

## CHAPTER 27

### INSURERS' CORPORATE GOVERNANCE ANNUAL DISCLOSURES

H.F. 455

**AN ACT** requiring the submission of a corporate governance annual disclosure to the commissioner of insurance by certain insurers or insurance groups, and including penalties and applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. **NEW SECTION. 521H.1 Purpose and scope.**

1. The purpose of this chapter is to do all of the following:

a. Provide the commissioner with 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 or insurance group's corporate governance framework.

b. Outline the requirements for an insurer or insurance group to complete a corporate governance annual disclosure for submission to the commissioner.

c. Provide for the confidential treatment of the corporate governance annual disclosure and related information that contains confidential and sensitive information related to an insurer's 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.

2. Nothing in this chapter shall be construed to prescribe or impose corporate governance standards or internal procedures beyond those which are required under applicable state corporate law. In addition, nothing in this chapter shall be construed to limit the commissioner's authority under chapter 507, or the rights or obligations of third parties thereunder.

3. The requirements of this chapter shall apply to all insurers domiciled in this state.

Sec. 2. **NEW SECTION. 521H.2 Definitions.**

1. "Commissioner" means the commissioner of insurance.

2. "Corporate governance annual disclosure" or "disclosure" means a confidential report filed by an insurer or insurance group pursuant to the requirements of this chapter.

3. "Insurance group" means those insurers and affiliates included within an insurance holding company system.

4. "Insurance holding company system" means the same as defined in section 521A.1.

5. "Insurer" means the same as defined in section 521A.1.

Sec. 3. **NEW SECTION. 521H.3 Corporate governance annual disclosure requirement.**

1. An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the commissioner a corporate governance annual disclosure that contains the information described in section 521H.5. Notwithstanding any request from the commissioner made pursuant to subsection 2, if an insurer is a member of an insurance group, the insurer shall submit the disclosure required by this section to the commissioner of insurance of the lead state of the insurance group of which the insurer is a member, in accordance with the laws of the lead state, as determined by procedures contained in the financial analysis handbook adopted by the national association of insurance commissioners.

2. An insurer or insurance group that is not required to submit a corporate governance annual disclosure under this section shall do so upon the commissioner's request.

3. Review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by procedures contained in the financial analysis handbook adopted by the national association of insurance commissioners.

4. Insurers or insurance groups that provide information substantially similar to the information required by this chapter in other documents provided to the commissioner,

including proxy statements filed in conjunction with the form B insurance holding company system annual registration statement requirements as provided in section 521A.4, or other state or federal filings provided to the commissioner, are not required to duplicate that information in the corporate governance annual disclosure, but shall cross reference the document in which the information is included.

**Sec. 4. NEW SECTION. 521H.4 Rules.**

The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter.

**Sec. 5. NEW SECTION. 521H.5 Contents of corporate governance annual disclosure.**

1. An insurer, or the insurance group of which the insurer is a member, shall have discretion over the responses to corporate governance annual disclosure inquiries, provided the corporate governance annual disclosure contains 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 the commissioner deems material and necessary to provide a clear understanding of the insurer's or insurance group's corporate governance policies, reporting or information systems, or the controls implementing such policies or systems.

2. The corporate governance annual disclosure shall be prepared consistent with rules adopted by the commissioner pursuant to chapter 17A. Documentation and supporting information prepared pursuant to this chapter and related rules shall be maintained and made available upon examination by or upon request of the commissioner.

3. The corporate governance annual disclosure shall include the signature of the insurer's or insurance group's chief executive officer or corporate secretary, attesting that to the best of that individual's belief and knowledge the insurer or the insurance group has implemented the corporate governance practices described in the disclosure and that a copy of the disclosure has been provided to the insurer's or the insurance group's board of directors or the appropriate committee of the board.

4. *a.* For purposes of completing a corporate governance annual disclosure, an insurer or insurance group may report information regarding corporate governance at the ultimate controlling parent level, at an intermediate holding company level, or at the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

*b.* An insurer or insurance group is encouraged to report information in the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk tolerance is determined; at the level at which the earnings, capital, liquidity, operations, and reputation of the insurer or insurance group are overseen collectively and the level at which the supervision of these factors is coordinated and exercised; or at the level at which legal liability for failure of general corporate governance duties would be placed. If an insurer or insurance group determines the level of reporting based upon the criteria set forth in this paragraph, the insurer or insurance group shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes that are made in the level of reporting.

**Sec. 6. NEW SECTION. 521H.6 Confidentiality.**

1. Documents, materials, or other information, including a corporate governance annual disclosure, in the possession or control of the insurance division of the department of commerce, that is obtained by, created by, or disclosed to the commissioner or to any other person pursuant to this chapter, is recognized in this state as being proprietary and containing trade secrets. All such documents, materials, or other information, including the disclosure, shall be confidential and privileged, shall not be subject to chapter 22, shall be considered confidential under chapter 507, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials, or other information, including the disclosure, 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, including the disclosure, public without

the prior written consent of the insurer or insurance group that provided the documents, materials, or other information, including the disclosure. Nothing in this section shall be construed to require written consent of the insurer or insurance group before the commissioner may share or receive confidential documents, materials, or other information related to governance of an insurer or insurance group pursuant to subsection 3 to assist in the performance of the commissioner's regular duties.

