

INSURANCE (40 PA.C.S.) - CORPORATE GOVERNANCE ANNUAL DISCLOSURE
AND SMALL COMPANY EXEMPTION

Act of Oct. 24, 2018, P.L. 1182, No. 163
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Cl. 40

SB 1205

AN ACT

Amending Title 40 (Insurance) of the Pennsylvania Consolidated Statutes, in regulation of insurers and related persons generally, providing for corporate governance annual disclosure; and, in reserve liabilities, further providing for small company exemption.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 40 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 39

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Sec.

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§ 3901. Purposes and scope of chapter.

(a) Purposes.--The purposes of this chapter are to:

(1) Provide the commissioner 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 insurer or insurance group's corporate governance framework.

(2) Outline the requirements for completing and filing a CGAD with the commissioner.

(3) Provide for the confidential treatment of the CGAD and related information containing 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) Scope.--The requirements of this chapter shall apply to:

(1) an insurer that is domiciled in this Commonwealth;
or

(2) an insurance group of which this Commonwealth is the lead state.

§ 3902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The board of directors of the filing entity.

"CGAD-related information." The CGAD or any documents, materials or other information, including proprietary and trade secret information or documents, related to an insurer or insurance group's CGAD.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Corporate governance annual disclosure" or "CGAD." The confidential report filed by the insurer or insurance group in accordance with the requirements of this chapter.

"Department." The Insurance Department of the Commonwealth.

"Insurance Company Law." The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

"Insurance group." The insurers and affiliates included within an insurance holding company system as defined in section 1401 of the Insurance Company Law.

"Insurer." A fraternal benefit society, a health maintenance organization, a preferred provider organization, a company, an association, an exchange, a hospital plan corporation as defined in and subject to Chapter 61 (relating to hospital plan corporations) or a professional health services plan corporation subject to Chapter 63 (relating to professional health services plan corporations) authorized by the commissioner to transact the business of insurance in this Commonwealth.

"Lead state." The state responsible for coordination and communication among state regulators regarding oversight of an insurance group, as determined by the department in consultation with other regulators with domestic insurers in the insurance group.

"NAIC." The National Association of Insurance Commissioners or successor organization and its affiliates and subsidiaries.

"Senior management." A corporate officer or other high-level management official responsible for reporting information to the board of directors at regular intervals, providing information to shareholders or providing information to regulators.

§ 3903. Submittal of CGAD.

(a) General rule.--

(1) Beginning January 1, 2020, a domestic insurer or an insurance group of which this Commonwealth is the lead state shall submit to the department a CGAD no later than June 1 of each calendar year.

(2) If a domestic insurer is a member of an insurance group of which this Commonwealth is not the lead state, 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.

(b) Exception.--An insurer or insurance group not required to submit a CGAD to the department under subsection (a) shall submit a copy of the most current version of its CGAD to the department upon the commissioner's request.

(c) Amendments.--Each year following the initial filing of the CGAD, the filing entity shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the filing entity, the filing should so state.

(d) Format.--The filing entity may exercise discretion regarding the appropriate format for providing the information required in this chapter and may customize the CGAD to provide the most relevant information necessary to permit the department to understand the corporate governance structure, policies and practices utilized by the filing entity. The department shall

include a sample template on its publicly accessible Internet website.

§ 3904. Contents of CGAD.

(a) Contents.--The CGAD must contain the material information necessary to permit the department to gain an understanding of the insurer's or insurance group'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.

(b) Discretion.--The insurer or insurance group shall have discretion over the contents of the CGAD if the CGAD includes all of the following information:

(1) A description of the insurer's or insurance group's corporate governance framework, including all of the following:

(i) The board and committees of the board that are ultimately responsible for oversight of the filing entity.

(ii) The level or levels at which board or committee oversight occurs, such as the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level or some combination of these levels.

(iii) The rationale for the current board size and structure.

(iv) The duties of the board and each of its significant committees.

(v) The method of board and committee governance, such as bylaws, charters or informal mandates.

(vi) The structure of the board's leadership.

(vii) A discussion of the roles of the chief executive officer and chairman of the board or their functional counterparts within the organization.

(2) Policies and practices of the board of directors or the most senior governing entity and significant committees of the board or entity, including a discussion of the following factors:

(i) The way in which the qualifications, expertise and experience of each board member meet the needs of the filing entity.

(ii) The method for maintaining an appropriate amount of independence on the board and its significant committees.

(iii) The number of meetings held by the board and its significant committees over the past year as well as information on board member attendance.

(iv) The way in which the filing entity identifies, nominates and elects members to the board and its committees. Factors discussed may include whether a nominating committee exists, whether term limits are placed on directors, how the election and reelection processes function and whether a board diversity policy is in place and, if so, how it functions.

(v) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs.

(3) Policies and practices for directing senior management, including a description of any processes, practices or suitability standards used to determine whether

officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles. The description shall identify:

(i) The following:

(A) The specific positions for which suitability standards have been developed and a description of the standards employed.

(B) Procedures in place to monitor any changes in an officer's or key person's suitability, as outlined by the filing entity's standards and procedures to monitor and evaluate such changes.

(ii) The filing entity's code of business conduct and ethics, including a discussion of compliance with laws, rules and regulations, and proactive reporting of any illegal or unethical behavior.

(iii) The filing entity's plans for senior management succession.

(iv) The filing entity's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the department to understand how the organization ensures that compensation programs neither encourage nor reward excessive risk-taking. Elements to be discussed may include any of the following:

(A) The board's role in overseeing management compensation programs and practices.

(B) The various elements of compensation awarded in the filing entity's compensation programs.

(C) The method by which the filing entity determines and calculates the amount of each element of compensation paid.

(D) The way in which compensation programs are related to both company and individual performance over time.

(E) Whether compensation programs include risk adjustments and, if so, how those adjustments are incorporated into the programs for employees at different levels.

(F) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.

(G) Any other factors relevant in understanding how the filing entity monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) 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 or insurance group's business activities, including a discussion of the following:

(i) The way in which oversight and management responsibilities are delegated among the board, its committees and senior management.

(ii) The way in which the board remains informed of the filing entity's strategic plans, the associated risks and steps that senior management is taking to monitor and manage those risks.

(iii) The way in which reporting responsibilities are organized for each critical risk area. The description should allow the department to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include the following critical risk areas of the insurer:

- (A) Risk management processes.
- (B) Actuarial function.
- (C) Investment decision-making processes.
- (D) Reinsurance decision-making processes.
- (E) Business strategy.
- (F) Finance decision-making processes.
- (G) Compliance function.
- (H) Financial reporting.
- (I) Internal auditing.
- (J) Market conduct decision-making processes.

(5) Any other information as specified by regulation.

(c) Additional information.--The department may request additional information regarding the items provided under subsection (b) that are material and necessary to provide a clear understanding of the corporate governance policies, the reporting or information system or the controls implementing those policies. An insurer or insurance group shall maintain and make available supporting information upon examination or upon the request of the department.

(d) Permissible levels of reporting.--

(1) 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, or some combination thereof, depending upon how the insurer or insurance group has structured its system of corporate governance. When determining which level to choose, the insurer or insurance group shall consider the level at which any of the following occurs:

(i) The insurer's or insurance group's risk appetite is determined.

(ii) Earnings, capital, liquidity, operations and reputation of the insurer or insurance group are overseen collectively and at which the supervision of those factors are coordinated and exercised.

(iii) Legal liability for failure of general corporate governance duties would be placed.

(2) An insurer or insurance group that determines the level of reporting based on any of the criteria under paragraph (1) shall indicate which of the criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) Attestation.--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 or insurance group has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer or insurance group's board of directors or the appropriate committee of the board.

§ 3905. Review of CGAD.

(a) Procedures for review.--The review of the CGAD and any 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, the department.

(b) Duplicative filings.--An insurer or insurance group providing information substantially similar to the information required by this chapter in other documents provided to the department, including proxy statements filed in conjunction with registration requirements or other Federal or State filings provided to the department, is not required to duplicate that information in the CGAD but shall only be required to cross-reference the document in which the information is included.

§ 3906. Third-party consultants.

(a) Assistance with review.--The department may retain, at the insurer or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the department's staff as may be reasonably necessary to assist the department in reviewing the CGAD, CGAD-related information or the insurer's or insurance group's compliance with this chapter. Before retaining a third-party consultant, the department shall consider all of the following:

(1) The complexity of the corporate governance structure of the insurer or insurance group.

(2) Whether subject matter expertise to effectively review the report is available within the department.

(b) Advisory capacity.--A person retained under subsection (a) shall be under the direction and control of the department and shall act in a purely advisory capacity.

(c) Confidentiality.--Each third-party consultant shall be subject to the same confidentiality standards and requirements as the department.

(d) Verification.--As part of the retention process, a third-party consultant shall verify to the department, with notice to the insurer or insurance group, that it:

(1) is free of a conflict of interest;

(2) will comply with the confidentiality standards and requirements of this chapter; and

(3) has internal procedures in place to monitor compliance with this section.

(e) Written consent.--A retention agreement with a third-party consultant shall expressly require the written consent of the insurer or insurance group prior to making information provided under this chapter public.

§ 3907. Confidentiality.

(a) General rule.--The CGAD-related information in the possession or control of the department that is produced by, obtained by or disclosed to the department or any other person under this chapter shall be privileged and given confidential treatment and shall not be:

(1) subject to discovery or admissible as evidence in a private civil action;

(2) subject to subpoena;

(3) subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law; or

(4) made public by the department or any other person without the prior written consent of the insurer or insurance group to which it pertains, except as provided in subsection (c).

