

House Bill 367 (AS PASSED HOUSE AND SENATE)

By: Representatives Taylor of the 173rd, Smith of the 134th, Blackmon of the 146th, Lumsden of the 12th, and Williams of the 148th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 enact the "Corporate Governance Annual Disclosure Act"; to provide for definitions; to
3 provide for the reporting of corporate governance structure; to provide for enforcement
4 authority; to provide for confidentiality; to provide for applicability; to provide for related
5 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
9 adding a new chapter to read as follows:

10 "CHAPTER 65

11 33-65-1.

12 This chapter shall be known and may be cited as the 'Corporate Governance Annual
13 Disclosure Act.'

14 33-65-2.

15 As used in this chapter, the term:

16 (1) 'Corporate governance annual disclosure' means a confidential report filed by the
17 insurer or insurance group made in accordance with the requirements of this chapter.

18 (2) 'Insurance group' means those insurers and affiliates included within an insurance
19 holding company system as defined in paragraph (5) of Code Section 33-13-1.

20 (3) 'Insurer' has the same meaning as set forth in Code Section 33-1-2, except that it shall
21 not include agencies, authorities, or instrumentalities of the United States, its possessions
22 and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or
23 political subdivision of a state.

24 (4) 'Own Risk and Solvency Assessment Summary Report' means the report filed in
25 accordance with Article 2 of Chapter 13 of this title.

26 33-65-3.

27 (a) An insurer, or the insurance group of which the insurer is a member, shall, no later than
28 June 1 of each calendar year, submit to the Commissioner a corporate governance annual
29 disclosure that contains the information described in subsection (b) of Code
30 Section 33-65-5. Notwithstanding any request from the Commissioner made pursuant to
31 subsection (c) of this Code section, if the insurer is a member of an insurance group, the
32 insurer shall submit the report required by this subsection to the Commissioner of the lead
33 state for the insurance group, in accordance with the laws of the lead state, as determined
34 by the procedures outlined in the most recent Financial Analysis Handbook adopted by the
35 National Association of Insurance Commissioners.

36 (b) The corporate governance annual disclosure must include a signature of the insurer or
37 insurance group's chief executive officer or corporate secretary attesting to the best of that
38 individual's belief and knowledge that the insurer has implemented the corporate
39 governance practices and that a copy of the disclosure has been provided to the insurer's
40 board of directors or the appropriate committee thereof.

41 (c) An insurer not required to submit a corporate governance annual disclosure under this
42 Code section shall do so upon the Commissioner's request.

43 (d) For purposes of completing the corporate governance annual disclosure, the insurer or
44 insurance group may provide information regarding corporate governance at the ultimate
45 controlling parent level, an intermediate holding company level, or the individual legal
46 entity level, depending upon how the insurer or insurance group has structured its system
47 of corporate governance. The insurer or insurance group is encouraged to make the
48 disclosures at the level at which the insurer's or insurance group's risk appetite is
49 determined, or at which the earnings, capital, liquidity, operations, and reputation of the
50 insurer are overseen collectively and at which the supervision of those factors is
51 coordinated and exercised, or the level at which legal liability for failure of general
52 corporate governance duties would be placed. If the insurer or insurance group determines
53 the level of reporting based on these criteria, it shall indicate which of the three criteria was
54 used to determine the level of reporting and explain any subsequent changes in level of
55 reporting.

56 (e) The review of the corporate governance annual disclosure and any additional requests
57 for information shall be made through the lead state as determined by the procedures within
58 the most recent Financial Analysis Handbook referenced in subsection (a) of this Code
59 section.

60 (f) Insurers providing information substantially similar to the information required by this
61 chapter in other documents provided to the Commissioner, including proxy statements filed
62 in conjunction with Form B requirements, or other state or federal filings provided to the
63 department shall not be required to duplicate that information in the corporate governance
64 annual disclosure, but shall only be required to cross-reference the document in which the
65 information is included.

66 33-65-4.

