

1 SB146
2 181474-1
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 09-FEB-17

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8 SYNOPSIS: Under existing law, the Insurance
9 Commissioner receives certain documents, materials,
10 and other information in connection with the
11 Alabama Risk-Based Capital for Insurers Act which
12 are confidential and not subject to public
13 disclosure.

14 This bill would provide that the
15 commissioner or any person receiving documents,
16 materials, or other information under the Alabama
17 Risk-Based Capital for Insurers Act under the
18 authority of the commissioner shall not be
19 permitted or required to testify in a private civil
20 action concerning the confidential documents,
21 materials, or information received; however, the
22 documents, materials, or other information can be
23 shared with other state, federal, and international
24 regulatory agencies, with the NAIC, and state,
25 federal, and international law enforcement
26 authorities; that any such documents, materials, or
27 other information received from the NAIC, from

1 regulatory or law enforcement officials of foreign
2 or domestic jurisdictions shall be maintained as
3 confidential or privileged as provided under the
4 laws of the source jurisdiction; that the
5 commissioner may enter into information sharing
6 agreements consistent with the law; and that
7 sharing the documents, materials, or information
8 shall not result in a waiver of any applicable
9 privilege or claim of confidentiality in the
10 documents, materials, or information.

11 Also under existing law, the ultimate
12 controlling person of every insurer subject to
13 registration under the Alabama Insurance Holding
14 Company System Regulatory Act, with certain
15 exceptions, is required to file an annual
16 enterprise risk report.

17 This bill would delete the exception to the
18 requirement for the ultimate controlling person of
19 every insurer subject to registration under the
20 Alabama Insurance Holding Company Regulatory Act to
21 file an annual enterprise risk report.

22 This bill would also specifically permit the
23 Commissioner of Insurance to share otherwise
24 confidential and privileged documents, materials,
25 and information under the Alabama Insurance Holding
26 Company Regulatory Act with the National
27 Association of Insurance Commissioners and its

1 affiliates and subsidiaries under certain
2 circumstances.

3 This bill would also clarify legal authority
4 and power for the commissioner to act as a
5 group-wide supervisor for an internationally active
6 insurance group or to acknowledge another
7 regulatory person for that purpose.

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 Relating to insurance; to amend Sections 27-2B-9,
14 27-29-1, 27-29-4, and 27-29-7 of the Code of Alabama 1975, and
15 to add Section 27-29-6.2 to the Code of Alabama 1975, to
16 provide that the commissioner or any person receiving
17 documents, materials, or other information under the Alabama
18 Risk-Based Capital for Insurers Act under the authority of the
19 commissioner shall not be permitted or required to testify in
20 a private civil action concerning the confidential documents,
21 materials, or information received except to authorize the
22 documents, material, or other information to be shared with
23 other state, federal, and international regulatory agencies,
24 with the NAIC, and state, federal, and international law
25 enforcement authorities; to provide that any documents,
26 materials, or other information received from the NAIC, from
27 regulatory or law enforcement officials of foreign or domestic

1 jurisdictions shall be maintained as confidential or
2 privileged as provided under the laws of the source
3 jurisdiction; to provide that the commissioner may enter into
4 information sharing agreements consistent with the law; to
5 provide that sharing the documents, materials, or information
6 shall not result in a waiver of any applicable privilege or
7 claim of confidentiality in the documents, materials, or
8 information; to provide that there be no exception to the
9 requirement for the ultimate controlling person of every
10 insurer subject to registration under the Alabama Insurance
11 Holding Company Regulatory Act to file an annual enterprise
12 risk report; to provide specific authority for the
13 commissioner to share otherwise confidential and privileged
14 documents, materials, or information under the Alabama
15 Insurance Holding Company Regulatory Act with the National
16 Association of Insurance Commissioners and its affiliates and
17 subsidiaries under certain circumstances; and to clarify legal
18 authority and power for the commissioner to act as a
19 group-wide supervisor for internationally active insurance
20 groups or to acknowledge another regulatory person for that
21 purpose.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 27-2B-9, 27-29-1, 27-29-4, and
24 27-29-7 of the Code of Alabama 1975, are amended to read as
25 follows:

26 "§27-2B-9.

