SPONSOR: Sen. Bushweller & Rep. B. Short & Rep. Bolden
Sens. Cloutier, Hocker, Lopez; Reps. Briggs King,
Kowalko, Lynn, Mitchell, Osienski, Wilson

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 40
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE COMPANY DISCLOSURE REQUIREMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

Chapter 85. Corporate Governance Annual Disclosure Act

§ 8501. Short title.

This chapter may be cited as the "Corporate Governance Annual Disclosure Act."

§ 8502. Purpose and Scope.

(a) The purpose of this Act is to:

(1) Provide the Commissioner 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.

(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 or insurance group competitive harm or disadvantage.

(b) Nothing in this Act shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. Notwithstanding the foregoing, nothing in this Act shall be construed to limit the Commissioner's authority, or the rights or obligations of third parties, under § 318 through § 321 of this title.

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

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§ 8503. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Commissioner." The term "Commissioner" shall mean the Insurance Commissioner of this State.

(2) "Corporate Governance Annual Disclosure" or "CGAD". The term "Corporate Governance Annual Disclosure" or "CGAD" shall mean a confidential report filed by the insurer or insurance group made in accordance with the requirements of this Act.

(3) "Insurance group." For purposes of this Act, the term "insurance group" shall mean those insurers and affiliates included within an insurance holding company system as defined in Chapter 50 of this title.

(4) "Insurer." The term "insurer" shall have the same meaning as set forth in § 102(3) of this title, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) "NAIC." The term "NAIC" shall mean the National Association of Insurance Commissioners.

§ 8504. Disclosure Requirement

(a) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the Commissioner a Corporate Governance Annual Disclosure (CGAD) that contains the information described in § 8506(b) of this title. Notwithstanding any request from the Commissioner made pursuant to paragraph (c) below, if the insurer is a member of an insurance group, the insurer shall submit the report required in this section to the Commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

(b) The CGAD must include a signature of 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.

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

(d) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are

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overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

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

(f) Insurers providing information substantially similar to the information required by this Act in other documents provided to the Commissioner, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to this Department shall not be required to duplicate that information in the CGAD, but shall only be required to cross reference the document in which the information is included.

§ 8505. Rules and regulations.

The Commissioner may, upon notice and an opportunity for all interested parties to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

§ 8506. Contents of Corporate Governance Annual Disclosure.

(a) The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD shall contain the material information necessary to permit the Commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies and practices. The Commissioner may request additional information that he or she deems material and necessary to provide the Commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.

(b) Notwithstanding subsection (a) above, the CGAD shall be prepared consistent with the Corporate Governance Annual Disclosure Model Regulation to be promulgated by the Commissioner. Documentation and supporting information shall be maintained and made available upon examination by or upon request of the Commissioner.

§ 8507. Confidentiality.

(a) Documents, materials or other information including the CGAD, in the possession or control of the Department that are obtained by, created by or disclosed to the Commissioner or any other person under this Act, are recognized by this State as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to the Freedom of Information Act, 29 Del. C. §§ 10001, et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any

regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the Commissioner may share or receive confidential documents, materials or other CGAD-related information pursuant to subsection (c) of this section to assist in the performance of the Commissioner's regular duties.

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

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

(1) May, upon request, share documents, materials or other CGAD-related information including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials with other state, federal and international financial agencies, including members of any supervisory college as described in § 5014 of this title, with the NAIC, and with third party consultants pursuant to § 8508 of this title, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) May receive documents, materials or other CGAD-related information, including otherwise confidential and privileged documents, 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 described in § 5014 of this title, and from the NAIC, and shall maintain as confidential or privileged any documents, 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, material or information.

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

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

§ 8508. NAIC and third-party consultants.

(a) The Commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the CGAD and related information or the insurer's compliance with this Act.

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

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

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

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

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

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

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

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

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

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

§ 8509. Sanctions.

Any insurer failing, without just cause, to timely file the CGAD as required in this Act shall be required, after notice and hearing, to pay a penalty of $500 for each day's delay, to be recovered by the Commissioner and the penalty so recovered shall be paid into the General Fund. The maximum penalty under this section is $25,000. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

§ 8510. Severability Clause.

If any provision of this Act other than § 8507 of this title, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act, with the exception of § 8507 of this title, are severable.

§ 8511. Effective Date.

The requirements of this Act shall become effective on January 1, 2018. The first filing of the CGAD shall be in 2018.