

1
2
3
4
5
6
7
8
9
10
11

12
13
14
15
16
17
18
19
20

H.73

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry, Carr
of Brandon, Dakin of Colchester, Keenan of St. Albans City,
Kitzmiller of Montpelier, O’Sullivan of Burlington, and Strong
of Albany

Referred to Committee on

Date:

Subject: Insurance; corporate governance; transparency

Statement of purpose of bill as introduced: This bill proposes to require an
insurer to disclose to the Commissioner of Financial Regulation information
related to its corporate governance structure.

An act relating to the corporate governance structure of insurers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 3316 is added to read:

§ 3316. CORPORATE GOVERNANCE; DISCLOSURE

(a) Purpose. The purpose of this section is to:

(1) provide the Commissioner a summary of an insurer or insurance
group’s corporate governance structure, policies, and practices so the
Commissioner may gain and maintain an understanding of the insurer’s
corporate governance framework;

1 (2) outline the requirements for completing a corporate governance
2 annual disclosure with the Commissioner; and

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

9 (b) Scope. This section shall not be construed to prescribe or impose
10 corporate governance standards and internal procedures beyond that which is
11 required under applicable State corporate law. Nor shall it be construed to
12 limit the Commissioner's authority, or the rights or obligations of third parties,
13 under section 13 of this title.

14 (c) Application. The requirements of this section shall apply to all insurers
15 licensed to transact the business of insurance in Vermont.

16 (d) Definitions. As used in this section:

17 (1) "Corporate Governance Annual Disclosure" or "CGAD" means a
18 report on corporate governance filed by the insurer or insurance group as
19 required by this section.

1 (2) “Insurance group” means those insurers and affiliates included
2 within an insurance holding company system as defined in subdivision 3681(4)
3 of this title.

4 (3) “Insurer” means an insurance company that offers any of the types
5 of insurance itemized under subsection 3301(a) of this chapter, except that it
6 shall not include agencies, authorities, or instrumentalities of the United States,
7 its possessions and territories, the Commonwealth of Puerto Rico, the District
8 of Columbia, or a state or political subdivision of a state. It shall also mean an
9 insurance group.

10 (4) “ORSA Summary Report” means a report as defined in subdivision
11 3582(6) of this chapter.

12 (e)(1) Disclosure. On or before June 1 of each year, beginning in the year
13 2016, an insurer shall submit to the Commissioner a CGAD, which contains
14 the information described in subdivision (g)(2) of this section.
15 Notwithstanding a request from the Commissioner made under subdivision (3)
16 of this subsection, if the insurer is a member of an insurance group, the insurer
17 shall submit the report required by this subsection to the commissioner of the
18 lead state for the insurance group, in accordance with the laws of the lead state,
19 as determined by the procedures outlined in the most recent Financial Analysis
20 Handbook adopted by the National Association of Insurance Commissioners
21 (NAIC).

1 (2) The CGAD shall include a signature of the insurer's chief executive
2 officer or corporate secretary attesting to the best of that individual's belief and
3 knowledge that the insurer has implemented the corporate governance
4 practices and that a copy of the disclosure has been provided to the insurer's
5 board of directors or the appropriate committee thereof.

6 (3) An insurer not required to submit a CGAD under this section shall
7 do so upon the Commissioner's request.

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

1 (5) The review of the CGAD and any additional requests for information
2 shall be made through the lead state as determined by the procedures within the
3 most recent Handbook referenced in subdivision (1) of this subsection.

4 (6) Insurers providing information substantially similar to the
5 information required by this section in other documents provided to the
6 Commissioner, including proxy statements filed in conjunction with Form B
7 requirements, or other state or federal filings provided to the Commissioner,
8 shall not be required to duplicate that information in the CGAD, but shall be
9 required to cross reference the document in which the information is included.

10 (f) Rules. The Commissioner may adopt rules and issue orders necessary
11 to carry out the provisions of this section.

12 (g)(1) CGAD contents. An insurer has discretion over the responses to
13 CGAD inquiries, provided CGAD contains the material information necessary
14 to permit the Commissioner to gain an understanding of the insurer's corporate
15 governance structure, policies, and practices. The Commissioner may request
16 additional information he or she deems material and necessary to provide the
17 Commissioner with a clear understanding of the corporate governance policies,
18 and the reporting or information system or controls implementing those
19 policies.

20 (2) Notwithstanding subdivision (1) of this subsection, CGAD shall be
21 prepared consistent with CGAD rules adopted by the Commissioner.

1 Documentation and supporting information shall be maintained and made
2 available upon examination or upon request of the Commissioner.

3 (h)(1) Confidentiality. Documents, materials, or other information,
4 including CGAD, in the possession or control of the Department obtained or
5 created by, or disclosed to the Commissioner or any other person under this
6 section, are recognized by this State as being proprietary and to contain trade
7 secrets. All such documents, materials, or other information are confidential
8 and privileged, and are exempt from public inspection and copying under the
9 Public Records Act. In addition, they are not subject to subpoena nor
10 discovery, nor admissible in evidence in any private civil action. However, the
11 Commissioner may to use the documents, materials, or other information in
12 furtherance of any regulatory or legal action brought as a part of the
13 Commissioner's official duties. The Commissioner shall not otherwise make
14 the documents, materials, or other information public without the prior written
15 consent of the insurer. Nothing in this subsection shall be construed to require
16 written consent of the insurer before the Commissioner may share or receive
17 confidential documents, materials, or other CGAD-related information
18 pursuant to subdivision (3) of this subsection for the purpose of assisting in the
19 performance of the Commissioner's regular duties.

