



2020 South Dakota Legislature

House Bill 1017

Introduced by: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation

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

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

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

4 **58-5-161. Definitions.**

5 Terms used in this Act mean:

6 (1) "Corporate Governance Annual Disclosure," a confidential report filed by an insurer
7 or insurance group in accordance with § 58-5-163;

8 (2) "Insurance group," those insurers and affiliates included within an insurance
9 holding company system as defined in chapter 58-5A.

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

11 **58-5-162. Corporate governance disclosure--Requirements and limitations.**

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

15 Nothing in this Act may be construed to limit the director's authority, or the rights
16 or obligations of third parties, under chapter 58-3. The requirements in §§ 58-5-161 to
17 58-5-171, inclusive, apply to all insurers domiciled in this state.

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

19 **58-5-163. Submission of disclosure--Required.**

20 An insurer, or the insurance group of which the insurer is a member, shall submit
21 a corporate governance annual disclosure containing the information described in §§ 58-
22 5-161 to 58-5-171, inclusive, to the director no later than June first of each calendar year.
23 If the insurer is a member of an insurance group, the insurer shall submit the report
24 required by this section to the director, commissioner, superintendent, or other official

1 who is the lead state for the insurance group in accordance with the laws of the lead state.
2 The disclosure must be signed by the insurer or insurance group's chief executive officer
3 or corporate secretary attesting to the best of that individual's belief and knowledge that
4 the insurer has implemented the corporate governance practices and that a copy of the
5 disclosure has been provided to the insurer's board of directors or the appropriate
6 committee thereof.

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

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

10 **58-5-164. Information provided with disclosure--Appropriate corporate**
11 **level.**

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

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

19 (1) Risk appetite is determined;

20 (2) Earnings, capital, liquidity, operations, and reputation of the insurer are collectively
21 overseen and the supervision of those factors is coordinated and exercised; or

22 (3) Legal liability for failure of general corporate governance duties is placed.

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

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

29 **58-5-165. Duplicate information not required--Documentation.**

30 An insurer who provides information substantially similar to the information
31 required in §§ 58-5-161 to 58-5-171, inclusive, in other documents provided to the
32 director is not required to duplicate information in the corporate governance annual
33 disclosure if the insurer reports where the information is included.

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

2 **58-5-166. Content and maintenance--Promulgation of Rules.**

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

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

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

16 **58-5-167. Disclosure documents and other information--Confidential and**
17 **privileged--Exempt from public record--Permitted uses.**

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

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

30 Nothing in this section may be construed to require written consent of the insurer
31 before the director may share or receive any confidential document, materials, or other
32 related information pursuant to § 58-5-169 to assist in the performance of the director's
33 regular duties.

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

2 **58-5-168. Disclosure documents and other materials--Testimony prohibited.**

3 No person, including the director, who received a document, materials, or other
4 information related to the corporate governance annual disclosure, through examination
5 or otherwise, while acting under the authority of the director, or with whom the document,
6 materials, or other information is shared pursuant to the provisions of §§ 58-5-161 to 58-
7 5-171, inclusive, may be permitted or required to testify in any private civil action
8 concerning any confidential document, materials, or information subject to the provisions
9 of §§ 58-5-161 to 58-5-171, inclusive.

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

11 **58-5-169. Disclosure documents and other materials--Information sharing**
12 **and receiving.**

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

15 (1) Share any document, materials, or other information related to the corporate
16 governance annual disclosure, including any confidential and privileged document,
17 materials, or information, including any proprietary and trade secret document and
18 materials, with other state, federal, and international financial regulatory agencies,
19 including members of any supervisory college as defined in chapter 58-5A, with
20 the National Association of Insurance Commissioners, and with third party
21 consultants pursuant to §§ 58-5-161 to 58-5-171, inclusive, provided that the
22 recipient agrees in writing to maintain the confidentiality and privileged status of
23 the document, materials, or other information related to the disclosure and verifies
24 in writing the legal authority to maintain confidentiality; and

25 (2) Receive any document, materials, or other information related to the corporate
26 governance annual disclosure, including any otherwise confidential and privileged
27 document, materials, or information, including proprietary and trade-secret
28 information or documents from regulatory officials of other state, federal, and
29 international financial regulatory agencies, including members of any supervisory
30 college as defined in chapter 58-5A, and from the National Association of Insurance
31 Commissioners. The director shall maintain as confidential or privileged any
32 document, materials, or information received with notice or the understanding that

1 it is confidential or privileged under the laws of the jurisdiction that is the source
2 of the document, materials, or information.

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

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

9 **58-5-170. Disclosure review--Expert assistance.**

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

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

24 **58-5-171. Disclosure information--Access by National Association of**
25 **Insurance Commissioners--Requirements.**

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

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