WEST VIRGINIA CODE CHAPTER 33 ARTICLE 52

WV Legislature

§33-52-1. Short title, purpose and scope of article.

(a) This article may be cited as the "Corporate Governance Annual Disclosure Act".

(b) The purpose of this article is to:

(1) Provide the commissioner a summary of an insurer’s or insurance group’s corporate governance structure, policies and practices to permit the commissioner to gain and maintain an understanding of the insurer’s corporate governance framework;

(2) Outline the requirements for completing a corporate governance annual disclosure with the commissioner;

(3) Set forth the procedures for filing the corporate governance annual disclosure; and

(4) 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.

(c) Nothing in this article limits the commissioner’s examination authority, or the rights or obligations of third parties, under §33-2-9 of this code.

(d) The requirements of this article apply to all licensed insurers domiciled in this state.

WV Legislature

§33-52-2. Definitions.

As used in this article:

(1) "Board" means the board of directors of an insurer or insurance group.

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

(3) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in §33-27-2 of this code.

(4) "Insurer" means every person engaged in the business of making contracts of insurance, except that it shall not include 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.

(5) "ORSA summary report" means the report filed in accordance with §33-40B-5 of this code.

(6) "Senior management" means any corporate officer responsible for reporting information to the board at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue officer (CRO), chief visionary officer (CVO), or any other "C" level executive.

WV Legislature

§33-52-3. Disclosure Requirements.

(a) An insurer, or the insurance group of which the insurer is a member, shall annually submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code. 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 National Association of Insurance Commissioners.

(b) The CGAD must include a signature of the insurer's 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 CGAD has been provided to the insurer's or insurance group's board 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 subsection (a) of this section.

(f) Insurers providing information substantially similar to the information required by this article in other documents provided to the commissioner, including proxy statements filed in conjunction with a holding company's Form B requirements or other state or federal filings provided to the commissioner, are not required to duplicate that information in the CGAD, but are only required to cross reference the document in which the information is included.

(g) Documentation and supporting information relevant to the CGAD shall be maintained by the insurer or insurance group and made available upon examination or upon request of the

WV Legislature

commissioner.

WV Legislature

§33-52-4. Contents of Corporate Governance Annual Disclosure.

(a) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(b) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure, including consideration of the following:

(1) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs, including, but not limited to, ultimate control level, intermediate holding company or legal entity. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are governed, including, but not limited to, bylaws, charters or informal mandates, as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(c) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group;

(2) How an appropriate amount of independence is maintained on the board and its significant committees;

(3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;

(4) 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 that have been put in place; and

(5) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

(A) Whether a nomination committee is in place to identify and select individuals for consideration;

(B) Whether term limits are placed on directors;

WV Legislature

(C) How the election and reelection processes function; and

(D) Whether a board diversity policy is in place and if so, how it functions.

(d) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices, such as suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

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

(B) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(A) Compliance with laws, rules, and regulations; and

(B) Proactive reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group'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 commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

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

(B) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) How compensation programs are related to both company and individual performance over time;

(D) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) 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; and

WV Legislature

(F) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for chief executive officer and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(2) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner 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, for example, the following critical risk areas of the insurer:

(A) Risk management processes: Provided, That an insurer or insurance group may refer to its ORSA summary report;

(B) Actuarial function;

(C) Investment decision-making processes;

(D) Reinsurance decision-making processes;

(E) Business strategy/finance decision-making processes;

(F) Compliance function;

(G) Financial reporting/internal auditing; and

(H) Market conduct decision-making processes.

(f) The insurer or insurance group has discretion over the responses to the CGAD inquiries: Provided, That the CGAD shall contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance 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.

WV Legislature

§33-52-5. Filing procedures.

(a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by §33-52-3 of this code, shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code.

(b) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by this article and is permitted to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(c) Notwithstanding subsection (a) of this section, and as outlined in §33-52-3 of this code, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(d) An insurer or insurance group may comply with this section by referencing other existing documents, including, but not limited to, ORSA summary report, holding company Form B or F filings, Securities and Exchange Commission (SEC) proxy statements or foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in §33-52-4 of this code. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the commissioner.

(e) Each year following the initial filing of the CGAD, the insurer or insurance group 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 insurer or insurance group, the filing should so state.

WVLegislature

§33-52-6. Confidentiality.

(a) Documents, materials or other information, including the CGAD, in the possession or control of the commissioner that are obtained by, created by or disclosed to the commissioner or any other person under this article, are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information are confidential by law and privileged, are not subject to the provisions of chapter 29e-b of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The commissioner may 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 requires 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 regulatory 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 article is 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 may:

(1) 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, members of any supervisory college as defined in §33-27-6a of this code, the National Association of Insurance Commissioners, and third party consultants pursuant to §33-52-7 of this code: 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) 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, members of any supervisory college as defined in §33-27-6a of this code, and the National Association of Insurance Commissioners, 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.

WV Legislature

(d) The sharing of information and documents by the commissioner pursuant to this article does 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 article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other CGAD-related information may 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 article.

WV Legislature

§33-52-7. National Association of Insurance Commissioners 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 article.

(b) Any persons retained under subsection (a) of this section is under the direction and control of the commissioner and may act only in a purely advisory capacity.

(c) The National Association of Insurance Commissioners and third-party consultants are 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 article.

(e) A written agreement with the National Association of Insurance Commissioners and/or a third-party consultant governing sharing and use of information provided pursuant to this article shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this article:

(1) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article;

(2) Procedures and protocols for sharing by the National Association of Insurance Commissioners 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 National Association of Insurance Commissioners or a third-party consultant remains with the commissioner and the use of the information by the National Association of Insurance Commissioners or third-party consultant is subject to the direction of the commissioner;

(4) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(5) A provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance

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group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

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

WV Legislature

§33-52-8. Sanctions.

Any insurer failing, without just cause, to timely file the CGAD as required in this article shall be required, after notice and hearing, to pay a penalty of up to $1,000 for each day's delay, to be recovered by the commissioner. Any penalty so recovered shall be paid into the General Revenue Fund of this state. 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.

WV Legislature

§33-52-9. Effective date.

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

WV Legislature