

1 ENGROSSED HOUSE
2 BILL NO. 2191

By: Sims of the House

3 and

4 Paxton of the Senate

5
6
7 An Act relating to insurance; providing purpose;
8 defining terms; providing for corporate disclosure;
9 requiring certain disclosures; providing for
10 confidentiality of certain documents; permitting
11 third-party consultants; requiring confidentiality;
12 providing for sanctions; permitting the enactment of
13 rules; providing for codification; and providing an
14 effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1534 of Title 36, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The purpose of this act is to:

20 1. Provide the Commissioner of the Oklahoma Insurance
21 Department a summary of an insurer or insurance group's corporate
22 governance structure, policies and practices to permit the
23 Commissioner to gain and maintain an understanding of the insurer's
24 corporate governance framework;

1 2. Outline the requirements for completing a Corporate
2 Governance Annual Disclosure (CGAD) with the Commissioner; and

3 3. Provide for the confidential treatment of the CGAD and
4 related information that will contain confidential and sensitive
5 information related to an insurer or insurance group's internal
6 operations and proprietary and trade secret information which, if
7 made public, could potentially cause the insurer or insurance group
8 competitive harm or disadvantage.

9 B. Nothing in this act shall be construed to prescribe or
10 impose corporate governance standards and internal procedures beyond
11 those which are required under applicable state corporate law.
12 Notwithstanding the foregoing, nothing in this act shall be
13 construed to limit the Commissioner's authority or the rights or
14 obligations of third parties under Sections 309.1 through 309.7 of
15 Title 36 of the Oklahoma Statutes.

16 C. The requirements of this act shall apply to all insurers
17 domiciled in this state.

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1535 of Title 36, unless there
20 is created a duplication in numbering, reads as follows:

21 As used in this act:

22 1. "Commissioner" means the Insurance Commissioner of this
23 state;
24

1 2. "Corporate Governance Annual Disclosure (CGAD)" means a
2 confidential report filed by the insurer or insurance group made in
3 accordance with the requirements of this act;

4 3. "Insurance group" means those insurers and affiliates
5 included within an insurance holding company system as defined in
6 Section 1651 of Title 36 of the Oklahoma Statutes;

7 4. "Insurer" means the same as set forth in Section 103 of
8 Title 36 of the Oklahoma Statutes, except that it shall not include
9 agencies, authorities or instrumentalities of the United States, its
10 possessions and territories, the Commonwealth of Puerto Rico, the
11 District of Columbia, or a state or political subdivision of a
12 state; and

13 5. "ORSA Summary Report" means the report filed in accordance
14 with Section 3305 of Title 36 of the Oklahoma Statutes.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1536 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 A. An insurer or the insurance group of which the insurer is a
19 member shall, no later than June 1 of each calendar year, submit to
20 the Insurance Commissioner a Corporate Governance Annual Disclosure
21 (CGAD) that contains the information described in Section 4 of this
22 act. Notwithstanding any request from the Commissioner made
23 pursuant to subsection C of this section, if the insurer is a member
24 of an insurance group, the insurer shall submit the report required

1 by this section to a commissioner of the lead state for the
2 insurance group, in accordance with the laws of the lead state, as
3 determined by the procedures outlined in the most recent Financial
4 Analysis Handbook adopted by the National Association of Insurance
5 Commissioners (NAIC).

6 B. The CGAD shall include a signature of the insurer or chief
7 executive officer or corporate secretary of the insurance group
8 attesting to the best of his or her belief and knowledge that the
9 insurer has implemented the corporate governance practices and that
10 a copy of the disclosure has been provided to the insurer's board of
11 directors or the appropriate committee thereof.

12 C. An insurer not required to submit a CGAD under this section
13 shall do so upon the Commissioner's request.

14 D. For purposes of completing the CGAD, the insurer or
15 insurance group may provide information regarding corporate
16 governance at the ultimate controlling parent level, an intermediate
17 holding company level and/or the individual legal entity level,
18 depending upon how the insurer or insurance group has structured its
19 system of corporate governance. The insurer or insurance group is
20 encouraged to make the CGAD disclosures at the level at which the
21 insurer's or insurance group's risk appetite is determined, or at
22 which the earnings, capital, liquidity, operations and reputation of
23 the insurer are overseen collectively and at which the supervision
24 of those factors is coordinated and exercised, or the level at which

1 legal liability for failure of general corporate governance duties
2 would be placed. If the insurer or insurance group determines the
3 level of reporting based on these criteria, it shall indicate which
4 of the three criteria was used to determine the level of reporting
5 and explain any subsequent changes in level of reporting.

