

An Act

ENROLLED HOUSE
BILL NO. 2191

By: Sims of the House

and

Paxton of the Senate

An Act relating to insurance; providing purpose; defining terms; providing for corporate disclosure; requiring certain disclosures; providing for confidentiality of certain documents; permitting third-party consultants; requiring confidentiality; providing for sanctions; permitting the enactment of rules; providing for codification; and providing an effective date.

SUBJECT: Insurance

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 1534 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The purpose of this act is to:

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

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

3. Provide for the confidential treatment of the CGAD and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal

operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

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

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

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

As used in this act:

1. "Commissioner" means the Insurance Commissioner of this state;

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

3. "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in Section 1631 of Title 36 of the Oklahoma Statutes;

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

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

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

A. An insurer or the insurance group of which the insurer is a member shall, no later than June 1 of each calendar year, submit to the Insurance Commissioner a Corporate Governance Annual Disclosure (CGAD) that contains the information described in Section 4 of this act. Notwithstanding any request from the Commissioner made pursuant to subsection C of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to a commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners (NAIC).

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

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

D. For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations and reputation of the insurer are overseen collectively and at which the supervision of those factors is coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

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

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

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

A. The insurer or insurance group shall have discretion over the responses to the Corporate Governance Annual Disclosure (CGAD) inquiries, provided the CGAD shall contain the material information necessary to permit the Insurance Commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The Commissioner may request additional information that he or she deems material and necessary to provide a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.

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

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

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

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

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

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

1. May, upon request, share documents, materials or other CGAD-related information including the confidential and privileged documents, materials or information subject to subsection A of this section, including proprietary and trade secret documents and materials, with other state, federal and international financial regulatory agencies, including members from the National Association of Insurance Commissioners (NAIC), and with third-party consultants pursuant to Section 6 of this act, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

2. May receive documents, materials or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade secret information or documents, from regulatory officials of other state, federal and international financial regulatory agencies, including members from the NAIC and shall maintain as confidential or privileged any documents, materials or 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 documents, materials or information.

D. The sharing of information and documents by the Commissioner pursuant to this act 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 act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials or other CGAD-related information shall occur as a result of disclosure of such CGAD-related information or documents to the Commissioner under this section or as a result of sharing as authorized in this act.

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

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

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

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

D. As part of the retention process, a third-party consultant shall verify to the Commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this act.

E. A written agreement with the NAIC and/or a third-party consultant governing sharing and use of information provided pursuant to this act shall contain the following provisions and

expressly require the written consent of the insurer prior to making public information provided under this act:

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

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

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

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

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

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

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

Any insurer failing, without just cause, to timely file the Corporate Governance Annual Disclosure (CGAD) as required in this act shall be required, after notice and hearing, to pay a penalty of

One Hundred Dollars (\$100.00) for each day's delay, to be recovered by the Insurance Commissioner and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is Ten Thousand Dollars (\$10,000.00). The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

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

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

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

Passed the House of Representatives the 6th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 3rd day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____