1 "(a) All RBC reports, to the extent the information
2 therein is not required to be set forth in a publicly
3 available annual statement schedule, and RBC plans, including
4 the results or report of any examination or analysis of an
5 insurer performed pursuant hereto and any corrective order
6 issued by the commissioner pursuant to examination or
7 analysis, with respect to any domestic insurer or foreign
8 insurer which are filed with the commissioner constitute
9 information that may be damaging to the insurer if made
10 available to its competitors and therefore shall be kept
11 confidential by the commissioner. This information shall not
12 be made public or be subject to subpoena, other than by the
13 commissioner, and then only for the purpose of enforcement
14 actions taken by the commissioner pursuant to this chapter or
15 any other provision of the insurance laws of this state.

16 "(b) Neither the commissioner nor any person who
17 received documents, materials, or other information while
18 acting under the authority of the commissioner shall be
19 permitted or required to testify in any private civil action
20 concerning any confidential documents, materials, or
21 information subject to subsection (a).

22 "(c) In order to assist in the performance of the
23 commissioner's duties, the commissioner may do all of the
24 following:

25 "(1) Share documents, materials, or other
26 information, including the confidential and privileged
27 documents, materials, or information subject to subsection

1 (a), with other state, federal, and international regulatory
2 agencies, with the National Association of Insurance
3 Commissioners (NAIC) and its affiliates and subsidiaries, and
4 with state, federal, and international law enforcement
5 authorities, provided that the recipient agrees to maintain
6 the confidentiality and privileged status of the document,
7 material, or other information.

8 "(2) Receive documents, materials, or information,
9 including otherwise confidential and privileged documents,
10 materials, or information, from the NAIC and its affiliates
11 and subsidiaries, and from regulatory and law enforcement
12 officials of other foreign or domestic jurisdictions, and
13 maintain as confidential or privileged any documents,
14 materials, or information received with notice or the
15 understanding that it is confidential or privileged under the
16 laws of the jurisdiction that is the source of the document,
17 material, or information.

18 "(3) Enter into agreements governing sharing and use
19 of information consistent with this subsection.

20 "(d) No waiver of any applicable privilege or claim
21 of confidentiality in the documents, materials, or information
22 shall occur as a result of disclosure to the commissioner
23 under this section or as a result of sharing as authorized in
24 subsection (c).

25 ~~(b)~~(e) It is the judgment of the Legislature that
26 the comparison of an insurer's total adjusted capital to any
27 of its RBC levels is a regulatory tool which may indicate the

1 need for possible corrective action with respect to the
2 insurer, and is not intended as a means to rank insurers
3 generally. Therefore, except as otherwise required under the
4 provisions of this chapter, the making, publishing,
5 disseminating, circulating, or placing before the public, or
6 causing, directly or indirectly to be made, published,
7 disseminated, circulated, or placed before the public, in a
8 newspaper, magazine, or other publication, or in the form of a
9 notice, circular, pamphlet, letter, or poster, or over any
10 radio or television station, or in any other way, an
11 advertisement, announcement, or statement containing an
12 assertion, representation, or statement with regard to the RBC
13 levels of any insurer, or of any component derived in the
14 calculation, by any insurer, agent, broker, or other person
15 engaged in any manner in the insurance business, would be
16 misleading and is therefore prohibited. Except, if any
17 materially false statement with respect to the comparison
18 regarding an insurer's total adjusted capital to its RBC
19 levels, or any of them, or an inappropriate comparison of any
20 other amount to the insurer's RBC levels is published in any
21 written publication, and the insurer is able to demonstrate to
22 the commissioner with substantial proof the falsity of the
23 statement, or the inappropriateness, as the case may be, then
24 the insurer may publish an announcement in a written
25 publication if the sole purpose of the announcement is to
26 rebut the materially false statement.

1 "~~(e)~~(f) It is the further judgment of the
2 Legislature that the RBC instructions, RBC reports, adjusted
3 RBC reports, RBC plans, and revised RBC plans are intended
4 solely for use by the commissioner in monitoring the solvency
5 of insurers and the need for possible corrective action with
6 respect to insurers and shall not be used by the commissioner
7 for ratemaking nor considered or introduced as evidence in any
8 rate proceeding nor used by the commissioner to calculate or
9 derive any elements of an appropriate premium level or rate of
10 return for any line of insurance which an insurer or any
11 affiliate is authorized to write.

12 "§27-29-1.

