

1 HB102
2 194213-1
3 By Representative Rich
4 RFD: Insurance
5 First Read: 05-MAR-19

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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 Under existing law, the Insurance
24 Commissioner regulates insurance holding company
25 systems that are insurers in this state. Under the
26 law, the commissioner is authorized to act as a
27 group-wide supervisor for an internationally active

1 insurance group or to acknowledge another
2 regulatory person for that purpose.

3 This bill would provide a definition of
4 internationally active insurance group and specify
5 that documents, materials, and information filed
6 with the commissioner relative to the group-wide
7 supervision of an internationally active insurance
8 group are confidential and privileged.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 Relating to insurance; to add Chapter 29B to Title
15 27, Code of Alabama 1975, to require insurers domiciled in
16 this state to provide information to the Commissioner of
17 Insurance on an annual basis regarding the corporate
18 governance practices of the insurer; to provide that the
19 information would be confidential and privileged under certain
20 conditions; and to amend Sections 27-29-1 and 27-29-7, Code of
21 Alabama 1975, relating to insurance holding company systems,
22 to provide a definition of internationally active insurance
23 groups and to specify that documents, materials, and other
24 information filed with the Commissioner of Insurance relative
25 to the group-wide supervision of an internationally active
26 insurance group are confidential and privileged.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 Chapter 29B. Corporate Governance Annual Disclosure
4 Act.

5 §27-29B-1. Purpose and Scope.

6 (a) The purpose of this chapter is to do all of the
7 following:

8 (1) Provide the Commissioner of Insurance a summary
9 of an insurer or insurance group's corporate governance
10 structure, policies, and practices to permit the commissioner
11 to gain and maintain an understanding of the insurer's
12 corporate governance framework.

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

15 (3) Provide for the confidential treatment of the
16 corporate governance annual disclosure and related information
17 that will contain confidential and sensitive information
18 related to an insurer or insurance group's internal operations
19 and proprietary and trade secret information which, if made
20 public, could potentially cause the insurer or insurance group
21 competitive harm or disadvantage.

22 (b) Nothing in this chapter shall be construed to
23 prescribe or impose corporate governance standards and
24 internal procedures beyond the procedures that are required
25 under applicable state corporate law. Notwithstanding the
26 foregoing, nothing in this chapter shall be construed to limit

1 the authority of the commissioner, or the rights or
2 obligations of third parties, under Chapter 2 of this title.

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

5 §27-29B-2. Definitions.

6 For purposes of this chapter, the following
7 definitions apply:

8 (1) COMMISSIONER. The Commissioner of Insurance of
9 the Department of Insurance.

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

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

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

21 (5) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
22 or NAIC. The National Association of Insurance Commissioners
23 and its affiliates and subsidiaries.

24 §27-29B-3. Disclosure Requirement.

25 (a) Not later than June 1 of each calendar year, an
26 insurer or the insurance group of which the insurer is a
27 member, shall submit to the commissioner a Corporate

1 Governance Annual Disclosure (CGAD) that contains the
2 information described in Section 27-29B-5. Notwithstanding any
3 request from the commissioner made pursuant to subsection (c),
4 if the insurer is a member of an insurance group the insurer
5 shall submit the report required by this section to the
6 commissioner of the lead state for the insurance group in
7 accordance with the laws of the lead state as determined by
8 the procedures outlined in the most recent Financial Analysis
9 Handbook adopted by the NAIC.

10 (b) The CGAD shall include a signature of the
11 insurer or insurance group's chief executive officer or
12 corporate secretary attesting to the best of that individual's
13 belief and knowledge that the insurer has implemented the
14 corporate governance practices and that a copy of the
15 disclosure has been provided to the board of directors of the
16 insurer or the appropriate committee thereof.

17 (c) An insurer that is not required to submit a CGAD
18 under this section shall submit a CGAD at the request of the
19 commissioner.

20 (d) For purposes of completing the CGAD, the insurer
21 or insurance group may provide information regarding corporate
22 governance at the ultimate controlling parent level, an
23 intermediate holding company level, or the individual legal
24 entity level, based on the structure of the system of
25 corporate governance of the insurer or insurance group. The
26 insurer or insurance group is encouraged to make the CGAD
27 disclosures at the level at which the insurer's or insurance

1 group's risk appetite is determined; or at the level at which
2 the earnings, capital, liquidity, operations, and reputation
3 of the insurer are overseen collectively and at which the
4 supervision of those factors are coordinated and exercised; or
5 at the level at which legal liability for failure of general
6 corporate governance duties would be placed. If the insurer or
7 insurance group determines the level of reporting based on
8 these criteria, it shall indicate which of the three criteria
9 was used to determine the level of reporting and explain any
10 subsequent changes in level of reporting.

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

15 (f) Insurers providing information substantially
16 similar to the information required by this chapter in other
17 documents provided to the commissioner, including proxy
18 statements filed in conjunction with Form B requirements, or
19 other state or federal filings provided to the Department of
20 Insurance shall not be required to duplicate that information
21 in the CGAD, but shall only be required to cross reference the
22 document in which the information is included.

23 §27-29B-4. Rules.

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

1 §27-29B-5. Contents of Corporate Governance Annual
2 Disclosure.

3 (a) The insurer or insurance group shall have
4 discretion over the responses to the CGAD inquiries, provided
5 the CGAD shall contain the material information necessary to
6 permit the commissioner to gain an understanding of the
7 insurer's or insurance group's corporate governance structure,
8 policies, and practices. The commissioner may request
9 additional information that the commissioner deems material
10 and necessary to provide the commissioner with a clear
11 understanding of the corporate governance policies or the
12 reporting or information system or controls implementing those
13 policies.

14 (b) Notwithstanding subsection (a), the CGAD shall
15 be prepared consistent with rules adopted by the commissioner
16 which shall be substantially similar to the Corporate
17 Governance Annual Disclosure Model Regulation developed by the
18 NAIC. Documentation and supporting information shall be
19 maintained and made available upon examination or upon request
20 of the commissioner.

21 §27-29B-6. Confidentiality.

22 (a) Documents, materials, or other information
23 including the CGAD, in the possession or control of the
24 Department of Insurance that are obtained by, created by, or
25 disclosed to the commissioner or any other person under this
26 chapter, are recognized by this state as being proprietary and
27 to contain trade secrets. All of the documents, materials, or

1 other information shall be confidential by law and privileged,
2 shall not be subject to any open records, freedom of
3 information, sunshine, or other public record disclosure laws,
4 shall not be subject to subpoena, and shall not be subject to
5 discovery or admissible in evidence in any private civil
6 action. However, the commissioner may use the documents,
7 materials, or other information in the furtherance of any
8 regulatory or legal action brought as a part of the official
9 duties of the commissioner. The commissioner shall not
10 otherwise make the documents, materials, or other information
11 public without the prior written consent of the insurer.
12 Nothing in this section shall be construed to require written
13 consent of the insurer before the commissioner may share or
14 receive confidential documents, materials, or other
15 CGAD-related information pursuant to subsection (c) to assist
16 in the performance of the duties of the commissioner.

17 (b) Neither the commissioner nor any person who
18 received documents, materials, or other CGAD-related
19 information, through examination or otherwise, while acting
20 under the authority of the commissioner, or with whom the
21 documents, materials, or other information are shared pursuant
22 to this chapter, shall be permitted or required to testify in
23 any private civil action concerning any confidential
24 documents, materials, or information subject to subsection
25 (a).

1 (c) In order to assist in the performance of the
2 regulatory duties of the commissioner, the commissioner may do
3 all of the following:

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

17 (2) May receive documents, materials, or other
18 CGAD-related information, including otherwise confidential and
19 privileged documents, materials, or information, including
20 proprietary and trade secret information or documents, from
21 regulatory officials of other state, federal, and
22 international financial regulatory agencies, including members
23 of any supervisory college as defined in Section 27-29-6.1,
24 and from the NAIC, and shall maintain as confidential or
25 privileged any documents, materials, or information received
26 with notice or the understanding that it is confidential or

1 privileged under the laws of the jurisdiction that is the
2 source of the document, material, or information.

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

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

14 §27-29B-7. NAIC and Third-party Consultants.