6 E. The review of the CGAD and any additional requests for
7 information shall be made through the lead state as determined by
8 the procedures within the most recent Financial Analysis Handbook
9 referenced in subsection A of this section.

10 F. Insurers providing information substantially similar to the
11 information required by this act in other documents provided to the
12 Commissioner, including proxy statements filed in conjunction with
13 Form B requirements, or other state or federal filings provided to
14 the Oklahoma Insurance Department shall not be required to duplicate
15 that information in the CGAD but shall only be required to cross-
16 reference the document in which the information is included.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1537 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The insurer or insurance group shall have discretion over
21 the responses to the Corporate Governance Annual Disclosure (CGAD)
22 inquiries, provided the CGAD shall contain the material information
23 necessary to permit the Insurance Commissioner to gain an
24 understanding of the insurer's or group's corporate governance

1 structure, policies, and practices. The Commissioner may request
2 additional information that he or she deems material and necessary
3 to provide a clear understanding of the corporate governance
4 policies, the reporting or information system or controls
5 implementing those policies.

6 B. Notwithstanding subsection A of this section, the CGAD shall
7 be prepared consistent with any regulation created to support this
8 act. Documentation and supporting information shall be maintained
9 and made available upon examination or upon request of the
10 Commissioner.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1538 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Documents, materials or other information including the
15 Corporate Governance Annual Disclosure (CGAD), in the possession or
16 control of the Oklahoma Insurance Department that is obtained by,
17 created by or disclosed to the Insurance Commissioner or any other
18 person under this act, is recognized by this state as being
19 proprietary and to contain trade secrets. All such documents,
20 materials or other information shall be confidential by law and
21 privileged, shall not be subject to the Oklahoma Open Records Act,
22 subpoena, and discovery or admissible in evidence in any private
23 civil action. However, the Commissioner is authorized to use the
24 documents, materials or other information in the furtherance of any

1 regulatory or legal action brought as a part of the Commissioner's
2 official duties. The Commissioner shall not otherwise make the
3 documents, materials or other information public without the prior
4 written consent of the insurer. Nothing in this section shall be
5 construed to require written consent of the insurer before the
6 Commissioner may share or receive confidential documents, materials
7 or other CGAD-related information pursuant to subsection C of this
8 section to assist in the performance of the Commissioner's regular
9 duties.

10 B. Neither the Commissioner nor any person who received
11 documents, materials or other CGAD-related information, through
12 examination or otherwise, while acting under the authority of the
13 Commissioner, or with whom such documents, materials or other
14 information is shared pursuant to this act shall be permitted or
15 required to testify in any private civil action concerning any
16 confidential documents, materials, or information subject to
17 subsection A of this section.

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

20 1. May, upon request, share documents, materials or other CGAD-
21 related information including the confidential and privileged
22 documents, materials or information subject to subsection A of this
23 section, including proprietary and trade secret documents and
24 materials, with other state, federal and international financial

1 regulatory agencies, including members from the National Association
2 of Insurance Commissioners (NAIC), and with third-party consultants
3 pursuant to Section 6 of this act, provided that the recipient
4 agrees in writing to maintain the confidentiality and privileged
5 status of the CGAD-related documents, material or other information
6 and has verified in writing the legal authority to maintain
7 confidentiality; and

8 2. May receive documents, materials or other CGAD-related
9 information, including otherwise confidential and privileged
10 documents, materials or information, including proprietary and trade
11 secret information or documents, from regulatory officials of other
12 state, federal and international financial regulatory agencies,
13 including members from the NAIC and shall maintain as confidential
14 or privileged any documents, materials or information received with
15 notice or the understanding that it is confidential or privileged
16 under the laws of the jurisdiction that is the source of the
17 documents, materials or information.

