering  
10 whether to grant the insurer's request for a waiver.

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

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

20 (2) The Director may require that an insurer maintain a  
21 risk management framework, conduct an ORSA, and file an  
22 ORSA summary report if the insurer has risk-based capital  
23 for a company action level event as set forth in Section  
24 35A-15 of this Code, meets one or more of the standards of  
25 an insurer deemed to be in hazardous financial condition as  
26 defined in Section 186.1 of this Code, or otherwise

1 exhibits qualities of a troubled insurer as determined by  
2 the Director.

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

11 (215 ILCS 5/129.8 new)

12 Sec. 129.8. Confidentiality.

13 (a) Documents, materials, or other information, including  
14 the ORSA summary report, in the possession or control of the  
15 Department that are obtained by, created by, or disclosed to  
16 the Director or any other person under this Article, is  
17 recognized by this State as being proprietary and to contain  
18 trade secrets. All such documents, materials, or other  
19 information shall be confidential by law and privileged, shall  
20 not be subject to the Freedom of Information Act, shall not be  
21 subject to subpoena, and shall not be subject to discovery or  
22 admissible in evidence in any private civil action. However,  
23 the Director is authorized to use the documents, materials, or  
24 other information in the furtherance of any regulatory or legal  
25 action brought as a part of the Director's official duties. The

1 Director shall not otherwise make the documents, materials, or  
2 other information public without the prior written consent of  
3 the insurer.

4 (b) Neither the Director nor any person who received  
5 documents, materials, or other ORSA-related information,  
6 through examination or otherwise, while acting under the  
7 authority of the Director or with whom such documents,  
8 materials, or other information are shared pursuant to this  
9 Article shall be permitted or required to testify in any  
10 private civil action concerning any confidential documents,  
11 materials, or information subject to subsection (a) of this  
12 Section.

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

15 (1) upon request, share documents, materials, or other  
16 ORSA-related information, including the confidential and  
17 privileged documents, materials, or information subject to  
18 subsection (a) of this Section, including proprietary and  
19 trade secret documents and materials with other state,  
20 federal, and international financial regulatory agencies,  
21 including members of any supervisory college as defined in  
22 the Section 131.20c of this Code, with the NAIC, and with  
23 any third-party consultants designated by the Director,  
24 provided that the recipient agrees in writing to maintain  
25 the confidentiality and privileged status of the  
26 ORSA-related documents, materials, or other information

1 and has verified in writing the legal authority to maintain  
2 confidentiality; and

3 (2) receive documents, materials, or other  
4 ORSA-related information, including otherwise confidential  
5 and privileged documents, materials, or information,  
6 including proprietary and trade-secret information or  
7 documents, from regulatory officials of other foreign or  
8 domestic jurisdictions, including members of any  
9 supervisory college as defined in the Section 131.20c of  
10 this Code, and from the NAIC, and shall maintain as  
11 confidential or privileged any documents, materials, or  
12 information received with notice or the understanding that  
13 it is confidential or privileged under the laws of the  
14 jurisdiction that is the source of the document, material,  
15 or information.

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

20 (1) specify procedures and protocols regarding the  
21 confidentiality and security of information shared with  
22 the NAIC or a third-party consultant pursuant to this  
23 Article, including procedures and protocols for sharing by  
24 the NAIC with other state regulators from states in which  
25 the insurance group has domiciled insurers; the agreement  
26 shall provide that the recipient agrees in writing to

1 maintain the confidentiality and privileged status of the  
2 ORSA-related documents, materials, or other information  
3 and has verified in writing the legal authority to maintain  
4 confidentiality;

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

10 (3) prohibit the NAIC or third-party consultant from  
11 storing the information shared pursuant to this Article in  
12 a permanent database after the underlying analysis is  
13 completed;

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

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

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



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

6       (f) No waiver of any applicable privilege or claim of  
7 confidentiality in the documents, proprietary and trade-secret  
8 materials, or other ORSA-related information shall occur as a  
9 result of disclosure of such ORSA-related information or  
10 documents to the Director under this Section or as a result of  
11 sharing as authorized in this Article.

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

19       (215 ILCS 5/129.9 new)

20       Sec. 129.9. Sanctions. Any insurer failing, without just  
21 cause, to timely file the ORSA summary report as required in  
22 this Article shall be required, after notice and hearing, to  
23 pay a penalty of \$200 for each day's delay, to be recovered by  
24 the Director, and the penalty so recovered shall be paid into  
25 the General Revenue Fund of this State. The Director may reduce

1 the penalty if the insurer demonstrates to the Director that  
2 the imposition of the penalty would constitute a financial  
3 hardship to the insurer.

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

6 Section 99. Effective date. This Act takes effect January  
7 1, 2015."