

As Amended by Senate Committee

Session of 2020

HOUSE BILL No. 2479

By Committee on Insurance

1-23

1 AN ACT concerning insurance; relating to the corporate governance
2 annual disclosure report; pertaining to filing procedures; required
3 contents; codifying the national association of insurance commissioners
4 corporate governance model regulation into statute; amending K.S.A.
5 2019 Supp. 40-2,203 and repealing the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2019 Supp. 40-2,203 is hereby amended to read as
9 follows: 40-2,203. (a) (1) Nothing in this section shall be construed to
10 prescribe or impose corporate governance standards and internal
11 procedures beyond those required by state corporate law. ~~However,~~
12 Nothing in this section shall be construed to limit the commissioner's
13 authority, or the rights and obligations of third parties under K.S.A. 40-
14 222, and amendments thereto.

15 (2) The requirements of this section shall apply to all insurers
16 domiciled in this state.

17 (b) As used in this section:

18 (1) "Commissioner" means the commissioner of insurance of the state
19 of Kansas.

20 (2) "Corporate governance annual disclosure" or "CGAD" means a
21 confidential report filed by the insurer or insurance group made in
22 accordance with the requirements of this section.

23 (3) "Insurance group" means those insurers and affiliates included
24 within an insurance holding company system as defined in K.S.A. 40-
25 3302, and amendments thereto.

26 (4) "Insurer" ~~shall have the same meaning~~ *means the same* as set forth
27 in K.S.A. 40-3302, and amendments thereto, except that it ~~shall~~ *does* not
28 include agencies, authorities or instrumentalities of the United States, its
29 possessions and territories, the Commonwealth of Puerto Rico, the District
30 of Columbia or a state or political subdivision of a state.

31 (5) "NAIC" means the national association of insurance
32 commissioners.

33 (6) "ORSA summary report" means the report filed in accordance
34 with risk management and own risk and solvency assessment act.

35 (7) *"Senior management" means any corporate officer responsible*
36 *for reporting information to the board of directors at regular intervals or*

1 *providing this information to shareholders or regulators, including, but*
2 *not limited to, the chief executive officer, chief financial officer, chief*
3 *procurement officer, chief legal officer, chief information officer, chief*
4 *technology officer, chief revenue officer or any other "C" level executive.*

5 (c) (1) An insurer or the insurance group of which the insurer is a
6 member shall, no later than June 1 of each calendar year, submit to the
7 commissioner a CGAD that contains the information described in
8 subsection (e). Notwithstanding any request from the commissioner made
9 pursuant to subsection (c)(3), if an insurer is a member of an insurance
10 group, the insurer shall submit the report required by this section to the
11 commissioner of the lead state for the insurance group, in accordance with
12 the laws of the lead state, as determined by the procedures outlined in the
13 most recent financial analysis handbook adopted by the national
14 association of insurance commissioners. *An insurer or insurer group shall*
15 *provide a copy of the CGAD upon request to the chief regulatory official*
16 *of any state in which the insurance group has a domestic insurer.*

17 (2) The CGAD ~~must~~ *shall* include a signature of the insurer or
18 insurance group's chief executive officer or corporate secretary attesting to
19 the best of that individual's belief and knowledge that the insurer has
20 implemented the corporate governance practices and that a copy of the
21 disclosure has been provided to the insurer's board of directors or the
22 appropriate committee of the insurer thereof.

23 (3) An insurer not required to submit a CGAD under this section shall
24 do so upon the commissioner's request.

25 (4) For purposes of completing the CGAD, the insurer or insurance
26 group may provide information regarding corporate governance at the
27 ultimate controlling parent level, an intermediate holding company level or
28 the individual legal entity level or both, depending upon how the insurer or
29 insurance group has structured its system of corporate governance. The
30 insurer or insurance group is encouraged to make the CGAD disclosures at
31 the level at which the insurer's or insurance group's risk appetite is
32 determined, or at which the earnings, capital, liquidity, operations and
33 reputation of the insurer are overseen collectively and at which the
34 supervision of those factors are coordinated and exercised, or the level at
35 which legal liability for failure of general corporate governance duties
36 would be placed. If the insurer or insurance group determines the level of
37 reporting based on these criteria, it shall indicate which of the three criteria
38 was used to determine the level of reporting and explain any subsequent
39 changes in level of reporting.

40 (5) The review of the CGAD and any additional requests for
41 information shall be made through the lead state as determined by the
42 procedures within the most recent financial analysis handbook referenced
43 in subsection (c)(1).

