

1 HB506
2 189877-3
3 By Representative Rich
4 RFD: Insurance
5 First Read: 08-MAR-18

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8 SYNOPSIS: Under existing law, an insurer domiciled in
9 this state provides information to the Commissioner
10 of Insurance concerning the corporate governance
11 practices of the insurer at least once every five
12 years during a full-scope examination of the
13 insurer by the commissioner.

14 This bill would require an insurer domiciled
15 in this state to provide information to the
16 Commissioner of Insurance on an annual basis
17 regarding the corporate governance practices of the
18 insurer by adopting a law substantially similar to
19 the Corporate Governance Model Act developed by the
20 National Association of Insurance Commissioners.
21 The bill would provide that the information would
22 be confidential and privileged.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to insurance; to add Chapter 29B to Title
2 27, Code of Alabama 1975, to require insurers domiciled in
3 this state to provide information to the Commissioner of
4 Insurance on an annual basis regarding the corporate
5 governance practices of the insurer; and to provide that the
6 information would be confidential and privileged under certain
7 conditions.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Chapter 29B is added to Title 27, Code of
10 Alabama 1975, to read as follows:

11 Chapter 29B. Corporate Governance Annual Disclosure
12 Act.

13 §27-29B-1. Purpose and Scope.

14 (a) The purpose of this chapter is to do all of the
15 following:

16 (1) Provide the Commissioner of Insurance a summary
17 of an insurer or insurance group's corporate governance
18 structure, policies, and practices to permit the commissioner
19 to gain and maintain an understanding of the insurer's
20 corporate governance framework.

21 (2) Outline the requirements for completing a
22 corporate governance annual disclosure with the commissioner.

23 (3) Provide for the confidential treatment of the
24 corporate governance annual disclosure and related information
25 that will contain confidential and sensitive information
26 related to an insurer or insurance group's internal operations
27 and proprietary and trade secret information which, if made

1 public, could potentially cause the insurer or insurance group
2 competitive harm or disadvantage.

3 (b) Nothing in this chapter shall be construed to
4 prescribe or impose corporate governance standards and
5 internal procedures beyond the procedures that are required
6 under applicable state corporate law. Notwithstanding the
7 foregoing, nothing in this chapter shall be construed to limit
8 the authority of the commissioner, or the rights or
9 obligations of third parties, under Chapter 2 of this title.

10 (c) The requirements of this chapter shall apply to
11 all insurers domiciled in this state.

12 §27-29B-2. Definitions.

13 For purposes of this chapter, the following
14 definitions apply:

15 (1) COMMISSIONER. The Commissioner of Insurance of
16 the Department of Insurance.

17 (2) CORPORATE GOVERNANCE ANNUAL DISCLOSURE or CGAD.
18 A confidential report filed by an insurer or insurance group
19 in accordance with the requirements of this chapter.

20 (3) INSURANCE GROUP. Insurers and affiliates
21 included within an insurance holding company system as defined
22 in Chapter 29 of this title.

23 (4) INSURER. As defined in Section 27-1-2, except
24 the term shall not include agencies, authorities, or
25 instrumentalities of the United States, its possessions and
26 territories, the Commonwealth of Puerto Rico, the District of
27 Columbia, or a state or political subdivision of a state.

1 (5) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
2 or NAIC. The National Association of Insurance Commissioners
3 and its affiliates and subsidiaries.

4 §27-29B-3. Disclosure Requirement.

5 (a) Not later than June 1 of each calendar year, an
6 insurer or the insurance group of which the insurer is a
7 member, shall submit to the commissioner a Corporate
8 Governance Annual Disclosure (CGAD) that contains the
9 information described in Section 27-29B-5. Notwithstanding any
10 request from the commissioner made pursuant to subsection (c),
11 if the insurer is a member of an insurance group the insurer
12 shall submit the report required by this section to the
13 commissioner of the lead state for the insurance group in
14 accordance with the laws of the lead state as determined by
15 the procedures outlined in the most recent Financial Analysis
16 Handbook adopted by the NAIC.

17 (b) The CGAD shall include a signature of the
18 insurer or insurance group's chief executive officer or
19 corporate secretary attesting to the best of that individual's
20 belief and knowledge that the insurer has implemented the
21 corporate governance practices and that a copy of the
22 disclosure has been provided to the board of directors of the
23 insurer or the appropriate committee thereof.

24 (c) An insurer that is not required to submit a CGAD
25 under this section shall submit a CGAD at the request of the
26 commissioner.

