

2015 Regular Session

HOUSE BILL NO. 199

BY REPRESENTATIVE CROMER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURERS: Enacts the National Association of Insurance Commissioners' Corporate Governance Annual Disclosure Act

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(11) and to enact Subpart G-2 of Part III of Chapter 2
3 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
4 22:691.31 through 691.38, relative to corporate governance of insurers and insurance
5 groups; to provide with respect to the authority of the commissioner to require
6 corporate governance annual disclosures; to provide for confidentiality of
7 information; to provide for sanctions for noncompliance; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart G-2 of Part III of Chapter 2 of Title 22 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 22:691.31 through 691.38, is hereby enacted to read as
12 follows:

13 SUBPART G-2. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT

14 §691.31. Purpose and scope

15 A. The purpose of this Subpart is to:

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

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

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

8 B. Nothing in this Subpart shall be construed to prescribe or impose
9 corporate governance standards and internal procedures beyond those required
10 pursuant to this Title or other laws of this state. Notwithstanding any other provision
11 of this Subpart to the contrary, nothing in this Subpart shall be construed to limit the
12 commissioner's authority or the rights or obligations of third parties pursuant to this
13 Title.

14 C. The requirements of this Subpart shall apply to all insurers domiciled in
15 this state.

16 §691.32. Definitions

17 For purposes of this Subpart:

18 (1) "Corporate governance annual disclosure" or "CGAD" means a
19 confidential report filed by the insurer or insurance group compiled in accordance
20 with the requirements of this Subpart.

21 (2) "Insurance group" means those insurers and affiliates included within an
22 insurance holding company system as defined in the Insurance Holding Company
23 System Regulatory Law, R.S. 22:691.1 et seq.

24 (3) "Insurer" means an insurer as defined in R.S. 22:46, except that it shall
25 not include agencies, authorities, or instrumentalities of the United States, its
26 possessions and territories, the Commonwealth of Puerto Rico, the District of
27 Columbia, or a state or political subdivision of a state.

28 (4) "NAIC" means the National Association of Insurance Commissioners.

1 (5) "ORSA summary report" means a confidential high-level summary of an
2 insurer's or insurance group's own risk and solvency assessment.

3 §691.33. Disclosure requirement

4 A. An insurer, or the insurance group of which the insurer is a member,
5 shall, no later than June first of each calendar year, submit to the commissioner a
6 corporate governance annual disclosure (CGAD) that contains the information
7 specified in R.S. 22:691.35. Notwithstanding any request from the commissioner
8 made pursuant to Subsection C of this Section, if the insurer is a member of an
9 insurance group, the insurer shall submit the report required by this Section to the
10 commissioner of the lead state for the insurance group, in accordance with the laws
11 of the lead state, as determined by the procedures outlined in the most recent
12 Financial Analysis Handbook adopted by the NAIC.

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

18 C. An insurer not required to submit a CGAD under this Section shall do so
19 upon the commissioner's request.

20 D. For purposes of completing the CGAD, the insurer or insurance group
21 may provide information regarding corporate governance at the ultimate controlling
22 parent level, an intermediate holding company level, or the individual legal entity
23 level, depending upon how the insurer or insurance group has structured its system
24 of corporate governance. The insurer or insurance group shall be encouraged to
25 make the CGAD disclosures at the level at which the insurer's or insurance group's
26 risk appetite is determined, or at which the earnings, capital, liquidity, operations,
27 and reputation of the insurer are overseen collectively and at which the supervision
28 of those factors are coordinated and exercised, or the level at which legal liability for
29 failure of general corporate governance duties would be placed. If the insurer or

1 insurance group determines the level of reporting based on these criteria, it shall
2 indicate which of the three criteria was used to determine the level of reporting and
3 explain any subsequent changes in the level of reporting.

4 E. The review of the CGAD and any additional requests for information shall
5 be made through the lead state as determined by the procedures outlined in the most
6 recent Financial Analysis Handbook specified in Subsection A of this Section.

7 F. Insurers providing information substantially similar to the information
8 required by this Subpart in other documents provided to the commissioner, including
9 proxy statements filed in conjunction with Form B requirements or other state or
10 federal filings provided to the commissioner, shall not be required to duplicate that
11 information in the CGAD but shall be required only to make reference to the
12 document in which such information is included.

13 §691.34. Rules and regulations

14 Pursuant to the Administrative Procedure Act and this Title, the
15 commissioner may promulgate rules, regulations, and orders necessary to carry out
16 the provisions of this Subpart.

17 §691.35. Contents of corporate governance annual disclosure

18 A. The insurer or insurance group shall have discretion over the responses
19 to the CGAD inquiries; however, the CGAD shall contain the material information
20 necessary to permit the commissioner to gain an understanding of the insurer's or
21 insurance group's corporate governance structure, policies, and practices. The
22 commissioner may request additional information deemed material and necessary to
23 provide a clear understanding of the corporate governance policies, the reporting or
24 information system, or controls implementing those policies.

25 B. Notwithstanding Subsection A of this Section, the CGAD shall be
26 prepared consistently with rules, regulations, and orders promulgated pursuant to
27 R.S. 22:691.34. Documentation and supporting information shall be maintained and
28 made available upon examination or upon request of the commissioner.

1 §691.36. Confidentiality

2 A. Documents, materials, or other information, including the CGAD, in the
3 possession of or control of the commissioner that are obtained by, created by, or
4 disclosed to the commissioner or any other person pursuant to this Subpart are
5 recognized by this state as being proprietary and containing trade secrets. All such
6 documents, materials, or other information shall be confidential and privileged, shall
7 not be subject to the Public Records Law, shall not be subject to subpoena, and shall
8 not be subject to discovery or admissible in evidence in any private civil action.
9 However, the commissioner is authorized to use the documents, materials, or other
10 information in the furtherance of any regulatory or legal action brought as a part of
11 the commissioner's official duties. The commissioner shall not otherwise make the
12 documents, materials, or other information public without the prior written consent
13 of the insurer. Nothing in this Section shall be construed to require written consent
14 of the insurer before the commissioner may share or receive confidential documents,
15 materials, or other governance-related information pursuant to Subsection C of this
16 Section to assist in the performance of the commissioner's regular duties.

17 B. Neither the commissioner nor any person who received documents,
18 materials, or other governance-related information, through examination or
19 otherwise, while acting under the authority of the commissioner, or with whom such
20 documents, materials, or other information are shared pursuant to this Subpart shall
21 be permitted or required to testify in any private civil action concerning any
22 confidential documents, materials, or information subject to Subsection A of this
23 Section.

24 C. In order to assist in the performance of the commissioner's regulatory
25 duties, the commissioner may do either or both of the following:

26 (1) Upon request, share documents, materials, or other governance-related
27 information, including the confidential and privileged documents, materials, or
28 information subject to Subsection A of this Section, including proprietary and trade
29 secret documents and materials with other state, federal, and international financial

1 regulatory agencies, including members of any supervisory college as defined in R.S.
2 22:691.9, with the NAIC, and with third-party consultants pursuant to R.S.
3 22:691.37; however, the recipient shall agree in writing to maintain the
4 confidentiality and privileged status of the governance-related documents, materials,
5 or other information and shall verify in writing its legal authority to maintain such
6 confidentiality.

7 (2) Receive documents, materials, or other governance-related information,
8 including otherwise confidential and privileged documents, materials, or
9 information, including proprietary and trade-secret information or documents, from
10 regulatory officials of other state, federal, and international financial regulatory
11 agencies, including members of any supervisory college as defined in R.S. 22:691.9,
12 and from the NAIC and shall maintain as confidential or privileged any documents,
13 materials, or information received with notice or the understanding that it is
14 confidential or privileged under the laws of the jurisdiction that is the source of the
15 document, materials, or information.

16 D. The sharing of information and documents by the commissioner pursuant
17 to this Subpart shall not constitute a delegation of regulatory authority or rulemaking,
18 and the commissioner shall be solely responsible for the administration, execution,
19 and enforcement of the provisions of this Subpart.

20 E. No waiver of any applicable privilege or claim of confidentiality in the
21 documents, proprietary and trade-secret materials or other governance-related
22 information shall occur as a result of disclosure of such governance-related
23 information or documents to the commissioner under this Section or as a result of
24 sharing as authorized in this Subpart.

25 §691.37. NAIC and third-party consultants

26 A. The commissioner may retain, at the insurer's expense, third-party
27 consultants, including attorneys, actuaries, accountants, and other experts not
28 otherwise a part of the commissioner's staff, as may be reasonably necessary to assist

1 the commissioner in reviewing the CGAD and related information or the insurer's
2 compliance with this Subpart.

3 B. Any person retained pursuant to Subsection A of this Section shall be
4 under the direction and control of the commissioner and shall act in a purely advisory
5 capacity.

6 C. The NAIC and third-party consultants shall be subject to the same
7 confidentiality standards and requirements as the commissioner.

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

12 E. A written agreement with either the NAIC, a third-party consultant, or
13 both governing sharing and use of information provided pursuant to this Subpart
14 shall contain the following provisions and expressly require the written consent of
15 the insurer prior to making public information provided pursuant to this Subpart:

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

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

25 (3) A provision specifying that ownership of the CGAD-related information
26 shared with the NAIC or a third-party consultant remains with the commissioner and
27 the NAIC's or third-party consultant's use of the information is subject to the
28 direction of the commissioner.

1 (11) R.S. 22:2, 14, 31, 42.1, 88, 244, 263, 265, 461, 550.7, 571, 572, 572.1,
 2 574, 618, 639, 691.4, 691.5, 691.6, 691.7, 691.8, 691.9, 691.10, 691.36, 732, 752,
 3 753, 771, 834, 972(D), 1008, 1019.2, 1203, 1460, 1464, 1466, 1488, 1546, 1559,
 4 1566(D), 1644, 1656, 1723, 1796, 1801, 1927, 1929, 1983, 1984, 2036, 2056, 2085,
 5 2091, 2293, 2303.

6 * * *

7 Section 3. Notwithstanding the provisions of R.S. 24:175, the provisions of this Act
 8 are nonseverable. It is intended that if any provision of R.S. 22:691.36, as enacted by
 9 Section 1 of this Act, or the application thereof to any person or circumstances is held
 10 invalid under the Constitution of Louisiana or of the United States by a final and
 11 nonappealable judgment, then such provision's ineffectiveness or invalidity will invalidate
 12 this Act.

13 Section 4. This Act shall become effective on January 1, 2016.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 199 Re-Reengrossed 2015 Regular Session Cromer

Abstract: Enacts the National Association of Insurance Commissioners' (NAIC) Corporate Governance Annual Disclosure Model Act.

Proposed law enacts the NAIC Corporate Governance Annual Disclosure (CGAD) Model Act, as follows:

- (1) Outlines the requirements for an insurer or insurance group to complete a CGAD and submit it to the insurance commissioner. Provides that nothing in proposed law prescribes or imposes corporate governance standards and internal procedures beyond those required pursuant to the Insurance Code or other laws of this state. Provides that the requirement to file a CGAD shall apply to all insurers domiciled in this state.
- (2) Provides that, for purposes of completing a CGAD, an insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. Further provides that insurers providing information substantially similar to the information required by proposed law 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 commissioner, shall not be required to duplicate that information in the CGAD but shall only be required to make reference to the document in which such information is included.

- (3) Provides that an insurer or insurance group shall have discretion over the responses to the CGAD inquiries; however, requires that the CGAD contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. Also authorizes the commissioner to request additional information deemed material and necessary to provide a clear understanding of the corporate governance policies, the reporting or information system, or controls implementing those policies.
- (4) Provides that certain documents, materials, or other information, including the CGAD, in possession of the commissioner shall be confidential and privileged, shall not be subject to disclosure under the Public Records Law, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. Provides for an exemption from the Public Records Law. Allows the commissioner to share and receive such materials as long as they are kept confidential.
- (5) Authorizes the commissioner to retain, at an insurer's expense, third-party consultants, including those from the NAIC, as necessary to assist in reviewing the CGAD. Further requires of such consultants that they be free of any conflict of interest and compliant with the confidentiality standards of proposed law. Also requires a written agreement with such consultant.
- (6) Mandates that any insurer failing, without just cause, to timely file a CGAD be required, after notice and opportunity to be heard, to pay a penalty of \$100 for each day's delay, to be recovered by the commissioner and deposited upon receipt in the state treasury. Sets the maximum penalty at \$10,000. Allows the commissioner to reduce the penalty if the insurer demonstrates to him that the imposition of the penalty would constitute a financial hardship to it.
- (7) Authorizes the commissioner to promulgate rules, regulations, and orders necessary to carry out the provisions of proposed law.

Proposed law provides that its provisions are nonseverable. Specifies that it is intended that if any provision of proposed law relative to confidentiality is held invalid under the Constitution of Louisiana or of the United States by a final and nonappealable judgment, then such provision's ineffectiveness or invalidity will invalidate proposed law.

Effective on Jan. 1, 2016.

(Amends R.S. 44:4.1(B)(11); Adds R.S. 22:691.31-691.38)

Summary of Amendments Adopted by House

The House Floor Amendments to the reengrossed bill:

1. Delete requirement for a hearing for an insurer failing to timely file a CGAD before required payment of a penalty. Instead requires an opportunity to be heard for such an insurer.