13 "For purposes of this chapter, unless otherwise
14 stated, the following terms shall have the meanings
15 respectively ascribed to them by this section:

16 "(1) AFFILIATE. The term shall include an
17 "affiliate" of, or person "affiliated" with, a specific
18 person, and shall mean a person that directly, or indirectly
19 through one or more intermediaries, controls, or is controlled
20 by, or is under common control with, the person specified.

21 "(2) COMMISSIONER. The Commissioner of Insurance,
22 his or her deputies, or the Insurance Department as
23 appropriate.

24 "(3) CONTROL. The term shall include "controlling,"
25 "controlled by," or "under common control with" and shall mean
26 the possession, direct or indirect, of the power to direct or
27 cause the direction of the management and policies of a

1 person, whether through the ownership of voting securities, by
2 contract other than a commercial contract for goods or
3 nonmanagement services, or otherwise, unless the power is the
4 result of an official position with or corporate office held
5 by the person. Control shall be presumed to exist if any
6 person, directly or indirectly owns, controls, holds with the
7 power to vote, or holds proxies representing five percent or
8 more of the voting securities of any other person. This
9 presumption may be rebutted by a showing made in the manner
10 provided by subsection (k) of Section 27-29-4 that control
11 does not exist in fact. The commissioner may determine, after
12 furnishing all persons in interest notice and opportunity to
13 be heard and making a specific finding of fact to support such
14 determination, that control exists in fact, notwithstanding
15 the absence of a presumption to that effect.

16 "(4) ENTERPRISE RISK. Any activity, circumstance,
17 event, or series of events involving one or more affiliates of
18 an insurer that, if not remedied promptly, is likely to have a
19 material adverse effect upon the financial condition or
20 liquidity of the insurer or its insurance holding company
21 system as a whole, including, but not limited to, anything
22 that would cause the insurer's risk-based capital to fall into
23 company action level as set forth in Section 27-2B-4 or would
24 cause the insurer to be in hazardous financial condition.

25 "(5) GROUP-WIDE SUPERVISOR. The regulatory official
26 authorized to engage in conducting and coordinating group-wide
27 supervision activities who is determined or acknowledged by

1 the commissioner under this chapter to have sufficient
2 significant contacts with the internationally active insurance
3 group.

4 "~~(5)~~(6) INSURANCE HOLDING COMPANY SYSTEM. A system
5 which consists of two or more affiliated persons, one or more
6 of which is an insurer.

7 "~~(6)~~(7) INSURER. An insurance company as set forth
8 in Section 27-1-2, including, without limitation, any
9 fraternal benefit society, health care service plan, and
10 health maintenance organization, except that it shall not
11 include agencies, authorities, or instrumentalities of the
12 United States, its possessions and territories, the
13 Commonwealth of Puerto Rico, the District of Columbia, or a
14 state or political subdivision of a state.

15 "~~(7)~~(8) PERSON. An individual, a corporation, a
16 limited liability company, a partnership, an association, a
17 joint-stock company, a trust, an unincorporated organization,
18 or any similar entity or any combination of the foregoing
19 acting in concert, but shall not include any joint venture
20 partnership exclusively engaged in owning, managing, leasing,
21 or developing real or tangible personal property.

22 "~~(8)~~(9) SECURITYHOLDER. One who owns any security of
23 such person, including common stock, preferred stock, debt
24 obligations, and other security convertible into, or
25 evidencing, the right to acquire any of the foregoing.

1 "~~(9)~~(10) SUBSIDIARY. An affiliate controlled by such
2 person, directly or indirectly, through one or more
3 intermediaries.

4 "~~(10)~~(11) VOTING SECURITY. The term shall include
5 any security convertible into, or evidencing, a right to
6 acquire a voting security.

7 "§27-29-4.

8 "(a) (1) Every insurer which is authorized to do
9 business in this state and which is a member of an insurance
10 holding company system shall register with the commissioner,
11 except a foreign insurer subject to registration requirements
12 and standards adopted by statute or regulation in the
13 jurisdiction of its domicile which are substantially similar
14 to those contained in this section and both of the following:

15 "a. Subdivision (1) of subsection (a) of Section
16 27-29-5, and subsections (b) and (d) of Section 27-29-5.

17 "b. Either subdivision (2) of subsection (a) of
18 Section 27-29-5 or a provision such as the following: Each
19 registered insurer shall keep current the information required
20 to be disclosed in its registration statement by reporting all
21 material changes or additions within 15 days after the end of
22 the month in which it learns of each change or addition.

23 "(2) Any insurer which is subject to registration
24 under this section shall register within 15 days after it
25 becomes subject to registration, and annually thereafter by
26 June 1 of each year for the previous calendar year, unless the
27 commissioner for good cause shown extends the time for

1 registration and, then, within such extended time. The
2 commissioner may require any authorized insurer which is a
3 member of an insurance holding company system which is not
4 subject to registration under this section to furnish a copy
5 of the registration statement, the summary specified in
6 subsection (c) or other information filed by such insurance
7 company with the insurance regulatory authority of domiciliary
8 jurisdiction.

9 "(b) Every insurer subject to registration shall
10 file a registration statement on a form prescribed by the
11 commissioner by rule which shall contain the following current
12 information:

13 "(1) The capital structure, general financial
14 condition, ownership, and management of the insurer and any
15 person controlling the insurer.

16 "(2) The identity of every member of the insurance
17 holding company system.

18 "(3) The following agreements in force, and
19 transactions currently outstanding or which have occurred
20 during the last calendar year between such insurer and its
21 affiliates:

22 "a. Loans, other investments or purchases, sales or
23 exchanges of securities of the affiliates by the insurer or of
24 the insurer by its affiliates.

25 "b. Purchases, sales, or exchanges of assets.

26 "c. Transactions not in the ordinary course of
27 business.

1 "d. Guarantees or undertakings for the benefit of an
2 affiliate which result in an actual contingent exposure of the
3 insurer's assets to liability, other than insurance contracts
4 entered into in the ordinary course of the insurer's business.

5 "e. All management agreements and service contracts
6 and all cost-sharing arrangements.

7 "f. Reinsurance agreements.

8 "g. Dividends and other distributions to
9 shareholders.

10 "h. Consolidated tax allocation agreements.

11 "(4) Any pledge of the insurer's stock, including
12 stock of any subsidiary or controlling affiliate, for a loan
13 made to any member of the insurance holding company system.

14 "(5) If requested by the commissioner, financial
15 statements of or within an insurance holding company system,
16 including all affiliates. Financial statements may include,
17 but are not limited to, annual audited financial statements
18 filed with the U.S. Securities and Exchange Commission
19 pursuant to the Securities Act of 1933, as amended, or the
20 Securities Exchange Act of 1934, as amended. An insurer
21 required to file financial statements pursuant to this
22 subdivision may satisfy the request by providing the
23 commissioner with the most recently filed parent corporation
24 financial statements that have been filed with the Securities
25 Exchange Commission. Financial statements of insurer's
26 affiliates required to be filed with the commissioner may be
27 filed by the insurer in the accounting standard utilized by

1 the affiliate in its usual course of business at the time of
2 the filing.

3 "(6) Other matters concerning transactions between
4 registered insurers and any affiliates as may be included,
5 from time to time, in any registration forms adopted or
6 approved by the commissioner.

7 "(7) Statements that the insurer's board of
8 directors or an appropriate committee of the board oversees
9 corporate governance and internal controls and that the
10 insurer's officers or senior management have approved,
11 implemented, and continue to maintain and monitor corporate
12 governance and internal control procedures.

13 "(8) Any other information required by the
14 commissioner by rule.

15 "(c) All registration statements shall contain a
16 summary outlining all items in the current registration
17 statement representing changes from the prior registration
18 statement.

19 "(d) No information need be disclosed on the
20 registration statement filed pursuant to subsection (b) if
21 such information is not material for the purposes of this
22 section. Unless the commissioner by rule, regulation, or order
23 provides otherwise, sales, purchases, exchanges, loans, or
24 extensions of credit or investments involving one-half of one
25 percent or less of an insurer's admitted assets as of December
26 31, next preceding, shall not be deemed material for purposes
27 of this section.

1 "(e) Subject to subsection (b) of Section 27-29-5,
2 each registered insurer shall so report all dividends and
3 other distributions to shareholders within 15 business days
4 following the declaration thereof.

5 "(f) Any person within an insurance holding company
6 system subject to registration shall be required to provide
7 complete and accurate information to an insurer, where the
8 information is reasonably necessary to enable the insurer to
9 comply with the provisions of this chapter.

10 "(g) The commissioner shall terminate the
11 registration of any insurer which demonstrated that it no
12 longer is a member of an insurance holding company system.

13 "(h) The commissioner may require or allow two or
14 more affiliated insurers subject to registration under this
15 section to file a consolidated registration statement.

16 "(i) The commissioner may allow an insurer which is
17 authorized to do business in this state and which is part of
18 an insurance holding company system to register on behalf of
19 any affiliated insurer which is required to register under
20 subsection (a) and to file all information and material
21 required to be filed under this section.

22 "(j) The provisions of this section shall not apply
23 to any insurer, information, or transaction if, and to the
24 extent that, the commissioner by rule, regulation, or order
25 shall exempt the same from the provisions of this section.

26 "(k) Any person may file with the commissioner a
27 disclaimer of affiliation with any authorized insurer or a

1 disclaimer may be filed by the insurer or any member of an
2 insurance holding company system. The disclaimer shall fully
3 disclose all material relationships and bases for affiliation
4 between the person and the insurer as well as the basis for
5 disclaiming such affiliation. A disclaimer of affiliation
6 shall be deemed to have been granted unless the commissioner,
7 within 30 days following receipt of a complete disclaimer,
8 notifies the filing party the disclaimer is disallowed. In the
9 event of disallowance, the disclaiming party may request an
10 administrative hearing, which shall be granted. The
11 disclaiming party shall be relieved of its duty to register
12 under this section if approval of the disclaimer has been
13 granted by the commissioner, or if the disclaimer is deemed to
14 have been approved.

15 " ~~(1) (1) Except as provided in subdivisions (2) and~~
16 ~~(4), the~~ The ultimate controlling person of every insurer
17 subject to registration shall also file an annual enterprise
18 risk report. The report shall, to the best of the ultimate
19 controlling person's knowledge and belief, identify the
20 material risks within the insurance holding company system
21 that could pose enterprise risk to the insurer. The report
22 shall be filed with the lead state commissioner of the
23 insurance holding company system as determined by the
24 procedures within the Financial Analysis Handbook adopted by
25 the National Association of Insurance Commissioners.

26 " ~~(2) Except as provided in subdivision (3), the~~
27 ~~ultimate controlling person of an insurer with total direct or~~

1 assumed annual premiums of less than three hundred million
2 dollars (\$300,000,000) is not required to submit an enterprise
3 risk report under subdivision (1).

4 "(3) Regardless of total direct or assumed annual
5 premium, the ultimate controlling person of an insurer that is
6 not in compliance with applicable risk-based capital standards
7 or that is otherwise in hazardous condition, as determined by
8 the commissioner, shall file an enterprise risk report
9 required by subdivision (1) as directed by the commissioner.

10 "(4) An insurer that in the preceding calendar year
11 had direct written and assumed premiums of more than three
12 hundred million dollars (\$300,000,000) but less than five
13 hundred million dollars (\$500,000,000) may request an
14 exemption from the reporting requirements of subdivision (1)
15 by filing with the commissioner a written statement describing
16 the undue financial or organizational hardship the insurer
17 would suffer as a result of complying with subdivision (1).
18 The commissioner may grant the exemption if the commissioner
19 finds that compliance with subdivision (1) would impose an
20 undue financial or organizational hardship on the insurer.

21 "(m) The failure to file a registration statement or
22 any summary of the registration statement or enterprise risk
23 filing required by this section within the time specified for
24 filing shall be a violation of this section.

25 "§27-29-7.

26 "(a) All documents, materials, or other information,
27 and copies thereof, in the possession or control of the

1 Department of Insurance that are obtained by or disclosed to
2 the commissioner or any other person in the course of an
3 examination or investigation made pursuant to Section 27-29-6
4 and all information reported pursuant to paragraphs l. and m.
5 of subdivision (1) of subsection (b) of Section 27-29-3,
6 Section 27-29-4, and Section 27-29-5 shall be confidential by
7 law and privileged, shall not be subject to any open records,
8 freedom of information, sunshine or other public record
9 disclosure laws, and shall not be subject to subpoena. The
10 commissioner may use the documents, materials, and other
11 information in the furtherance of any regulatory or legal
12 action in the course of the commissioner's official duties.
13 The documents, materials, and other information shall not be
14 made public by the commissioner or any other person without
15 the prior written consent of the insurer to which it pertains
16 unless the commissioner determines that the interests of
17 policyholders, shareholders, or the public will be served by
18 the publication thereof, in which event the commissioner may
19 publish all, or any part thereof, in such manner as the
20 commissioner may deem appropriate. Prior to making this
21 determination, the commissioner shall give the insurer and its
22 affiliates who would be affected thereby no less than 10 days'
23 written notice of the opportunity to request a hearing on the
24 matter.