20 (2) Neither the Commissioner nor any person who receives documents,
21 materials, or other CGAD-related information, through examination or

1 otherwise, while acting under the authority of the Commissioner, or with
2 whom such documents, materials, or other information are shared pursuant to
3 this this section, is permitted or required to testify in any private civil action
4 concerning any confidential documents, materials, or information subject to
5 subdivision (1) of this subsection.

6 (3) In order to assist in the performance of the Commissioner's
7 regulatory duties, the Commissioner may:

8 (A) Upon request, share documents, materials, or other
9 CGAD-related information including confidential and privileged documents,
10 materials, or information subject to subdivision (1) of this subsection including
11 proprietary and trade secret documents and materials with other state, federal,
12 and international financial regulatory agencies, including members of any
13 supervisory college as defined in subsection 3695(c) of this chapter, the NAIC,
14 and with third-party consultants pursuant to subsection (i) of this section,
15 provided the recipient agrees in writing to maintain the confidentiality and
16 privileged status of the CGAD-related documents, materials, or other
17 information and verifies in writing the legal authority to maintain
18 confidentiality.

19 (B) Receive documents, materials, or other CGAD-related
20 information, including otherwise confidential and privileged documents,
21 materials or information, including proprietary and trade-secret information or

1 documents, from regulatory officials of other state, federal, and international
2 financial regulatory agencies, including members of any supervisory college as
3 defined in subsection 3695(c) of this chapter, and from the NAIC, and shall
4 maintain as confidential or privileged any documents, materials, or information
5 received with notice or the understanding that it is confidential or privileged
6 under the laws of the jurisdiction that is the source of the document, materials,
7 or information.

8 (4) The sharing of information and documents by the Commissioner
9 pursuant to this section does not constitute a delegation of regulatory authority
10 or rulemaking, and the Commissioner is solely responsible for the
11 administration, execution, and enforcement of the provisions of this section.

12 (5) A waiver of any applicable privilege or claim of confidentiality in
13 the documents, proprietary and trade-secret materials, or other CGAD-related
14 information shall not occur as a result of disclosure of such CGAD-related
15 information or documents to the Commissioner under this section or as a result
16 of sharing as authorized under this section.

17 (i)(1) NAIC and third-party consultants. The Commissioner may retain, at
18 the insurer's expense, third-party consultants, including attorneys, actuaries,
19 accountants, and other experts not otherwise a part of the Commissioner's staff
20 he or she deems reasonably necessary to assist with the review of the CGAD
21 and related information or with the insurer's compliance with this section.

1 (2) A person retained under this subsection is under the direction and
2 control of the Commissioner and shall act in a purely advisory capacity.

3 (3) The NAIC and third-party consultants are subject to the same
4 confidentiality standards and requirements as the Commissioner.

5 (4) As part of the retention process, a third-party consultant shall verify
6 to the Commissioner, with notice to the insurer, that it is free of a conflict of
7 interest and that it has internal procedures in place to monitor compliance with
8 a conflict and to comply with the confidentiality standards and requirements of
9 this section.

10 (5) A written agreement with the NAIC or a third-party consultant
11 governing the sharing and use of information provided under this section shall
12 contain the following provisions and expressly require the written consent of
13 the insurer prior to making public such information:

14 (A) Specific procedures and protocols for maintaining the
15 confidentiality and security of CGAD-related information.

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

1 (C) A provision specifying that ownership of the CGAD-related
2 information shared with the NAIC or a third-party consultant remains with the
3 Department and that use of such information by the NAIC or a third-party
4 consultant is subject to the direction of the Commissioner.

5 (D) A provision prohibiting the NAIC and third-party consultants
6 from storing the information in a permanent database after the underlying
7 analysis is completed.

8 (E) A provision requiring the NAIC and third-party consultants to
9 provide prompt notice to the Commissioner and to the insurer regarding any
10 subpoena, request for disclosure, or request for production of the insurer's
11 CGAD-related information.

12 (F) A requirement that the NAIC and third-party consultants consent
13 to intervention by an insurer in any judicial or administrative action in which
14 the NAIC or a third-party consultant may be required to disclose confidential
15 information about the insurer shared with the NAIC or third-party consultant
16 pursuant to this section.

17 (j) Sanctions. An insurer failing, without just cause, to timely file the
18 CGAD as required by this section shall be required, after notice and hearing, to
19 pay a penalty of \$10,000.00 for each day's delay, to be recovered by the
20 Commissioner, and the penalty so recovered shall be paid into the General
21 Fund of this State. The maximum penalty under this section is \$1,000,000.00.

1 The Commissioner may reduce the penalty if the insurer demonstrates to the
2 Commissioner that the imposition of the penalty would constitute a financial
3 hardship to the insurer.

4 Sec. 2. EFFECTIVE DATE

5 This act shall take effect on passage.