

2016 -- S 2785 SUBSTITUTE A AS AMENDED

LC005138/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO INSURANCE - CORPORATE GOVERNANCES

Introduced By: Senators Lynch Prata, Goodwin, and Archambault

Date Introduced: March 23, 2016

Referred To: Senate Commerce

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 1.2

4 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

5 **27-1.2-1. Purpose and scope.** -- (a) The purpose of this chapter is to:

6 (1) Provide the insurance commissioner a summary of an insurer or insurance group's
7 corporate governance structure, policies and practices to permit the commissioner to obtain and
8 maintain an understanding of the insurer's corporate governance framework;

9 (2) Outline the requirements for completing a corporate governance annual disclosure
10 with the insurance commissioner; and

11 (3) Provide for the confidential treatment of the corporate governance annual disclosure
12 and related information that will contain private, confidential and sensitive information related to
13 an insurer or insurance group's internal operations and proprietary and trade secret information
14 which, if made public, could potentially cause the insurer or insurance group competitive harm or
15 disadvantage.

16 (b) Nothing in this chapter shall be construed to prescribe or impose additional corporate
17 governance standards and internal procedures beyond that which is required under applicable
18 state corporate and insurance laws. This chapter shall not be construed to limit the commissioner's
19 authority, or the rights or obligations of third parties, under chapter 13.1 of this title.

1 (c) The requirements of this chapter shall apply to all insurers domiciled in this state.

2 **27-1.2-2. Definitions.** -- As used in this chapter:

3 (1) "Commissioner" means the director of the department of business regulation and any
4 assistant to the director.

5 (2) "Corporate governance annual disclosure" (CGAD) means a confidential report filed
6 by the insurer or insurance group made as required by this chapter.

7 (3) "Insurance group" means those insurers and affiliates included within an insurance
8 holding company system as defined in chapter 35 of this title.

9 (4) "Insurer" shall have the same meaning as set forth in §27-54.1-1, except that it shall
10 not include agencies, authorities or instrumentalities of the United States, its possessions and
11 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political
12 subdivision of a state.

13 (5) "ORSA summary report" means the report filed in accordance with chapter 77 of this
14 title.

15 **27-1.2-3. Disclosure Requirement.** -- (a) An insurer, or the insurance group of which the
16 insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner
17 a corporate governance annual disclosure (CGAD) that contains the information described in this
18 section and §27-1.2-5(b). Notwithstanding any request from the commissioner made pursuant to
19 subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall
20 submit the report required by this section to the commissioner of the lead state for the insurance
21 group, in accordance with the laws of the lead state, as determined by the procedures outlined in
22 the most recent Financial Analysis Handbook adopted by the National Association of Insurance
23 Commissioner (NAIC).

24 (b) The CGAD must include a signature of the insurer or insurance group's chief
25 executive officer or corporate secretary attesting to the best of that individual's belief and
26 knowledge that the insurer has implemented the corporate governance practices and that a copy of
27 the disclosure has been provided to the insurer's board of directors or the appropriate committee
28 thereof.

29 (c) An insurer not otherwise required to submit a CGAD under this section shall do so
30 upon the commissioner's request.

31 (d) For purposes of completing the CGAD, the insurer or insurance group may provide
32 information regarding corporate governance at the ultimate controlling parent level, an
33 intermediate holding company level and/or the individual legal entity level, depending upon how
34 the insurer or insurance group has structured its system of corporate governance. The insurer or

1 insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's
2 or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity,
3 operations, and reputation of the insurer are overseen collectively and at which the supervision of
4 those factors are coordinated and exercised, or the level at which legal liability for failure of
5 general corporate governance duties would be placed. If the insurer or insurance group
6 determines the level of reporting based on these criteria, it shall indicate which of the three (3)
7 criteria was used to determine the level of reporting and explain any subsequent changes in level
8 of reporting.

