

**304.3-235 Corporate Governance Annual Disclosure -- Submission to department or lead state regulator -- Required information and support -- Annual filing of amended version -- Confidentiality -- Use and sharing of filings and information -- Parties retained to assist commissioner.**

- (1) As used in this section:
  - (a) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in KRS 304.37-010;
  - (b) "Lead state regulator" means the state insurance regulator of the state that is the lead state for an insurance group, as determined by procedures outlined in the National Association of Insurance Commissioner's Financial Analysis Handbook, as amended; and
  - (c) "CGAD" means Corporate Governance Annual Disclosure.
- (2) This section shall not be construed to:
  - (a) Prescribe or impose corporate governance standards or internal procedures beyond those required under applicable state corporate law; or
  - (b) Limit the authority of the commissioner or the department, or the rights or obligations of third parties, under this chapter.
- (3)
  - (a) By June 1 of each calendar year, an insurer shall submit a CGAD to the department, unless the insurer is a member of an insurance group, in which case either the insurer, or the insurance group of which the insurer is a member, shall submit a CGAD to the lead state regulator for the insurance group.
  - (b)
    1. An insurer or insurance group not required to submit a CGAD under paragraph (a) of this subsection shall submit a CGAD to the department if requested by the commissioner, but not more than once per calendar year.
    2. The insurer or insurance group required to provide a CGAD under this paragraph shall notify the department of the CGAD's proposed submission date within thirty (30) days of the commissioner's request.
- (4)
  - (a) Subject to paragraph (b) of this subsection, an insurer or insurance group shall have discretion in:
    1. Determining the appropriate format of the CGAD; and
    2. Communicating the information required by this section in the CGAD.
  - (b) Notwithstanding paragraph (a) of this subsection, an insurer or insurance group shall:
    1. Provide sufficient material and relevant information in the CGAD to enable the commissioner to understand the corporate governance structure, policies, and practices used by the insurer or insurance group;
    2. Provide any additional information requested by the commissioner that the commissioner deems necessary to comply with the requirements of this section; and

3. Ensure that the CGAD is prepared in compliance with all requirements of this section.
- (5) (a) Each CGAD submitted to the department shall:
1. Contain the signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting that, to the best of his or her belief and knowledge, the insurer or insurance group has:
    - a. Implemented the corporate governance practices disclosed in the CGAD; and
    - b. Provided a copy of the CGAD to the insurer's or insurance group's board of directors or to the appropriate committee of the board;
  2. Be as descriptive as possible;
  3. Include any attachments or example documents used in the governance process; and
  4. Describe the following:
    - a. The corporate governance framework and structure of the insurer or insurance group;
    - b. The policies and practices:
      - i. Of the insurer's or insurance group's most senior governing entity and its significant committees; and
      - ii. For directing the insurer's or insurance group's senior management; and
    - c. The processes by which the insurer's or insurance group's board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer's business activities.
- (b)
1. An insurer or insurance group may comply with this subsection by cross-referencing other existing relevant and applicable documents, if the documents contain information substantially similar to the information required by this subsection.
  2. For purposes of this paragraph, "other existing relevant and applicable documents" include but are not limited to:
    - a. The ORSA Summary Report as defined in KRS 304.3-600;
    - b. The filings required under KRS 304.37-020;
    - c. Securities and Exchange Commission proxy statements; and
    - d. Documents filed in compliance with other state, federal, or international reporting requirements.
  3. An insurer or insurance group that cross-references documents under this paragraph shall:
    - a. Clearly identify and reference the specific location of the documents; and
    - b. Include the referenced documents as an attachment to the CGAD,

unless the documents have already been filed with, or made available to, the department.

