

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 1205

PRINTER NO. 1848

AMOUNT

No Adverse Fiscal Impact

FUND

Insurance Regulation and Oversight Fund

DATE INTRODUCED

June 11, 2018

PRIME SPONSOR

Senator Laughlin

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 1205 amends Title 40 (Insurance) of the Pennsylvania Consolidated Statutes to provide for corporate governance disclosure.

SB 1205 creates Chapter 39 under Title 40 to provide the Insurance Commissioner (commissioner) with 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 corporate governance framework. The requirements of this chapter apply to an insurer who is domiciled in Pennsylvania or an insurance group of which Pennsylvania is the lead state.

The bill requires a domestic insurer or an insurance group (insurer), beginning January 1, 2020, to submit to the Insurance Department (department) a Corporate Governance Annual Disclosure (CGAD) no later than June 1 of each calendar year.

If an insurer is not required to submit a CGAD, it shall submit a copy of the most current version of its CGAD to the department upon the commissioner's request.

The bill requires the department to include a sample template for a CGAD on its website. However, an insurer may exercise discretion in the appropriate format.

The bill stipulates that the CGAD must contain the material information necessary to permit the department to gain an understanding of the insurer's corporate governance structure, policies and practices. The commissioner shall consider premium volume, licensing status in other states and corporate complexity and scale when evaluating the comprehensiveness of a company's CGAD.

The bill grants discretion to the insurer over the contents of the CGAD if it includes the following:

- A description of the insurer's corporate governance framework;
- Policies and practices of the board of directors or the most senior governing entity and significant committees of the board or entity;

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- Policies and practices for directing senior management, including a description of any processes, practices or suitability standards used to determine whether officers and key individuals in control functions have the appropriate background, experience and integrity to fulfill their roles;
- A description of the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight over critical risk areas impacting the insurer's business activities; and
- Other information as specified by regulation.

The CGAD must include a signature of the insurer'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 of the board.

The review of the CGAD and additional requests for information shall be made by or through the lead state or, in the case of an insurer that is not part of an insurance group, by the department. Insurers are not required to duplicate information already submitted to the department in its CGAD.

The department may retain third-party consultants, at the insurer's expense, to assist in the review of the CGAD. Third-party consultants shall be under the control of the department, and shall act in a purely advisory capacity.

The CGAD-related material in possession or control of the department shall be privileged and given confidential treatment by third-party consultants.

The legislation requires third-party consultants to verify with the department that it is free from conflicts of interest, will comply with the confidentiality standards under this chapter, and has internal procedures in place to monitor compliance with this section.

The CGAD-related information in the possession and control of the department that is produced by, obtained by or disclosed to the department shall be privileged and given confidential treatment and shall not be subject to discovery or admissible as evidence in a private civil action; to subpoena; to the Right-to-Know Law; or made public by the department without prior written consent of the insurer to which it pertains.

A person who receives CGAD-related information while acting under the authority of the department shall not be permitted or required to testify in a private civil action concerning confidential CGAD-related information.

The bill authorizes the department to use CGAD-related information to assist in the performance of regulatory duties or legal action brought pursuant to the department's official duties, including sharing information with NAIC, regulatory or law enforcement officials of this Commonwealth or other jurisdictions, group supervisors, members of a supervisory college, and third-party consultants if the entity receiving the information demonstrates the necessary authority and intent to give confidential treatment to the information.

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The sharing of information by the department does not constitute a delegation of regulatory authority, nor a waiver of any applicable privilege or claim of confidentiality.

An insurer that fails to timely file a CGAD shall be required, after notice and hearing, to pay a penalty of \$200 for each day's delay. The maximum penalty under this section shall be \$25,000 per year.

The bill authorizes the department to promulgate rules and regulations and issue orders necessary to administer and enforce this chapter.

Nothing shall be construed to prescribe or impose corporate governance standards and internal procedures in addition to those required under applicable State corporate law.

Senate Bill 1205 also changes an effective date for a small company exemption in the Principle-Based Reserve Law from "the operative date of the valuation manual" to "January 1, 2020."

This act shall take effect immediately.

FISCAL IMPACT:

SB 1205 will have no adverse fiscal impact to the Commonwealth. Assuming that existing Insurance Department staff conduct the reviews of Corporate Governance Annual Disclosure and promulgate regulations, any costs related to fulfilling those duties would be capable of being accommodated within the agency's current workload and budget. In addition, the department may retain third-party consultants, at the insurer's expense, to assist in the review of the CGAD.