

FIRST REGULAR SESSION

# SENATE BILL NO. 304

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 17, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0841S.02I

## AN ACT

To amend chapter 382, RSMo, by adding thereto nine new sections relating to the corporate governance of insurance companies, with a delayed effective date.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 382, RSMo, is amended by adding thereto nine new sections, to be known as sections 382.600, 382.605, 382.610, 382.615, 382.620, 382.625, 382.630, 382.635, and 382.640, to read as follows:

**382.600. 1. The purpose of sections 382.600 to 382.640 is to:**

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

**(2) Outline the requirements for completing a Corporate Governance Annual Disclosure with the director; and**

**(3) 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.**

**2. Nothing in sections 382.600 to 382.640 shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which are required under applicable state corporate law. Notwithstanding the foregoing, nothing in sections 382.600 to 382.640 shall be construed to limit the director's authority, or the rights or obligations of third parties under chapter 374 relating to the examination of insurers.**

21           **3. The requirements of sections 382.600 to 382.640 shall apply to**  
22 **all insurers domiciled in this state.**

**382.605. As used in sections 382.600 to 382.640, the following**  
2 **terms shall mean:**

3           **(1) "Corporate governance annual disclosure" or "CGAD", a**  
4 **confidential report filed by the insurer or insurance group made in**  
5 **accordance with the requirements of sections 382.600 to 382.640;**

6           **(2) "Director", the director of the department of insurance,**  
7 **financial institutions and professional registration, his or her deputies,**  
8 **or the department of insurance, financial institutions and professional**  
9 **registration, as applicable;**

10          **(3) "Insurance group", those insurers and affiliates included**  
11 **within an insurance holding company system as defined in section**  
12 **382.010;**

13          **(4) "Insurer", any person, reciprocal exchange, interinsurer,**  
14 **Lloyds insurer, fraternal benefit society, and any other legal entity**  
15 **engaged in the business of insurance, including but not limited to,**  
16 **producers, adjusters, and third party administrators, health services**  
17 **corporations, health maintenance organizations, health carriers,**  
18 **prepaid limited health care service plans, dental, optometric, and other**  
19 **similar health service plans. "Insurer" shall also include all companies**  
20 **organized, incorporated, or doing business under the provisions of**  
21 **chapters 325, 375, 376, 377, 378, 379, 381, and 383; except that, it shall**  
22 **not include agencies, authorities, or instrumentalities of the United**  
23 **States, its possessions and territories, the Commonwealth of Puerto**  
24 **Rico, the District of Columbia, or a state or political subdivision of a**  
25 **state;**

26          **(5) "NAIC", the National Association of Insurance Commissioners;**

27          **(6) "ORSA summary report", the report filed in accordance with**  
28 **sections 382.500 to 382.550.**

**382.610. 1. An insurer, or the insurance group of which the**  
2 **insurer is a member, shall, before June first of each calendar year,**  
3 **submit to the director a CGAD that contains the information described**  
4 **in subsection 2 of section 382.615. Notwithstanding any request from**  
5 **the director made pursuant to subsection 3 of this section, if the**  
6 **insurer is a member of an insurance group, the insurer shall submit the**  
7 **report required by this section to the director or commissioner of the**

8 lead state for the insurance group, in accordance with the laws of the  
9 lead state, as determined by the procedures outlines in the most recent  
10 Financial Analysis Handbook adopted by the NAIC. An insurer which  
11 is a member of an insurance group, however, shall not be required to  
12 submit the report required by this section to the director until the lead  
13 state for such insurance group has adopted the National Association of  
14 Insurance Commissioners Corporate Governance Annual Disclosure  
15 Model Act and National Association of Insurance Commissioners  
16 Corporate Governance Annual Disclosure Model Regulations.

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

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

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

41 5. The review of the CGAD and any additional requests for  
42 information shall be made through the lead state as determined by the  
43 procedures within the most recent Financial Analysis Handbook  
44 referenced in subsection 1 of this section.

45           **6. Insurers providing information substantially similar to the**  
46 **information required by sections 382.600 to 382.640 in other documents**  
47 **provided to the director, including proxy statements filed in**  
48 **conjunction with annual registration requirements or other state or**  
49 **federal filings provided to the department of insurance, financial**  
50 **institutions and professional registration shall not be required to**  
51 **duplicate that information in the CGAD but shall only be required to**  
52 **cross-reference the document in which the information is included.**

**382.615. 1. The insurer or insurance group shall have discretion**  
2 **over the responses to the CGAD inquiries, provided the CGAD shall**  
3 **contain the material information necessary to permit the director to**  
4 **gain an understanding of the insurer; or insurance group's corporate**  
5 **governance structure, policies, and practices. The director may request**  
6 **additional information that he or she deems material and necessary to**  
7 **provide the director with a clear understanding of the corporate**  
8 **governance policies and the reporting or information system or**  
9 **controls implementing those policies.**

10           **2. Notwithstanding subsection 1 of this section, the CGAD shall**  
11 **be prepared consistent with regulations promulgated by the**  
12 **director. Documentation and supporting information shall be**  
13 **maintained and made available upon examination or upon request of**  
14 **the director.**

**382.620. 1. Documents, materials, or other information, including**  
2 **the CGAD, in the possession or control of the department of insurance,**  
3 **financial institutions and professional registration that are obtained**  
4 **by, created by, or disclosed to the director or any other person under**  
5 **sections 382.600 to 382.640 are recognized by this state as being**  
6 **proprietary and contains trade secrets. All such documents, material,**  
7 **or other information shall be confidential by law and privileged, shall**  
8 **not be subject to disclosure under chapter 610, shall not be subject to**  
9 **subpoena, and shall not be subject to discovery or admissible in**  
10 **evidence in any private civil action. However, the director is**  
11 **authorized to use the documents, materials, or other information in the**  
12 **furtherance of any regulatory or legal action brought as a part of the**  
13 **director's official duties. The director shall not otherwise make the**  
14 **documents, materials, or other information public without the prior**  
15 **written consent of the insurer. Nothing in this section shall be**

16 construed to require written consent of the insurer before the director  
17 may share or receive confidential documents, materials, or other CGAD-  
18 related information pursuant to subsection 3 of this section to assist in  
19 the performance of the director's regular duties.

20       2. Neither the director nor any person who receives documents,  
21 materials, or other CGAD-related information through examination or  
22 otherwise while acting under the authority of the director or with  
23 whom such documents, materials, or other information are shared  
24 pursuant to sections 382.600 to 382.640 shall be permitted or required  
25 to testify in any private civil action concerning any confidential  
26 documents, materials, or information subject to subsection 1 of this  
27 section.

28       3. In order to assist in the performance of the director's  
29 regulatory duties, the director:

30       (1) May, upon request, share documents, materials, or other  
31 CGAD-related information including the confidential and privileged  
32 documents, materials, or information subject to subsection 1 of this  
33 section, including proprietary and trade secret documents and  
34 materials, with other state, federal, and international financial  
35 regulatory agencies, including members of any supervisory college as  
36 defined in section 382.225, with the NAIC, and with third party  
37 consultants pursuant to section 382.625; provided that, the recipient  
38 agrees in writing to maintain the confidentiality and privilege status  
39 of the CGAD-related documents, materials, or other information and  
40 has verified in writing the legal authority to maintain confidentiality;  
41 and

42       (2) May receive documents, materials, or other CGAD-related  
43 information, including otherwise confidential and privileged  
44 documents, materials, or information, including proprietary and trade  
45 secret information or documents, from regulatory officials of other  
46 state, federal, and international financial regulatory agencies,  
47 including members of any supervisory college as described in section  
48 382.225, and from the NAIC, and shall maintain as confidential or  
49 privileged any documents, materials, or information received with  
50 notice or the understanding that it is confidential or privileged under  
51 the laws of the jurisdiction that is the source of the documents,  
52 material, or information.

53           4. The sharing of information and documents by the director  
54 pursuant to sections 382.600 to 382.640 shall not constitute a delegation  
55 of regulatory authority or rulemaking, and the director is solely  
56 responsible for the administration, execution, and enforcement of the  
57 provisions of sections 382.600 to 382.640.

58           5. No waiver of any applicable privilege or claim of  
59 confidentiality in the documents, proprietary and trade secret  
60 materials, or other CGAD-related information shall occur as a result of  
61 disclosure of such CGAD-related information or documents to the  
62 director under this section or as a result of sharing as authorized  
63 under sections 382.600 to 382.640.

          382.625. 1. The director may retain, at the insurer's expense,  
2 third party consultants, including attorneys, actuaries, accountants,  
3 and other experts not otherwise a part of the director's staff as may be  
4 reasonably necessary to assist the director in reviewing the CGAD and  
5 related information or the insurer's compliance with sections 382.600  
6 to 382.640.

