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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"CHAPTER 65

33-65-1. This chapter shall be known and may be cited as the 'Corporate Governance Annual Disclosure Act.'

33-65-2. As used in this chapter, the term:
(1) 'Corporate governance annual disclosure' means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.
(2) 'Insurance group' means those insurers and affiliates included within an insurance holding company system as defined in paragraph (5) of Code Section 33-13-1.
(3) 'Insurer' has the same meaning as set forth in Code Section 33-1-2, 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.
(4) 'Own Risk and Solvency Assessment Summary Report' means the report filed in accordance with Article 2 of Chapter 13 of this title.

33-65-3.

(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 that contains the information described in subsection (b) of Code Section 33-65-5. Notwithstanding any request from the Commissioner made pursuant to subsection (c) of this Code section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection 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 National Association of Insurance Commissioners.

(b) The corporate governance annual disclosure 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 corporate governance annual disclosure under this Code section shall do so upon the Commissioner's request.

(d) 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, 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 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 overseen collectively and at which the supervision of those factors is 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 corporate governance annual disclosure 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 Code section.
(f) Insurers providing information substantially similar to the information required by this chapter 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 the department shall not be required to duplicate that information in the corporate governance annual disclosure, but shall only be required to cross-reference the document in which the information is included.

33-65-4.

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

33-65-5.

(a) The insurer or insurance group shall have discretion over the responses to the corporate governance annual disclosure inquiries, provided that the corporate governance annual disclosure 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) of this Code section, the corporate governance annual disclosure shall be prepared consistent with the Corporate Governance Annual Disclosure Regulation as promulgated by the Commissioner. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commissioner.

33-65-6.

(a) Documents, materials, or other information including the corporate governance annual disclosure, 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 chapter, 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 Article 4 of Chapter 18 of Title 50, relating to open records, 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 Code section shall be construed to require written consent of the
insurer before the Commissioner may share or receive confidential documents, materials,
or other corporate governance annual disclosure related information pursuant to
subsection (c) of this Code 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
corporate governance annual disclosure 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 chapter 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 Code 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 corporate governance annual
disclosure related information including the confidential and privileged documents,
materials, or information subject to subsection (a) of this Code section, including
proprietary and trade secret documents and materials with other state, federal, and
international financial regulatory agencies, including members of any supervisory college
as described in subsection (c) of Code Section 33-13-7, with the National Association of
Insurance Commissioners, and with third-party consultants pursuant to Code
Section 33-65-7, provided that the recipient agrees in writing to maintain the
confidentiality and privileged status of the corporate governance annual disclosure 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 corporate governance annual disclosure
related information, including otherwise confidential and privileged documents,
materials, or information, including proprietary and trade secret information or
documents, from regulatory officials of other states, federal and international financial
regulatory agencies, including members of any supervisory college as described in
subsection (c) of Code Section 33-13-7, and from the National Association of Insurance
Commissioners, 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 chapter shall not constitute a delegation of regulatory authority or rule-making, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

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

33-65-7.

(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 corporate governance annual disclosure and related information or the insurer's compliance with this chapter.

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

(c) The National Association of Insurance Commissioners 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 conflicts of interest and that it has internal procedures in place to monitor compliance of potential conflicts and to comply with the confidentiality standards and requirements of this chapter.

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

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

(2) Procedures and protocols for sharing by the National Association of Insurance Commissioners 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 corporate governance annual
disclosure 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 corporate governance annual disclosure related information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the department, and the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the Commissioner;

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

(5) A provision requiring the National Association of Insurance Commissioners or a 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 corporate governance annual disclosure related information;

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 this chapter.

33-65-8.

Any insurer failing, without just cause, to timely file the corporate governance annual disclosure as required in this chapter shall be required, after notice and hearing, to pay a penalty of $100.00 for each day's delay, to be recovered by the Commissioner, and the penalty so recovered shall be paid into the general fund of the state treasury. The maximum penalty under this Code section is $10,000.00. 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.


If any provision of this chapter other than Code Section 33-65-6, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter, with the exception of Code Section 33-65-6, are severable.
The requirements of this chapter shall apply to all insurers domiciled in this state.

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

SECTION 2.
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 Code Section 33-2-14.

SECTION 3.
This Act shall become effective on January 1, 2020.

SECTION 4.
All laws and parts of laws in conflict with this Act are repealed.