

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 324

BY: Committee

**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, and shall stand repealed on December
267 31, 2019. The first filing of the CGAD shall be 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.

