

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2191

By: Sims

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5  
6 AS INTRODUCED

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 that 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;

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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;

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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.

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