

HOUSE BILL NO. HB0034

Insurance-corporate governance annual disclosure.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; requiring insurance
2 companies, fraternal benefit societies and health
3 maintenance organizations to submit a governance report as
4 specified; providing filing requirements; providing for the
5 confidentiality of information reported; specifying
6 applicability; authorizing rules and regulations; providing
7 penalties; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 26-29-239, 26-34-135 and 26-52-101
12 through 26-52-108 are created to read:

13

14 **26-29-239. Application of Wyoming Corporate**
15 **Governance Annual Disclosure Act.**

1

2 The Wyoming Corporate Governance Annual Disclosure Act,
3 title 26, chapter 52, shall apply to domestic fraternal
4 benefit societies regulated under this chapter.

5

6 **26-34-135. Application of Wyoming Corporate**
7 **Governance Annual Disclosure Act.**

8

9 The Wyoming Corporate Governance Annual Disclosure Act,
10 title 26, chapter 52, shall apply to domestic health
11 maintenance organizations licensed under this chapter.

12

13

CHAPTER 52

14

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

15

16 **26-52-101. Short title; applicability.**

17

18 (a) This chapter constitutes the Wyoming Corporate
19 Governance Annual Disclosure Act.

20

21 (b) The requirements of this chapter shall apply to
22 all insurers domiciled in this state.

23

1 (c) Nothing in this chapter shall be construed to
2 prescribe or impose corporate governance standards and
3 internal procedures beyond that which is required under
4 applicable state corporate law.

5

6 (d) Nothing in this chapter shall be construed to
7 limit the commissioner's authority, or the rights or
8 obligations of third parties, pursuant to the Wyoming
9 Insurance Code.

10

11 (e) No insurer or group of insurers shall be required
12 to file the disclosure required by this chapter until 2017.

13

14 **26-52-102. Definitions.**

15

16 (a) As used in this chapter:

17

18 (i) "Corporate governance annual disclosure" or
19 "CGAD" means a confidential report filed by an insurer or
20 insurance group in accordance with the requirements of this
21 chapter;

22

1 (ii) "Insurance group" means those insurers and
2 affiliates included within an insurance holding company
3 system as defined under W.S. 26-44-101(a)(iv);
4

5 (iii) "Insurer" shall have the same meaning as
6 set forth under W.S. 26-1-102(a)(xvi), except that it shall
7 not include agencies, authorities or instrumentalities of
8 the United States, its possessions and territories, the
9 Commonwealth of Puerto Rico, the District of Columbia, or a
10 state or political subdivision of a state.
11

12 **26-52-103. Disclosure requirement.**
13

14 (a) An insurer, or the insurance group of which the
15 insurer is a member, shall, no later than June 1 of each
16 calendar year, submit to the commissioner a corporate
17 governance annual disclosure that contains the information
18 described in W.S. 26-52-105. Notwithstanding any request
19 from the commissioner made pursuant to subsection (c) of
20 this section, if the insurer is a member of an insurance
21 group, the insurer shall submit the report required by this
22 section to the commissioner of the lead state for the
23 insurance group, in accordance with the laws of the lead

1 state and under the guidance of the procedures outlined in
2 the most recent financial analysis handbook adopted by the
3 National Association of Insurance Commissioners.

4

5 (b) The CGAD shall include a signature of the
6 insurer's or insurance group's chief executive officer
7 or corporate secretary attesting to the best of that
8 individual's belief and knowledge that the insurer has
9 implemented the corporate governance practices disclosed
10 pursuant to subsection (a) of this section and that a copy
11 of the disclosure has been provided to the insurer's board
12 of directors or the appropriate committee thereof.

13

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

16

17 (d) For purposes of completing the CGAD, the insurer
18 or insurance group may provide information regarding
19 corporate governance at the ultimate controlling parent
20 level, an intermediate holding company level or the
21 individual legal entity level, depending upon how the
22 insurer or insurance group has structured its system of
23 corporate governance. The insurer or insurance group is

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

13

14 (e) The review of the CGAD and any additional
15 requests for information shall be made through the lead
16 state under the guidance of the procedures within the most
17 recent financial analysis handbook referenced in subsection
18 (a) of this section.

19

20 (f) Insurers providing information substantially
21 similar to the information required by this act in other
22 documents provided to the commissioner, including proxy
23 statements filed pursuant to W.S. 26-44-104, or other state

1 or federal filings provided to the department, shall not be
2 required to duplicate that information in the CGAD, but
3 shall be required to cross reference and identify where the
4 document may be located by the commissioner.