9 (e) The review of the CGAD and any additional requests for information shall be made
10 through the lead state as determined by the procedures within the most recent Financial Analysis
11 Handbook referenced in subsection (a) of this section.

12 (f) Insurers providing information substantially similar to the information required by this
13 chapter in other documents provided to the commissioner, including proxy statements filed in
14 conjunction with form B requirements, or other state or federal filings provided to this division of
15 insurance shall not be required to duplicate that information in the CGAD, but shall only be
16 required to cross reference the document in which the information is included.

17 **27-1.2-4. Rules and Regulations.** -- The commissioner may, in accordance with the
18 administrative procedures act, chapter 35 of title 42, issue such rules, regulations and orders as
19 shall be necessary to carry out the provisions of this chapter.

20 **27-1.2-5. Contents of Corporate Governance Annual Disclosure.** -- (a) The insurer or
21 insurance group shall have discretion over the responses to the CGAD inquiries, provided the
22 CGAD shall contain the material information necessary to permit the commissioner to obtain an
23 understanding of the insurer's or group's corporate governance structure, policies, and practices.
24 The commissioner may request additional information that they deem material and necessary to
25 provide the commissioner with a clear understanding of the corporate governance policies, the
26 reporting or information system or controls implementing those policies.

27 (b) Notwithstanding subsection (a) of this section, the CGAD shall be prepared consistent
28 with the corporate governance annual disclosure regulation adopted by the division of insurance
29 and supporting information shall be maintained and made available upon examination or upon
30 request of the commissioner.

31 **27-1.2-6. Confidentiality.** -- (a) Documents, materials or other information including the
32 CGAD, in the possession or control of the division of insurance that are obtained by, created by
33 or disclosed to the commissioner or any other person under this chapter, are recognized by this
34 state as being proprietary and to contain trade secrets. Subject to the disclosure requirements of

1 §27-1.2-5 (b), all such documents, materials or other information shall be confidential by law and
2 privileged, shall not be subject to access pursuant to chapter 2 of title 38, shall not be subject to
3 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
4 action. However, the commissioner is authorized to use the documents, materials or other
5 information in the furtherance of any regulatory or legal action brought as a part of the
6 commissioner's official duties. The commissioner shall not otherwise make the documents,
7 materials or other information public without the prior written consent of the insurer. Nothing in
8 this section shall be construed to require written consent of the insurer before the commissioner
9 may share or receive confidential documents, materials or other CGAD related information
10 pursuant to subsection (c) of this section to assist in the performance of the commissioner's
11 regular duties.

12 (b) Neither the commissioner nor any person who received documents, materials or other
13 CGAD related information, through examination or otherwise, while acting under the authority of
14 the commissioner, or with whom such documents, materials or other information are shared
15 pursuant to this chapter shall be permitted or required to testify in any private civil action
16 concerning any confidential documents, materials, or information subject to subsection (a) of this
17 section.

18 (c) In order to assist in the performance of the commissioner's regulatory duties, the
19 commissioner may:

20 (1) Upon request, share documents, materials or other CGAD related information
21 including the confidential and privileged documents, materials or information subject to
22 subsection (a) of this section, including proprietary and trade secret documents and materials with
23 other state, federal and international financial regulatory agencies, including members of any
24 supervisory college, as described in §27-35-5.5, with the NAIC, and with third-party consultants
25 pursuant to §27-1.2-7, provided that the recipient agrees in writing to maintain the confidentiality
26 and privileged status of the CGAD related documents, material or other information and has
27 verified in writing the legal authority to maintain confidentiality; and

28 (2) Receive documents, materials or other CGAD related information, including
29 otherwise confidential and privileged documents, materials or information, including proprietary
30 and trade-secret information or documents, from regulatory officials of other state, federal and
31 international financial regulatory agencies, including members of any supervisory college, as
32 described in the §27-35-5.5, and from the NAIC, and shall maintain as confidential or privileged
33 any documents, materials or information received with notice or the understanding that it is
34 confidential or privileged under the laws of the jurisdiction that is the source of the document,

1 material or information.

2 (d) The sharing of information and documents by the commissioner pursuant to this
3 chapter shall not constitute a delegation of regulatory authority or rulemaking, and the
4 commissioner is solely responsible for the administration, execution and enforcement of the
5 provisions of this chapter.

6 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
7 proprietary and trade-secret materials or other CGAD related information shall occur as a result
8 of disclosure of such CGAD related information or documents to the commissioner under this
9 section or as a result of sharing as authorized in this chapter.

10 **27-1.2-7. NAIC and third-party consultants.--** (a) The commissioner may retain, at the
11 insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other
12 experts, not otherwise a part of the commissioner's staff, as may be reasonably necessary to assist
13 the commissioner in reviewing the CGAD and related information or the insurer's compliance
14 with this chapter.

15 (b) Any persons retained pursuant to subsection (a) of this section shall be under the
16 direction and control of the commissioner and shall act in a purely advisory capacity.

17 (c) The NAIC and third-party consultants shall be subject to the same confidentiality
18 standards and requirements as the commissioner.

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

23 (e) A written agreement with the NAIC and/or a third-party consultant governing sharing
24 and use of information provided pursuant to this chapter shall contain the following provisions
25 and expressly require the written consent of the insurer prior to making public information
26 provided under this chapter:

27 (1) Specific procedures and protocols for maintaining the confidentiality and security of
28 CGAD related information shared with the NAIC or a third-party consultant pursuant to this
29 chapter;

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

1 (3) A provision specifying that ownership of the CGAD related information shared with
2 the NAIC or a third-party consultant remains with the division of insurance and the NAIC's or
3 third-party consultant's use of the information is subject to the direction of the commissioner;

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

7 (5) A provision requiring the NAIC or third-party consultant to provide prompt notice to
8 the commissioner and to the insurer or insurance group regarding any subpoena, request for
9 disclosure, or request for production of the insurer's CGAD related information; and

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

14 **27-1.2-8. Sanctions. -- Any insurer failing, without just cause, to timely file the CGAD**
15 as required in this chapter shall be required, after notice and hearing, to pay a penalty of two
16 hundred and fifty dollars (\$250) for each day's delay, to be recovered by the commissioner and
17 the penalty so recovered shall be paid into the general revenue fund of this state. The maximum
18 penalty under this section is two hundred and fifty thousand dollars (\$250,000). The
19 commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the
20 imposition of the penalty would constitute a financial hardship to the insurer.

21 **27-1.2-9. Severability Clause. -- If any provision of this chapter other than §27-1.2- 6, or**
22 the application thereof to any person or circumstance, is held invalid, such determination shall not
23 affect the provisions or applications of this chapter which can be given effect without the invalid
24 provision or application, and to that end the provisions of this chapter, with the exception of §27-
25 1.2-6, are severable.

26 SECTION 2. Section 27-3-38 of the General Laws in Chapter 27-3 entitled "Surplus
27 Lines Insurance" is hereby amended to read as follows:

28 **27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance -**
29 **- Reports and records -- Premium tax -- Notice to purchasers. --** (a) The insurance
30 commissioner may issue a surplus line broker's license to any person authorizing the licensee to
31 procure, subject to the restrictions provided in this section, policies of insurance, except life and
32 health and accident, from eligible surplus lines insurers. Residents of this state must hold a
33 property and casualty insurance producer license to qualify for a surplus lines broker license. This
34 license may be denied, suspended or revoked by the insurance commissioner whenever, in the

1 commissioner's judgment, any of the bases under § 27-2.4-14 exist. Before any license is issued
2 by the insurance commissioner and before each renewal of a license, there shall be filed in his or
3 her office a written application by the person desiring the license in the form and containing any
4 information, that the insurance commissioner may prescribe. For the purposes of carrying out the
5 provisions of the Nonadmitted and Reinsurance Reform Act of 2010, the commissioner is
6 authorized to utilize the national insurance producer database of the NAIC, or any other
7 equivalent uniform national database, for the licensure of a person as a surplus lines producer and
8 for renewal of such license. For insureds whose home state is this state, a person shall not procure
9 a contract of surplus lines insurance with a nonadmitted insurer unless the person possesses a
10 current surplus lines insurance license issued by the commissioner.