67 The Commissioner may, upon notice and opportunity for all interested persons to be heard,
68 issue such rules, regulations, and orders as shall be necessary to carry out the provisions
69 of this chapter.

70 33-65-5.

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

79 (b) Notwithstanding subsection (a) of this Code section, the corporate governance annual
80 disclosure shall be prepared consistent with the Corporate Governance Annual Disclosure
81 Regulation as promulgated by the Commissioner. Documentation and supporting
82 information shall be maintained and made available upon examination or upon request of
83 the Commissioner.

84 33-65-6.

85 (a) Documents, materials, or other information including the corporate governance annual
86 disclosure, in the possession or control of the department that are obtained by, created by,
87 or disclosed to the Commissioner or any other person under this chapter, are recognized
88 by this state as being proprietary and to contain trade secrets. All such documents,
89 materials, or other information shall be confidential by law and privileged, shall not be
90 subject to Article 4 of Chapter 18 of Title 50, relating to open records, shall not be subject
91 to subpoena, and shall not be subject to discovery or admissible in evidence in any private
92 civil action. However, the Commissioner is authorized to use the documents, materials,
93 or other information in the furtherance of any regulatory or legal action brought as a part

94 of the Commissioner's official duties. The Commissioner shall not otherwise make the
95 documents, materials, or other information public without the prior written consent of the
96 insurer. Nothing in this Code section shall be construed to require written consent of the
97 insurer before the Commissioner may share or receive confidential documents, materials,
98 or other corporate governance annual disclosure related information pursuant to
99 subsection (c) of this Code section to assist in the performance of the Commissioner's
100 regular duties.

101 (b) Neither the Commissioner nor any person who received documents, materials, or other
102 corporate governance annual disclosure related information, through examination or
103 otherwise, while acting under the authority of the Commissioner, or with whom such
104 documents, materials, or other information are shared pursuant to this chapter shall be
105 permitted or required to testify in any private civil action concerning any confidential
106 documents, materials, or information subject to subsection (a) of this Code section.

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

109 (1) May, upon request, share documents, materials, or other corporate governance annual
110 disclosure related information including the confidential and privileged documents,
111 materials, or information subject to subsection (a) of this Code section, including
112 proprietary and trade secret documents and materials with other state, federal, and
113 international financial regulatory agencies, including members of any supervisory college
114 as described in subsection (c) of Code Section 33-13-7, with the National Association of
115 Insurance Commissioners, and with third-party consultants pursuant to Code
116 Section 33-65-7, provided that the recipient agrees in writing to maintain the
117 confidentiality and privileged status of the corporate governance annual disclosure related
118 documents, material, or other information and has verified in writing the legal authority
119 to maintain confidentiality; and

120 (2) May receive documents, materials, or other corporate governance annual disclosure
121 related information, including otherwise confidential and privileged documents,
122 materials, or information, including proprietary and trade secret information or
123 documents, from regulatory officials of other states, federal and international financial
124 regulatory agencies, including members of any supervisory college as described in
125 subsection (c) of Code Section 33-13-7, and from the National Association of Insurance
126 Commissioners, and shall maintain as confidential or privileged any documents,
127 materials, or information received with notice or the understanding that it is confidential
128 or privileged under the laws of the jurisdiction that is the source of the document,
129 material, or information.

130 (d) The sharing of information and documents by the Commissioner pursuant to this
131 chapter shall not constitute a delegation of regulatory authority or rule-making, and the
132 Commissioner is solely responsible for the administration, execution, and enforcement of
133 the provisions of this chapter.

134 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
135 proprietary and trade secret materials, or other corporate governance annual disclosure
136 related information shall occur as a result of disclosure of such corporate governance
137 annual disclosure related information or documents to the Commissioner under this Code
138 section or as a result of sharing as authorized in this chapter.

139 33-65-7.

