

## Senate Amendments to House Bill No. 324

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

14        SECTION 1. (1) The purpose of this act is to:

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

20                (b) Outline the requirements for completing a corporate  
21 governance annual disclosure with the Commissioner of Insurance.

22                (c) Provide for the confidential treatment of the  
23 corporate governance annual disclosure and related information  
24 that will contain confidential and sensitive information related  
25 to an insurer or insurance group's internal operations and  
26 proprietary and trade secret information which, if made public,  
27 could potentially cause the insurer or insurance group competitive  
28 harm or disadvantage.

29                (2) Nothing in this act shall be construed to prescribe or  
30 impose corporate governance standards and internal procedures

31 beyond that which is required under applicable state corporate  
32 law. Notwithstanding the foregoing, nothing in this act shall be  
33 construed to limit the commissioner's authority, or the rights or  
34 obligations of third parties, under Section 83-5-201.

35 (3) The requirements of this act shall apply to all insurers  
36 domiciled in this state.

37 **SECTION 2.** As used in this act, unless the context requires  
38 otherwise:

39 (a) "Commissioner" means the Commissioner of Insurance  
40 of the State of Mississippi.

41 (b) "Corporate Governance Annual Disclosure (CGAD)"  
42 means a confidential report filed by the insurer or insurance  
43 group made in accordance with the requirements of this act.

44 (c) "Insurance group" means those insurers and  
45 affiliates included within an insurance holding company system as  
46 defined in Section 83-6-1 et seq.

47 (d) "Insurer" shall have the same meaning as set forth  
48 in Section 83-6-1(e), except that it shall not include agencies,  
49 authorities or instrumentalities of the United States, its  
50 possessions and territories, the Commonwealth of Puerto Rico, the  
51 District of Columbia, or a state or political subdivision of a  
52 state.

53 (e) "NAIC" means the National Association of Insurance  
54 Commissioners.

55 (f) "ORSA Summary Report" means the report filed in  
56 accordance with Section 83-85-1 et seq.

57           **SECTION 3.** (1) An insurer, or the insurance group of which  
58 the insurer is a member, shall, no later than June 1 of each  
59 calendar year, submit to the commissioner a Corporate Governance  
60 Annual Disclosure (CGAD) that contains the information described  
61 in Section 5(2) of this act. Notwithstanding any request from the  
62 commissioner made pursuant to subsection (3) of this section, if  
63 the insurer is a member of an insurance group, the insurer shall  
64 submit the report required by this section to the commissioner of  
65 the lead state for the insurance group, in accordance with the  
66 laws of the lead state, as determined by the procedures outlined  
67 in the most recent Financial Analysis Handbook adopted by the  
68 NAIC.

69           (2) The CGAD must include a signature of the insurer or  
70 insurance group's chief executive officer or corporate secretary  
71 attesting to the best of that individual's belief and knowledge  
72 that the insurer has implemented the corporate governance  
73 practices and that a copy of the disclosure has been provided to  
74 the insurer's board of directors or the appropriate committee  
75 thereof.

76           (3) An insurer not required to submit a CGAD under this  
77 section shall do so upon the commissioner's request.

78           (4) For purposes of completing the CGAD, the insurer or  
79 insurance group may provide information regarding corporate  
80 governance at the ultimate controlling parent level, an  
81 intermediate holding company level and/or the individual legal  
82 entity level, depending upon how the insurer or insurance group

83 has structured its system of corporate governance. The insurer or  
84 insurance group is encouraged to make the CGAD disclosures at the  
85 level at which the insurer's or insurance group's risk appetite is  
86 determined, or at which the earnings, capital, liquidity,  
87 operations, and reputation of the insurer are overseen  
88 collectively and at which the supervision of those factors are  
89 coordinated and exercised, or the level at which legal liability  
90 for failure of general corporate governance duties would be  
91 placed. If the insurer or insurance group determines the level of  
92 reporting based on these criteria, it shall indicate which of the  
93 three (3) criteria was used to determine the level of reporting  
94 and explain any subsequent changes in the level of reporting.

95 (5) The review of the CGAD and any additional requests for  
96 information shall be made through the lead state as determined by  
97 the procedures within the most recent Financial Analysis Handbook  
98 referenced in subsection (1) of this section.

99 (6) Insurers providing information substantially similar to  
100 the information required by this act in other documents provided  
101 to the commissioner, including proxy statements filed in  
102 conjunction with Form B requirements, or other state or federal  
103 filings provided to this department shall not be required to  
104 duplicate that information in the CGAD, but shall only be required  
105 to cross reference the document in which the information is  
106 included.

