

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact chapter 26.1-10.3 of the North Dakota Century Code,
2 relating to corporate governance; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 26.1-10.3 of the North Dakota Century Code is created and enacted
5 as follows:

6 **26.1-10.3-01. Definitions.**

7 As used in this chapter:

- 8 1. "Corporate governance annual disclosure" means a confidential report filed by the
9 insurer or insurance group made in accordance with the requirements of this chapter.
10 2. "Insurance group" means those insurers and affiliates included within an insurance
11 holding company system as defined in chapter 26.1-10.
12 3. "Insurer" has the meaning provided in section 26.1-10-01.
13 4. "Own risk and solvency assessment summary report" means the report filed in
14 accordance with chapter 26.1-10.2.

15 **26.1-10.3-02. Disclosure requirement.**

- 16 1. An insurer, or the insurance group of which the insurer is a member, no later than June
17 first of each calendar year, shall submit to the commissioner a corporate governance
18 annual disclosure that contains the information described in subsection 2 of section
19 26.1-10.3-04. Notwithstanding any request from the commissioner made pursuant to
20 subsection 3, if the insurer is a member of an insurance group, the insurer shall submit
21 the report required by this section to the commissioner of the lead state for the
22 insurance group, in accordance with the laws of the lead state, as determined by the
23 procedures outlined in the most recent financial analysis handbook adopted by the
24 national association of insurance commissioners.

- 1 2. The corporate governance annual disclosure must include a signature of the insurer or
2 insurance group's chief executive officer or corporate secretary attesting to the best of
3 that individual's belief and knowledge that the insurer has implemented the corporate
4 governance practices and that a copy of the disclosure has been provided to the
5 insurer's board of directors or the appropriate committee of the board of directors.
- 6 3. An insurer not required to submit a corporate governance annual disclosure under this
7 section shall do so upon the commissioner's request.
- 8 4. For purposes of completing the corporate governance annual disclosure, the insurer or
9 insurance group may provide information regarding corporate governance at the
10 ultimate controlling parent level, an intermediate holding company level, or the
11 individual legal entity level, ~~or both,~~ depending upon how the insurer or insurance
12 group has structured the system of corporate governance of the insurer or insurance
13 group. The insurer or insurance group is encouraged to make the corporate
14 governance annual disclosure disclosures at the level at which the insurer's or
15 insurance group's risk appetite is determined, or at which the earnings, capital,
16 liquidity, operations, and reputation of the insurer are overseen collectively and at
17 which the supervision of those factors are coordinated and exercised, or the level at
18 which legal liability for failure of general corporate governance duties would be placed.
19 If the insurer or insurance group determines the level of reporting based on these
20 criteria, the insurer or insurance group shall indicate which of the three criteria was
21 used to determine the level of reporting and explain any subsequent changes in level
22 of reporting.
- 23 5. The review of the corporate governance annual disclosure and any additional requests
24 for information must be made through the lead state as determined by the procedures
25 within the most recent financial analysis handbook referenced in subsection 1.
- 26 6. An insurer providing information substantially similar to the information required by this
27 chapter in other documents provided to the commissioner, including proxy statements
28 filed in conjunction with form b requirements, or other state or federal filings provided
29 to the commissioner are not required to duplicate that information in the corporate
30 governance annual disclosure, but shall cross reference the document in which the
31 information is included.

1 **26.1-10.3-03. Rules and regulations.**

2 The commissioner may adopt reasonable rules necessary for the implementation of this
3 chapter.

4 **26.1-10.3-04. Contents of corporate governance annual disclosure.**

5 1. The insurer or insurance group has discretion over the responses to the corporate
6 governance annual disclosure inquiries, if the corporate governance annual disclosure
7 contains the material information necessary to permit the commissioner to gain an
8 understanding of the insurer's or group's corporate governance structure, policies, and
9 practices. The commissioner may request additional information the commissioner
10 deems material and necessary to provide the commissioner with a clear
11 understanding of the corporate governance policies, the reporting or information
12 system or controls implementing those policies.

13 2. Notwithstanding subsection 1, the corporate governance annual disclosure must be
14 prepared according to rules adopted by the commissioner. Documentation and
15 supporting information must be maintained and made available upon examination or
16 upon request of the commissioner.

17 **26.1-10.3-05. Confidentiality.**

18 1. Documents, materials, or other information, including the corporate governance
19 annual disclosure, in the possession or control of the insurance department which are
20 obtained by, created by, or disclosed to the commissioner or any other person under
21 this chapter, are recognized by this state as being proprietary and to contain trade
22 secrets. All documents, materials, or other information is confidential by law and
23 privileged, is not subject to section 44-04-18, is not subject to subpoena, and is not
24 subject to discovery or admissible in evidence in any private civil action. However, the
25 commissioner may use the documents, materials, or other information in the
26 furtherance of any regulatory or legal action brought as a part of the commissioner's
27 official duties. The commissioner may not otherwise make the documents, materials,
28 or other information public without the prior written consent of the insurer. This section
29 may not be construed to require written consent of the insurer before the
30 commissioner may share or receive confidential documents, materials, or other