1 (6) Insurers providing information substantially similar to the
2 information required by this section in other documents provided to the
3 commissioner, including proxy statements filed in conjunction with other
4 state or federal filings or other requirements provided to the commissioner,
5 shall not be required to duplicate that information in the CGAD, but shall
6 only be required to cross reference the document in which the information
7 is included.

8 (7) *Each year following the initial filing of the CGAD, the insurer or*
9 *insurance group shall file an amended version of the previously filed*
10 *CGAD indicating where changes have been made. If no changes were*
11 *made in the information or activities reported by the insurer or insurance*
12 *group, the filing shall so state.*

13 (d) The commissioner is hereby authorized to adopt any rules and
14 regulations as are necessary to carry out the provisions of this section.
15 Such rules and regulations shall be adopted no later than January 1, 2019.

16 (e) (1) The insurer or insurance group shall have discretion over the
17 responses to the CGAD inquiries, provided the CGAD shall contain the
18 material information necessary to permit the commissioner to gain an
19 understanding of the insurer's or group's corporate governance structure,
20 policies and practices. The commissioner may request additional
21 information deemed material and necessary to provide the commissioner
22 with a clear understanding of the corporate governance policies, the
23 reporting or information system or controls implementing those policies.

24 (2) The CGAD shall be prepared consistent with all ~~department of~~
25 *insurance department* rules and regulations and documentation.
26 Documentation supporting information shall be maintained and made
27 available upon the commissioner's request.

28 ~~(3) In order to gain an understanding of the insurer's or insurance~~
29 ~~group's corporate governance structure, policies and practices, the~~
30 ~~commissioner shall consider:~~

31 ~~(A) (i) The board of directors and its various committees that are~~
32 ~~ultimately responsible for overseeing the insurer or insurance group and~~
33 ~~the levels at which that oversight occurs such as ultimate control level,~~
34 ~~intermediate holding company or legal entity;~~

35 ~~(ii) the insurer or insurance group's rationale for the current board~~
36 ~~size and structure; and~~

37 ~~(iii) the duties of the board of directors and each of its significant~~
38 ~~committees and how they are governed, including, but not limited to,~~
39 ~~bylaws, charters and informal mandates, as well as how the board's~~
40 ~~leadership is structured, including a discussion of the roles of chief~~
41 ~~executive officer and chairperson of the board within the organization;~~

42 ~~(B) the policies and practices of the most senior governing entity and~~
43 ~~its most significant committees, including the following factors:~~

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

3 ~~(ii) how an appropriate amount of independence is maintained on the~~
4 ~~board and its most significant committees;~~

5 ~~(iii) the number of meetings held by the board and its significant~~
6 ~~committees over the past year as well as information on the attendance of~~
7 ~~directors;~~

8 ~~(iv) how the insurer or insurance group identifies, nominates and~~
9 ~~elects members to the board and its committees including a description of;~~

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

12 ~~(b) whether term limits are placed on directors; and~~

13 ~~(c) how the election and re-election processes function; and~~

14 ~~(v) the processes in place for the board to evaluate its performance;~~
15 ~~and the performance of its committees, as well as any recent measures~~
16 ~~taken to improve performance, including any board or committee training~~
17 ~~programs that have been put in place;~~

18 ~~(C) the policies and practices for directing senior management,~~
19 ~~including a description of the following factors:~~

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

24 ~~(a) Identification of the specific positions for which suitability~~
25 ~~standards have been developed and a description of the standards~~
26 ~~employed; and~~

27 ~~(b) any changes in an officer's or key person's suitability for the~~
28 ~~officer's or key person's position as outlined by the insurer's or insurance~~
29 ~~group's standards and procedures to monitor and evaluate such changes;~~

30 ~~(ii) the insurer's or insurance group's code of business conduct and~~
31 ~~ethics that addresses compliance with laws, rules and regulations and~~
32 ~~proactive reporting of any illegal or unethical behavior; and~~

33 ~~(iii) the insurer's or insurance group's processes for performance~~
34 ~~evaluation, compensation and corrective action to ensure effective senior~~
35 ~~management throughout the organization, including a description of the~~
36 ~~general objectives of significant compensation programs and what the~~
37 ~~programs are designed to reward. The description shall include sufficient~~
38 ~~detail to allow the commissioner to understand how the organization~~
39 ~~ensures that compensation programs do not encourage or reward~~
40 ~~excessive risk-taking. The description should include, if applicable:~~

41 ~~(a) The board's role in overseeing management compensation~~
42 ~~programs and practices;~~

43 ~~(b) the various elements of compensation awarded in the insurer's or~~

1 ~~insurance group's compensation programs and how the insurer or~~
2 ~~insurance group determines and calculates the amount of each element of~~
3 ~~compensation paid;~~

