SENATE FILE NO. SF0007

Insurance-corporate governance annual disclosure.

Sponsored by: Joint Corporations, Elections & Political Subdivisions Interim Committee

A BILL

for

AN ACT relating to insurance; requiring insurance companies, fraternal benefit societies and health maintenance organizations to submit a governance report as specified; providing filing requirements; providing for the confidentiality of information reported; specifying applicability; requiring the promulgation of rules; providing sanctions for failure to submit a report; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 26-29-239 and 26-54-101 through 26-54-108 are created to read:

**26-29-239. Application of Wyoming Insurance Corporate Governance Annual Disclosure Act.**

The Wyoming Insurance Corporate Governance Annual Disclosure Act, W.S. 26-54-101 through 26-54-108, shall apply to domestic fraternal benefit societies regulated under this chapter.

CHAPTER 54

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

**26-54-101. Short title; applicability.**

(a) This chapter is known and may be cited as the Wyoming Insurance Corporate Governance Annual Disclosure Act.

(b) The requirements of this act shall apply to all insurers and insurance groups domiciled in this state.

(c) Nothing in this act shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under the corporate law of this state.

(d) Nothing in this act shall be construed to limit the commissioner's authority, or the rights or obligations of third parties, pursuant to the Wyoming Insurance Code.

(e) No insurer or insurance group shall be required to file the disclosure required by this act until 2020.

**26-54-102. Definitions.**

(a) As used in this act:

(i) "Corporate governance" means the system of rules, practices and procedures by which a corporation is managed by its directors and officers;

(ii) "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group in accordance with the requirements of this act;

(iii) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined under W.S. 26-44-101(a)(iv);

(iv) "Insurer" shall have the same meaning as set forth under W.S. 26-1-102(a)(xvi) and include domestic fraternal benefit societies and health maintenance organizations. This term 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.

**26-54-103. 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 that contains the information described in W.S. 26-54-105. Notwithstanding any request from the commissioner made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of insurance of the lead state for the insurance group, in accordance with the laws of the lead state and under the guidance of the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners.

(b) The CGAD shall include a signature of the insurer's 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 disclosed pursuant to subsection (a) of this section 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 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 (3) criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(e) The review of the CGAD and any additional requests for information shall be made through the lead state under the guidance of the procedures contained in 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 any statements filed pursuant to W.S. 26-44-104, or other state or federal filings provided to the department, shall not be required to duplicate that information in the CGAD, but shall be required to cross reference and identify where the document may be located by the commissioner.

**26-54-104. Rules and regulations.**

The commissioner shall promulgate rules and regulations necessary to carry out the provisions of this act. The rules and regulations shall be consistent with this act and the commissioner shall be guided by the model regulations adopted by the National Association of Insurance Commissioners at its 2014 fall national meeting and subsequent provisions of those model regulations, provided the model regulations are consistent with this act and other relevant provisions of Wyoming law and are not inappropriate for Wyoming circumstances.

**26-54-105. Contents of corporate governance annual disclosure.**

(a) An insurer or insurance group shall have discretion over the manner in which a CGAD is submitted, provided the CGAD shall contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies and practices. The commissioner may request additional information deemed material and necessary to provide the commissioner with a clear understanding of corporate governance policies and the reporting, information systems or controls used to implement those policies.

(b) Notwithstanding subsection (a) of this section, the CGAD shall be prepared consistent with this subsection and corporate governance annual disclosure regulations adopted pursuant to W.S. 26-54-104. The CGAD shall describe:

(i) The insurer's or insurance group's corporate governance framework;

(ii) The policies and practices of the most senior governing entity and significant committees thereof;

(iii) Policies and practices for directing senior management; and

(iv) The processes by which the board and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities.

(c) Documentation and supporting information relevant to the CGAD shall be maintained and made available for examination or upon request of the commissioner.

**26-54-106. 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 the documents, materials or other information shall be confidential by law and privileged, shall not be considered public records pursuant to W.S. 16-4-201 through 16-4-205, shall not be subject to subpoena and shall not be subject to discovery or admissible as evidence in any private civil action. 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 documents, materials or other information pursuant to subsection (c) of this section and as necessary to assist in the performance of the commissioner's regular duties.