2. The commissioner or any other person who received documents, materials, or other information related to corporate governance, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information is shared pursuant to this chapter, shall not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information, including disclosures, subject to subsection 1.

3. In order to assist in the performance of the commissioner's regulatory duties, the commissioner may do any of the following:

a. Upon request, share documents, materials, or corporate governance annual disclosure-related information, including the confidential and privileged documents, materials, or information subject to subsection 1, and including proprietary and trade secret documents, materials, or information, with other state, federal, or international financial regulatory agencies, including members of any supervisory college as defined in section 521A.1, with the national association of insurance commissioners, or with any third-party consultants designated by the commissioner pursuant to subsection 4, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other corporate governance annual disclosure-related information and verifies in writing the legal authority to maintain such confidentiality and privilege.

b. Receive documents, materials, or other corporate governance annual disclosure-related information, including otherwise confidential and privileged documents, materials, or information, and proprietary and trade secret documents, materials, and information, from regulatory officials of other state, federal, or international regulatory agencies, including members of any supervisory college as defined in section 521A.1, and from 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 the documents, materials, or other information received is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

4. In order to assist in the performance of the commissioner's regulatory duties under this chapter the commissioner may retain, at the insurer's or insurance group'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 a disclosure and related information submitted under this chapter or ensuring compliance of an insurer or insurance group with the requirements of this chapter.

a. Any persons retained under this subsection shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

b. As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that the third-party consultant is free of any conflict of interest and that the third-party consultant has internal procedures in place to monitor compliance if a conflict arises and to ensure compliance with the confidentiality standards and requirements of this chapter.

5. A written agreement entered into by the commissioner with the national association of insurance commissioners or with a third-party consultant governing the sharing and use of information provided pursuant to this chapter shall expressly require the written consent of the insurer prior to making public information provided under this chapter and shall contain a provision that does each of the following:

a. Expressly provides that the national association of insurance commissioners and any third-party consultants retained are subject to the same confidentiality standards and requirements governing the sharing and use of information provided pursuant to this chapter as the commissioner.

b. Specifies procedures and protocols regarding the confidentiality and security of information related to a corporate governance annual disclosure that is shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter and specifies procedures and protocols for sharing information by the national association of insurance commissioners only with other state insurance regulators from states in which an insurance group has domiciled insurers. The agreement shall require that the recipient of such information must agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to the corporate governance annual disclosure and verify in writing the legal authority to maintain confidentiality and privilege.

c. Specifies that ownership of information shared with the national association of insurance commissioners or with a third-party consultant pursuant to this chapter remains with the commissioner and that use of the information by the national association of insurance commissioners or by a third-party consultant is subject to the direction of the commissioner.

d. Prohibits the national association of insurance commissioners or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed.

e. Requires the national association of insurance commissioners or a third-party consultant to give prompt notice to the commissioner and to an insurer or insurance group whose confidential information is in the possession of the national association of insurance commissioners or a third-party consultant pursuant to this chapter, that the information is subject to a request or subpoena to the national association of insurance commissioners or the third-party consultant for disclosure or production.

f. Requires the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer or insurance group in any judicial or administrative action in which the national association of insurance commissioners or the third-party consultant may be required to disclose confidential information about the insurer or insurance group that was shared with the association or consultant pursuant to this chapter.

6. The sharing of documents, materials, or information by the commissioner pursuant to this chapter shall 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 chapter.

7. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other corporate governance annual disclosure-related information shall occur as a result of the disclosure of such documents, materials, or information to the commissioner under this section or as a result of sharing those documents, materials, or information as authorized in this chapter.

#### Sec. 7. NEW SECTION. 521H.7 Penalties.

1. If an insurer or insurance group fails, without just cause, to timely file a corporate governance annual disclosure as required in this chapter, the commissioner shall, after notice and hearing, impose a penalty of five hundred dollars for each day's delay. The penalty shall be collected by the commissioner and paid to the treasurer of state for deposit as provided in section 505.7. The maximum penalty which may be imposed under this section for any single failure is five thousand dollars.

2. The commissioner may reduce the penalty to be imposed if the insurer or insurance group demonstrates to the commissioner that imposition of the penalty would constitute a financial hardship to the insurer or insurance group.

#### Sec. 8. NEW SECTION. 521H.8 Severability.

If any provision of this chapter other than section 521H.6, or the application of this chapter to any person or circumstance, is held invalid, such holding shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter, with the exception of section 521H.6, are severable.

Sec. 9. APPLICABILITY. The provisions of this Act are applicable beginning January 1, 2016, and the first filings of corporate governance annual disclosures shall be made pursuant to chapter 521H, as enacted in this Act, in 2016.

Approved April 8, 2015