

ACT NO. 8213

BILL NO. 33-0149

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2019

An Act amending title 22 of the Virgin Islands Code to add a new chapter 20b entitled "Corporate Governance Annual Disclosure Act", requiring the Territory's domiciled insurers and alien insurers not doing business in any other U.S. jurisdiction to submit to the Commissioner of Insurance a corporate governance disclosure report in accordance with the accreditation standards established by the National Association of Insurance Commissioners, and that all such reports and related documents shall be kept confidential by law and privileged

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WHEREAS, it is imperative that all United States jurisdictions, including the Virgin Islands, periodically update their insurance laws commensurate with the ever-evolving insurance industry to strengthen the solvency regulation of insurance companies doing business in the United States;

WHEREAS, as a result of industry trends and experience in the insurance market the National Association of Insurance Commissioners ("NAIC"), a nonprofit organization comprised of all insurance regulators in the United States, has established and continues to establish core accreditation standards, which are incorporated into a comprehensive set of laws known as the NAIC Model Laws and Regulations;

WHEREAS, the purpose of the NAIC Model Laws and Regulations is to assist insurance regulators in United States jurisdictions in the solvency regulation of insurance companies with the goal of affording greater protection to all policyholders in the United States;

WHEREAS, NAIC member jurisdictions that adopt the NAIC Model Laws and Regulations required for accreditation are granted NAIC accreditation status, a distinction granted by the NAIC which denotes that a jurisdiction meets the minimum standards required for effective solvency regulation of insurance companies doing business within its borders;

WHEREAS, all of the 50 United States, the District of Columbia and the Commonwealth of Puerto Rico have adopted and continue to adopt the NAIC Model Laws and Regulations thereby achieving and maintaining accreditation status with the NAIC;

WHEREAS, the Virgin Islands, which is a member jurisdiction of the NAIC, has adopted and continues to adopt the NAIC Model Laws and Regulations which are necessary to achieve accreditation status with the NAIC and will bring the Territory on par with other United States jurisdictions;

WHEREAS, the Corporate Governance Annual Disclosure Act is modelled from one of the NAIC's model laws which contains accreditation standards that must be adopted in order to obtain accreditation with the NAIC; and

WHEREAS, the enactment of the Corporate Governance Annual Disclosure Act will afford greater protection to the policyholders in the Territory by enhancing solvency regulation of insurers and will place the Virgin Islands on par with other United States jurisdictions; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 of the Virgin Islands Code is amended to add a new chapter 20b to read as follows:

"Chapter 20b. Corporate Governance Annual Disclosure Act"

SECTION ANALYSIS

- §498. Purpose and Scope
- §498a. Definitions
- §498b. Disclosure Requirement
- §498c. Rules and Regulations
- §498d. Contents of Corporate Governance Annual Disclosure
- §498e. Confidentiality
- §498f. Third-Party Consultants
- §498g. Sanctions
- §498h. Severability Clause
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§498. Purpose and Scope

A. The purpose of this chapter is to:

(1) Permit the Commissioner of Insurance to gain and maintain an understanding of an insurer's corporate governance framework by requiring that

insurers provide to the Commissioner of Insurance a summary of an insurer or insurance group's corporate governance structure, policies and practices;

(2) Establish the requirements for completing a corporate governance annual disclosure and filing it with the Commissioner of Insurance; and

(3) Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

B. Nothing in this chapter shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state/territorial corporate law. Notwithstanding the foregoing, nothing in this chapter shall be construed to limit the Commissioner's authority, or the rights or obligations of third parties, under chapter 5 of this title.

C. The requirements of this chapter shall apply to all insurers domiciled in this Territory and all alien insurers doing business in this Territory that are not licensed to conduct insurance business in any other U.S. jurisdiction.

498a. Definitions

For the purpose of this chapter:

(a) "Commissioner" means The Commissioner of Insurance of this Territory.

(b) "Corporate Governance Annual Disclosure (CGAD)" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.

