



MURIEL BOWSER
MAYOR

10/15/2020

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the "Corporate Governance Accreditation Act of 2020" ("Bill"). The purpose of the bill is to establish a regulatory framework that requires insurers to file an annual report, signed and attested to by a corporate officer, that describes the insurer's or insurer's group's corporate governance structure, policies, and practices. The bill also would grant rulemaking authority to the Commissioner of the Department of Insurance, Securities and Banking (DISB) to implement the legislation.

While the bill does not prescribe new corporate governance standards, it does require tailored, confidential reporting to ensure appropriate policies and procedures of insurers' Boards of Directors and internal oversight are in place and effective. The bill provides insurers with sufficient discretion regarding the format of the filing based upon the varying corporate structures of U.S. insurers, however, at minimum, the disclosure is required to address items including the insurer's corporate governance framework and structure and the processes by which the board of directors, its committees and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's business activities.

The bill is based largely on model legislation from the National Association of Insurance Commissioners (NAIC), the U.S. standard-setting and regulatory support organization created and governed by the nation's chief insurance regulators, including the Commissioner of DISB. Passage of this legislation is a requirement for the District to maintain its accredited status with NAIC, which allows other states to rely on the District to fulfill a baseline level of effective financial regulatory oversight.

Accordingly, I urge the Council to act favorably and expeditiously on the proposed bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a regulatory framework that requires insurers to file an annual report signed and attested to by a corporate officer that describes the insurer's or insurer's group's corporate governance structure, policies and practices

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Corporate Governance Accreditation Act of 2020".

Sec. 2. Purpose and scope.

(a) The purpose of this act is to:

(1) Provide the Commissioner of the Department of Insurance, Securities and Banking (Commissioner) with a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the Commissioner to 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 will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer

35 or insurance group competitive harm or disadvantage.

36 (b) Nothing in this act shall be construed to prescribe or impose corporate
37 governance standards and internal procedures beyond that which is required under
38 applicable District insurance or corporate law. Notwithstanding the foregoing, nothing in
39 this act shall be construed to limit the Commissioner's authority, or the rights or
40 obligations of third parties, under the Law on Examinations, effective October 21, 1993
41 (D.C. Law 10-49; D.C. Official Code §§ 31-1401-1407).

42 (c) The requirements of this act shall apply to all insurers domiciled in the
43 District.

44 Sec. 3. Definitions.

45 (1) "Commissioner" means the Commissioner of the Department of
46 Insurance, Securities and Banking.

47 (2) "Corporate Governance Annual Disclosure" or "Annual
48 Disclosure" means confidential report filed by the insurer or insurance group made in
49 accordance with the requirements of this act.

50 (3) "Insurance group" means those insurers and affiliates included
51 within an insurance holding company system as defined in § 2 of the Holding Company
52 System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code §
53 31-701 *et seq.*).

54 (4) "Insurer" shall have the same meaning as defined in section 2(3) of
55 the Annual Audited Financial Reports Act of 1993, effective October 21, 1993 (D.C. Law 10-48;
56 D.C. Official Code § 31-301(3)), except that it shall not include agencies, authorities or
57 instrumentalities of the United States, its possessions and territories, the Commonwealth

58 of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

59 Sec. 4. Disclosure requirement.

60 (a) An insurer, or the insurance group of which the insurer is a member, shall,
61 no later than June 1 of each calendar year, submit to the Commissioner an Annual
62 Disclosure that contains the information described in subsection (b) of section 6.
63 Notwithstanding any request from the Commissioner made pursuant to subsection (c) of
64 this section, if the insurer is a member of an insurance group, the insurer shall submit the
65 Annual Disclosure required by this section to the commissioner of the lead state for the
66 insurance group in accordance with the laws of the lead state as determined by the
67 procedures outlined in the most recent edition of the National Association of Insurance
68 Commissioners (NAIC) Financial Analysis Handbook.

69 (b) The Annual Disclosure must include a signature of the insurer or insurance
70 group's chief executive officer or corporate secretary attesting to the best of that individual's
71 belief and knowledge that the insurer has implemented the corporate governance practices
72 and that a copy of the disclosure has been provided to the insurer's board of directors or
73 the appropriate committee thereof.