1 (d) For purposes of completing the CGAD, the insurer
2 or insurance group may provide information regarding corporate
3 governance at the ultimate controlling parent level, an
4 intermediate holding company level, or the individual legal
5 entity level, based on the structure of the system of
6 corporate governance of the insurer or insurance group. The
7 insurer or insurance group is encouraged to make the CGAD
8 disclosures at the level at which the insurer's or insurance
9 group's risk appetite is determined; or at the level at which
10 the earnings, capital, liquidity, operations, and reputation
11 of the insurer are overseen collectively and at which the
12 supervision of those factors are coordinated and exercised; or
13 at the level at which legal liability for failure of general
14 corporate governance duties would be placed. If the insurer or
15 insurance group determines the level of reporting based on
16 these criteria, it shall indicate which of the three criteria
17 was used to determine the level of reporting and explain any
18 subsequent changes in level of reporting.

19 (e) The review of the CGAD and any additional
20 requests for information shall be made through the lead state
21 as determined by the procedures within the most recent
22 Financial Analysis Handbook as provided for in subsection (a).

23 (f) Insurers providing information substantially
24 similar to the information required by this chapter in other
25 documents provided to the commissioner, including proxy
26 statements filed in conjunction with Form B requirements, or
27 other state or federal filings provided to the Department of

1 Insurance shall not be required to duplicate that information
2 in the CGAD, but shall only be required to cross reference the
3 document in which the information is included.

4 §27-29B-4. Rules.

5 The commissioner, upon notice and opportunity for
6 all interested persons to be heard, may issue rules and orders
7 as necessary to carry out this chapter.

8 §27-29B-5. Contents of Corporate Governance Annual
9 Disclosure.

10 (a) The insurer or insurance group shall have
11 discretion over the responses to the CGAD inquiries, provided
12 the CGAD shall contain the material information necessary to
13 permit the commissioner to gain an understanding of the
14 insurer's or insurance group's corporate governance structure,
15 policies, and practices. The commissioner may request
16 additional information that the commissioner deems material
17 and necessary to provide the commissioner with a clear
18 understanding of the corporate governance policies or the
19 reporting or information system or controls implementing those
20 policies.

21 (b) Notwithstanding subsection (a), the CGAD shall
22 be prepared consistent with rules adopted by the commissioner
23 which shall be substantially similar to the Corporate
24 Governance Annual Disclosure Model Regulation developed by the
25 NAIC. Documentation and supporting information shall be
26 maintained and made available upon examination or upon request
27 of the commissioner.

1 §27-29B-6. Confidentiality.

2 (a) Documents, materials, or other information
3 including the CGAD, in the possession or control of the
4 Department of Insurance that are obtained by, created by, or
5 disclosed to the commissioner or any other person under this
6 chapter, are recognized by this state as being proprietary and
7 to contain trade secrets. All of the documents, materials, or
8 other information shall be confidential by law and privileged,
9 shall not be subject to any open records, freedom of
10 information, sunshine, or other public record disclosure laws,
11 shall not be subject to subpoena, and shall not be subject to
12 discovery or admissible in evidence in any private civil
13 action. However, the commissioner may use the documents,
14 materials, or other information in the furtherance of any
15 regulatory or legal action brought as a part of the official
16 duties of the commissioner. The commissioner shall not
17 otherwise make the documents, materials, or other information
18 public without the prior written consent of the insurer.
19 Nothing in this section shall be construed to require written
20 consent of the insurer before the commissioner may share or
21 receive confidential documents, materials, or other
22 CGAD-related information pursuant to subsection (c) to assist
23 in the performance of the duties of the commissioner.

24 (b) Neither the commissioner nor any person who
25 received documents, materials, or other CGAD-related
26 information, through examination or otherwise, while acting
27 under the authority of the commissioner, or with whom the

1 documents, materials, or other information are shared pursuant
2 to this chapter, shall be permitted or required to testify in
3 any private civil action concerning any confidential
4 documents, materials, or information subject to subsection
5 (a).

6 (c) In order to assist in the performance of the
7 regulatory duties of the commissioner, the commissioner may do
8 all of the following:

9 (1) Upon request, may share documents, materials, or
10 other CGAD-related information, including the confidential and
11 privileged documents, materials, or information subject to
12 subsection (a), including proprietary and trade secret
13 documents and materials, with other state, federal, and
14 international financial regulatory agencies, including members
15 of any supervisory college as defined in Section 27-29-6.1,
16 with the NAIC, and with third party consultants pursuant to
17 Section 27-29B-7, provided the recipient agrees in writing to
18 maintain the confidentiality and privileged status of the
19 CGAD-related documents, material, or other information and has
20 verified in writing the legal authority to maintain
21 confidentiality.

