

1 ENGROSSED SENATE  
2 BILL NO. 1474

By: Johnson (Rob) of the Senate

3 and

4 Jordan of the House

5  
6 An Act relating to an insurance compliance self-  
7 evaluative audit; creating privilege for insurance  
8 compliance self-evaluative audit; prohibiting person  
9 performing audit from being examined; allowing for  
10 voluntary submission of audit document; allowing  
11 document certain protections; limiting privilege if  
12 waived; providing for in camera determination by  
13 court for civil or criminal proceedings; allowing for  
14 filing of petition if request made for audit;  
15 allowing court to compel disclosure if certain  
16 conditions are met; requiring entity claiming  
17 privilege to prove privilege; allowing for  
18 stipulations to privilege; limiting scope of  
19 privilege; defining terms; providing for  
20 applicability of act; limiting effect of act on other  
21 statutory privileges; and providing for codification.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. NEW LAW A new section of law to be codified  
24 in the Oklahoma Statutes as Section 6830 of Title 36, unless there  
is created a duplication in numbering, reads as follows:

A. Except as provided in Sections 2 and 3 of this act, an  
insurance compliance self-evaluative audit is privileged information  
and is not discoverable, or admissible as evidence in any legal  
action in any civil, criminal, or administrative proceeding. The  
privilege created herein is a matter of substantive law of this

1 state and is not merely a procedural matter governing civil or  
2 criminal procedures in the courts of this state.

3 B. If any company, person, or entity performs or directs the  
4 performance of an insurance compliance audit, an officer, employee  
5 or agent involved with the insurance audit, or any consultant who is  
6 hired for the purpose of performing the insurance compliance audit,  
7 may not be examined in any civil, criminal, or administrative  
8 proceeding as to the insurance compliance audit or any insurance  
9 compliance self-evaluative audit document, as defined in this  
10 section. This section does not apply if the privilege set forth in  
11 subsection A of this section is determined under Section 2 or 3 of  
12 this act not to apply.

13 C. A company may voluntarily submit, in connection with  
14 examinations conducted under this act, an insurance compliance self-  
15 evaluative audit document to the Insurance Commissioner, or  
16 designee, as a confidential document without waiving the privilege  
17 set forth in this section to which the company would otherwise be  
18 entitled; provided, however, that the provisions of the Oklahoma  
19 Insurance Code permitting the Commissioner to make confidential  
20 documents public and grant access to documents to the National  
21 Association of Insurance Commissioners shall not apply to the  
22 insurance compliance self-evaluative audit document. Any such  
23 report furnished to the Insurance Commissioner shall not be provided  
24 to any other persons or entities and shall be accorded the same

1 confidentiality and other protections as provided above for  
2 voluntarily submitted documents.

3 D. A company's insurance compliance self-evaluative audit  
4 document submitted to the Commissioner shall remain subject to all  
5 applicable statutory or common law privileges including, but not  
6 limited to, the work product doctrine, attorney-client privilege, or  
7 the subsequent remedial measures exclusion.

8 E. Any compliance self-evaluative audit document so submitted  
9 and in the possession of the Commissioner shall remain the property  
10 of the company and shall not be subject to any disclosure or  
11 production under the Oklahoma Open Records Act.

12 F. Disclosure of an insurance compliance self-evaluative audit  
13 document to a governmental agency, whether voluntary or pursuant to  
14 compulsion of law, shall not constitute a waiver of the privilege  
15 set forth in subsection A of this section with respect to any other  
16 persons or any other governmental agencies.

17 SECTION 2. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 6831 of Title 36, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. The privilege set forth in Section 1 of this act does not  
21 apply to the extent that it is expressly waived by the company that  
22 prepared or caused to be prepared the insurance compliance self-  
23 evaluative audit document.

24

1 B. In a civil or administrative proceeding, a court of record  
2 may, after an in camera review, require disclosure of material for  
3 which the privilege set forth in Section 1 of this act is asserted,  
4 if the court determines one of the following:

- 5 1. The privilege is asserted for a fraudulent purpose; or
- 6 2. The material is not subject to the privilege.

7 C. In a criminal proceeding, a court of record may, after an in  
8 camera review, require disclosure of material for which the  
9 privilege described in Section 1 of this act is asserted, if the  
10 court determines one of the following:

- 11 1. The privilege is asserted for a fraudulent purpose;
- 12 2. The material is not subject to the privilege; or
- 13 3. The material contains evidence relevant to commission of a  
14 criminal offense under this Code, and all three of the following  
15 factors are present:

- 16 a. the Insurance Commissioner, district attorney, or  
17 Attorney General has a compelling need for the  
18 information,
- 19 b. the information is not otherwise available, and
- 20 c. the Insurance Commissioner, district attorney, or  
21 Attorney General is unable to obtain the substantial  
22 equivalent of the information by any other means  
23 without incurring unreasonable cost and delay.

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1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6832 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Within thirty (30) days after the Insurance Commissioner,  
5 district attorney, or Attorney General serves on an insurer a  
6 written request by certified mail for disclosure of an insurance  
7 compliance self-evaluative audit document under this act, the  
8 company that prepared or caused the document to be prepared may file  
9 with the appropriate court a petition requesting an in camera  
10 hearing on whether the insurance compliance self-evaluative audit  
11 document or portions of the document are privileged or subject to  
12 disclosure. Failure by the company to file a petition waives the  
13 privilege for this request only.

