H.73

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;

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

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

(b) Scope. This section shall not be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable State corporate law. Nor shall it be construed to

limit the Commissioner's authority, or the rights or obligations of third parties, under section 13 of this title.

(c) Application. The requirements of this section shall apply to all insurers domiciled in Vermont.

(d) Definitions. As used in this section:

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

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

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

(4) "ORSA Summary Report" means a report as defined in subdivision 3582(6) of this chapter.

(e)(1) Disclosure. On or before June 1 of each year, beginning in the year 2016, an insurer shall submit to the Commissioner a CGAD, which contains

the information described in subdivision (g)(2) of this section. Notwithstanding a request from the Commissioner made under subdivision (3) of this subsection, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners (NAIC).

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

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

(4) For purposes of completing the CGAD, the insurer may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer has structured its system of corporate governance. The insurer is encouraged to make the CGAD disclosures at the level at which: the insurer's risk appetite is determined; the earnings, capital,

liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or legal liability for failure of general corporate governance duties would be placed. If the insurer determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

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

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

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

(g)(1) CGAD contents. An insurer has discretion over the responses to CGAD inquiries, provided CGAD contains the material information necessary to permit the Commissioner to gain an understanding of the insurer's corporate

governance structure, policies, and practices. The Commissioner may request additional information he or she deems material and necessary to provide the Commissioner with a clear understanding of the corporate governance policies, and the reporting or information system or controls implementing those policies.

(2) Notwithstanding subdivision (1) of this subsection, CGAD shall be prepared consistent with CGAD rules adopted by the Commissioner. Rules adopted by the Commissioner under this subdivision shall be consistent with the NAIC Model Regulation on CGAD. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commissioner.

(h)(1) Confidentiality. Documents, materials, or other information, including CGAD, in the possession or control of the Department obtained or created by, or disclosed to the Commissioner or any other person under this section, are recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information are confidential and privileged, and are exempt from public inspection and copying under the Public Records Act. In addition, they are not subject to subpoena nor discovery, nor admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of

the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this subsection shall be construed to require written consent of the insurer before the Commissioner may share or receive confidential documents, materials, or other CGAD-related information pursuant to subdivision (3) of this subsection for the purpose of assisting in the performance of the Commissioner's regular duties.

(2) Neither the Commissioner nor any person who receives documents, materials, or other CGAD-related information, through examination or otherwise, while acting under the authority of the Commissioner, or with whom such documents, materials, or other information are shared pursuant to this section, is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of this subsection.

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

(A) Upon request, share documents, materials, or other CGAD-related information including confidential and privileged documents, materials, or information subject to subdivision (1) of this subsection including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any

supervisory college as defined in subsection 3695(c) of this chapter, the NAIC, and with third-party consultants pursuant to subsection (i) of this section, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and verifies in writing the legal authority to maintain confidentiality.

(B) Receive documents, materials, or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in subsection 3695(c) of this chapter, and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information.

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

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

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

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

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

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

(5) A written agreement with the NAIC or a third-party consultant governing the sharing and use of information provided under this section shall

contain the following provisions and expressly require the written consent of the insurer prior to making public such information:

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

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

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

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

(E) A provision requiring the NAIC and third-party consultants to provide prompt notice to the Commissioner and to the insurer regarding any

subpoena, request for disclosure, or request for production of the insurer's CGAD-related information.

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

(j) Sanctions. An insurer failing, without just cause, to timely file the CGAD as required by this section shall be required, after notice and hearing, to pay a penalty of $10,000.00 for each day's delay, to be recovered by the Commissioner, and the penalty so recovered shall be paid into the General Fund of this State. The maximum penalty under this section is $1,000,000.00. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(k) Severability Clause. If any provision of this section other than subsection (h), or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions of this section, with the exception of subsection (h), are severable.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.