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

22 (b) Any persons retained under subsection (a) shall
23 be under the direction and control of the commissioner and
24 shall act in a purely advisory capacity.

25 (c) The NAIC and third-party consultants shall be
26 subject to the same confidentiality standards and requirements
27 as the commissioner.

1 (d) As part of the retention process, a third-party
2 consultant shall verify to the commissioner, with notice to
3 the insurer, that it is free of a conflict of interest and
4 that it has internal procedures in place to monitor compliance
5 with a conflict and to comply with the confidentiality
6 standards and requirements of this chapter.

7 (e) A written agreement with the NAIC or a
8 third-party consultant governing sharing and use of
9 information provided pursuant to this chapter shall contain
10 all of the following provisions and expressly require the
11 written consent of the insurer prior to making public
12 information provided under this chapter:

13 (1) Specific procedures and protocols for
14 maintaining the confidentiality and security of CGAD-related
15 information shared with the NAIC or a third-party consultant
16 pursuant to this chapter.

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

24 (3) A provision specifying that ownership of the
25 CGAD-related information shared with the NAIC or a third-party
26 consultant remains with the Department of Insurance and the

1 use of the information by NAIC or third-party consultant is
2 subject to the direction of the commissioner.

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

7 (5) A provision requiring the NAIC or third-party
8 consultant to provide prompt notice to the commissioner and to
9 the insurer or insurance group regarding any subpoena, request
10 for disclosure, or request for production of the insurer's
11 CGAD-related information.

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

18 §27-29B-8. Sanctions.

19 Any insurer failing, without just cause, to timely
20 file the CGAD as required in this chapter shall be required,
21 after notice and hearing, to pay a penalty of one thousand
22 dollars (\$1,000) for each day's delay, to be recovered by the
23 commissioner. Any penalty recovered shall be deposited in the
24 State General Fund. The maximum penalty under this section is
25 one hundred thousand dollars (\$100,000). The commissioner may
26 reduce the penalty if the insurer demonstrates to the

1 commissioner that the imposition of the penalty would
2 constitute a financial hardship to the insurer.

3 §27-29B-9. Severability Clause.

4 If any provision of this chapter, except Section
5 27-29B-6, or the application thereof to any person or
6 circumstance is held invalid, that determination shall not
7 affect the provisions or applications of this chapter which
8 can be given effect without the invalid provisions or
9 application, and to that end the provisions of this chapter,
10 with the exception of Section 27-29B-6, are severable.

11 Section 2. Sections 27-29-1 and 27-29-7, Code of
12 Alabama 1975, are amended to read as follows:

13 "§27-29-1.

14 "For purposes of this chapter, unless otherwise
15 stated, the following terms shall have the meanings
16 respectively ascribed to them by this section:

17 "(1) AFFILIATE. The term shall include an affiliate
18 of, or person affiliated with, a specific person, and shall
19 mean a person that directly, or indirectly through one or more
20 intermediaries, controls, or is controlled by, or is under
21 common control with, the person specified.

22 "(2) COMMISSIONER. The Commissioner of Insurance,
23 his or her deputies, or the Insurance Department as
24 appropriate.

25 "(3) CONTROL. The term shall include controlling,
26 controlled by, or under common control with and shall mean the
27 possession, direct or indirect, of the power to direct or

1 cause the direction of the management and policies of a
2 person, whether through the ownership of voting securities, by
3 contract other than a commercial contract for goods or
4 nonmanagement services, or otherwise, unless the power is the
5 result of an official position with or corporate office held
6 by the person. Control shall be presumed to exist if any
7 person, directly or indirectly owns, controls, holds with the
8 power to vote, or holds proxies representing five percent or
9 more of the voting securities of any other person. This
10 presumption may be rebutted by a showing made in the manner
11 provided by subsection (k) of Section 27-29-4 that control
12 does not exist in fact. The commissioner may determine, after
13 furnishing all persons in interest notice and opportunity to
14 be heard and making a specific finding of fact to support such
15 determination, that control exists in fact, notwithstanding
16 the absence of a presumption to that effect.