(b) Private civil actions.--The commissioner, the department, a person who receives CGAD-related information while acting under the authority of the commissioner or department or a person with whom the CGAD-related information is shared

under this chapter shall not be permitted or required to testify in a private civil action concerning confidential CGAD-related information.

(c) Use of CGAD-related information by department.--To assist in the performance of regulatory duties, the department may:

(1) Use CGAD-related information in furtherance of a regulatory or legal action brought pursuant to the department's official duties.

(2) Share CGAD-related information with the NAIC, regulatory or law enforcement officials of this Commonwealth or other jurisdictions, group supervisors, members of a supervisory college under section 1406.1 of the Insurance Company Law and third-party consultants under section 3906 (relating to third-party consultants) if, prior to receiving the CGAD-related information, the recipient demonstrates by written statement the necessary authority and intent to give confidential treatment to the CGAD-related information as required by this chapter.

(3) Receive and maintain as confidential CGAD-related information from the NAIC, regulatory or law enforcement officials of this Commonwealth or other jurisdictions, group supervisors and members of a supervisory college under section 1406.1 of The Insurance Company Law if the CGAD-related information is confidential by law in the jurisdiction from which it was received. CGAD-related information obtained under this paragraph shall be given confidential treatment, shall not be subject to subpoena and shall not be made public by the department, the commissioner or any other person.

(d) Written agreements.--The department shall enter into a written agreement with the NAIC or a third-party consultant governing the sharing and use of information provided under this chapter that includes all of the following:

(1) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information.

(2) Procedures and protocols for sharing CGAD-related information only with regulators from other states in which the insurance group has domiciled insurers, including a written acknowledgment of the recipient's intent and legal authority to maintain the confidential and privileged status of the CGAD-related information.

(3) A provision specifying that ownership of the CGAD-related information shared remains with the department and that the use of the CGAD-related information is subject to the direction and approval of the department.

(4) A provision that prohibits storing CGAD-related information shared under this chapter in a permanent database after the underlying analysis is completed.

(5) A provision requiring prompt notice to the department and to the insurer or insurance group regarding a subpoena, request for disclosure or request for production of the insurer or insurance group's CGAD-related information in the possession of the NAIC or third-party consultant.

(6) A requirement to consent to intervention by an insurer or insurance group in a judicial or an administrative action in which the NAIC or third-party consultant may be required to disclose CGAD-related information or other confidential information about the insurer or insurance group that was shared under this chapter.

(e) No delegation.--The sharing of information by the department under this chapter does not constitute a delegation

of regulatory authority or rulemaking. The department shall be solely responsible for the administration, execution and enforcement of this chapter.

(f) No waiver of privilege or confidentiality.--The sharing of CGAD-related information with, to or by the department as authorized by this chapter does not constitute a waiver of any applicable privilege or claim of confidentiality.

(g) Information with third parties.--CGAD-related information in the possession or control of the NAIC or a third-party consultant as provided under this chapter shall:

- (1) be confidential and privileged;
- (2) not be subject to the Right-to-Know Law;
- (3) not be subject to subpoena; and
- (4) not be subject to discovery or admissible as evidence in a private civil action.

§ 3908. Penalties.

An insurer or insurance group that fails to timely file a CGAD as required under this chapter or by regulation 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.

§ 3909. Rules and regulations.

The department may promulgate rules and regulations and issue orders necessary to administer and enforce this chapter.

§ 3910. Construction.

Nothing in this chapter shall be construed to prescribe or impose corporate governance standards and internal procedures in addition to those required under applicable State 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 Article IX of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

§ 3911. Severability.

(a) General rule.--Except as provided in subsection (b):

- (1) The provisions of this chapter are severable.
- (2) If a provision of this chapter or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application.

(b) Exception.--If the addition of section 3907 (relating to confidentiality) is held invalid, independent of its application to a person or circumstance, the remaining provisions or applications of this chapter are void.

Section 2. Section 7142(a)(4) and (b)(2) of Title 40 are amended to read:

§ 7142. Small company exemption.

(a) Requirements.--A company seeking an exemption for any of its ordinary life policies issued on or after the operative date of the valuation manual may file a statement of exemption for the current calendar year with its domestic commissioner prior to July 1 of that year if the following conditions are met:

* * *

(4) Any universal life secondary guarantee policies issued or assumed by the company with an issue date on or after [the operative date of the valuation manual] **January 1, 2020**, meet the definition of a nonmaterial secondary guarantee universal life product.

(b) Certification.--The statement of exemption under subsection (a) must certify that:

* * *

(2) Any universal life secondary guarantee business issued since [the operative date of the valuation manual] **January 1, 2020**, meets the definition of a nonmaterial secondary guarantee universal life product.

* * *

Section 3. This act shall take effect immediately.

APPROVED--The 24th day of October, A.D. 2018.

TOM WOLF