(c) "Division" means the Division of Banking, Insurance and Financial Regulation of this Territory.

(d) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in chapter 14 of this title.

(e) The term "Insurer" shall have the same meaning as set forth in Section 4 of this title, except that it shall not include entities regulated under the Virgin Islands International Insurers Act encoded at chapter 55 of this title or 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.

(f) "ORSA Summary Report" means the report filed in accordance with chapter 20a of this title.

498b. 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 (CGAD) that contains the information described in section 498d. 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 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 NAIC.

(b) The CGAD 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 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 and/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 criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) The review of the CGAD 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 Paragraph A of this 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 Division shall not be required to duplicate that information in the CGAD, but shall only be required to cross reference the document in which the information is included.

§498c. Rules and Regulations

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.

§498d. Contents of Corporate Governance Annual Disclosure

(a) The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD 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 section, the CGAD shall be prepared consistent with the procedures and requirements set forth in the Corporate Governance Annual Disclosure Rules and Regulations. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commissioner.

§498e. Confidentiality

(a) Documents, materials or other information including the CGAD, in the possession or control of the Division that are obtained by, created by or disclosed to the Commissioner or any other person under this chapter, through examination or otherwise, are recognized by this Territory 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 disclosure requirements under chapter 33 of title 3 of the Virgin Islands Code, 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 section shall be construed to require written consent of the insurer before the Commissioner may share or receive confidential documents,

materials or other CGAD-related information pursuant to subsection (c) of this 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 CGAD-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 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 CGAD-related information including the confidential and privileged documents, materials or information subject to subsection (a) of this 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 chapter 14 of this title, with the NAIC, and with third party consultants pursuant to section 498f, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-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 CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal and international financial regulatory agencies, including members of any supervisory college as described in chapter 14 of this title, and from the NAIC, 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 rulemaking, 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 CGAD-related information shall occur as a result of disclosure of such CGAD-related information or documents

to the Commissioner under this section or as a result of sharing as authorized in this chapter.

§498f. 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 or the insurer's compliance with this chapter.

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

(c) The NAIC 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 a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this chapter.

(e) A written agreement with the NAIC and/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 CGAD-related information shared with the NAIC or a third-party consultant pursuant to this chapter.

(2) Procedures and protocols for sharing by the NAIC 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 CGAD-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 CGAD-related information shared with the NAIC or a third-party consultant remains with the Division and the NAIC's or third-party consultant's use of the information is subject to the direction of the Commissioner;

(4) A provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(5) A provision requiring the NAIC or 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 CGAD-related information; and

(6) A requirement that the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this chapter.

§498g. Sanctions

Any insurer failing, without just cause, to timely file the CGAD as required in this chapter shall be required, after notice and hearing, to pay a penalty of \$100 for each day's delay, to be recovered by the Commissioner, and the penalty so recovered shall be paid into the General Revenue Fund of this Territory. The maximum penalty under this section is \$10,000. 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.

§498h. Severability Clause

If any provision of this chapter other than section 498e, 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 section 498e, are severable.

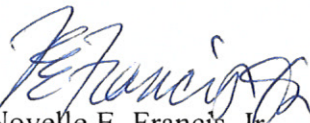
§498i. Effective Date

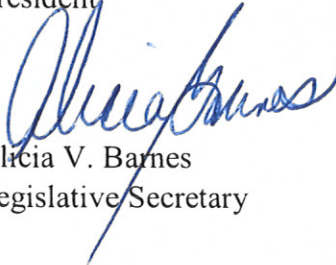
The requirements of this chapter shall become effective on January 1, 2020. The first filing of the CGAD shall be in 2020.

Thus passed by the Legislature of the Virgin Islands on September 26, 2019.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 30th day of September, A.D., 2019.




Novelle E. Francis, Jr.
President


Alicia V. Barnes
Legislative Secretary



Bill No. 33-0149 is hereby approved.

Witness my hand and the seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 6th day of October, 2019 A.D.


Albert Bryan, Jr.
Governor