17 "(4) ENTERPRISE RISK. Any activity, circumstance,
18 event, or series of events involving one or more affiliates of
19 an insurer that, if not remedied promptly, is likely to have a
20 material adverse effect upon the financial condition or
21 liquidity of the insurer or its insurance holding company
22 system as a whole, including, but not limited to, anything
23 that would cause the insurer's risk-based capital to fall into
24 company action level as set forth in Section 27-2B-4 or would
25 cause the insurer to be in hazardous financial condition.

26 "(5) GROUP-WIDE SUPERVISOR. The regulatory official
27 authorized to engage in conducting and coordinating group-wide

1 supervision activities who is determined or acknowledged by
2 the commissioner under this chapter to have sufficient
3 significant contacts with the internationally active insurance
4 group.

5 "(6) INSURANCE HOLDING COMPANY SYSTEM. A system
6 which consists of two or more affiliated persons, one or more
7 of which is an insurer.

8 "(7) INSURER. An insurance company as set forth in
9 Section 27-1-2, including, without limitation, any fraternal
10 benefit society, health care service plan, and health
11 maintenance organization, except that it shall not include
12 agencies, authorities, or instrumentalities of the United
13 States, its possessions and territories, the Commonwealth of
14 Puerto Rico, the District of Columbia, or a state or political
15 subdivision of a state.

16 "(8) INTERNATIONALLY ACTIVE INSURANCE GROUP. An
17 insurance holding company system that includes an insurer
18 registered under Section 27-29-4 that meets all of the
19 following criteria:

20 "a. Premiums are written in at least three
21 countries.

22 "b. The percentage of gross premiums written outside
23 the United States is at least 10 percent of the insurance
24 holding company system's total gross written premiums.

25 "c. Based on a three-year rolling average, the total
26 assets of the insurance holding company system are at least
27 fifty billion dollars (\$50,000,000,000) or the total gross

1 written premiums of the insurance holding company system are
2 at least ten billion dollars (\$10,000,000,000).

3 "~~(8)~~(9) PERSON. An individual, a corporation, a
4 limited liability company, a partnership, an association, a
5 joint-stock company, a trust, an unincorporated organization,
6 or any similar entity or any combination of the foregoing
7 acting in concert, but shall not include any joint venture
8 partnership exclusively engaged in owning, managing, leasing,
9 or developing real or tangible personal property.

10 "~~(9)~~(10) SECURITYHOLDER. One who owns any security
11 of such person, including common stock, preferred stock, debt
12 obligations, and other security convertible into, or
13 evidencing, the right to acquire any of the foregoing.

14 "~~(10)~~(11) SUBSIDIARY. An affiliate controlled by
15 such person, directly or indirectly, through one or more
16 intermediaries.

17 "~~(11)~~(12) VOTING SECURITY. The term shall include
18 any security convertible into, or evidencing, a right to
19 acquire a voting security.

20 "§27-29-7.

21 "(a) All documents, materials, or other information,
22 and copies thereof, in the possession or control of the
23 Department of Insurance that are obtained by or disclosed to
24 the commissioner or any other person in the course of an
25 examination or investigation made pursuant to Section 27-29-6
26 and all information reported pursuant to paragraphs l. and m.
27 of subdivision (l) of subsection (b) of Section 27-29-3,

1 Section 27-29-4, ~~and~~ Section 27-29-5, and Section 27-29-6.2
2 shall be confidential by law and privileged, shall not be
3 subject to any open records, freedom of information, sunshine
4 or other public record disclosure laws, and shall not be
5 subject to subpoena. The commissioner may use the documents,
6 materials, and other information in the furtherance of any
7 regulatory or legal action in the course of the commissioner's
8 official duties. The documents, materials, and other
9 information shall not be made public by the commissioner or
10 any other person without the prior written consent of the
11 insurer to which it pertains unless the commissioner
12 determines that the interests of policyholders, shareholders,
13 or the public will be served by the publication thereof, in
14 which event the commissioner may publish all, or any part
15 thereof, in such manner as the commissioner may deem
16 appropriate. Prior to making this determination, the
17 commissioner shall give the insurer and its affiliates who
18 would be affected thereby no less than 10 days' written notice
19 of the opportunity to request a hearing on the matter.