25 " (b) Neither the commissioner nor any person who
26 received documents, materials, or other information while
27 acting under the authority of the commissioner or with whom

1 such documents, materials, or other information are shared
2 pursuant to this chapter shall be permitted or required to
3 testify in any private civil action concerning any
4 confidential documents, materials, or information subject to
5 subsection (a).

6 "(c) In order to assist in the performance of the
7 commissioner's duties, the commissioner:

8 "(1) May share documents, materials, or other
9 information, including the confidential and privileged
10 documents, materials, or information subject to subsection
11 (a), with other state, federal, and international regulatory
12 agencies, with the National Association of Insurance
13 Commissioners and its affiliates and subsidiaries, and with
14 state, federal, and international law enforcement authorities,
15 including members of any supervisory college described in
16 Section 27-29-6.1, provided that the recipient agrees in
17 writing to maintain the confidentiality and privileged status
18 of the document, material, or other information, and has
19 verified in writing the legal authority to maintain
20 confidentiality.

21 "(2) Notwithstanding subdivision (1) above, may
22 share confidential and privileged documents, material, or
23 information reported pursuant to subsection (1) of Section
24 27-29-4 only with commissioners of states having statutes or
25 regulations substantially similar to subsection (a) and who
26 have agreed in writing not to disclose such information.

1 "(3) May receive documents, materials, or
2 information, including otherwise confidential and privileged
3 documents, materials, or information from the National
4 Association of Insurance Commissioners and its affiliates and
5 subsidiaries and from regulatory and law enforcement officials
6 of other foreign or domestic jurisdictions, and shall maintain
7 as confidential or privileged any document, material, or
8 information received with notice or the understanding that it
9 is confidential or privileged under the laws of the
10 jurisdiction that is the source of the document, material, or
11 information.

12 "(4) Shall enter into written agreements with the
13 National Association of Insurance Commissioners governing
14 sharing and use of information provided pursuant to this
15 chapter consistent with this subsection that shall:

16 "a. Specify procedures and protocols regarding the
17 confidentiality and security of information shared with the
18 National Association of Insurance Commissioners and its
19 affiliates and subsidiaries pursuant to this chapter,
20 including procedures and protocols for sharing by the National
21 Association of Insurance Commissioners with other state,
22 federal, or international regulators.

23 "b. Specify that ownership of information shared
24 with the National Association of Insurance Commissioners and
25 its affiliates and subsidiaries pursuant to this chapter
26 remains with the commissioner and the use of the information

1 by the National Association of Insurance Commissioners is
2 subject to the direction of the commissioner.

3 "c. Require at least 10 days' notice to be given to
4 an insurer whose confidential information in the possession of
5 the National Association of Insurance Commissioners pursuant
6 to this chapter is subject to a request or subpoena to the
7 National Association of Insurance Commissioners for disclosure
8 or production.

9 "d. Require the National Association of Insurance
10 Commissioners and its affiliates and subsidiaries to consent
11 to intervention by an insurer in any judicial or
12 administrative action in which the National Association of
13 Insurance Commissioners and its affiliates and subsidiaries
14 may be required to disclose confidential information about the
15 insurer shared with the National Association of Insurance
16 Commissioners and its affiliates and subsidiaries pursuant to
17 this chapter.

18 "(d) The sharing of information by the commissioner
19 pursuant to this chapter shall not constitute a delegation of
20 regulatory authority or rulemaking, and the commissioner is
21 solely responsible for the administration, execution, and
22 enforcement of this chapter.

23 "(e) No waiver of any applicable privilege or claim
24 of confidentiality in the documents, materials, or information
25 shall occur as a result of disclosure to the commissioner
26 under this section or as a result of sharing as authorized in
27 subsection (c).

1 "(f) Documents, materials, or other information in
2 the possession or control of the National Association of
3 Insurance Commissioners pursuant to this chapter shall be
4 confidential by law and privileged, shall not be subject to
5 open records, freedom of information, sunshine or other public
6 records disclosure laws, shall not be subject to subpoena, and
7 shall not be subject to discovery or admissible in evidence in
8 any private civil action."

