

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 44

(Chair, Finance Committee)(By Request - Departmental -
Maryland Insurance Administration)

Finance

Economic Matters

Insurance - Corporate Governance Annual Disclosure Act

This departmental bill adopts the National Association of Insurance Commissioners' (NAIC) Model Act #305, which generally requires each insurer in the State to provide the Insurance Commissioner with a summary of its corporate governance structure, policies, and practices on an annual basis. The Commissioner may adopt regulations to carry out the bill's requirements. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: The bill's requirements can likely be handled using existing budgeted resources. Revenues are not materially affected.

Local Effect: None.

Small Business Effect: The Maryland Insurance Administration (MIA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Applicability

The bill's requirements apply to insurers domiciled in the State, including (1) each person engaged as an indemnitor, surety, or contractor in the business of entering into insurance contracts; (2) a nonprofit health service plan; (3) a health maintenance organization; (4) a dental plan organization; and (5) a managed care organization.

Annual Submissions to the Insurance Commissioner

Beginning in 2020, each insurer (or the insurer's insurance group, if appropriate) must submit a Corporate Governance Annual Disclosure (CGAD) to the Commissioner. Furthermore, if an insurer is a member of an insurance group for which Maryland is not the lead state, the insurer must also submit a CGAD in its home state and, if requested to do so by the Commissioner, submit that CGAD to MIA.

Depending on how an insurer or its insurance group has structured its corporate governance, the insurer or insurance group may provide information regarding its corporate governance structure at one of three administrative levels. The bill specifies the criteria needed for an insurer to determine which level is appropriate.

Each CGAD must contain all information necessary for the Commissioner to develop an understanding of the corporate governance structure, policies, and practices of the insurer or insurance group. The insurer or insurance group must maintain documentation and supporting information concerning the submission and make that information available to the Commissioner when it is examined or if it is requested to do so. The submitter of the disclosure has discretion over the responses to any CGAD inquiry.

A CGAD must be submitted by June 1 each calendar year and be in the form and contain the information required by regulation. A CGAD must include a specified signature that attests that (1) the insurer has implemented a corporate governance structure, policies, and practices and (2) a copy of the CGAD has been provided to the insurer's board of directors or the appropriate committee of the board.

Confidentiality of Submissions and Third-party Consultant Authorization

Each CGAD submission (and specified related documents, materials, and information) is confidential and privileged, is not subject to the Public Information Act or subpoena, and is not subject to discovery or admissible in evidence in any private civil action. Even so,

the bill establishes a framework for the sharing and receiving of this information by the Commissioner (under specified circumstances) and explicitly authorizes the Commissioner to use the information for any regulatory or legal action brought as part of the regulatory duties of the Commissioner.

The Commissioner may retain, at the insurer's expense, third-party consultants if reasonable and necessary to assist in reviewing CGAD submissions and related information or to determine whether an insurer is complying with the bill's requirements. The bill establishes procedures and ethical standards for the retaining of third-party consultants and applies the same confidentiality framework to such persons.

Limitations

The bill's requirements (1) cannot be construed to require or impose corporate governance standards and internal procedures that are greater than those otherwise required by State law and (2) may not be construed to limit the Commissioner's general enforcement authority or the rights and obligations of third parties.

Penalties

An insurer that fails to submit a CGAD in the manner required by the bill and without just cause is subject to a penalty of \$200 for each day the violation continues, up to a maximum of \$25,000. The Commissioner may reduce a penalty if an insurer demonstrates that the imposition of the penalty would constitute a financial hardship to the insurer. These penalty provisions do not limit the authority of the Commissioner to take any other action authorized by the Insurance Article.

Current Law/Background: As the primary regulator of the insurance industry in the State, MIA performs actuarial evaluations, financial audits, financial examinations, and market conduct examinations to ensure that insurers remain financially solvent and comply with State laws.

MIA and the Insurance Commissioner participate in the activities of NAIC, a national standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and 5 U.S. territories. MIA achieved NAIC accredited status in September 1994 and has maintained its accreditation since that time. The NAIC Accreditation Program is a voluntary program among state insurance regulators that emphasizes the importance of adequate solvency laws, the use of effective and efficient financial analysis and examination procedures, and appropriate organizational and personnel practices.

NAIC regularly develops model legislation concerning new and existing insurance issues and encourages its member regulators to adopt the legislation. The bill implements NAIC Model Act #305 to ensure MIA's continued NAIC accreditation. MIA advises that adoption of the model act also enables the Commissioner to gain and maintain an understanding of each insurer's corporate governance framework, which affords better oversight of insurers and insurance groups.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - January 11, 2019
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Insurance –Corporate Governance Annual Disclosure Act

BILL NUMBER: SB 44

PREPARED BY:
(Dept./Agency) Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposed legislation adopts the National Association of Insurance Commissioners' ("NAIC") Model Act #305 "Corporate Governance Annual Disclosure Model Act." The purpose of the Model Act is require an insurer to provide the Insurance Commissioner a summary of the insurer or insurance group's corporate governance structure, policies, and practices. This summary will enable the Commissioner to gain and maintain an understanding of the insurer's corporate governance framework. This proposed legislation outlines the requirements for completing a corporate governance annual disclosure with the Insurance Commissioner and provides language for the confidential treatment of the corporate governance annual disclosure and related information.

Adoption of this Model Act will provide the State and the Maryland Insurance Administration (MIA) better oversight of insurers and insurance groups. Importantly, adoption of the changes to the Model Act is an accreditation requirement by the NAIC beginning in 2019, for a state's continued acceptance as a qualifying examination agency.

This bill does not impact small business.