22 (2) May receive documents, materials, or other
23 CGAD-related information, including otherwise confidential and
24 privileged documents, materials, or information, including
25 proprietary and trade secret information or documents, from
26 regulatory officials of other state, federal, and
27 international financial regulatory agencies, including members

1 of any supervisory college as defined in Section 27-29-6.1,
2 and from the NAIC, and shall maintain as confidential or
3 privileged any documents, materials, or information received
4 with notice or the understanding that it is confidential or
5 privileged under the laws of the jurisdiction that is the
6 source of the document, material, or information.

7 (d) The sharing of information and documents by the
8 commissioner pursuant to this chapter shall not constitute a
9 delegation of regulatory authority or rulemaking, and the
10 commissioner shall be solely responsible for the
11 administration, execution, and enforcement of this chapter.

12 (e) No waiver of any applicable privilege or claim
13 of confidentiality in the documents, proprietary and trade
14 secret materials, or other CGAD-related information shall
15 occur as a result of disclosure of CGAD-related information or
16 documents to the commissioner under this section or as a
17 result of sharing authorized in this chapter.

18 §27-29B-7. NAIC and Third-party Consultants.

19 (a) The commissioner, at the insurer's expense, may
20 retain third-party consultants, including attorneys,
21 actuaries, accountants, and other experts not otherwise a part
22 of the staff of the commissioner as may be reasonably
23 necessary to assist the commissioner in reviewing the CGAD and
24 related information or the insurer's compliance with this
25 chapter.

1 (b) Any persons retained under subsection (a) shall
2 be under the direction and control of the commissioner and
3 shall act in a purely advisory capacity.

4 (c) The NAIC and third-party consultants shall be
5 subject to the same confidentiality standards and requirements
6 as the commissioner.

7 (d) As part of the retention process, a third-party
8 consultant shall verify to the commissioner, with notice to
9 the insurer, that it is free of a conflict of interest and
10 that it has internal procedures in place to monitor compliance
11 with a conflict and to comply with the confidentiality
12 standards and requirements of this chapter.

13 (e) A written agreement with the NAIC or a
14 third-party consultant governing sharing and use of
15 information provided pursuant to this chapter shall contain
16 all of the following provisions and expressly require the
17 written consent of the insurer prior to making public
18 information provided under this chapter:

19 (1) Specific procedures and protocols for
20 maintaining the confidentiality and security of CGAD-related
21 information shared with the NAIC or a third-party consultant
22 pursuant to this chapter.

23 (2) Procedures and protocols for sharing by the NAIC
24 only with other state regulators from states in which the
25 insurance group has domiciled insurers. The agreement shall
26 provide that the recipient agrees in writing to maintain the
27 confidentiality and privileged status of the CGAD-related

1 documents, materials, or other information and has verified in
2 writing the legal authority to maintain confidentiality.

3 (3) A provision specifying that ownership of the
4 CGAD-related information shared with the NAIC or a third-party
5 consultant remains with the Department of Insurance and the
6 use of the information by NAIC or third-party consultant is
7 subject to the direction of the commissioner.

8 (4) A provision that prohibits the NAIC or a
9 third-party consultant from storing the information shared
10 pursuant to this chapter in a permanent database after the
11 underlying analysis is completed.

12 (5) A provision requiring the NAIC or third-party
13 consultant to provide prompt notice to the commissioner and to
14 the insurer or insurance group regarding any subpoena, request
15 for disclosure, or request for production of the insurer's
16 CGAD-related information.

17 (6) A requirement that the NAIC or a third-party
18 consultant consent to intervention by an insurer in any
19 judicial or administrative action in which the NAIC or a
20 third-party consultant may be required to disclose
21 confidential information about the insurer shared with the
22 NAIC or a third-party consultant pursuant to this chapter.

23 §27-29B-8. Sanctions.

24 Any insurer failing, without just cause, to timely
25 file the CGAD as required in this chapter shall be required,
26 after notice and hearing, to pay a penalty of one thousand
27 dollars (\$1,000) for each day's delay, to be recovered by the

1 commissioner. Any penalty recovered shall be deposited in the
2 State General Fund. The maximum penalty under this section is
3 one hundred thousand dollars (\$100,000). The commissioner may
4 reduce the penalty if the insurer demonstrates to the
5 commissioner that the imposition of the penalty would
6 constitute a financial hardship to the insurer.

7 §27-29B-9. Severability Clause.

8 If any provision of this chapter, except Section
9 27-29B-6, or the application thereof to any person or
10 circumstance is held invalid, that determination shall not
11 affect the provisions or applications of this chapter which
12 can be given effect without the invalid provisions or
13 application, and to that end the provisions of this chapter,
14 with the exception of Section 27-29B-6, are severable.

15 Section 2. This act shall become effective January
16 1, 2020, following its passage and approval by the Governor,
17 or its otherwise becoming law.