- 1 corporate governance annual disclosure-related information pursuant to subsection 3
2 to assist in the performance of the commissioner's regular duties.
- 3 2. Neither the commissioner nor any person that received documents, materials, or other
4 corporate governance annual disclosure-related information, through examination or
5 otherwise, while acting under the authority of the commissioner, or with which
6 documents, materials, or other information are shared pursuant to this chapter may be
7 permitted or required to testify in any private civil action concerning any confidential
8 documents, materials, or information subject to subsection 1.
- 9 3. In order to assist in the performance of the commissioner's regulatory duties, the
10 commissioner:
- 11 a. May, upon request, share documents, materials, or other corporate governance
12 annual disclosure-related information, including the confidential and privileged
13 documents, materials, or information subject to subsection 1, including
14 proprietary and trade secret documents and materials, with other state, federal,
15 and international financial regulatory agencies, including members of any
16 supervisory college as defined in section 26.1-10-06.1, with the national
17 association of insurance commissioners, and with third-party consultants
18 pursuant to section 26.1-10.3-06, if the recipient agrees in writing to maintain the
19 confidentiality and privileged status of the corporate governance annual
20 disclosure-related documents, materials, or other information and has verified in
21 writing the legal authority to maintain confidentiality; and
- 22 b. May receive documents, materials, or other corporate governance annual
23 disclosure-related information, including otherwise confidential and privileged
24 documents, materials, or information, including proprietary and trade secret
25 information or documents, from regulatory officials of other state, federal, and
26 international financial regulatory agencies, including members of any supervisory
27 college as defined in chapter 26.1-10, and from the national association of
28 insurance commissioners, and shall maintain as confidential or privileged any
29 documents, materials, or information received with notice or the understanding
30 that it is confidential or privileged under the laws of the jurisdiction that is the
31 source of the document, material, or information.

1 4. The sharing of information and documents by the commissioner pursuant to this
2 chapter does not constitute a delegation of regulatory authority or rulemaking, and the
3 commissioner is solely responsible for the administration, execution, and enforcement
4 of the provisions of this chapter.

5 5. A waiver of any applicable privilege or claim of confidentiality in the documents,
6 proprietary and trade secret materials, or other corporate governance annual
7 disclosure-related information does not occur as a result of disclosure of corporate
8 governance annual disclosure-related information or documents to the commissioner
9 under this section or as a result of sharing as authorized in this chapter.

10 **26.1-10.3-06. National association of insurance commissioners and third-party**
11 **consultants.**

12 1. The commissioner may retain, at the insurer's expense, third-party consultants,
13 including attorneys, actuaries, accountants, and other experts not otherwise a part of
14 the commissioner's staff as may be reasonably necessary to assist the commissioner
15 in reviewing the corporate governance annual disclosure and related information or
16 the insurer's compliance with this chapter.

17 2. Any persons retained under subsection 1 are under the direction and control of the
18 commissioner and shall act in a purely advisory capacity.

19 3. The national association of insurance commissioners and third-party consultants are
20 subject to the same confidentiality standards and requirements as the commissioner.

21 4. As part of the retention process, a third-party consultant shall verify to the
22 commissioner, with notice to the insurer, that the consultant is free of a conflict of
23 interest and has internal procedures in place to monitor compliance with a conflict and
24 to comply with the confidentiality standards and requirements of this chapter.

25 5. A written agreement with the national association of insurance commissioners or a
26 third-party consultant, or both, governing sharing and use of information provided
27 pursuant to this chapter must contain the following provisions and expressly require
28 the written consent of the insurer before making public information provided under this
29 chapter:

30 a. Specific procedures and protocols for maintaining the confidentiality and security
31 of corporate governance annual disclosure-related information shared with the

- 1 national association of insurance commissioners or a third-party consultant
2 pursuant to this chapter.
- 3 b. Procedures and protocols for sharing by the national association of insurance
4 commissioners only with other state regulators from states in which the insurance
5 group has domiciled insurers. The agreement must provide that the recipient
6 agrees in writing to maintain the confidentiality and privileged status of the
7 corporate governance annual disclosure-related documents, materials, or other
8 information and has verified in writing the legal authority to maintain
9 confidentiality.
- 10 c. A provision specifying that ownership of the corporate governance annual
11 disclosure-related information shared with the national association of insurance
12 commissioners or a third-party consultant remains with the insurance department
13 and the national association of insurance commissioner's or third-party
14 consultant's use of the information is subject to the direction of the commissioner.
- 15 d. A provision that prohibits the national association of insurance commissioners or
16 a third-party consultant from storing the information shared pursuant to this
17 chapter in a permanent database after the underlying analysis is completed.
- 18 e. A provision requiring the national association of insurance commissioners or
19 third-party consultant to provide prompt notice to the commissioner and to the
20 insurer or insurance group regarding any subpoena, request for disclosure, or
21 request for production of the insurer's corporate governance annual
22 disclosure-related information.
- 23 f. A requirement that the national association of insurance commissioners or a
24 third-party consultant consent to intervention by an insurer in any judicial or
25 administrative action in which the national association of insurance
26 commissioners or a third-party consultant may be required to disclose
27 confidential information about the insurer shared with the national association of
28 insurance commissioners or a third-party consultant pursuant to this chapter.

29 **26.1-10.3-07. Sanctions.**

30 Any insurer failing, without just cause, to timely file the corporate governance annual
31 disclosure as required in this chapter is required, after notice and hearing, to pay a

1 penalty of five hundred dollars for each day's delay, to be recovered by the
2 commissioner and the penalty so recovered shall be paid into the general fund. The
3 maximum penalty under this section is one hundred thousand dollars. The
4 commissioner may reduce the penalty if the insurer demonstrates to the commissioner
5 that the imposition of the penalty would constitute a financial hardship to the insurer.