14           B. A company asserting the insurance compliance self-evaluative  
15 privilege in response to a request for disclosure under this act  
16 shall include in its request for an in camera hearing all of the  
17 information set forth in subsection E of this section.

18           C. Upon the filing of a petition under this section, the court  
19 shall issue an order scheduling, within forty-five (45) days after  
20 the filing of the petition, an in camera hearing to determine  
21 whether the insurance compliance self-evaluative audit document or  
22 portions of the document are privileged under this section or  
23 subject to disclosure.

24

1 D. The court, after an in camera review, may require disclosure  
2 of material for which the privilege in Section 1 of this act is  
3 asserted if the court determines, based upon its in camera review,  
4 that any one of the conditions set forth in subsection B of Section  
5 2 of this act is applicable as to a civil or administrative  
6 proceeding or that any one of the conditions set forth in subsection  
7 C of Section 2 of this act is applicable as to a criminal  
8 proceeding. Upon making such a determination, the court may only  
9 compel the disclosure of those portions of an insurance compliance  
10 self-evaluative audit document relevant to issues in dispute in the  
11 underlying proceeding. Any compelled disclosure will not be  
12 considered to be a public document or be deemed to be a waiver of  
13 the privilege for any other civil, criminal, or administrative  
14 proceeding. A party unsuccessfully opposing disclosure may apply to  
15 the court for an appropriate order protecting the document from  
16 further disclosure.

17 E. A company asserting the insurance compliance self-evaluative  
18 privilege in response to a request for disclosure under this act  
19 shall provide to the Insurance Commissioner, district attorney, or  
20 Attorney General, as the case may be, at the time of filing any  
21 objection to the disclosure, all of the following information:

22 1. The date of the insurance compliance self-evaluative audit  
23 document;

24 2. The identity of the entity conducting the audit;

1           3. The general nature of the activities covered by the  
2 insurance compliance self-evaluative audit; and

3           4. An identification of the portions of the insurance  
4 compliance self-evaluative audit document for which the privilege is  
5 being asserted.

6           SECTION 4.           NEW LAW           A new section of law to be codified  
7 in the Oklahoma Statutes as Section 6833 of Title 36, unless there  
8 is created a duplication in numbering, reads as follows:

9           A. A company asserting the insurance compliance self-evaluative  
10 privilege set forth in Section 1 of this act has the burden of  
11 demonstrating the applicability of the privilege. Once a company  
12 has established the applicability of the privilege, the party  
13 seeking disclosure under this act has the burden of proving that the  
14 privilege is asserted for a fraudulent purpose. The Insurance  
15 Commissioner, district attorney, or Attorney General seeking  
16 disclosure under this act has the burden of proving the elements set  
17 forth in subsection B or C of Section 2 of this act.

18           B. The parties may at any time stipulate in proceedings under  
19 Section 2 or 3 of this act to entry of an order directing that  
20 specific information contained in an insurance compliance self-  
21 evaluative audit document is or is not subject to the privilege  
22 provided under Section 1 of this act. Any such stipulation may be  
23 limited to the instant proceeding and, absent specific language to  
24 the contrary, shall not be applicable to any other proceeding.

1           SECTION 5.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6834 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           The privilege set forth in Section 1 of this act shall not  
5 extend to any of the following:

6           1. Documents, communications, data, reports, or other  
7 information expressly required to be collected, developed,  
8 maintained, or reported to a regulatory agency pursuant to this act,  
9 or other federal or state law;

10          2. Information obtained by observation or monitoring by any  
11 regulatory agency; or

12          3. Information contained from a source independent of the  
13 insurance compliance audit.

14           SECTION 6.           NEW LAW           A new section of law to be codified  
15 in the Oklahoma Statutes as Section 6835 of Title 36, unless there  
16 is created a duplication in numbering, reads as follows:

17           As used in this act:

18          1. "Insurance compliance audit" means a voluntary internal  
19 evaluation, review, assessment, audit, or investigation for the  
20 purpose of identifying or preventing noncompliance with, or  
21 promoting compliance with, laws, regulations, orders, or industry or  
22 professional standards, which is conducted by or on behalf of a  
23 company licensed or regulated under the Oklahoma Insurance Code, or  
24 which involves an activity regulated under this Code; and

1           2. "Insurance compliance self-evaluative audit document" means  
2 documents prepared as a result of or in connection with an insurance  
3 compliance audit. An insurance compliance self-evaluative audit  
4 document may include, but is not limited to, as applicable, field  
5 notes and records of observations, findings, opinions, suggestions,  
6 conclusions, drafts, memoranda, drawings, photographs, exhibits,  
7 computer-generated or electronically recorded information, phone  
8 records, maps, charts, graphs, and surveys; provided, this  
9 supporting information is collected or developed for the primary  
10 purpose and in the course of an insurance compliance audit. An  
11 insurance compliance self-evaluative audit document also includes,  
12 but is not limited to, any of the following:

- 13           a. an insurance compliance audit report prepared by an  
14           auditor, who may be an employee of the company or an  
15           independent contractor, which may include the scope of  
16           the audit, the information gained in the audit, and  
17           conclusions and recommendations, with exhibits and  
18           appendices,
- 19           b. memoranda and documents analyzing portions or all of  
20           the insurance compliance audit report and discussing  
21           potential implementation issues,
- 22           c. an implementation plan that addresses correcting past  
23           noncompliance, improving current compliance, and  
24           preventing future noncompliance, or