4 ~~(c) how compensation programs are related to both company and~~
5 ~~individual performance over time;~~

6 ~~(d) whether compensation programs include risk adjustments and~~
7 ~~how those adjustments are incorporated into the programs for employees~~
8 ~~at different levels;~~

9 ~~(e) any clawback provisions built into the programs to recover~~
10 ~~awards or payments if the performance measures upon which they are~~
11 ~~based are restated or otherwise adjusted; and~~

12 ~~(f) any other factors relevant in understanding how the insurer or~~
13 ~~insurance group monitors its compensation policies to determine whether~~
14 ~~its risk management objectives are met by incentivizing its employees;~~

15 ~~(D) the insurer's or insurance group's plans for chief executive~~
16 ~~officer and other senior management level position succession; and~~

17 ~~(E) the processes by which the board, its committees and senior~~
18 ~~management ensure an appropriate amount of oversight to the critical risk~~
19 ~~areas impacting the insurer or insurance group's business activities;~~
20 ~~including a discussion of;~~

21 ~~(i) How oversight and management responsibilities are delegated~~
22 ~~between the board, its committees and senior management;~~

23 ~~(ii) how the board is kept informed of the insurer or insurer group's~~
24 ~~strategic plans, the associated risks and steps that senior management is~~
25 ~~taking to monitor and manage those risks; and~~

26 ~~(iii) how reporting responsibilities are organized for each critical risk~~
27 ~~area. The description should allow the commissioner to understand the~~
28 ~~frequency at which information on each critical risk area is reported to~~
29 ~~and reviewed by senior management and the board. This description~~
30 ~~should include, if applicable, the following critical risk areas of the~~
31 ~~insurer:~~

32 ~~(a) Risk management processes or reference to an ORSA summary~~
33 ~~report;~~

34 ~~(b) actuarial functions;~~

35 ~~(c) investment decision-making processes;~~

36 ~~(d) reinsurance decision-making processes;~~

37 ~~(e) business strategy and finance decision-making processes;~~

38 ~~(f) compliance function;~~

39 ~~(g) financial reporting and internal auditing; and~~

40 ~~(h) market conduct decision-making processes.~~

41 (f) (1) Documents, materials or other information, including the
42 CGAD, in the possession or control of the department of insurance that are
43 obtained, created by or disclosed to the commissioner or any other person

1 under this section, are recognized by this state as being proprietary and
2 containing trade secrets. All such documents, materials or other
3 information shall be confidential by law and privileged, and shall not be
4 subject to the open records act, K.S.A. 45-215 et seq., and amendments
5 thereto, shall not be subject to subpoena and shall not be subject to
6 discovery or admissible in evidence in any private civil action. However,
7 the commissioner is authorized to use the documents, materials or other
8 information in the furtherance of any regulatory or legal action brought as
9 part of the commissioner's official duties. The commissioner shall not
10 otherwise make the documents, materials or other information public
11 without the prior written consent of the insurer. Nothing in this section
12 shall be construed to require the written consent of the insurer before the
13 commissioner may share or receive confidential documents, materials or
14 other CGAD-related information pursuant to subsection (f)(3) to assist in
15 the performance of the commissioner's regular duties. The provisions of
16 this subsection shall expire on July 1, 2022, unless the legislature reviews
17 and reenacts this provision pursuant to K.S.A 45-229, and amendments
18 thereto, prior to July 1, 2022.

19 (2) Neither the commissioner nor any person who received
20 documents, materials or other CGAD-related information, through
21 examination or otherwise, while acting under the authority of the
22 commissioner, or with whom such documents, materials or other
23 information are shared pursuant to this section, shall be permitted or
24 required to testify in any private civil action concerning any confidential
25 documents, materials or information subject to subsection (f)(1).

26 (3) In order to assist in the performance of the commissioner's
27 regulatory duties, the commissioner:

28 (A) May, upon request, share documents, materials or other CGAD-
29 related information, including the confidential and privileged documents,
30 materials or information subject to subsection (c)(1), including proprietary
31 and trade secret documents and materials with other state, federal and
32 international financial regulatory agencies, including members of any
33 supervisory college as defined in K.S.A. 40-3308, and amendments
34 thereto, with the NAIC and with third-party consultants pursuant to
35 subsection (g), provided that the recipient agrees in writing to maintain the
36 confidentiality and privileged status of the CGAD-related documents,
37 material or other information and has verified in writing the legal authority
38 to maintain confidentiality; and

39 (B) may receive documents, materials or other CGAD-related
40 information, including otherwise confidential and privileged documents,
41 materials or information, including proprietary and trade secret
42 information or documents, from regulatory officials of other state, federal
43 and international financial regulatory agencies, including members of any

1 supervisory college as defined in the insurance holding company act and
2 from the NAIC, and shall maintain as confidential or privileged any
3 documents, materials or information received with notice or the
4 understanding that it is confidential or privileged under the laws of the
5 jurisdiction that is the source of the document, material or information.