11 (b) A Rhode Island resident business entity acting as a surplus line broker may elect to
12 obtain a surplus line broker license. Application shall be made using the uniform business entity
13 application. Prior to approving the application, the commissioner shall find both of the following:

14 (1) The business entity has paid the appropriate fees.

15 (2) The business entity has designated a licensed surplus line broker responsible for the
16 business entity's compliance with the insurance laws and rules of this state.

17 (c) When any policy of insurance is procured under the authority of that license, there
18 shall be executed, both by the licensee and by the insured, affidavits setting forth facts showing
19 that the insured or a licensed Rhode Island producer were unable, after diligent effort, to procure
20 from no less than three (3) admitted insurers the full amount of insurance required to protect the
21 property owned or controlled by the insured or the risks insured. Provided, however the
22 aforementioned affidavit shall not be required when insuring the following interest: amusement
23 parks and devices, environmental improvement and/or remediation sites, vacant property or
24 property under renovation, demolition operations, event cancellation due to weather, railroad
25 liability, discontinued products, fireworks and pyrotechnics, warehouseman's legal liability,
26 excess property coverage, [private flood](#), and contingent liability. In addition, no such affidavit is
27 required for exempt commercial purchasers as defined by the Nonadmitted and Reinsurance
28 Reform Act of 2010. For purposes of this section, residual market mechanisms shall not be
29 considered authorized insurers. Prior to renewing, continuing, or extending any policy, the
30 licensed surplus line broker must confirm that the insurer is on the insurance commissioner's list
31 of approval surplus line insurers in this state.

32 (d) The licensee shall keep a complete and separate record of all policies procured from
33 approved surplus lines insurers under the license and these records shall be open to the
34 examination of both the insurance commissioner and tax administrator at all reasonable times,

1 and shall show the exact amount of each kind of insurance permitted under this section which has
2 been procured for each insured, the gross premiums charged by the insurers for each kind of
3 insurance permitted under this section which were returned to each insured, the name of the
4 insurer or insurers which issued each of these policies, the effective dates of these policies, and
5 the terms for which these policies were issued. The licensee shall file a yearly report with the
6 insurance commissioner on a form prescribed by the insurance commissioner showing the
7 business procured under the surplus line license for the preceding calendar year, and the report
8 shall be due annually on or before April 1.

9 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section
10 shall file with the insurance commissioner, at the time of the insurance producer license renewal,
11 sufficient information as determined by the insurance commissioner whether a licensee or a
12 person acting on the licensee's behalf, has paid to the tax administrator, for all policies procured
13 by the licensee pursuant to the license during the next preceding calendar year, a tax, computed at
14 the rate of four percent (4%) on the gross premiums charged the insured by the insurers, less the
15 amount of premiums returned to the insured.

16 (f) Every application form for insurance from a surplus lines insurer, every affidavit
17 form executed by the insured, and every policy (on its front and declaration pages) issued by the
18 surplus lines insurer, shall contain in ten (10) point type the following notice:

19 NOTICE

20 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT
21 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS
22 A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE
23 ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME SOLVENT,
24 THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY
25 FUND ARE NOT AVAILABLE.

26 SECTION 2. Section 1 of this act shall take effect on January 1, 2017. The remaining
27 sections of this act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - CORPORATE GOVERNANCES

1 This act would require insurance companies to annually file with the director of business
2 regulation a corporate governance disclosure form which contains a summary of the carriers
3 structure, policies and practices. It would allow private flood insurance to be written in the
4 surplus market without a due diligence affidavit.

5 Section 1 of this act would take effect on January 1, 2017. The remaining sections of this
6 act would take effect upon passage.

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