



2020 South Dakota Legislature  
**House Bill 1017**  
**ENROLLED**

AN ACT

**ENTITLED An Act to provide for certain insurer corporate governance disclosure requirements.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

**Section 1.** That a NEW SECTION be added:

**58-5-161. Definitions.**

Terms used in this Act mean:

- (1) "Corporate Governance Annual Disclosure," a confidential report filed by an insurer or insurance group in accordance with § 58-5-163;
- (2) "Insurance group," those insurers and affiliates included within an insurance holding company system as defined in chapter 58-5A.

**Section 2.** That a NEW SECTION be added:

**58-5-162. Corporate governance disclosure--Requirements and limitations.**

Nothing in §§ 58-5-161 to 58-5-171, inclusive, may be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law.

Nothing in this Act may be construed to limit the director's authority, or the rights or obligations of third parties, under chapter 58-3. The requirements in §§ 58-5-161 to 58-5-171, inclusive, apply to all insurers domiciled in this state.

**Section 3.** That a NEW SECTION be added:

**58-5-163. Submission of disclosure--Requirement.**

An insurer, or the insurance group of which the insurer is a member, shall submit a corporate governance annual disclosure containing the information described in §§ 58-5-161 to 58-5-171, inclusive, to the director no later than June first of each calendar year. If the insurer is a member of an insurance group, the insurer shall submit the report

required by this section to the director, commissioner, superintendent, or other official who is the lead state for the insurance group in accordance with the laws of the lead state. The disclosure must be signed by the insurer or insurance group'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.

Notwithstanding the foregoing, the director may request any insurer to submit the disclosure.

**Section 4.** That a NEW SECTION be added:

**58-5-164. Information provided with disclosure--Appropriate corporate level.**

For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, the individual legal entity level, or any combination of the levels depending upon how the insurer or insurance group has structured its system of corporate governance.

An insurer or insurance group shall make the disclosures at the level where the insurer's or insurance group's:

- (1) Risk appetite is determined;
- (2) Earnings, capital, liquidity, operations, and reputation of the insurer are collectively overseen and the supervision of those factors is coordinated and exercised; or
- (3) Legal liability for failure of general corporate governance duties is placed.

When an insurer or insurance group determines the level of reporting based on the criteria under this section, the insurer or insurance group shall indicate which of the criteria under this section was used to determine the level of reporting and explain any subsequent change in the level of reporting. Any additional request for information by the director shall be made through the lead state.

**Section 5.** That a NEW SECTION be added:

**58-5-165. Duplicate information not required--Documentation.**

An insurer who provides information substantially similar to the information required in §§ 58-5-161 to 58-5-171, inclusive, in other documents provided to the

director is not required to duplicate information in the corporate governance annual disclosure if the insurer reports where the information is included.

**Section 6.** That a NEW SECTION be added:

**58-5-166. Content and maintenance--Promulgation of Rules.**

The insurer or insurance group has discretion over the responses to the corporate governance annual disclosure inquiries if the disclosure contains the material information necessary to permit the director to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The director may request additional information the director determines is material and necessary to provide a clear understanding of the corporate governance policies and the reporting or information system or controls implementing those policies. Documentation and supporting information must be maintained and made available upon examination by the division or upon a request of the director.

The corporate governance annual disclosure must be prepared consistent with applicable administrative rules which may be promulgated by the division pursuant to chapter 1-26 regarding the contents and filing of the disclosure.

**Section 7.** That a NEW SECTION be added:

**58-5-167. Disclosure documents and other information--Confidential and privileged--Exempt from public record--Permitted uses.**

Any document, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the division that is obtained by, created by, or disclosed to the director or any other person under the provisions of §§ 58-5-161 to 58-5-171, inclusive, is recognized by this state as being proprietary and to contain trade secrets. The document, materials, or other information is confidential and privileged, is not a record open to public inspection under chapter 1-27, is not subject to subpoena, and is not discoverable or admissible in evidence in any private civil action.

The director may use corporate governance annual disclosure documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director may not otherwise make the document, materials, or other information public without the prior written consent of the insurer.

Nothing in this section may be construed to require written consent of the insurer before the director may share or receive any confidential document, materials, or other

related information pursuant to § 58-5-169 to assist in the performance of the director's regular duties.