107 **SECTION 4.** The commissioner may, upon notice and opportunity  
108 for all interested persons to be heard, issue such rules,

109 regulations and orders as shall be necessary to carry out the  
110 provisions of this act.

111 **SECTION 5.** (1) The insurer or insurance group shall have  
112 discretion over the responses to the CGAD inquiries, provided the  
113 CGAD shall contain the material information necessary to permit  
114 the commissioner to gain an understanding of the insurer's or  
115 group's corporate governance structure, policies and practices.  
116 The commissioner may request additional information that he or she  
117 deems material and necessary to provide the commissioner with a  
118 clear understanding of the corporate governance policies, the  
119 reporting or information system or controls implementing those  
120 policies.

121 (2) Notwithstanding subsection (1) of this section, the CGAD  
122 shall be prepared consistent with the NAIC Corporate Governance  
123 Annual Disclosure Model Regulation, as which may be adopted and  
124 amended. Documentation and supporting information shall be  
125 maintained and made available upon examination or upon request of  
126 the commissioner.

127 **SECTION 6.** (1) Documents, materials or other information  
128 including the CGAD, in the possession or control of the Department  
129 of Insurance that are obtained by, created by or disclosed to the  
130 commissioner or any other person under this act, are recognized by  
131 this state as being proprietary and to contain trade secrets. All  
132 such documents, materials or other information shall be  
133 confidential by law and privileged, shall not be subject to the  
134 Mississippi Public Records Act, Section 25-61-1 et seq., shall not

135 be subject to subpoena, and shall not be subject to discovery or  
136 admissible in evidence in any private civil action. However, the  
137 commissioner is authorized to use the documents, materials or  
138 other information in the furtherance of any regulatory or legal  
139 action brought as a part of the commissioner's official duties.  
140 The commissioner shall not otherwise make the documents, materials  
141 or other information public without the prior written consent of  
142 the insurer. Nothing in this section shall be construed to  
143 require written consent of the insurer before the commissioner may  
144 share or receive confidential documents, materials or other  
145 CGAD-related information pursuant to subsection (3) of this  
146 section to assist in the performance of the commissioner's regular  
147 duties.

148 (2) Neither the commissioner nor any person who received  
149 documents, materials or other CGAD-related information, through  
150 examination or otherwise, while acting under the authority of the  
151 commissioner, or with whom such documents, materials or other  
152 information are shared pursuant to this act shall be permitted or  
153 required to testify in any private civil action concerning any  
154 confidential documents, materials or information subject to  
155 subsection (1) of this section.

156 (3) In order to assist in the performance of the  
157 commissioner's regulatory duties, the commissioner:

158 (a) May, upon request, share documents, materials or  
159 other CGAD-related information including the confidential and  
160 privileged documents, materials or information subject to

161 subsection (1) of this section, including proprietary and trade  
162 secret documents and materials with other state, federal and  
163 international financial regulatory agencies, including members of  
164 any supervisory college as defined in Section 83-6-45(3), with the  
165 NAIC, and with third-party consultants pursuant to Section 7 of  
166 this act, provided that the recipient agrees in writing to  
167 maintain the confidentiality and privileged status of the  
168 CGAD-related documents, material or other information and has  
169 verified in writing the legal authority to maintain  
170 confidentiality; and

171 (b) May receive documents, materials or other  
172 CGAD-related information, including otherwise confidential and  
173 privileged documents, materials or information, including  
174 proprietary and trade-secret information or documents, from  
175 regulatory officials of other state, federal and international  
176 financial regulatory agencies, including members of any  
177 supervisory college as defined in Section 83-6-45(3) and from the  
178 NAIC, and shall maintain as confidential or privileged any  
179 documents, materials or information received with notice or the  
180 understanding that it is confidential or privileged under the laws  
181 of the jurisdiction that is the source of the document, material  
182 or information.

183 (4) The sharing of information and documents by the  
184 commissioner pursuant to this act shall not constitute a  
185 delegation of regulatory authority or rulemaking, and the

186 commissioner is solely responsible for the administration,  
187 execution and enforcement of the provisions of this act.

188 (5) No waiver of any applicable privilege or claim of  
189 confidentiality in the documents, proprietary and trade-secret  
190 materials or other CGAD-related information shall occur as a  
191 result of disclosure of such CGAD-related information or documents  
192 to the commissioner under this section or as a result of sharing  
193 as authorized in this act.

194 **SECTION 7.** (1) The commissioner may retain, at the  
195 insurer's expense, third-party consultants, including attorneys,  
196 actuaries, accountants and other experts not otherwise a part of  
197 the commissioner's staff as may be reasonably necessary to assist  
198 the commissioner in reviewing the CGAD and related information or  
199 the insurer's compliance with this act.

