STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2021 By: Coody (Jeff) of the House

and

Stanislawski of the Senate

COMMITTEE SUBSTITUTE

An Act relating to insurance; authorizing the Insurance Commissioner to participate in a supervisory college; providing powers of the Commissioner with respect to supervisory colleges; requiring registered insurers to pay certain expenses; authorizing participation in a supervisory college with certain other regulators; authorizing Commissioner to enter into certain agreements; providing that certain authority shall not be delegated; amending Section 1, Chapter 269, O.S.L. 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.

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

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

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

1. Initiating the establishment of a supervisory college;

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

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

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

5. Establishing a crisis management plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators,

b. specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the Commissioner and the NAIC's use of the information is subject to the direction of the Commissioner,

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

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

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

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

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

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

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

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