**Section 8.** That a NEW SECTION be added:

**58-5-168. Disclosure documents and other materials--Testimony prohibited.**

No person, including the director, who received a document, materials, or other information related to the corporate governance annual disclosure, through examination or otherwise, while acting under the authority of the director, or with whom the document, materials, or other information is shared pursuant to the provisions of §§ 58-5-161 to 58-5-171, inclusive, may be permitted or required to testify in any private civil action concerning any confidential document, materials, or information subject to the provisions of §§ 58-5-161 to 58-5-171, inclusive.

**Section 9.** That a NEW SECTION be added:

**58-5-169. Disclosure documents and other materials--Information sharing and receiving.**

In order to assist in the performance of the director's regulatory duties, the director may:

- (1) Share any document, materials, or other information related to the corporate governance annual disclosure, including any confidential and privileged document, materials, or information, including any proprietary and trade secret document and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in chapter 58-5A, with the National Association of Insurance Commissioners, and with third party consultants pursuant to §§ 58-5-161 to 58-5-171, inclusive, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, materials, or other information related to the disclosure and verifies in writing the legal authority to maintain confidentiality; and
- (2) Receive any document, materials, or other information related to the corporate governance annual disclosure, including any otherwise confidential and privileged document, 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 chapter 58-5A, and from the National Association of Insurance Commissioners. The director shall maintain as confidential or privileged any

document, 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.

No waiver of any applicable privilege or claim of confidentiality in any document, proprietary and trade-secret materials, or other information related to the corporate governance annual disclosure may occur as a result of disclosure of any information or documents related to the disclosure to the director under this section or as a result of sharing under this section by the director.

**Section 10.** That a NEW SECTION be added:

**58-5-170. Disclosure review--Expert assistance.**

The director may retain, at the insurer's expense, any third-party consultant, including attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the corporate governance annual disclosure and related information or the insurer's compliance with the provisions of §§ 58-5-161 to 58-5-171, inclusive. Any person retained shall be under the direction and control of the director and shall act in an advisory capacity. The National Association of Insurance Commissioners and third-party consultants is subject to the same confidentiality standards and requirements as the director. As part of the retention process, a third-party consultant shall verify to the director, with notice to the insurer, that the third-party consultant is free of a conflict of interest and that the consultant has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of §§ 58-5-161 to 58-5-171, inclusive.

**Section 11.** That a NEW SECTION be added:

**58-5-171. Disclosure information--Access by National Association of Insurance Commissioners--Requirements.**

The director may enter a written agreement with the National Association of Insurance Commissioners, a third-party consultant, or both, governing the sharing and use of information provided pursuant to §§ 58-5-161 to 58-5-171, inclusive, that expressly requires the written consent of the insurer prior to making any information related to the corporate governance annual disclosure available and contains the following:

- (1) A provision specifying procedures and protocols for maintaining the confidentiality and security of information related to the disclosure that is shared with the National Association of Insurance Commissioners or a third-party consultant;
- (2) A provision delineating procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from only those states in which the insurance group has domiciled insurers. The agreement must provide that the recipient agrees, in writing, to maintain the confidentiality and privileged status of the documents, materials or other information related to the disclosure and has verified in writing the legal authority to maintain confidentiality;
- (3) A provision specifying that ownership of the information related to the disclosure that is shared with the National Association of Insurance Commissioners or a third-party consultant remains with the division and use by the National Association of Insurance Commissioners or a third-party consultant is subject to the direction of the director;
- (4) A provision prohibiting the National Association of Insurance Commissioners or a third-party consultant from storing shared information related to the disclosure in a permanent database after the underlying analysis is completed;
- (5) A requirement that the National Association of Insurance Commissioners or third-party consultant provide prompt notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's information related to the disclosure; and
- (6) A requirement that the National Association of Insurance Commissioners or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the provisions of §§ 58-5-161 to 58-5-171, inclusive.

An Act to provide for certain insurer corporate governance disclosure requirements.

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I certify that the attached Act originated in the:  
  
House as Bill No. 1017

Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2020 at \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
Speaker of the Houser of the House

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2020

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
President of the Senate

Attest:

Filed \_\_\_\_\_, 2020  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Secretary of State

House Bill No. 1017  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State