

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2021

By: Coody (Jeff) of the House

and

6 Stanislawski of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to insurance; authorizing the
11 Insurance Commissioner to participate in a
12 supervisory college; providing powers of the
13 Commissioner with respect to supervisory colleges;
14 requiring registered insurers to pay certain
15 expenses; authorizing participation in a supervisory
16 college with certain other regulators; authorizing
17 Commissioner to enter into certain agreements;
18 providing that certain authority shall not be
19 delegated; amending Section 1, Chapter 269, O.S.L.
20 2013 (36 O.S. Supp. 2014, Section 1657.1), which
relates to confidentiality; modifying information
made confidential by law; modifying information
subject to discovery or admissible in evidence in
certain actions; modifying authority of Commissioner;
changing certain references; providing for
codification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1656.1 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

1 A. With respect to any insurer registered under Section 1654 of
2 Title 36 of the Oklahoma Statutes, and in accordance with subsection
3 C of this section, the Insurance Commissioner shall also be
4 authorized to participate in a supervisory college for any domestic
5 insurer that is part of an insurance holding company system with
6 international operations in order to determine compliance by the
7 insurer with Article 16A of Title 36 of the Oklahoma Statutes. The
8 powers of the Commissioner with respect to supervisory colleges
9 include, but are not limited to, the following:

10 1. Initiating the establishment of a supervisory college;

11 2. Clarifying the membership and participation of other
12 supervisors in the supervisory college;

13 3. Clarifying the functions of the supervisory college and the
14 role of other regulators, including the establishment of a group-
15 wide supervisor;

16 4. Coordinating the ongoing activities of the supervisory
17 college, including planning meetings, supervisory activities, and
18 processes for information sharing; and

19 5. Establishing a crisis management plan.

20 B. Each registered insurer subject to this section shall be
21 liable for and shall pay the reasonable expenses of the
22 Commissioner's participation in a supervisory college in accordance
23 with subsection C of this section, including reasonable travel
24 expenses. For purposes of this section, a supervisory college may

1 be convened as either a temporary or permanent forum for
2 communication and cooperation between the regulators charged with
3 the supervision of the insurer or its affiliates, and the
4 Commissioner may establish a regular assessment to the insurer for
5 the payment of these expenses.

6 C. In order to assess the business strategy, financial
7 position, legal and regulatory position, risk exposure, risk
8 management and governance processes, and as part of the examination
9 of individual insurers in accordance with Section 1656 of Title 36
10 of the Oklahoma Statutes, the Commissioner may participate in a
11 supervisory college with other regulators charged with supervision
12 of the insurer or its affiliates, including other state, federal,
13 and international regulatory agencies. The Commissioner may enter
14 into agreements in accordance with Section 1657.1 of Title 36 of the
15 Oklahoma Statutes providing the basis for cooperation between the
16 Commissioner and the other regulatory agencies, and the activities
17 of the supervisory college. Nothing in this section shall delegate
18 to the supervisory college the authority of the Commissioner to
19 regulate or supervise the insurer or its affiliates within its
20 jurisdiction.

21 SECTION 2. AMENDATORY Section 1, Chapter 269, O.S.L.
22 2013 (36 O.S. Supp. 2014, Section 1657.1), is amended to read as
23 follows:
24

1 Section 1657.1. A. Documents, materials or other information
2 in the possession or control of the Insurance Department that are
3 obtained by or disclosed to the Commissioner or any other person ~~in~~
4 ~~the course of an examination or investigation made pursuant to~~
5 ~~Section 1656 of Title 36 of the Oklahoma Statutes and all~~
6 ~~information reported pursuant to subsection B of Section 1653 of~~
7 ~~Title 36 of the Oklahoma Statutes, and Sections 1654 and 1655 of~~
8 ~~Title 36 of the Oklahoma Statutes,~~ pursuant to this article shall be
9 confidential by law and privileged, shall not be subject to open
10 records or freedom of information requests, shall not be subject to
11 subpoena, and shall not be subject to discovery or admissible in
12 evidence in any private civil action ~~if obtained from the~~
13 ~~Commissioner, a state, federal, or international regulatory agency,~~
14 ~~or the National Association of Insurance Commissioners, or any~~
15 ~~person or entity affiliated therewith.~~ However, the Commissioner is
16 authorized to use the documents, materials or other information in
17 the furtherance of any regulatory or legal action brought as part of
18 the official duties of the Commissioner. The Commissioner shall not
19 otherwise make the documents, materials or other information public
20 without the prior written consent of the insurer to which it
21 pertains unless the Commissioner, after giving the insurer and its
22 affiliates who would be affected thereby notice and opportunity to
23 be heard, determines that the interest of the policyholders,
24 shareholders or the public will be served by the publication

1 thereof, in which event the Commissioner may publish all or any part
2 in such manner as may be deemed appropriate.

