

1 TO THE HOUSE OF REPRESENTATIVES:

2 The House Committee on Commerce and Economic Development to which
3 was referred House Bill No. 73 entitled “An act relating to the corporate
4 governance structure of insurers” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

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

8 § 3316. CORPORATE GOVERNANCE; DISCLOSURE

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

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

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

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

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

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

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

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

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

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

1 (4) “ORSA Summary Report” means a report as defined in subdivision
2 3582(6) of this chapter.

3 (e)(1) Disclosure. On or before June 1 of each year, beginning in the year
4 2016, an insurer shall submit to the Commissioner a CGAD, which contains
5 the information described in subdivision (g)(2) of this section.

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

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

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

20 (4) For purposes of completing the CGAD, the insurer may provide
21 information regarding corporate governance at the ultimate controlling parent

1 level, an intermediate holding company level, or the individual legal entity
2 level, depending upon how the insurer has structured its system of corporate
3 governance. The insurer is encouraged to make the CGAD disclosures at the
4 level at which: the insurer’s risk appetite is determined; the earnings, capital,
5 liquidity, operations, and reputation of the insurer are overseen collectively and
6 at which the supervision of those factors are coordinated and exercised; or
7 legal liability for failure of general corporate governance duties would be
8 placed. If the insurer determines the level of reporting based on these criteria,
9 it shall indicate which of the three criteria was used to determine the level of
10 reporting and explain any subsequent changes in level of reporting.

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

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

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

3 (g)(1) CGAD contents. An insurer has discretion over the responses to
4 CGAD inquiries, provided CGAD contains the material information necessary
5 to permit the Commissioner to gain an understanding of the insurer's corporate
6 governance structure, policies, and practices. The Commissioner may request
7 additional information he or she deems material and necessary to provide the
8 Commissioner with a clear understanding of the corporate governance policies,
9 and the reporting or information system or controls implementing those
10 policies.

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

17 (h)(1) Confidentiality. Documents, materials, or other information,
18 including CGAD, in the possession or control of the Department obtained or
19 created by, or disclosed to the Commissioner or any other person under this
20 section, are recognized by this State as being proprietary and to contain trade
21 secrets. All such documents, materials, or other information are confidential

1 and privileged, and are exempt from public inspection and copying under the
2 Public Records Act. In addition, they are not subject to subpoena nor
3 discovery, nor admissible in evidence in any private civil action. However, the
4 Commissioner is authorized to use the documents, materials, or other
5 information in furtherance of any regulatory or legal action brought as a part of
6 the Commissioner's official duties. The Commissioner shall not otherwise
7 make the documents, materials, or other information public without the prior
8 written consent of the insurer. Nothing in this subsection shall be construed to
9 require written consent of the insurer before the Commissioner may share or
10 receive confidential documents, materials, or other CGAD-related information
11 pursuant to subdivision (3) of this subsection for the purpose of assisting in the
12 performance of the Commissioner's regular duties.

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

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

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

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

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

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

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

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

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

19 (4) As part of the retention process, a third-party consultant shall verify
20 to the Commissioner, with notice to the insurer, that it is free of a conflict of
21 interest and that it has internal procedures in place to monitor compliance with

1 a conflict and to comply with the confidentiality standards and requirements of
2 this section.

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

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

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

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

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

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

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

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

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

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on passage.

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12 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE