

Act No. 520
Public Acts of 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Rep. Theis

ENROLLED HOUSE BILL No. 6520

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” (MCL 500.100 to 500.8302) by adding chapter 17A and section 3032.

The People of the State of Michigan enact:

CHAPTER 17A
CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Sec. 1751. This chapter does not prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. However, this chapter does not limit the director’s authority, or the rights or obligations of third parties, under chapter 2.

Sec. 1753. This chapter applies to all insurers domiciled in this state.

Sec. 1755. As used in this chapter:

- (a) "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.
- (b) "Insurance group" means insurers and affiliates included within an insurance holding company system.
- (c) "Insurer" means that term as defined in section 1701.
- (d) "NAIC" means that term as defined in section 1701.
- (e) "ORSA Summary Report" means that term as defined in section 1701.

Sec. 1757. (1) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1, 2020 and each June 1 after that date, submit to the director a corporate governance annual disclosure as prescribed by the director. Notwithstanding any request from the director made under subsection (3), if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws and requirements of the lead state.

(2) The CGAD required under subsection (1) must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee of the insurer's board of directors.

(3) An insurer not required to submit a CGAD under this section shall submit a CGAD on the director's request.

(4) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, or any 1 or more of those levels, depending on how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors is coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on the criteria described in this subsection, the insurer or insurance group shall indicate which of the 3 criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(5) The review of the CGAD and any additional requests for information must be made through the lead state in accordance with the laws and requirements of the lead state.

(6) An insurer or insurance group that provides information substantially similar to the information required by this chapter in other documents provided to the director, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to the department is not required to duplicate that information in the CGAD and is only required to cross-reference the document in which the information is included.

Sec. 1759. (1) The insurer or insurance group has discretion over the responses to the CGAD inquiries if the CGAD contains the material information necessary to permit the director to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The director may request additional information that he or she considers material and necessary to provide the director with a clear understanding of the corporate governance policies, the reporting or information system, or the controls implementing those policies.

(2) Notwithstanding subsection (1), the CGAD must be prepared as prescribed by the director. Documentation and supporting information related to the CGAD must be maintained and made available on examination or on request of the director.

Sec. 1761. (1) Documents, materials, or other information, including the CGAD, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any other person under this chapter are considered proprietary and to contain trade secrets. The documents, materials, or other information are confidential and privileged, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer or insurance group. This section does not require written consent of the insurer or insurance group before the director may share or receive confidential documents, materials, or other CGAD-related information under subsection (3) to assist in the performance of the director's regular duties.

(2) The director or any person who received documents, materials, or other CGAD-related information, through examination or otherwise, while acting under the authority of the director, or with whom the documents, materials, or other information are shared under this act shall not testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1).

(3) The director may do any of the following:

(a) Except as otherwise provided in this subdivision, on request, share documents, materials, or other CGAD-related information, including the confidential and privileged documents, materials, or information described in subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college under chapter 13, with the NAIC, and with third-party consultants retained by the director under section 1763. The director shall not share documents, materials, or other CGAD-related information unless the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(b) Except as otherwise provided in this subdivision, receive documents, materials, or other CGAD-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college under chapter 13, and from the NAIC. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The sharing of information and documents by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of this chapter.

(5) The disclosure or sharing of documents, proprietary and trade-secret materials, or other CGAD-related information to the director under this chapter is not a waiver of an applicable privilege or claim of confidentiality.

Sec. 1763. (1) The director 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 director's staff as may be reasonably necessary to assist the director in reviewing the CGAD and related information or the insurer's or insurance group's compliance with this chapter.

(2) A person retained under subsection (1) is under the direction and control of the director and shall act in a purely advisory capacity.

(3) The NAIC and third-party consultants are subject to the same confidentiality standards and requirements as the director.

(4) As part of the retention process, a third-party consultant shall verify to the director, with written notice to the insurer or insurance group, that it is free of any conflict of interest and that it has internal procedures in place to identify and monitor compliance with any conflict that may arise after engagement and to comply with the confidentiality standards and requirements of this chapter.

(5) A written agreement with the NAIC or a third-party consultant, or both, under subsection (4) governing sharing and use of information provided under this chapter must contain all of the following provisions and expressly require the written consent of the insurer or insurance group before making public information provided under this chapter:

(a) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant under this chapter.

(b) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurer or insurance group has domiciled insurers. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(c) A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the department and the NAIC's or third-party consultant's use of the information is subject to the direction of the director with written notice to the insurer or insurance group.

(d) A provision that prohibits the NAIC or a third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed and that requires the NAIC or third-party consultant to promptly return or destroy all CGAD-related information provided by the insurer or insurance group.

(e) A provision requiring the NAIC or third-party consultant to provide prompt written notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information.

(f) A requirement that the NAIC or a third-party consultant consent to intervention by an insurer or insurance group in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant under this chapter.

Sec. 1765. (1) An insurer or insurance group that does not, without just cause, timely file the CGAD as required in this chapter, after written notice and hearing, shall pay a civil fine of \$1,000.00 for each day's delay, to be recovered by the director and paid into the general fund of this state. The maximum civil fine under this section is \$75,000.00. The director may reduce or waive the penalty if the insurer demonstrates to the director that either of the following applies:

- (a) The penalty would cause a financial hardship to the insurer.
- (b) There is just cause for the delayed filing.
- (2) On written request, the director may grant a 90-day extension for filing the CGAD.

Sec. 1767. If in a final decision a court holds section 1761 of this chapter to be invalid, that section is not severable, and the entire chapter is void as of the date of the court decision.

Sec. 3032. In an action brought in a court in this state, the court shall not apply a principle from the American Law Institute's "Restatement of the Law, Liability Insurance" in ruling on an issue in the case unless the principle is clearly expressed in a statute of this state, the common law, or case law precedent of this state.

Enacting section 1. This amendatory act takes effect January 1, 2020.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor