

# ACT No. 304

2015 Regular Session

HOUSE BILL NO. 199

BY REPRESENTATIVE CROMER

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

SUBPART G-2. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT

§691.31. Purpose and scope

A. The purpose of this Subpart is to:

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

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

(3) Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive

1 information related to an insurer or insurance group's internal operations and  
2 proprietary and trade secret information which, if made public, could potentially  
3 cause the insurer or insurance group competitive harm or disadvantage.

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

10 C. The requirements of this Subpart shall apply to all insurers domiciled in  
11 this state.

12 §691.32. Definitions

13 For purposes of this Subpart:

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

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

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

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

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

27 §691.33. Disclosure requirement

28 A. An insurer, or the insurance group of which the insurer is a member,  
29 shall, no later than June first of each calendar year, submit to the commissioner a  
30 corporate governance annual disclosure (CGAD) that contains the information

1 specified in R.S. 22:691.35. Notwithstanding any request from the commissioner  
2 made pursuant to Subsection C of this Section, if the insurer is a member of an  
3 insurance group, the insurer shall submit the report required by this Section to the  
4 commissioner of the lead state for the insurance group, in accordance with the laws  
5 of the lead state, as determined by the procedures outlined in the most recent  
6 Financial Analysis Handbook adopted by the NAIC.

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

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

14 D. For purposes of completing the CGAD, the insurer or insurance group  
15 may provide information regarding corporate governance at the ultimate controlling  
16 parent level, an intermediate holding company level, or the individual legal entity  
17 level, depending upon how the insurer or insurance group has structured its system  
18 of corporate governance. The insurer or insurance group shall be encouraged to  
19 make the CGAD disclosures at the level at which the insurer's or insurance group's  
20 risk appetite is determined, or at which the earnings, capital, liquidity, operations,  
21 and reputation of the insurer are overseen collectively and at which the supervision  
22 of those factors are coordinated and exercised, or the level at which legal liability for  
23 failure of general corporate governance duties would be placed. If the insurer or  
24 insurance group determines the level of reporting based on these criteria, it shall  
25 indicate which of the three criteria was used to determine the level of reporting and  
26 explain any subsequent changes in the level of reporting.

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

1           F. Insurers providing information substantially similar to the information  
 2           required by this Subpart in other documents provided to the commissioner, including  
 3           proxy statements filed in conjunction with Form B requirements or other state or  
 4           federal filings provided to the commissioner, shall not be required to duplicate that  
 5           information in the CGAD but shall be required only to make reference to the  
 6           document in which such information is included.

7           §691.34. Rules and regulations

8           Pursuant to the Administrative Procedure Act and this Title, the  
 9           commissioner may promulgate rules, regulations, and orders necessary to carry out  
 10          the provisions of this Subpart.

11          §691.35. Contents of corporate governance annual disclosure

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

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

23          §691.36. Confidentiality

24           A. Documents, materials, or other information, including the CGAD, in the  
 25           possession of or control of the commissioner that are obtained by, created by, or  
 26           disclosed to the commissioner or any other person pursuant to this Subpart are  
 27           recognized by this state as being proprietary and containing trade secrets. All such  
 28           documents, materials, or other information shall be confidential and privileged, shall  
 29           not be subject to the Public Records Law, shall not be subject to subpoena, and shall  
 30           not be subject to discovery or admissible in evidence in any private civil action.

1 However, the commissioner is authorized to use the documents, materials, or other  
2 information in the furtherance of any regulatory or legal action brought as a part of  
3 the commissioner's official duties. The commissioner shall not otherwise make the  
4 documents, materials, or other information public without the prior written consent  
5 of the insurer. Nothing in this Section shall be construed to require written consent  
6 of the insurer before the commissioner may share or receive confidential documents,  
7 materials, or other governance-related information pursuant to Subsection C of this  
8 Section to assist in the performance of the commissioner's regular duties.

9 B. Neither the commissioner nor any person who received documents,  
10 materials, or other governance-related information, through examination or  
11 otherwise, while acting under the authority of the commissioner, or with whom such  
12 documents, materials, or other information are shared pursuant to this Subpart shall  
13 be permitted or required to testify in any private civil action concerning any  
14 confidential documents, materials, or information subject to Subsection A of this  
15 Section.

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

18 (1) Upon request, share documents, materials, or other governance-related  
19 information, including the confidential and privileged documents, materials, or  
20 information subject to Subsection A of this Section, including proprietary and trade  
21 secret documents and materials with other state, federal, and international financial  
22 regulatory agencies, including members of any supervisory college as defined in R.S.  
23 22:691.9, with the NAIC, and with third-party consultants pursuant to R.S.  
24 22:691.37; however, the recipient shall agree in writing to maintain the  
25 confidentiality and privileged status of the governance-related documents, materials,  
26 or other information and shall verify in writing its legal authority to maintain such  
27 confidentiality.

28 (2) Receive documents, materials, or other governance-related information,  
29 including otherwise confidential and privileged documents, materials, or  
30 information, including proprietary and trade-secret information or documents, from

1 regulatory officials of other state, federal, and international financial regulatory  
2 agencies, including members of any supervisory college as defined in R.S. 22:691.9,  
3 and from the NAIC and shall maintain as confidential or privileged any documents,  
4 materials, or information received with notice or the understanding that it is  
5 confidential or privileged under the laws of the jurisdiction that is the source of the  
6 document, materials, or information.

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

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

16 §691.37. NAIC and third-party consultants

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

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

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

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

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

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

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

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

18                  (4) A provision that prohibits the NAIC or a third-party consultant from  
19                  storing the information shared pursuant to this Subpart in a permanent database after  
20                  the underlying analysis is complete.

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

25                  (6) A requirement that the NAIC or a third-party consultant consent to  
26                  intervention by an insurer in any judicial or administrative action in which the NAIC  
27                  or a third-party consultant may be required to disclose confidential information about  
28                  the insurer shared with the NAIC or a third-party consultant pursuant to this Subpart.





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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_