200 (2) Any persons retained under subsection (1) of this  
201 section shall be under the direction and control of the  
202 commissioner and shall act in a purely advisory capacity.

203 (3) The NAIC and third-party consultants shall be subject to  
204 the same confidentiality standards and requirements as the  
205 commissioner.

206 (4) As part of the retention process, a third-party  
207 consultant shall verify to the commissioner, with notice to the  
208 insurer, that it is free of a conflict of interest and that it has  
209 internal procedures in place to monitor compliance with a conflict  
210 and to comply with the confidentiality standards and requirements  
211 of this act.



212 (5) A written agreement with the NAIC and/or a third-party  
213 consultant governing the sharing and use of information provided  
214 pursuant to this act shall contain the following provisions and  
215 expressly require the written consent of the insurer prior to  
216 making public information provided under this act:

217 (a) Specific procedures and protocols for maintaining  
218 the confidentiality and security of CGAD-related information  
219 shared with the NAIC or a third-party consultant pursuant to this  
220 act;

221 (b) Procedures and protocols for sharing by the NAIC  
222 only with other state regulators from states in which the  
223 insurance group has domiciled insurers. The agreement shall  
224 provide that the recipient agrees in writing to maintain the  
225 confidentiality and privileged status of the CGAD-related  
226 documents, materials or other information and has verified in  
227 writing the legal authority to maintain confidentiality;

228 (c) A provision specifying that ownership of the  
229 CGAD-related information shared with the NAIC or a third-party  
230 consultant remains with the Department of Insurance and the NAIC's  
231 or third-party consultant's use of the information is subject to  
232 the direction of the commissioner;

233 (d) A provision that prohibits the NAIC or a  
234 third-party consultant from storing the information shared  
235 pursuant to this act in a permanent database after the underlying  
236 analysis is completed;

237 (e) A provision requiring the NAIC or third-party  
238 consultant to provide prompt notice to the commissioner and to the  
239 insurer or insurance group regarding any subpoena, request for  
240 disclosure, or request for production of the insurer's  
241 CGAD-related information; and

242 (f) A requirement that the NAIC or a third-party  
243 consultant to consent to intervention by an insurer in any  
244 judicial or administrative action in which the NAIC or a  
245 third-party consultant may be required to disclose confidential  
246 information about the insurer shared with the NAIC or a  
247 third-party consultant pursuant to this act.

248 **SECTION 8.** Any insurer failing, without just cause, to  
249 timely file the CGAD as required in this act shall be required,  
250 after notice and hearing, to pay a penalty of One Hundred Dollars  
251 (\$100.00) for each day's delay, to be recovered by the  
252 commissioner and the penalty so recovered shall be paid into the  
253 State General Fund. The maximum penalty under this section is Ten  
254 Thousand Dollars (\$10,000.00). The commissioner may reduce the  
255 penalty if the insurer demonstrates to the commissioner that the  
256 imposition of the penalty would constitute a financial hardship to  
257 the insurer.

258 **SECTION 9.** If any provision of this act, other than Section  
259 6 of this act, or the application thereof to any person or  
260 circumstance, is held invalid, such determination shall not affect  
261 the provisions or applications of this act which can be given  
262 effect without the invalid provision or application, and to that

263 end the provisions of this act, with the exception of Section 6 of  
264 this act, are severable.

265         **SECTION 10.** This act shall take effect and be in force from  
266 and after January 1, 2020. The first filing of the CGAD shall be  
267 in 2020.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1           AN ACT TO REQUIRE INSURANCE COMPANIES TO FILE A CORPORATE  
2 GOVERNANCE ANNUAL DISCLOSURE (CGAD) WITH THE COMMISSIONER OF  
3 INSURANCE; TO DEFINE CERTAIN TERMS; TO AUTHORIZE THE COMMISSIONER  
4 OF INSURANCE TO ISSUE RULES, REGULATIONS AND ORDERS AS NECESSARY  
5 TO CARRY OUT THE PROVISIONS OF THIS ACT; TO PROVIDE FOR THE  
6 CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURES; TO PROVIDE  
7 THAT CERTAIN DOCUMENTS, MATERIALS OR OTHER CGAD-RELATED  
8 INFORMATION SHALL BE CONFIDENTIAL AND SHALL NOT BE SUBJECT TO THE  
9 MISSISSIPPI PUBLIC RECORDS ACT; TO AUTHORIZE THE COMMISSIONER TO  
10 RETAIN THIRD-PARTY CONSULTANTS; TO PROVIDE A PENALTY FOR FAILING  
11 TO TIMELY FILE THE DISCLOSURE AS REQUIRED BY THIS ACT; AND FOR  
12 RELATED PURPOSES.

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Liz Welch  
Secretary of the Senate