(b) Neither the commissioner nor any other person who receives documents, materials or other information subject to subsection (a) of this section, 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 testify in any private civil action concerning the documents, materials or other information.

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

(i) Upon request, share documents, materials or other information, including confidential and privileged documents, materials or other information, which may include proprietary or trade secret information, with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined under W.S. 26-44-118, with the National Association of Insurance Commissioners and with third party consultants pursuant to W.S. 26-54-107, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Receive documents, materials or other information, including confidential and privileged documents, materials or other information, which may include proprietary or trade secret information, from regulatory officials of other state, federal and international financial regulatory agencies, including members of any supervisory college as defined under W.S. 26-44-118 and from the National Association of Insurance Commissioners. The commissioner shall maintain as confidential and privileged any documents, materials or other information received under this paragraph with notice or the understanding that it is confidential and privileged under the law of the jurisdiction that is the source of the document, materials or other information.

(d) The sharing of documents, materials or other information 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, materials or other information shall occur as a result of disclosure of such information to the commissioner under this section or as a result of any sharing authorized by this act.

(f) Information that is disclosed in the CGAD which is also contained in any public filing or is otherwise publicly disclosed by the insurer shall not be considered privileged or confidential.

**26-54-107. 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 submitted by an insurer or to determine an insurer’s compliance with this act.

(b) Any consultant retained under subsection (a) of this section shall act only as an independent contractor within the scope of duties established by the commissioner.

(c) The National Association of Insurance Commissioners and any person retained pursuant to subsection (a) of this section shall be subject to the same confidentiality standards and requirements as the commissioner.

(d) A third party consultant retained pursuant to subsection (a) of this section shall verify to the commissioner, with notice to the insurer, that he is free of a conflict of interest and that, if applicable, the consultant's firm has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this act.

(e) The commissioner shall enter into a written agreement with the National Association of Insurance Commissioners and any person retained pursuant to subsection (a) of this section concerning the sharing and use of information provided under this act. Consistent with

W.S. 26-2-113, the agreement shall contain the following provisions and expressly require the written consent of the insurer prior to making public any information provided under this act:

(i) Specific procedures and protocols for maintaining the confidentiality and security of CGAD related information shared with the National Association of Insurance Commissioners or any person retained pursuant to subsection (a) of this section;

(ii) Procedures and protocols for the National Association of Insurance Commissioners, or other persons retained pursuant to subsection (a) of this section, to disclose CGAD related information to other state regulators from states in which an 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;

(iii) A provision specifying that ownership of CGAD related information shared with the National Association of Insurance Commissioners or a person retained pursuant to subsection (a) of this section remains with the department and use of the information by the National Association of Insurance Commissioners or a person retained pursuant to subsection (a) of this section is subject to the direction of the commissioner;

(iv) A provision that prohibits the National Association of Insurance Commissioners or any person retained pursuant to subsection (a) of this section from storing the information shared pursuant to this act in a permanent database after the underlying analysis is completed;

(v) A provision requiring the National Association of Insurance Commissioners or any person retained pursuant to subsection (a) of this section to provide prompt notice to the commissioner and to the insurer or insurance group upon the receipt of any subpoena, request for disclosure, or request for production of the insurer's or insurance group’s CGAD related information; and

(vi) A requirement that the National Association of Insurance Commissioners or any person retained pursuant to subsection (a) of this section shall consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or the person retained pursuant to subsection (a) of this section may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a person retained pursuant to subsection (a) of this section.

**26-54-108. Sanctions.**

Any insurer failing, without just cause, to timely file the CGAD required by this act shall be required, after notice and hearing, to pay a penalty of one hundred dollars ($100.00) for each day that the CGAD is not filed, to be recovered by the commissioner. The maximum penalty due under this section shall be five thousand dollars ($5,000.00). 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.

**Section 2.** W.S. 26-34-135 by creating a new subsection (d) is amended to read:

**26-34-135. Application of other laws.**

(d) The Wyoming Insurance Corporate Governance Annual Disclosure Act, W.S. 26-54-101 through 26-54-108, shall apply to domestic health maintenance organizations licensed under this chapter.

**Section 3.** This act is effective July 1, 2019.

(END)