

**§423-G. Corporate governance annual disclosure**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group pursuant to this section. [PL 2017, c. 169, Pt. A, §5 (NEW).]

B. "Domestic insurance carrier" means an insurance company, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization or nonprofit health plan domiciled in this State. [PL 2017, c. 169, Pt. A, §5 (NEW).]

C. "Insurance group" means the insurance carriers and affiliates included within a domestic insurance carrier's insurance holding company system as defined in section 222, subsection 2, paragraph C. [PL 2017, c. 169, Pt. A, §5 (NEW).]

D. "Lead state," with respect to an insurance group, means the state designated as the lead state for the insurance group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC, except that if the designated lead state does not have a corporate governance disclosure law substantially similar to this section, the superintendent shall designate this State or another state with a substantially similar law as the lead state for purposes of this section. [PL 2017, c. 169, Pt. A, §5 (NEW).]

E. [PL 2021, c. 521, §23 (RP).]  
[PL 2021, c. 521, §23 (AMD).]

**2. Disclosure requirement.** This subsection governs corporate governance annual disclosure filings.

A. A domestic insurance carrier shall file a corporate governance annual disclosure in accordance with this subsection no later than June 1st of each calendar year. The carrier's insurance group may file the CGAD on behalf of the carrier.

(1) If the CGAD is completed at the insurance group level, and this State is not the group's lead state, the CGAD must be filed with the chief insurance regulator of the lead state in accordance with the laws of the lead state, and a copy must be filed with the superintendent if requested by the superintendent.

(2) If the CGAD is completed at the legal entity level or if this State is the group's lead state, the CGAD must be filed with the superintendent. [PL 2017, c. 169, Pt. A, §5 (NEW).]

B. The CGAD must contain the information described in subsection 3, paragraph B and must include a signature of the domestic insurance carrier or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the domestic insurance carrier has implemented the corporate governance practices and that a copy of the CGAD has been provided to the domestic insurance carrier's board of directors or the appropriate committee thereof. [PL 2017, c. 169, Pt. A, §5 (NEW).]

C. A CGAD may provide information regarding corporate governance at the level of the group's ultimate controlling parent or intermediate holding company, at the individual legal entity level or at any combination of these levels depending upon how the domestic insurance carrier or insurance group has structured its system of corporate governance. The domestic insurance carrier or insurance group is encouraged to make the CGAD at the level:

(1) At which the domestic insurance carrier's or insurance group's risk appetite is determined;

(2) At which the earnings, capital, liquidity, operations and reputation of the domestic insurance carrier are overseen collectively and at which the supervision of those factors is coordinated and exercised; or

(3) At which legal liability for failure of general corporate governance duties is placed.

If the domestic insurance carrier or insurance group determines the level of reporting based on the 3 criteria under this paragraph, it shall indicate which of the criteria were used to determine the level or levels of reporting and explain any subsequent changes in the level of reporting. [PL 2017, c. 169, Pt. A, §5 (NEW).]

D. If the CGAD is completed at the insurance group level, the lead state shall conduct the review of the CGAD and any additional requests for information must be made through the lead state. [PL 2017, c. 169, Pt. A, §5 (NEW).]

E. Domestic insurance carriers providing information substantially similar to the information required by this section in other documents provided to the superintendent, including proxy statements filed in conjunction with Form B requirements or other state or federal filings provided to the bureau, may not be required to duplicate that information in the CGAD, but may only be required to cross-reference the document in which the information is included. [PL 2017, c. 169, Pt. A, §5 (NEW).]

[PL 2017, c. 169, Pt. A, §5 (NEW).]

**3. Contents of corporate governance annual disclosure.** This subsection governs the contents of corporate governance annual disclosure filings.

A. The domestic insurance carrier or insurance group shall ensure that the CGAD contains the material information necessary to permit the superintendent to gain an understanding of the domestic insurance carrier's or insurance group's corporate governance structure, policies and practices. The superintendent may require additional information that is determined to be material and necessary to provide a clear understanding of the corporate governance policies, including the reporting or information system or controls implementing those policies. [PL 2017, c. 169, Pt. A, §5 (NEW).]

B. The CGAD must be prepared consistent with rules adopted pursuant to subsection 6. Documentation and supporting information must be maintained and made available upon examination or upon request of the superintendent. [PL 2017, c. 169, Pt. A, §5 (NEW).]

C. The domestic insurance carrier or insurance group has discretion over its responses to the CGAD inquiries, as long as those responses meet the requirements of this section. [PL 2017, c. 169, Pt. A, §5 (NEW).]

[PL 2017, c. 169, Pt. A, §5 (NEW).]