7           2. Any persons retained under subsection 1 of this section shall  
8 be under the direction and control of the director and shall act in a  
9 purely advisory capacity.

10          3. The NAIC and third party consultants shall be subject to the  
11 same confidentiality standards and requirements as the director.

12          4. As part of the retention process, a third party consultant shall  
13 verify to the director, with notice to the insurer, that it is free of a  
14 conflict of interest and that it has internal procedures in place to  
15 monitor compliance with a conflict and to comply with the  
16 confidentiality standards and requirements of sections 382.600 to  
17 382.640.

18          5. A written agreement with the NAIC or a third party consultant  
19 governing sharing and use of information provided pursuant to sections  
20 382.600 to 382.640 shall contain the following provisions and expressly  
21 require the written consent of the insurer prior to making public  
22 information provided pursuant to sections 382.600 to 382.640:

23           (1) Specific procedures and protocols for maintaining the  
24 confidentiality and security of CGAD-related information shared with  
25 the NAIC or a third party consultant pursuant to sections 382.600 to  
26 382.640;

27           **(2) Procedures and protocols for sharing by the NAIC only with**  
28 **other state regulators from states in which the insurance group has**  
29 **domiciled insurers. The agreement shall provide that the recipient**  
30 **agrees in writing to maintain the confidentiality and privileged status**  
31 **of the CGAD-related documents, materials, or other information and**  
32 **has verified in writing the legal authority to maintain confidentiality;**

33           **(3) A provision specifying that ownership of the CGAD-related**  
34 **information shared with the NAIC or a third party consultant remains**  
35 **with the department of insurance, financial institutions and**  
36 **professional registration, and the NAIC's or third party consultant's use**  
37 **of the information is subject to the direction of the director;**

38           **(4) A provision that prohibits the NAIC or a third party**  
39 **consultant from storing the information shared pursuant to sections**  
40 **382.600 to 382.640 in a permanent database after the underlying**  
41 **analysis is completed;**

42           **(5) A provision requiring the NAIC or a third party consultant to**  
43 **provide prompt notice to the director and to the insurer or insurance**  
44 **group regarding any subpoena, request for disclosure, or request for**  
45 **production of the insurer's CGAD-related information; and**

46           **(6) A provision requiring the NAIC or a third party consultant to**  
47 **consent to intervention by an insurer in any judicial or administrative**  
48 **action in which the NAIC or a third party consultant may be required**  
49 **to disclose confidential information about the insurer shared with the**  
50 **NAIC or a third party consultant pursuant to sections 382.600 to**  
51 **382.640.**

**382.630. 1. Any insurer failing without just cause to timely file**  
2 **a CGAD as required under sections 382.600 to 382.640 commits a level**  
3 **two violation under section 374.049 for each day's delay; provided that,**  
4 **the total maximum penalty under this section is five thousand**  
5 **dollars. The director may reduce the penalty if the insurer**  
6 **demonstrates to the director that the imposition of the penalty would**  
7 **constitute a financial hardship to the insurer.**

8           **2. The director may enforce the provisions of sections 382.600 to**  
9 **382.640 under sections 374.046 to 374.049.**

**382.635. The director may, upon notice and opportunity for all**  
2 **interested persons to be heard, issue such rules, regulations, and orders**  
3 **as shall be necessary to carry out the provisions of sections 382.600 to**

4 382.640. Any rule or portion of a rule, as that term is defined in section  
5 536.010 that is created under the authority delegated in this section  
6 shall become effective only if it complies with and is subject to all of  
7 the provisions of chapter 536, and, if applicable, section 536.028. This  
8 section and chapter 536 are nonseverable and if any of the powers  
9 vested with the general assembly pursuant to chapter 536, to review, to  
10 delay the effective date, or to disapprove and annul a rule are  
11 subsequently held unconstitutional, then the grant of rulemaking  
12 authority and any rule proposed or adopted after August 28, 2017, shall  
13 be invalid and void.

382.640. If any provision of sections 382.600 to 382.640 or the  
2 application thereof to any person or circumstance is held invalid under  
3 the Constitution of the United States or the Constitution of the State of  
4 Missouri, such determination shall not affect the provisions or  
5 applications of sections 382.600 to 382.640, which may be given effect  
6 without the invalid provision or application, and to that end the  
7 provisions of sections 382.600 to 382.640, with the exception of section  
8 382.620, are severable.

Section B. This act shall become effective on January 1, 2018.

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