74 (c) An insurer not required to submit an Annual Disclosure under this section
75 shall provide a copy of the insurer's Annual Disclosure upon the Commissioner's request.

76 (d) For purposes of completing the Annual Disclosure, the insurer or insurance
77 group may provide information regarding corporate governance at the ultimate
78 controlling parent level, an intermediate holding company level and/or the individual legal
79 entity level depending upon how the insurer or insurance group has structured its system
80 of corporate governance. The insurer or insurance group is encouraged to prepare the

81 Annual Disclosure at the level which the insurer or insurance group determines is
82 appropriate based on its risk profile, or at which the earnings, capital, liquidity,
83 operations, and reputation of the insurer are overseen collectively and at which the
84 supervision of those factors are coordinated and exercised, or the level at which legal
85 liability for failure of general corporate governance duties would be placed. If the
86 insurer or insurance group determines the level of reporting based on these criteria, it
87 shall indicate which of the three criteria was used to determine the level of reporting and
88 explain any subsequent changes in level of reporting.

89 (e) The review of the Annual Disclosure and any additional requests for
90 information shall be made through the lead state as determined by the NAIC Financial
91 Analysis Handbook.

92 (f) Insurers providing information substantially similar to the information
93 required by this act in other documents provided to the Commissioner, including proxy
94 statements filed in conjunction with Form B requirements, or other state or federal
95 filings provided to the Department shall not be required to duplicate that information in
96 the Annual Disclosure, but shall only be required to cross-reference the document in
97 which the information is included.

98 Sec. 5. Rulemaking authority.

99 The Commissioner may issue rules as necessary to carry out the provisions of this
100 act.

101 Sec. 6. Contents of Corporate Governance Annual Disclosure.

102 (a) The insurer or insurance group shall have discretion over the responses to
103 Annual Disclosure, provided that the Annual Disclosure shall contain the material

104 information necessary to permit the Commissioner to gain an understanding of the
105 insurer's or group's corporate governance structure, policies, and practices. The
106 Commissioner may request any additional information deemed material and necessary to
107 provide the Commissioner with a clear understanding of the corporate governance
108 policies, the reporting or information system or controls implementing those policies.

109 (b) Notwithstanding subsection (a) of this section, the Annual Disclosure shall be
110 prepared consistent with the implementing rules of this act. Documentation and supporting
111 information shall be maintained and made available upon examination or upon request of the
112 Commissioner.

113 Sec. 7. Confidentiality.

114 (a) Documents, materials or other information including the Annual Disclosure, in the
115 possession or control of the Commissioner that are obtained by, created by or disclosed to the
116 Commissioner or any other person under this act shall be treated as confidential pursuant to the
117 standards set forth in the Insurance Industry Material Transactions Disclosure Act of 1996,
118 effective May 24, 1996 (D.C. Law 11-123; D.C. Official Code § 31-1004).

119 (b) Documents obtained by, created by or disclosed to the Commissioner or any other
120 person under this act that are already in the public domain shall not be subject to the confidentiality
121 provisions described in subsection (a) of this section.

122 Sec. 8. NAIC and third-party consultants.

123 (a) The Commissioner may retain, at the insurer's expense, third-party consultants,
124 including attorneys, actuaries, accountants and other experts not otherwise a part of the
125 Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing

126 the Annual Disclosure and related information or evaluating the insurer's compliance with this
127 act.

128 (b) Any persons retained under subsection (a) of this section shall serve under the
129 direction and control of the Commissioner and shall act in an advisory capacity.

130 (c) The NAIC and third-party consultants shall be subject to the same
131 confidentiality standards and requirements as the Commissioner.

132 (d) As part of the retention process, a third-party consultant shall verify to the
133 Commissioner, with notice to the insurer, that it is free of a conflict of interest, has internal
134 procedures in place to identify conflicts and monitor compliance with any measures taken
135 to cure any conflicts, and to comply with the confidentiality standards and requirements
136 of this act.