140 (a) The Commissioner may retain, at the insurer's expense, third-party consultants,
141 including attorneys, actuaries, accountants, and other experts not otherwise a part of the
142 Commissioner's staff as may be reasonably necessary to assist the Commissioner in
143 reviewing the corporate governance annual disclosure and related information or the
144 insurer's compliance with this chapter.

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

147 (c) The National Association of Insurance Commissioners and third-party consultants shall
148 be subject to the same confidentiality standards and requirements as the Commissioner.

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

153 (e) A written agreement between the Commissioner and the National Association of
154 Insurance Commissioners or a third-party consultant governing sharing and use of
155 information provided pursuant to this chapter shall contain the following provisions and
156 expressly require the written consent of the insurer prior to making public information
157 provided under this chapter:

158 (1) Specific procedures and protocols for maintaining the confidentiality and security of
159 corporate governance annual disclosure related information shared with the National
160 Association of Insurance Commissioners or a third-party consultant pursuant to this
161 chapter;

162 (2) Procedures and protocols for sharing by the National Association of Insurance
163 Commissioners only with other state regulators from states in which the insurance group
164 has domiciled insurers. The agreement shall provide that the recipient agrees in writing
165 to maintain the confidentiality and privileged status of the corporate governance annual

166 disclosure related documents, materials, or other information and has verified in writing
167 the legal authority to maintain confidentiality;

168 (3) A provision specifying that ownership of the corporate governance annual disclosure
169 related information shared with the National Association of Insurance Commissioners or
170 a third-party consultant remains with the department, and the National Association of
171 Insurance Commissioners' or third-party consultant's use of the information is subject to
172 the direction of the Commissioner;

173 (4) A provision that prohibits the National Association of Insurance Commissioners or
174 a third-party consultant from storing the information shared pursuant to this chapter in
175 a permanent data base after the underlying analysis is completed;

176 (5) A provision requiring the National Association of Insurance Commissioners or a
177 third-party consultant to provide prompt notice to the Commissioner and to the insurer
178 or insurance group regarding any subpoena, request for disclosure, or request for
179 production of the insurer's corporate governance annual disclosure related information;
180 and

181 (6) A requirement that the National Association of Insurance Commissioners or a
182 third-party consultant consent to intervention by an insurer in any judicial or
183 administrative action in which the National Association of Insurance Commissioners or
184 a third-party consultant may be required to disclose confidential information about the
185 insurer shared with the National Association of Insurance Commissioners or a third-party
186 consultant pursuant to this chapter.

187 33-65-8.

188 Any insurer failing, without just cause, to timely file the corporate governance annual
189 disclosure as required in this chapter shall be required, after notice and hearing, to pay a
190 penalty of \$100.00 for each day's delay, to be recovered by the Commissioner, and the
191 penalty so recovered shall be paid into the general fund of the state treasury. The
192 maximum penalty under this Code section is \$10,000.00. The Commissioner may reduce
193 the penalty if the insurer demonstrates to the Commissioner that the imposition of the
194 penalty would constitute a financial hardship to the insurer.

195 33-65-9.

196 If any provision of this chapter other than Code Section 33-65-6, or the application thereof
197 to any person or circumstance, is held invalid, such determination shall not affect the
198 provisions or applications of this chapter which can be given effect without the invalid
199 provision or application, and to that end the provisions of this chapter, with the exception
200 of Code Section 33-65-6, are severable.

201 33-65-10.

202 The requirements of this chapter shall apply to all insurers domiciled in this state.

203 33-65-11.

204 The first filing of the corporate governance annual disclosure shall be in 2020."

205 **SECTION 2.**

206 Nothing in this Act shall be construed to prescribe or impose corporate governance standards
207 and internal procedures beyond that which is required under applicable state corporate law.

208 Notwithstanding the foregoing, nothing in this Act shall be construed to limit the
209 Commissioner's authority, or the rights or obligations of third parties, under Code
210 Section 33-2-14.

211 **SECTION 3.**

212 This Act shall become effective on January 1, 2020.

213 **SECTION 4.**

214 All laws and parts of laws in conflict with this Act are repealed.