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

23 E. No waiver of any applicable privilege or claim of
24 confidentiality in the documents, proprietary and trade secret

1 materials or other CGAD-related information shall occur as a result
2 of disclosure of such CGAD-related information or documents to the
3 Commissioner under this section or as a result of sharing as
4 authorized in this act.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1539 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Insurance Commissioner may retain, at the insurer's
9 expense, third-party consultants, including attorneys, actuaries,
10 accountants and other experts not otherwise a part of the
11 Commissioner's staff as may be reasonably necessary to assist the
12 Commissioner in reviewing the Corporate Governance Annual Disclosure
13 (CGAD) and related information or the insurer's compliance with this
14 act.

15 B. Any persons retained under subsection A of this section
16 shall be under the direction and control of the Commissioner and
17 shall act in a purely advisory capacity.

18 C. The National Association of Insurance Commissioners (NAIC)
19 and third-party consultants shall be subject to the same
20 confidentiality standards and requirements as the Commissioner.

21 D. As part of the retention process, a third-party consultant
22 shall verify to the Commissioner, with notice to the insurer, that
23 it is free of a conflict of interest and that it has internal
24 procedures in place to monitor compliance with a conflict and to

1 comply with the confidentiality standards and requirements of this
2 act.

3 E. A written agreement with the NAIC and/or a third-party
4 consultant governing sharing and use of information provided
5 pursuant to this act shall contain the following provisions and
6 expressly require the written consent of the insurer prior to making
7 public information provided under this act:

8 1. Specific procedures and protocols for maintaining the
9 confidentiality and security of CGAD-related information shared with
10 the NAIC or a third-party consultant pursuant to this act;

11 2. Procedures and protocols for sharing by the NAIC only with
12 other state regulators from states in which the insurance group has
13 domiciled insurers. The agreement shall provide that the recipient
14 agrees in writing to maintain the confidentiality and privileged
15 status of the CGAD-related documents, materials or other information
16 and has verified in writing the legal authority to maintain
17 confidentiality;

18 3. A provision specifying that ownership of the CGAD-related
19 information shared with the NAIC or a third-party consultant remains
20 with the Department of Insurance and the NAIC's or third-party
21 consultant's use of the information is subject to the direction of
22 the Commissioner;

1 4. A provision that prohibits the NAIC or a third-party
2 consultant from storing the information shared pursuant to this act
3 in a permanent database after the underlying analysis is completed;

4 5. A provision requiring the NAIC or third-party consultant to
5 provide prompt notice to the Commissioner and to the insurer or
6 insurance group regarding any subpoena, request for disclosure, or
7 request for production of the insurer's CGAD-related information;
8 and

9 6. A requirement that the NAIC or a third-party consultant
10 consents to intervention by an insurer in any judicial or
11 administrative action in which the NAIC or a third-party consultant
12 may be required to disclose confidential information about the
13 insurer shared with the NAIC or a third-party consultant pursuant to
14 this act.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1540 of Title 36, unless there
17 is created a duplication in numbering, reads as follows:

18 Any insurer failing, without just cause, to timely file the
19 Corporate Governance Annual Disclosure (CGAD) as required in this
20 act shall be required, after notice and hearing, to pay a penalty of
21 One Hundred Dollars (\$100.00) for each day's delay, to be recovered
22 by the Insurance Commissioner and the penalty so recovered shall be
23 paid into the General Revenue Fund of this state. The maximum
24 penalty under this section is Ten Thousand Dollars (\$10,000.00).

1 The Commissioner may reduce the penalty if the insurer demonstrates
2 to the Commissioner that the imposition of the penalty would
3 constitute a financial hardship to the insurer.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1541 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 The Insurance Commissioner may, upon notice and opportunity for
8 all interested persons to be heard, issue such rules and orders as
9 shall be necessary to carry out the provisions of this act.

10 SECTION 9. This act shall become effective November 1, 2019.

11 Passed the House of Representatives the 4th day of March, 2019.

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13 _____
14 Presiding Officer of the House
15 of Representatives

16 Passed the Senate the ____ day of _____, 2019.

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19 Presiding Officer of the Senate

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