9 Section 2. Section 27-29-6.2 is added to the Code of
10 Alabama 1975, to read as follows:

11 §27-29-6.2.

12 (a) (1) The commissioner may act as the group-wide
13 supervisor for any internationally active insurance group in
14 accordance with this section. The commissioner may otherwise
15 acknowledge another regulatory official as the group-wide
16 supervisor where the internationally active insurance group
17 meets any of the following:

18 a. Does not have substantial insurance operations in
19 the United States.

20 b. Has substantial insurance operations in the
21 United States, but not in this state.

22 c. Has substantial insurance operations in the
23 United States and this state, but the commissioner has
24 determined pursuant to the factors set forth in subsections
25 (b) and (f) that the other regulatory official is the
26 appropriate group-wide supervisor.

1 (2) An insurance holding company system that does
2 not otherwise qualify as an internationally active insurance
3 group may request that the commissioner make a determination
4 or acknowledgment as to a group-wide supervisor pursuant to
5 this section.

6 (b) (1) In cooperation with other state, federal, and
7 international regulatory agencies, the commissioner shall
8 identify a single group-wide supervisor for an internationally
9 active insurance group. The commissioner may determine that
10 the commissioner is the appropriate group-wide supervisor for
11 an internationally active insurance group that conducts
12 substantial insurance operations concentrated in this state.
13 The commissioner may acknowledge that a regulatory official
14 from another jurisdiction is the appropriate group-wide
15 supervisor for the internationally active insurance group. The
16 commissioner shall consider all of the following factors when
17 making a determination or acknowledgment under this
18 subsection:

19 a. The place of domicile of the insurers within the
20 internationally active insurance group that hold the largest
21 share of the group's written premiums, assets, or liabilities.

22 b. The place of domicile of the top-tiered insurer
23 or insurers in the insurance holding company system of the
24 internationally active insurance group.

25 c. The location of the executive office or largest
26 operational offices of the internationally active insurance
27 group.

1 d. Whether another regulatory official is acting or
2 is seeking to act as the group-wide supervisor under a
3 regulatory system that the commissioner determines to be both
4 of the following:

5 1. Substantially similar to the system of regulation
6 provided under the laws of this state.

7 2. Otherwise sufficient in terms of providing for
8 group-wide supervision, enterprise risk analysis, and
9 cooperation with other regulatory officials.

10 e. Whether another regulatory official acting or
11 seeking to act as the group-wide supervisor provides the
12 commissioner with reasonably reciprocal recognition and
13 cooperation.

14 (2) A commissioner identified under this section as
15 the group-wide supervisor may determine that it is appropriate
16 to acknowledge another supervisor to serve as the group-wide
17 supervisor. The acknowledgment of the group-wide supervisor
18 shall be made after consideration of the factors listed in
19 paragraphs a. to e. of subdivision (1) and shall be made in
20 cooperation with and subject to the acknowledgment of other
21 regulatory officials involved with supervision of members of
22 the internationally active insurance group and in consultation
23 with the internationally active insurance group.

24 (c) Notwithstanding any other provision of law, when
25 another regulatory official is acting as the group-wide
26 supervisor of an internationally active insurance group, the
27 commissioner shall acknowledge that regulatory official as the

1 group-wide supervisor. The commission shall make a
2 determination or acknowledgment as to the appropriate
3 group-wide supervisor for such an internationally active
4 insurance group pursuant to subsection (b) in the event of a
5 material change in the internationally active insurance group
6 that results in either of the following:

7 (1) The internationally active insurance group's
8 insurers domiciled in this state holding the largest share of
9 the group's premiums, assets, or liabilities.

10 (2) This state being the place of domicile of the
11 top-tiered insurer or insurers in the insurance holding
12 company system of the internationally active insurance group.

13 (d) Pursuant to Section 27-29-6, the commissioner is
14 authorized to collect from any insurer registered pursuant to
15 Section 27-29-4 all information necessary to determine whether
16 the commissioner may act as the group-wide supervisor of an
17 internationally active insurance group or if the commissioner
18 may acknowledge another regulatory official to act as the
19 group-wide supervisor. Prior to issuing a determination that
20 an internationally active insurance group is subject to
21 group-wide supervision by the commissioner, the commissioner
22 shall notify the insurer registered pursuant to Section
23 27-29-4 and the ultimate controlling person within the
24 internationally active insurance group. The internationally
25 active insurance group shall have not less than 30 days to
26 provide the commissioner with additional information pertinent
27 to the pending determination. The commissioner shall publish

1 by bulletin and on its Internet website the identity of
2 internationally active insurance groups that the commissioner
3 has determined are subject to group-wide supervision by the
4 commissioner.