3 B. Neither the Commissioner nor any person who received
4 documents, materials or other information while acting under the
5 authority of the Commissioner or with whom such documents, materials
6 or other information are shared pursuant to this ~~section~~ article
7 shall be permitted or required to testify in any private civil
8 action concerning any confidential documents, materials or other
9 information subject to subsection A of this section.

10 C. In order to assist in the performance of the Commissioner's
11 duties, the Commissioner:

12 1. May share documents, materials or other information,
13 including the confidential and privileged documents, materials or
14 information subject to subsection A of this section, with other
15 state, federal and international regulatory agencies, including any
16 members of any supervisory college described in Section 1 of this
17 act, with the NAIC and its affiliates and subsidiaries, and with
18 state, federal and international law enforcement authorities,
19 provided that the recipient agrees in writing to maintain the
20 confidentiality and privileged status of the document, material or
21 other information, and has verified in writing the legal authority
22 to maintain confidentiality;

23 2. Notwithstanding paragraph 1 of this subsection, ~~the~~
24 ~~Commissioner~~ may only share confidential and privileged documents,

1 material or other information reported pursuant to ~~Section 1654 of~~
2 ~~Title 36 of the Oklahoma Statutes with commissioners of states~~ this
3 article with insurance regulators in jurisdictions having statutes
4 or regulations substantially similar to subsection A of this section
5 and who have agreed in writing not to disclose such information;

6 3. May receive documents, materials or other information,
7 including otherwise confidential and privileged documents, materials
8 or other information from the NAIC and its affiliates and
9 subsidiaries and from regulatory and law enforcement officials of
10 other foreign or domestic jurisdictions, and shall maintain as
11 confidential or privileged any document, material or other
12 information received with notice or the understanding that it is
13 confidential or privileged under the laws of the jurisdiction that
14 is the source of the document, material or other information; and

15 4. Shall enter into written agreements with the NAIC governing
16 sharing and use of information provided pursuant to this section and
17 consistent with this subsection that shall:

- 18 a. specify procedures and protocols regarding the
19 confidentiality and security of information shared
20 with the NAIC and its affiliates and subsidiaries
21 pursuant to this act, including procedures and
22 protocols for sharing by the NAIC with other state,
23 federal or international regulators,
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1 b. specify that ownership of information shared with the
2 NAIC and its affiliates and subsidiaries pursuant to
3 this section remains with the Commissioner and the
4 NAIC's use of the information is subject to the
5 direction of the Commissioner,

6 c. require prompt notice to be given to an insurer whose
7 confidential information in the possession of the NAIC
8 pursuant to this section is subject to a request or
9 subpoena to the NAIC for disclosure or production, and

10 d. require the NAIC and its affiliates and subsidiaries
11 to consent to intervention by an insurer in any
12 judicial or administrative action in which the NAIC
13 and its affiliates and subsidiaries may be required to
14 disclose confidential information about the insurer
15 shared with the NAIC and its affiliates and
16 subsidiaries pursuant to this ~~section~~ article.

17 D. The sharing of information by the Commissioner pursuant to
18 this ~~section~~ article shall not constitute a delegation of regulatory
19 authority or rulemaking, and the Commissioner is solely responsible
20 for the administration, execution and enforcement of the provisions
21 of this ~~section~~ article.

22 E. No waiver of any applicable privilege or claim of
23 confidentiality in the documents, materials or other information
24 shall occur as a result of disclosure to the Commissioner under this

1 section or as a result of sharing as authorized in subsection C of
2 this section.

3 F. Documents, materials or other information in the possession
4 or control of the NAIC pursuant to this ~~section~~ article shall be
5 confidential by law and privileged, shall not be subject to open
6 records or freedom of information requests, shall not be subject to
7 subpoena, and shall not be subject to discovery or admissible in
8 evidence in any private civil action ~~if obtained from the~~
9 ~~Commissioner, a state, federal, or international regulatory agency,~~
10 ~~or the National Association of Insurance Commissioners, or any~~
11 ~~person or entity affiliated therewith.~~

12 SECTION 3. This act shall become effective November 1, 2015.

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