**4. Confidentiality.** This subsection governs confidentiality in corporate governance annual disclosure filings.

A. Documents, materials or other information in the possession or control of the bureau that are obtained by, created by or disclosed to the superintendent or any other person under this section, including the CGAD, are confidential and privileged, are not public records within the meaning of the Freedom of Access Act, are not subject to subpoena, are not subject to discovery or admissible in evidence in any private civil action and may not be made public without the prior written consent of the domestic insurance carrier. Neither the superintendent nor any person who received information from or under the authority of the superintendent under this section may be permitted or required to testify in any private civil action concerning information that is confidential under this subsection. [PL 2017, c. 169, Pt. A, §5 (NEW).]

B. This subsection does not prohibit the superintendent from using information that is confidential under this subsection in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties. [PL 2017, c. 169, Pt. A, §5 (NEW).]

C. The superintendent may share information that is confidential under this subsection only in accordance with the requirements of section 216, subsection 5. [PL 2017, c. 169, Pt. A, §5 (NEW).]

D. The privilege provided by this subsection does not supersede any other applicable privilege or confidentiality protection, nor does disclosure of confidential information to the superintendent pursuant to this section constitute a waiver of any such privilege or protection. [PL 2017, c. 169, Pt. A, §5 (NEW).]

[PL 2017, c. 169, Pt. A, §5 (NEW).]

**4-A. Sharing CGAD information with the NAIC.** The superintendent may share confidential information provided or obtained under this section with the NAIC only in accordance with a written agreement that contains the provisions specified in section 216, subsection 5, paragraph C and the following additional provisions:

A. Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurance carriers. The agreement must provide that the recipient agrees to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and must document the NAIC's legal authority to maintain confidentiality; [PL 2021, c. 521, §24 (NEW).]

B. A provision requiring the NAIC to provide prompt notice to the superintendent, in addition to the notice to the domestic insurance carrier or insurance group required by section 216, regarding any subpoena, request for disclosure or request for production of the domestic insurance carrier's or insurance group's CGAD-related information; and [PL 2021, c. 521, §24 (NEW).]

C. A provision expressly requiring the written consent of the domestic insurance carrier before any information shared pursuant to this section may be made public. [PL 2021, c. 521, §24 (NEW).]

[PL 2021, c. 521, §24 (NEW).]

**5. Independent consultants.** This subsection governs independent consultants retained to review corporate governance annual disclosure and compliance with this section.

A. The superintendent may retain, at the domestic insurance carrier's expense, independent consultants as provided in section 208, including attorneys, actuaries, accountants and other experts as may be reasonably necessary to assist the superintendent in reviewing the CGAD and related information or the domestic insurance carrier's compliance with this section. [PL 2017, c. 169, Pt. A, §5 (NEW).]

B. Any persons retained under paragraph A are subject to the requirements of section 216, subsection 5, paragraph B-1. [PL 2021, c. 521, §25 (AMD).]

C. The superintendent may not retain an independent consultant that has not verified to the superintendent, with notice to the domestic insurance carrier, that it is free of a conflict of interest and that it has internal procedures in place to monitor ongoing freedom from conflicts and to comply with the confidentiality standards and requirements of this section. [PL 2017, c. 169, Pt. A, §5 (NEW).]

D. [PL 2021, c. 521, §25 (RP).]

E. The superintendent may share confidential information provided or obtained under this section with an independent consultant only in accordance with a written agreement that makes compliance with the confidentiality requirements of this section one of the consultant's duties as a state contractor and includes all protections that the NAIC is required to provide in an agreement entered into under subsection 4-A. [PL 2021, c. 521, §25 (AMD).]

[PL 2021, c. 521, §25 (AMD).]

**6. Rules.** The superintendent may adopt reasonable rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 169, Pt. A, §5 (NEW).]

**7. Severability.** If any provision of this section other than subsection 4, or the application thereof to any person or circumstance, is determined to be invalid, that determination does not affect the provisions or applications of this section that can be given effect without the invalid provision or application, and to that end the provisions of this section with the exception of subsection 4 are severable.

[PL 2017, c. 169, Pt. A, §5 (NEW).]

**8. Relationship to other laws.** This section may not be construed to prescribe or impose corporate governance standards and internal procedures beyond those required of business corporations under Title 13-C. This section may not be construed to limit the superintendent's examination authority under sections 221 and 222 or the rights or obligations of 3rd parties in connection with examinations conducted under those sections.

[PL 2017, c. 169, Pt. A, §5 (NEW).]

#### SECTION HISTORY

PL 2017, c. 169, Pt. A, §5 (NEW). PL 2021, c. 521, §§23-25 (AMD).

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