5

6 **26-52-104. Rules and regulations.**

7

8 The commissioner may promulgate rules, regulations and
9 orders necessary to carry out the provisions of this act.

10

11 **26-52-105. Contents of corporate governance annual**
12 **disclosure.**

13

14 (a) An insurer or insurance group shall have
15 discretion over the responses to the CGAD inquiries,
16 provided the CGAD shall contain the material information
17 necessary to permit the commissioner to gain an
18 understanding of the insurer's or group's corporate
19 governance structure, policies and practices. The
20 commissioner may request additional information deemed
21 material and necessary to provide the commissioner with a
22 clear understanding of corporate governance policies and

1 the reporting, information systems or controls used to
2 implement those policies.

3

4 (b) Notwithstanding subsection (a) of this section,
5 the CGAD shall be prepared consistent with corporate
6 governance annual disclosure model regulations adopted in
7 the department's rules. Pursuant to the guidance in the
8 model regulation, the CGAD shall describe the insurer's or
9 insurance group's corporate governance framework, the
10 policies and practices of the most senior governing entity
11 and significant committees thereof, the policies and
12 practices for directing senior management and the processes
13 by which the board and senior management ensure an
14 appropriate amount of oversight to the critical risk areas
15 impacting the insurer's business activities. Documentation
16 and supporting information shall be maintained and made
17 available for examination or upon request of the
18 commissioner.

19

20 **26-52-106. Confidentiality.**

21

22 (a) Documents, materials or other information,
23 including the CGAD, in the possession or control of the

1 department of insurance that are obtained by, created by or
2 disclosed to the commissioner or any other person under
3 this chapter, are recognized by this state as being
4 proprietary and to contain trade secrets. All such
5 documents, materials or other information shall be
6 confidential by law and privileged, shall not be considered
7 public records pursuant to W.S. 16-4-201 through 16-4-205,
8 shall not be subject to subpoena, and shall not be subject
9 to discovery or admissible as evidence in any private civil
10 action. The commissioner is authorized to use the
11 documents, materials or other information in the
12 furtherance of any regulatory or legal action brought as a
13 part of the commissioner's official duties. The
14 commissioner shall not otherwise make the documents,
15 materials or other information public without the prior
16 written consent of the insurer. Nothing in this section
17 shall be construed to require written consent of the
18 insurer before the commissioner may share or receive
19 confidential documents, materials or other CGAD related
20 information pursuant to subsection (c) of this section and
21 as necessary to assist in the performance of the
22 commissioner's regular duties.

23

1 (b) Neither the commissioner nor any person who
2 receives documents, materials or other CGAD related
3 information, through examination or otherwise, while acting
4 under the authority of the commissioner, or with whom such
5 documents, materials or other information are shared
6 pursuant to this chapter, shall be permitted or required to
7 testify in any private civil action concerning any
8 confidential documents, materials or information subject to
9 subsection (a) of this section.

10

11 (c) In order to assist in the performance of the
12 commissioner's regulatory duties, the commissioner:

13

14 (i) May, upon request, share documents,
15 materials or other CGAD related information including
16 confidential and privileged documents, materials or
17 information subject to subsection (a), including
18 proprietary and trade secret documents and materials, with
19 other state, federal and international financial regulatory
20 agencies, including members of any supervisory college as
21 defined under W.S. 26-44-118, with the National Association
22 of Insurance Commissioners, and with third party
23 consultants pursuant to W.S. 26-52-107, provided that the

1 recipient agrees in writing to maintain the confidentiality
2 and privileged status of the CGAD related documents,
3 material or other information and has verified in writing
4 the legal authority to maintain confidentiality; and

5

6 (ii) May receive documents, materials or other
7 CGAD related information, including otherwise confidential
8 and privileged documents, materials or information,
9 including proprietary and trade secret information or
10 documents, from regulatory officials of other state,
11 federal and international financial regulatory agencies,
12 including members of any supervisory college as defined
13 under W.S. 26-44-118, and from the National Association of
14 Insurance Commissioners, and shall maintain as confidential
15 or privileged any documents, materials or information
16 received with notice or the understanding that it is
17 confidential or privileged under the laws of the
18 jurisdiction that is the source of the document, material
19 or information.

20

21 (d) The sharing of information and documents by the
22 commissioner pursuant to this chapter shall not constitute
23 a delegation of regulatory authority or rulemaking, and the

1 commissioner is solely responsible for the administration,
2 execution and enforcement of the provisions of this
3 chapter.

4

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

12

13 **26-52-107. NAIC and third party consultants.**

14

15 (a) The commissioner may retain, at the insurer's
16 expense, third party consultants, including attorneys,
17 actuaries, accountants and other experts not otherwise a
18 part of the commissioner's staff as may be reasonably
19 necessary to assist the commissioner in reviewing the CGAD
20 and related information or the insurer's compliance with
21 this chapter.

22

1 (b) Any person retained under subsection (a) of this
2 section shall be under the direction and control of the
3 commissioner and shall act only in an advisory capacity.

4

5 (c) The National Association of Insurance
6 Commissioners and any person retained pursuant to
7 subsection (a) of this section shall be subject to the same
8 confidentiality standards and requirements as the
9 commissioner.

10

11 (d) Any person retained pursuant to subsection (a) of
12 this section shall verify to the commissioner, with notice
13 to the insurer, that it is free of a conflict of interest
14 and that it has internal procedures in place to monitor
15 compliance with a conflict and to comply with the
16 confidentiality standards and requirements of this chapter.

17

18 (e) The commissioner shall enter into a written
19 agreement with the National Association of Insurance
20 Commissioners and any person hired pursuant to subsection
21 (a) of this section concerning the sharing and use of
22 information provided under this chapter. The agreement
23 shall contain the following provisions and expressly

1 require the written consent of the insurer prior to making
2 public any information provided under this chapter:

3

4 (i) Specific procedures and protocols for
5 maintaining the confidentiality and security of CGAD
6 related information shared with the National Association of
7 Insurance Commissioners or any person hired pursuant to
8 subsection (a) of this section;

9

10 (ii) Procedures and protocols for the National
11 Association of Insurance Commissioners' disclosure of CGAD
12 related information only to other state regulators from
13 states in which an insurance group has domiciled insurers.
14 The agreement shall provide that the recipient agrees in
15 writing to maintain the confidentiality and privileged
16 status of the CGAD related documents, materials or other
17 information and has verified in writing the legal authority
18 to maintain confidentiality;

19

20 (iii) A provision specifying that ownership of
21 CGAD related information shared with the National
22 Association of Insurance Commissioners or a person retained
23 pursuant to subsection (a) of this section remains with the

1 department of insurance and use of the information by the
2 National Association of Insurance Commissioners or a person
3 retained pursuant to subsection (a) of this section is
4 subject to the direction of the commissioner;

5

6 (iv) A provision that prohibits the National
7 Association of Insurance Commissioners or any person
8 retained pursuant to subsection (a) of this section from
9 storing the information shared pursuant to this chapter in
10 a permanent database after the underlying analysis is
11 completed;

12

13 (v) A provision requiring the National
14 Association of Insurance Commissioners or any person
15 retained pursuant to subsection (a) of this section to
16 provide prompt notice to the commissioner and to the
17 insurer or insurance group upon the receipt of any
18 subpoena, request for disclosure, or request for production
19 of the insurer's CGAD related information; and

20

21 (vi) A requirement that the National Association
22 of Insurance Commissioners or any person retained pursuant
23 to subsection (a) of this section shall consent to

1 intervention by an insurer in any judicial or
2 administrative action in which the National Association of
3 Insurance Commissioners or the person retained pursuant to
4 subsection (a) of this section may be required to disclose
5 confidential information about the insurer shared with the
6 National Association of Insurance Commissioners or a person
7 retained pursuant to subsection (a) of this section
8 pursuant to this chapter.

9

10 **26-52-108. Sanctions.**

11

12 Any insurer failing, without just cause, to timely file the
13 CGAD required by this chapter shall be required, after
14 notice and hearing, to pay a penalty of one hundred dollars
15 (\$100.00) for each day that the CGAD is not filed, to be
16 recovered by the commissioner. The maximum penalty due
17 under this section shall be five thousand dollars
18 (\$5,000.00). The commissioner may reduce the penalty if the
19 insurer demonstrates to the commissioner that the
20 imposition of the penalty would constitute a financial
21 hardship to the insurer.

22

1 **Section 2.** This act is effective July 1, 2016.

2

3

(END)