- (6) For purposes of completing the CGAD:
  - (a) An insurer or insurance group may:
    1. Report information at one (1) of the following levels, depending upon the structure of its corporate governance system:
      - a. The ultimate controlling parent level;
      - b. An intermediate holding company level; or
      - c. The individual legal entity level; and
    2. Make disclosures at the level:
      - a. Used to determine the risk appetite of the insurer or insurance group;
      - b. At which the earnings, capital, liquidity, operations, and reputation of the insurer are collectively overseen and the supervision of those factors is coordinated and exercised; or
      - c. At which legal liability for failure of general corporate governance duties is placed; and
  - (b) An insurer or insurance group shall:
    1. Indicate the reporting level used;
    2. If the reporting level was based on the criteria set forth in paragraph (a)2. of this subsection, indicate the criteria used to determine the reporting level; and
    3. Explain any subsequent changes in reporting level.
- (7) An insurer or insurance group shall maintain documentation and support for all information provided in the CGAD, which shall be made available to the commissioner upon examination or upon request.
- (8) For each year following the initial filing of a CGAD with the department, the insurer or insurance group shall comply with this section by filing an amended version of the CGAD previously filed. The amended CGAD shall indicate any changes that have been made from the previously filed CGAD. If no changes were made in the information or activities reported by the insurer or insurance group since the previous filing, the insurer or insurance group shall so indicate.
- (9) Subject to subsection (10) of this section:
  - (a) Filings, documents, and information in the possession or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under this section are recognized as being proprietary and containing trade secrets, and shall be confidential by law and privileged. The filings, documents, and information shall not be subject to:
    1. Disclosure or production by the department under:
      - a. The Kentucky Open Records Act, KRS 61.870 to 61.884; or
      - b. A subpoena; or

2. Discovery or admission into evidence in any private civil action; and
  - (b) The following persons shall not be permitted or required to testify in any private civil action regarding the filings, documents, or information referenced in paragraph (a) of this subsection:
    1. The commissioner or any person who received filings, documents, or information while acting under the authority of the commissioner; and
    2. Any person with whom filings, documents, or information are shared under subsection (10) of this section.
- (10) The filings, documents, and information subject to subsection (9) of this section may be:
- (a) Used by the commissioner in furtherance of any regulatory or legal action brought against an insurer as part of the commissioner's official duties; and
  - (b) Shared, upon request, by the commissioner with the following, if the recipient agrees in writing to maintain the confidential and privileged status of the filings, documents, or information and has verified in writing the recipient's legal authority to do so:
    1. Other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in KRS 304.37-010;
    2. The National Association of Insurance Commissioners; and
    3. Third-party consultants retained under subsection (14) of this section.
- (11) (a) The commissioner may receive CGAD filings, related documents, or governance-related information from the following:
  1. Other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in KRS 304.37-010; and
  2. The National Association of Insurance Commissioners.
- (b) Any filing, document, or information received under this subsection, with notice that the filing, document, or information is confidential or privileged under the laws of the jurisdiction that is the source of the filing, document, or information, shall be confidential by law and privileged in accordance with subsection (9) of this section.
- (12) The sharing of documents or information by the commissioner under this section shall not constitute a delegation of regulatory authority or rulemaking. The commissioner is solely responsible for the administration, execution, and enforcement of this subtitle.
- (13) A waiver of any applicable privilege or claim of confidentiality in the filings, documents, or information received or provided under this section shall not occur as a result of:
- (a) Disclosure to the commissioner or any person acting under authority of the commissioner; or
  - (b) Sharing as authorized in this section.

- (14) (a) The commissioner may retain, at the insurer's or insurance group's expense, third-party consultants and the National Association of Insurance Commissioners for the purpose of assisting the commissioner in the performance of his or her regulatory duties under this section, including but not limited to understanding the insurer's or insurance group's:
1. Risk management framework;
  2. Own Risk and Solvency Assessment (ORSA) and ORSA Summary Report, as those terms are defined in KRS 304.3-600; and
  3. CGAD filing.
- (b) As part of the retention process, each party retained by the commissioner shall agree, in writing, to the following:
1. Adhere to the same confidentiality standards and requirements as the commissioner;
  2. Comply with specific procedures and protocols for maintaining the confidentiality and security of information shared with the retained party;
  3. Comply with specific 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:
    - a. Specify that the recipient state agrees to maintain the confidentiality and privileged status of the information received; and
    - b. Provide verification that the recipient state has legal authority to maintain confidentiality;
  4. Recognize that:
    - a. Ownership of information shared with the retained party shall remain with the department; and
    - b. The retained party's use of shared information is subject to the direction of the commissioner;
  5. Verify and give notice to the insurer that the retained party is free of any conflict of interest;
  6. Monitor compliance with applicable confidentiality and conflict of interest standards in accordance with a system of internal procedures;
  7. Not store information shared with the retained party in a permanent database after the underlying analysis is completed;
  8. Provide prompt notice to the commissioner and the insurer or insurance group of any subpoena or request received by the retained party for the insurer's or insurance group's filings, documents, or information; and
  9. Consent to intervention by an insurer in any judicial or administrative action in which the retained party may be required to disclose confidential information about the insurer that was shared with the

retained party under this section.

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