5 (e) If the commissioner is the group-wide supervisor
6 for an internationally active insurance group, the
7 commissioner is authorized to engage in any of the following
8 group-wide supervision activities:

9 (1) Assess the enterprise risks within the
10 internationally active insurance group to ensure both of the
11 following:

12 a. The material financial condition and liquidity
13 risks to the members of the internationally active insurance
14 group that are engaged in the business of insurance are
15 identified by management.

16 b. Reasonable and effective mitigation measures are
17 in place.

18 (2) Request, from any member of an internationally
19 active insurance group subject to the commissioner's
20 supervision, information necessary and appropriate to assess
21 enterprise risk, including, but not limited to, information
22 about the members of the internationally active insurance
23 group regarding the following:

24 a. Governance, risk assessment, and management.

25 b. Capital adequacy.

26 c. Material intercompany transactions.

1 (3) Coordinate and, through the authority of the
2 regulatory officials of the jurisdictions where members of the
3 internationally active insurance group are domiciled, compel
4 development and implementation of reasonable measures designed
5 to ensure that the internationally active insurance group is
6 able to timely recognize and mitigate enterprise risks to
7 members of the internationally active insurance group that are
8 engaged in the business of insurance.

9 (4) Communicate with other state, federal, and
10 international regulatory agencies for members within the
11 internationally active insurance group and share relevant
12 information subject to the confidentiality provisions of
13 Section 27-29-7 through supervisory colleges as set forth in
14 Section 27-29-6.1 or otherwise.

15 (5) Enter into agreements with or obtain
16 documentation from any insurer registered under Section
17 27-29-4, any member of the internationally active insurance
18 group, and any other state, federal, and international
19 regulatory agencies for members of the internationally active
20 insurance group, providing the basis for or otherwise
21 clarifying the commissioner's role as group-wide supervisor,
22 including provisions for resolving disputes with other
23 regulatory officials. The agreements or documentation shall
24 not serve as evidence in any proceeding that any insurer or
25 person within an insurance holding company system not
26 domiciled or incorporated in this state is doing business in

1 this state or is otherwise subject to jurisdiction in this
2 state.

3 (6) Other group-wide supervision activities,
4 consistent with the authorities and purposes enumerated above,
5 as considered necessary by the commissioner.

6 (f) If the commissioner acknowledges that another
7 regulatory official from a jurisdiction that is not accredited
8 by the National Association of Insurance Commissioners is the
9 group-wide supervisor, the commissioner is authorized to
10 reasonably cooperate, through supervisory colleges or
11 otherwise, with group-wide supervision undertaken by the
12 group-wide supervisor, provided that:

13 (1) The commissioner's cooperation is in compliance
14 with the laws of this state.

15 (2) The regulatory official acknowledged as the
16 group-wide supervisor also recognizes and cooperates with the
17 commissioner's activities as a group-wide supervisor for other
18 internationally active insurance groups where applicable.
19 Where such recognition and cooperation is not reasonably
20 reciprocal, the commissioner may refuse recognition and
21 cooperation.

22 (g) The commissioner may enter into agreements with
23 or obtain documentation from any insurer registered under
24 Section 27-29-4, any affiliate of the insurer, and other
25 state, federal, and regulatory agencies for members of the
26 internationally active insurance group, that provide the basis

1 for or otherwise clarify a regulatory official's role as
2 group-wide supervisor.

3 (h) The commissioner may adopt rules necessary for
4 the administration of this section.

5 (i) A registered insurer subject to this section
6 shall be liable for and shall pay the reasonable expenses of
7 the commissioner's participation in the administration of this
8 section, including the engagement of attorneys, actuaries, and
9 any other professionals and all reasonable travel expenses.

10 Section 3. The amendment to Section 27-29-4, Code of
11 Alabama 1975, by this act shall become effective January 1,
12 2019, and the remainder of this act shall become effective
13 immediately upon its passage and approval by the Governor or
14 its otherwise becoming law.