
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1205 Session of
2018

INTRODUCED BY LAUGHLIN AND WHITE, JUNE 11, 2018

REFERRED TO BANKING AND INSURANCE, JUNE 11, 2018

AN ACT

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

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

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

10 CHAPTER 39

11 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

12 Sec.

13 3901. Purposes and scope of chapter.

14 3902. Definitions.

15 3903. Submittal of CGAD.

16 3904. Contents of CGAD.

17 3905. Review of CGAD.

18 3906. Third-party consultants.

19 3907. Confidentiality.

20 3908. Penalties.

1 3909. Rules and regulations.

2 3910. Construction.

3 3911. Severability.

4 § 3901. Purposes and scope of chapter.

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

6 (1) Provide the commissioner a summary of an insurer or
7 insurance group's corporate governance structure, policies
8 and practices to permit the commissioner to gain and maintain
9 an understanding of the insurer or insurance group's
10 corporate governance framework.

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

13 (3) Provide for the confidential treatment of the CGAD
14 and related information containing confidential and sensitive
15 information related to an insurer or insurance group's
16 internal operations and proprietary and trade secret
17 information which, if made public, could potentially cause
18 the insurer or insurance group competitive harm or
19 disadvantage.

20 (b) Scope.--The requirements of this chapter shall apply to:

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

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

25 § 3902. Definitions.

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

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

30 "CGAD-related information." The CGAD or any documents,

1 materials or other information, including proprietary and trade
2 secret information or documents, related to an insurer or
3 insurance group's CGAD.

4 "Commissioner." The Insurance Commissioner of the
5 Commonwealth.

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

9 "Department." The Insurance Department of the Commonwealth.

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

12 "Insurance group." The insurers and affiliates included
13 within an insurance holding company system as defined in section
14 1401 of the Insurance Company Law.

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

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

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

30 "Senior management." A corporate officer or other high-level

1 management official responsible for reporting information to the
2 board of directors at regular intervals, providing information
3 to shareholders or providing information to regulators.

4 § 3903. Submittal of CGAD.

5 (a) General rule.--

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

10 (2) If a domestic insurer is a member of an insurance
11 group of which this Commonwealth is not the lead state, the
12 insurer shall submit the report required by this section to
13 the commissioner of the lead state for the insurance group in
14 accordance with the laws of the lead state.

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

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

24 (d) Format.--The filing entity may exercise discretion
25 regarding the appropriate format for providing the information
26 required in this chapter and may customize the CGAD to provide
27 the most relevant information necessary to permit the department
28 to understand the corporate governance structure, policies and
29 practices utilized by the filing entity. The department shall
30 include a sample template on its publicly accessible Internet

1 website.

2 § 3904. Contents of CGAD.

3 (a) Contents.--The CGAD must contain the material
4 information necessary to permit the department to gain an
5 understanding of the insurer's or insurance group's corporate
6 governance structure, policies and practices. The commissioner
7 shall consider premium volume, licensing status in other states
8 and corporate complexity and scale when evaluating the
9 comprehensiveness of a company's CGAD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (i) The following:

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

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

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

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

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

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

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

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

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

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

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

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

21 (4) A description of the processes by which the board,
22 its committees and senior management ensure an appropriate
23 amount of oversight over critical risk areas impacting the
24 insurer or insurance group's business activities, including a
25 discussion of the following:

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

29 (ii) The way in which the board remains informed of
30 the filing entity's strategic plans, the associated risks

1 and steps that senior management is taking to monitor and
2 manage those risks.

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

10 (A) Risk management processes.

11 (B) Actuarial function.

12 (C) Investment decision-making processes.

13 (D) Reinsurance decision-making processes.

14 (E) Business strategy.

15 (F) Finance decision-making processes.

16 (G) Compliance function.

17 (H) Financial reporting.

18 (I) Internal auditing.

19 (J) Market conduct decision-making processes.

20 (5) Any other information as specified by regulation.