20 "(b) Neither the commissioner nor any person who
21 received documents, materials, or other information while
22 acting under the authority of the commissioner or with whom
23 such documents, materials, or other information are shared
24 pursuant to this chapter shall be permitted or required to
25 testify in any private civil action concerning any
26 confidential documents, materials, or information subject to
27 subsection (a).

1 "(c) In order to assist in the performance of the
2 commissioner's duties, the commissioner:

3 "(1) May share documents, materials, or other
4 information, including the confidential and privileged
5 documents, materials, or information subject to subsection
6 (a), with other state, federal, and international regulatory
7 agencies, with the National Association of Insurance
8 Commissioners and its affiliates and subsidiaries, and with
9 state, federal, and international law enforcement authorities,
10 including members of any supervisory college described in
11 Section 27-29-6.1, provided that the recipient agrees in
12 writing to maintain the confidentiality and privileged status
13 of the document, material, or other information, and has
14 verified in writing the legal authority to maintain
15 confidentiality.

16 "(2) Notwithstanding subdivision (1) above, may
17 share confidential and privileged documents, material, or
18 information reported pursuant to subsection (1) of Section
19 27-29-4 only with commissioners of states having statutes or
20 regulations substantially similar to subsection (a) and who
21 have agreed in writing not to disclose such information.

22 "(3) May receive documents, materials, or
23 information, including otherwise confidential and privileged
24 documents, materials, or information from the National
25 Association of Insurance Commissioners and its affiliates and
26 subsidiaries and from regulatory and law enforcement officials
27 of other foreign or domestic jurisdictions, and shall maintain

1 as confidential or privileged any document, material, or
2 information received with notice or the understanding that it
3 is confidential or privileged under the laws of the
4 jurisdiction that is the source of the document, material, or
5 information.

6 "(4) Shall enter into written agreements with the
7 National Association of Insurance Commissioners governing
8 sharing and use of information provided pursuant to this
9 chapter consistent with this subsection that shall:

10 "a. Specify procedures and protocols regarding the
11 confidentiality and security of information shared with the
12 National Association of Insurance Commissioners and its
13 affiliates and subsidiaries pursuant to this chapter,
14 including procedures and protocols for sharing by the National
15 Association of Insurance Commissioners with other state,
16 federal, or international regulators.

17 "b. Specify that ownership of information shared
18 with the National Association of Insurance Commissioners and
19 its affiliates and subsidiaries pursuant to this chapter
20 remains with the commissioner and the use of the information
21 by the National Association of Insurance Commissioners is
22 subject to the direction of the commissioner.

23 "c. Require at least 10 days' notice to be given to
24 an insurer whose confidential information in the possession of
25 the National Association of Insurance Commissioners pursuant
26 to this chapter is subject to a request or subpoena to the

1 National Association of Insurance Commissioners for disclosure
2 or production.

3 "d. Require the National Association of Insurance
4 Commissioners and its affiliates and subsidiaries to consent
5 to intervention by an insurer in any judicial or
6 administrative action in which the National Association of
7 Insurance Commissioners and its affiliates and subsidiaries
8 may be required to disclose confidential information about the
9 insurer shared with the National Association of Insurance
10 Commissioners and its affiliates and subsidiaries pursuant to
11 this chapter.

12 "(d) The sharing of information by the commissioner
13 pursuant to this chapter shall not constitute a delegation of
14 regulatory authority or rulemaking, and the commissioner is
15 solely responsible for the administration, execution, and
16 enforcement of this chapter.

17 "(e) No waiver of any applicable privilege or claim
18 of confidentiality in the documents, materials, or information
19 shall occur as a result of disclosure to the commissioner
20 under this section or as a result of sharing as authorized in
21 subsection (c).

22 "(f) Documents, materials, or other information in
23 the possession or control of the National Association of
24 Insurance Commissioners pursuant to this chapter shall be
25 confidential by law and privileged, shall not be subject to
26 open records, freedom of information, sunshine or other public
27 records disclosure laws, shall not be subject to subpoena, and

1 shall not be subject to discovery or admissible in evidence in
2 any private civil action."

3 Section 3. This act shall become effective January
4 1, 2020, following its passage and approval by the Governor,
5 or its otherwise becoming law.