

1 SB52
2 194213-3
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 05-MAR-19

1 SB52

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3
4 ENROLLED, An Act,

5 Relating to insurance; to add Chapter 29B to Title
6 27, Code of Alabama 1975, to require insurers domiciled in
7 this state to provide information to the Commissioner of
8 Insurance on an annual basis regarding the corporate
9 governance practices of the insurer; to provide that the
10 information would be confidential and privileged under certain
11 conditions; and to amend Sections 27-29-1 and 27-29-7, Code of
12 Alabama 1975, relating to insurance holding company systems,
13 to provide a definition of internationally active insurance
14 groups and to specify that documents, materials, and other
15 information filed with the Commissioner of Insurance relative
16 to the group-wide supervision of an internationally active
17 insurance group are confidential and privileged.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 Chapter 29B. Corporate Governance Annual Disclosure
22 Act.

23 §27-29B-1. Purpose and Scope.

24 (a) The purpose of this chapter is to do all of the
25 following:

1 (1) Provide the Commissioner of Insurance a summary
2 of an insurer or insurance group's corporate governance
3 structure, policies, and practices to permit the commissioner
4 to gain and maintain an understanding of the insurer's
5 corporate governance framework.

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

8 (3) Provide for the confidential treatment of the
9 corporate governance annual disclosure and related information
10 that will contain confidential and sensitive information
11 related to an insurer or insurance group's internal operations
12 and proprietary and trade secret information which, if made
13 public, could potentially cause the insurer or insurance group
14 competitive harm or disadvantage.

15 (b) Nothing in this chapter shall be construed to
16 prescribe or impose corporate governance standards and
17 internal procedures beyond the procedures that are required
18 under applicable state corporate law. Notwithstanding the
19 foregoing, nothing in this chapter shall be construed to limit
20 the authority of the commissioner, or the rights or
21 obligations of third parties, under Chapter 2 of this title.

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

24 §27-29B-2. Definitions.

1 For purposes of this chapter, the following
2 definitions apply:

3 (1) COMMISSIONER. The Commissioner of Insurance of
4 the Department of Insurance.

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

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

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

16 (5) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
17 or NAIC. The National Association of Insurance Commissioners
18 and its affiliates and subsidiaries.

19 §27-29B-3. Disclosure Requirement.

20 (a) Not later than June 1 of each calendar year, an
21 insurer or the insurance group of which the insurer is a
22 member, shall submit to the commissioner a Corporate
23 Governance Annual Disclosure (CGAD) that contains the
24 information described in Section 27-29B-5. Notwithstanding any
25 request from the commissioner made pursuant to subsection (c),

1 if the insurer is a member of an insurance group the insurer
2 shall submit the report required by this section to the
3 commissioner of the lead state for the insurance group in
4 accordance with the laws of the lead state as determined by
5 the procedures outlined in the most recent Financial Analysis
6 Handbook adopted by the NAIC.

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

14 (c) An insurer that is not required to submit a CGAD
15 under this section shall submit a CGAD at the request of the
16 commissioner.

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

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

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

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

22 §27-29B-4. Rules.

23 The commissioner, upon notice and opportunity for
24 all interested persons to be heard, may issue rules and orders
25 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

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

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

1 documents, materials, or information subject to subsection
2 (a).

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

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

19 (2) May receive documents, materials, or other
20 CGAD-related information, including otherwise confidential and
21 privileged documents, materials, or information, including
22 proprietary and trade secret information or documents, from
23 regulatory officials of other state, federal, and
24 international financial regulatory agencies, including members
25 of any supervisory college as defined in Section 27-29-6.1,

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

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

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

17 §27-29B-7. NAIC and Third-party Consultants.

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

1 provide that the recipient agrees in writing to maintain the
2 confidentiality and privileged status of the CGAD-related
3 documents, materials, or other information and has verified in
4 writing the legal authority to maintain confidentiality.

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

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

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

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

25 §27-29B-8. Sanctions.

1 Any insurer failing, without just cause, to timely
2 file the CGAD as required in this chapter shall be required,
3 after notice and hearing, to pay a penalty of one thousand
4 dollars (\$1,000) for each day's delay, to be recovered by the
5 commissioner. Any penalty recovered shall be deposited in the
6 State General Fund. The maximum penalty under this section is
7 one hundred thousand dollars (\$100,000). The commissioner may
8 reduce the penalty if the insurer demonstrates to the
9 commissioner that the imposition of the penalty would
10 constitute a financial hardship to the insurer.

11 §27-29B-9. Severability Clause.

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

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

21 "§27-29-1.

22 "For purposes of this chapter, unless otherwise
23 stated, the following terms shall have the meanings
24 respectively ascribed to them by this section:

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

6 "(2) COMMISSIONER. The Commissioner of Insurance,
7 his or her deputies, or the Insurance Department as
8 appropriate.