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

29 (d) Permissible levels of reporting.--

30 (1) For purposes of completing the CGAD, the insurer or

1 insurance group may provide information regarding corporate
2 governance at the ultimate controlling parent level, an
3 intermediate holding company level or the individual legal
4 entity level, or some combination thereof, depending upon how
5 the insurer or insurance group has structured its system of
6 corporate governance. When determining which level to choose,
7 the insurer or insurance group shall consider the level at
8 which any of the following occurs:

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

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

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

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

22 (e) Attestation.--The CGAD must include a signature of the
23 insurer or insurance group's chief executive officer or
24 corporate secretary attesting to the best of that individual's
25 belief and knowledge that the insurer or insurance group has
26 implemented the corporate governance practices and that a copy
27 of the disclosure has been provided to the insurer or insurance
28 group's board of directors or the appropriate committee of the
29 board.

30 § 3905. Review of CGAD.

1 (a) Procedures for review.--The review of the CGAD and any
2 additional requests for information shall be made by or through
3 the lead state or, in the case of an insurer that is not part of
4 an insurance group, the department.

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

13 § 3906. Third-party consultants.

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

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

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

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

30 (c) Confidentiality.--Each third-party consultant shall be

1 subject to the same confidentiality standards and requirements
2 as the department.

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

6 (1) is free of a conflict of interest;

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

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

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

15 § 3907. Confidentiality.

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

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

23 (2) subject to subpoena;

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

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

30 (b) Private civil actions.--The commissioner, the

1 department, a person who receives CGAD-related information while
2 acting under the authority of the commissioner or department or
3 a person with whom the CGAD-related information is shared under
4 this chapter shall not be permitted or required to testify in a
5 private civil action concerning confidential CGAD-related
6 information.

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

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

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

23 (3) Receive and maintain as confidential CGAD-related
24 information from the NAIC, regulatory or law enforcement
25 officials of this Commonwealth or other jurisdictions, group
26 supervisors and members of a supervisory college under
27 section 1406.1 of The Insurance Company Law if the CGAD-
28 related information is confidential by law in the
29 jurisdiction from which it was received. CGAD-related
30 information obtained under this paragraph shall be given

1 confidential treatment, shall not be subject to subpoena and
2 shall not be made public by the department, the commissioner
3 or any other person.

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

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

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

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

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

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

28 (6) A requirement to consent to intervention by an
29 insurer or insurance group in a judicial or an administrative
30 action in which the NAIC or third-party consultant may be

1 required to disclose CGAD-related information or other
2 confidential information about the insurer or insurance group
3 that was shared under this chapter.

4 (e) No delegation.--The sharing of information by the
5 department under this chapter does not constitute a delegation
6 of regulatory authority or rulemaking. The department shall be
7 solely responsible for the administration, execution and
8 enforcement of this chapter.

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

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

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

21 § 3908. Penalties.

22 An insurer or insurance group that fails to timely file a
23 CGAD as required under this chapter or by regulation shall be
24 required, after notice and hearing, to pay a penalty of \$200 for
25 each day's delay. The maximum penalty under this section shall
26 be \$25,000 per year.

27 § 3909. Rules and regulations.

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

30 § 3910. Construction.

1 Nothing in this chapter shall be construed to prescribe or
2 impose corporate governance standards and internal procedures in
3 addition to those required under applicable State corporate law.
4 Notwithstanding the foregoing, nothing in this chapter shall be
5 construed to limit the commissioner's authority or the rights or
6 obligations of third parties under Article IX of the act of May
7 17, 1921 (P.L.789, No.285), known as The Insurance Department
8 Act of 1921.

9 § 3911. Severability.

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

11 (1) The provisions of this chapter are severable.

12 (2) If a provision of this chapter or its application to
13 a person or circumstance is held invalid, the invalidity does
14 not affect other provisions or applications of this chapter
15 that can be given effect without the invalid provision or
16 application.

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

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

23 § 7142. Small company exemption.

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

29 * * *

30 (4) Any universal life secondary guarantee policies

1 issued or assumed by the company with an issue date on or
2 after [the operative date of the valuation manual] January 1,
3 2020, meet the definition of a nonmaterial secondary
4 guarantee universal life product.

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

7 * * *

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

12 * * *

13 Section 3. This act shall take effect immediately.