6 (4) The sharing of information and documents by the commissioner
7 pursuant to this section shall not constitute a delegation of regulatory
8 authority or rulemaking, and the commissioner is solely responsible for the
9 administration, execution and enforcement of the provisions of this
10 section.

11 (5) No waiver of any applicable privilege or claim of confidentiality
12 in the documents, proprietary and trade secret materials or other CGAD-
13 related information shall occur as a result of disclosure of such CGAD-
14 related information or documents to the commissioner under this section
15 or as a result of sharing as authorized in this section.

16 (g) (1) The commissioner may retain, at the insurer's expense, third-
17 party consultants, including attorneys, actuaries, accountants and other
18 experts not otherwise a part of the commissioner's staff as may be
19 reasonably necessary to assist the commissioner in reviewing the CGAD
20 and related information or the insurer's compliance with this section.

21 (2) Any person retained under subsection (g)(1) shall be under the
22 direction and control of the commissioner and shall act in a purely
23 advisory capacity.

24 (3) The NAIC and third-party consultants shall be subject to the same
25 confidentiality standards and requirements as the commissioner.

26 (4) As part of the retention process, a third-party consultant shall
27 verify to the commissioner, with notice to the insurer, that it is free from a
28 conflict of interest and that it has internal procedures in place to monitor
29 compliance with a conflict and to comply with the confidentiality
30 standards and requirements of this section.

31 (5) A written agreement with NAIC consultants or third-party
32 consultants, or a combination of the same, governing sharing and use of
33 information provided pursuant to this section shall contain the following
34 provisions and expressly require the written consent of the insurer prior to
35 making the information public as provided under this section:

36 (A) Specific procedures and protocols for maintaining the
37 confidentiality and security of CGAD-related information shared with the
38 NAIC or a third-party consultant pursuant to this section;

39 (B) procedures and protocols for sharing by the NAIC only with other
40 state regulators from states in which the insurance group has domiciled
41 insurers. The agreement shall provide that the recipient agrees in writing to
42 maintain the confidentiality and privileged status of the CGAD-related
43 documents, materials or other information and has verified in writing the

1 legal authority to maintain confidentiality;

2 (C) a provision specifying that ownership of the CGAD-related
3 information shared with the NAIC or a third-party consultant remains with
4 the department of insurance and the NAIC or third-party consultant's use
5 of the information is subject to the direction of the commissioner;

6 (D) a provision that prohibits the NAIC or a third-party consultant
7 from storing the information shared pursuant to this act in a permanent
8 database after the underlying analysis is completed;

9 (E) a provision requiring the NAIC or third-party consultant to
10 provide prompt notice to the commissioner and to the insurer or insurance
11 group regarding any subpoena, request for disclosure or request for
12 production of the insurer's CGAD-related information; and

13 (F) a requirement that the NAIC or a third-party consultant consent to
14 intervention by an insurer in any judicial or administrative action in which
15 the NAIC or a third-party consultant may be required to disclose
16 confidential information about the insurer shared with the NAIC or a third-
17 party consultant pursuant to this section.

18 (h) Any insurer failing, without just cause, to timely file the CGAD
19 as required in this section may be required, after notice and hearing, to pay
20 a penalty for each day's delay, to be recovered by the commissioner, in
21 accordance with any rules and regulations adopted by the commissioner.
22 The commissioner shall remit all moneys received to the state treasurer in
23 accordance with the provisions of K.S.A. 75-4215, and amendments
24 thereto. Upon receipt of each such remittance, the state treasurer shall
25 deposit the entire amount in the state treasury to the credit of the fees and
26 penalties fund.

27 (i) If any provision of this section other than subsection (f), or the
28 application thereof to any person or circumstance, is held invalid, such
29 determination shall not affect the provisions or applications of this section,
30 which can be given effect without the invalid provision or application, and
31 to that end the provisions of this section, with the exception of subsection
32 (f), are severable.

33 (j) The first filing of the CGAD shall be in 2018.

34 ~~(k) The provisions of this section shall be effective on and after~~
35 ~~January 1, 2018.~~

36 Sec. 2. K.S.A. 2019 Supp. 40-2,203 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its
38 publication in the statute book.