9 "(3) CONTROL. The term shall include controlling,
10 controlled by, or under common control with and shall mean the
11 possession, direct or indirect, of the power to direct or
12 cause the direction of the management and policies of a
13 person, whether through the ownership of voting securities, by
14 contract other than a commercial contract for goods or
15 nonmanagement services, or otherwise, unless the power is the
16 result of an official position with or corporate office held
17 by the person. Control shall be presumed to exist if any
18 person, directly or indirectly owns, controls, holds with the
19 power to vote, or holds proxies representing five percent or
20 more of the voting securities of any other person. This
21 presumption may be rebutted by a showing made in the manner
22 provided by subsection (k) of Section 27-29-4 that control
23 does not exist in fact. The commissioner may determine, after
24 furnishing all persons in interest notice and opportunity to
25 be heard and making a specific finding of fact to support such

1 determination, that control exists in fact, notwithstanding
2 the absence of a presumption to that effect.

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

12 "(5) GROUP-WIDE SUPERVISOR. The regulatory official
13 authorized to engage in conducting and coordinating group-wide
14 supervision activities who is determined or acknowledged by
15 the commissioner under this chapter to have sufficient
16 significant contacts with the internationally active insurance
17 group.

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

21 "(7) INSURER. An insurance company as set forth in
22 Section 27-1-2, including, without limitation, any fraternal
23 benefit society, health care service plan, and health
24 maintenance organization, except that it shall not include
25 agencies, authorities, or instrumentalities of the United

1 States, its possessions and territories, the Commonwealth of
2 Puerto Rico, the District of Columbia, or a state or political
3 subdivision of a state.

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

8 "a. Premiums are written in at least three
9 countries.

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

13 "c. Based on a three-year rolling average, the total
14 assets of the insurance holding company system are at least
15 fifty billion dollars (\$50,000,000,000) or the total gross
16 written premiums of the insurance holding company system are
17 at least ten billion dollars (\$10,000,000,000).

18 "~~(8)~~(9) PERSON. An individual, a corporation, a
19 limited liability company, a partnership, an association, a
20 joint-stock company, a trust, an unincorporated organization,
21 or any similar entity or any combination of the foregoing
22 acting in concert, but shall not include any joint venture
23 partnership exclusively engaged in owning, managing, leasing,
24 or developing real or tangible personal property.

1 "~~(9)~~(10) SECURITYHOLDER. One who owns any security
2 of such person, including common stock, preferred stock, debt
3 obligations, and other security convertible into, or
4 evidencing, the right to acquire any of the foregoing.

5 "~~(10)~~(11) SUBSIDIARY. An affiliate controlled by
6 such person, directly or indirectly, through one or more
7 intermediaries.

8 "~~(11)~~(12) VOTING SECURITY. The term shall include
9 any security convertible into, or evidencing, a right to
10 acquire a voting security.

11 "§27-29-7.

12 "(a) All documents, materials, or other information,
13 and copies thereof, in the possession or control of the
14 Department of Insurance that are obtained by or disclosed to
15 the commissioner or any other person in the course of an
16 examination or investigation made pursuant to Section 27-29-6
17 and all information reported pursuant to paragraphs l. and m.
18 of subdivision (l) of subsection (b) of Section 27-29-3,
19 Section 27-29-4, ~~and~~ Section 27-29-5, and Section 27-29-6.2
20 shall be confidential by law and privileged, shall not be
21 subject to any open records, freedom of information, sunshine
22 or other public record disclosure laws, and shall not be
23 subject to subpoena. The commissioner may use the documents,
24 materials, and other information in the furtherance of any
25 regulatory or legal action in the course of the commissioner's

1 official duties. The documents, materials, and other
2 information shall not be made public by the commissioner or
3 any other person without the prior written consent of the
4 insurer to which it pertains unless the commissioner
5 determines that the interests of policyholders, shareholders,
6 or the public will be served by the publication thereof, in
7 which event the commissioner may publish all, or any part
8 thereof, in such manner as the commissioner may deem
9 appropriate. Prior to making this determination, the
10 commissioner shall give the insurer and its affiliates who
11 would be affected thereby no less than 10 days' written notice
12 of the opportunity to request a hearing on the matter.

13 "(b) Neither the commissioner nor any person who
14 received documents, materials, or other information while
15 acting under the authority of the commissioner or with whom
16 such documents, materials, or other information are shared
17 pursuant to this chapter shall be permitted or required to
18 testify in any private civil action concerning any
19 confidential documents, materials, or information subject to
20 subsection (a).

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

23 "(1) May share documents, materials, or other
24 information, including the confidential and privileged
25 documents, materials, or information subject to subsection

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

11 "(2) Notwithstanding subdivision (1) above, may
12 share confidential and privileged documents, material, or
13 information reported pursuant to subsection (1) of Section
14 27-29-4 only with commissioners of states having statutes or
15 regulations substantially similar to subsection (a) and who
16 have agreed in writing not to disclose such information.

17 "(3) May receive documents, materials, or
18 information, including otherwise confidential and privileged
19 documents, materials, or information from the National
20 Association of Insurance Commissioners and its affiliates and
21 subsidiaries and from regulatory and law enforcement officials
22 of other foreign or domestic jurisdictions, and shall maintain
23 as confidential or privileged any document, material, or
24 information received with notice or the understanding that it
25 is confidential or privileged under the laws of the

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

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

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

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

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

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

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB52
Senate 02-APR-19
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 23-APR-19

By: Senator Shelnut