137 (e) A written agreement with the NAIC and/or a third-party consultant
138 governing sharing and use of information provided pursuant to this act shall contain the
139 following provisions and expressly require the written consent of the insurer prior to
140 making public information provided under this act:

141 (1) Specific procedures and protocols for maintaining the confidentiality
142 and security of Annual Disclosure related information shared with the NAIC or a third-
143 party consultant pursuant to this act.

144 (2) Procedures and protocols for sharing information by the NAIC only
145 with other state regulators from states in which the insurance group has domiciled
146 insurers. The agreement shall provide that the recipient agrees in writing to maintain the
147 confidentiality and privileged status of the Annual Disclosure related documents, materials

148 or other information and has verified in writing the legal authority to maintain
149 confidentiality.

150 (3) A provision specifying that ownership of the Annual Disclosure
151 related information shared with the NAIC or a third-party consultant remains with the
152 Department and the NAIC's or third-party consultant's use of the information is subject to
153 the direction of the Commissioner;

154 (4) A provision that prohibits the NAIC or a third-party consultant from
155 storing information shared pursuant to this act in a permanent database after the
156 underlying analysis is completed;

157 (5) A provision requiring the NAIC or third-party consultant to provide
158 prompt notice to the Commissioner and to the insurer or insurance group regarding any
159 subpoena, request for disclosure, or request for production of the insurer's Annual Disclosure
160 related information; and

161 (6) A requirement that the NAIC or a third-party consultant consent to
162 intervention by an insurer in any judicial or administrative action in which the NAIC or a
163 third-party consultant may be required to disclose confidential information about the insurer
164 shared with the NAIC or a third-party consultant pursuant to this act.

165 Sec. 9. Sanctions.

166 Any insurer or insurance group failing, without just cause, to timely file an Annual
167 Disclosure as required in this act, after notice and hearing, may be fined up to \$1,000 per
168 day, with a maximum penalty of \$25,000, or have its Certificate of Authority suspended,
169 revoked, or refused to be renewed.

170 Sec. 10. Fiscal impact statement.

171 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
172 statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved
173 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

174 Sec. 11. Effective date.

175 This act shall take effect following approval by the Mayor (or in the event of veto by the
176 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
177 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
178 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
179 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone
Executive Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: September 24, 2020

SUBJECT: Legal Sufficiency of the "Corporate Governance Accreditation Act of 2020"
(AD-20-738)

This is to Certify that this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: September 25, 2020

SUBJECT: Fiscal Impact Statement – Corporate Governance Accreditation Act of 2020

REFERENCE: Draft Bill as provided to the Office of Revenue Analysis on September 24, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill requires an insurance company or group to file an annual disclosure with the Commissioner of the Department of Insurance, Securities, and Banking (DISB) outlining its corporate governance structures, policies, and practices. An insurer does not need to provide information in its annual disclosure that it provides in other filings with the DISB Commissioner, but it must provide reference to those filings. If an insurer is part of an insurance group, then the insurance group only needs to file the annual disclosure with the lead state.¹ The DISB Commissioner must keep confidential any information included in the annual disclosure. If DISB hires a third-party consultant to assist in the review of annual disclosure filings, the confidentiality requirements extend to the consultant. The disclosure must be filed by June 1st each calendar year.

¹ The lead state is typically the state where the insurance group is incorporated.

The Honorable Phil Mendelson

FIS: "Corporate Governance Accreditation Act of 2020," Draft Bill as provided to the Office of Revenue

Analysis on September 24, 2020

The bill is substantially similar to model legislation the District is required to pass to maintain accreditation with the National Association of Insurance Commissioners (NAIC).²

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The District is required to pass this legislation to maintain accreditation with NAIC. DISB can absorb any costs associated with reviewing the corporate governance annual disclosures within its existing budgeted resources. Any insurer or insurance group that fails to file its annual disclosure can be fined \$1,000 per day, up to \$25,000. This is a national standard, so insurers are expected to comply, and any fine revenues are expected to be de minimis.

² https://content.naic.org/cipr_topics/topic_corporate_governance.htm.