

FIRST REGULAR SESSION

HOUSE BILL NO. 337

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHULL (16).

0799H.02I

D. ADAM CRUMBLISS, Chief Clerk

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 and a penalty provision.

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
2 known as sections 382.600, 382.605, 382.610, 382.615, 382.620, 382.625, 382.630, 382.635,
3 and 382.640, to read as follows:

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

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

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

7 **(3) Provide for the confidential treatment of the Corporate Governance Annual**
8 **Disclosure and related information that will contain confidential and sensitive information**
9 **related to an insurer; or insurance group's internal operations and proprietary and trade**
10 **secret information which if made public could potentially cause the insurer or insurance**
11 **group competitive harm or disadvantage.**

12 **2. Nothing in sections 382.600 to 382.640 shall be construed to prescribe or impose**
13 **corporate governance standards and internal procedures beyond that which are required**
14 **under applicable state corporate law. Notwithstanding the foregoing, nothing in sections**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 382.600 to 382.640 shall be construed to limit the director's authority, or the rights or
16 obligations of third parties under chapter 374 relating to the examination of insurers.

17 3. The requirements of sections 382.600 to 382.640 shall apply to all insurers
18 domiciled in this state.

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

2 (1) "Corporate Governance Annual Disclosure" or "CGAD", a confidential report
3 filed by the insurer or insurance group made in accordance with the requirements of
4 sections 382.600 to 382.640;

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

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

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

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

21 (6) "ORSA Summary Report", the report filed in accordance with sections 382.500
22 to 382.550.

382.610. 1. An insurer, or the insurance group of which the insurer is a member,
2 shall, before June first of each calendar year, submit to the director a CGAD that contains
3 the information described in subsection 2 of section 382.615. Notwithstanding any request
4 from the director made pursuant to subsection 3 of this section, if the insurer is a member
5 of an insurance group, the insurer shall submit the report required by this section to the
6 director or commissioner of the lead state for the insurance group, in accordance with the
7 laws of the lead state, as determined by the procedures outlined in the most recent
8 Financial Analysis Handbook adopted by the NAIC. An insurer which is a member of an
9 insurance group, however, shall not be required to submit the report required by this
10 section to the director until the lead state for such insurance group has adopted the

11 **National Association of Insurance Commissioners Corporate Governance Annual**
12 **Disclosure Model Act and National Association of Insurance Commissioners Corporate**
13 **Governance Annual Disclosure Model Regulations.**

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

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

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

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

36 **6. Insurers providing information substantially similar to the information required**
37 **by sections 382.600 to 382.640 in other documents provided to the director, including proxy**
38 **statements filed in conjunction with annual registration requirements or other state or**
39 **federal filings provided to the department of insurance, financial institutions and**
40 **professional registration shall not be required to duplicate that information in the CGAD**
41 **but shall only be required to cross-reference the document in which the information is**
42 **included.**

382.615. 1. The insurer or insurance group shall have discretion over the responses
2 **to the CGAD inquiries, provided the CGAD shall contain the material information**
3 **necessary to permit the director to gain an understanding of the insurer; or insurance**
4 **group's corporate governance structure, policies, and practices. The director may request**

5 additional information that he or she deems material and necessary to provide the director
6 with a clear understanding of the corporate governance policies and the reporting or
7 information system or controls implementing those policies.

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

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

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

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

24 (1) May, upon request, share documents, materials, or other CGAD-related
25 information including the confidential and privileged documents, materials, or information
26 subject to subsection 1 of this section, including proprietary and trade secret documents
27 and materials, with other state, federal, and international financial regulatory agencies,
28 including members of any supervisory college as defined in section 382.225, with the NAIC,
29 and with third party consultants pursuant to section 382.625; provided that, the recipient

30 agrees in writing to maintain the confidentiality and privileged status of the CGAD-related
31 documents, materials, or other information and has verified in writing the legal authority
32 to maintain confidentiality; and

33 (2) May receive documents, materials, or other CGAD-related information,
34 including otherwise confidential and privileged documents, materials, or information,
35 including proprietary and trade secret information or documents, from regulatory officials
36 of other state, federal, and international financial regulatory agencies, including members
37 of any supervisory college as defined in section 382.225, and from the NAIC, and shall
38 maintain as confidential or privileged any documents, materials, or information received
39 with notice or the understanding that it is confidential or privileged under the laws of the
40 jurisdiction that is the source of the documents, material, or information.

41 4. The sharing of information and documents by the director pursuant to sections
42 382.600 to 382.640 shall not constitute a delegation of regulatory authority or rulemaking,
43 and the director is solely responsible for the administration, execution, and enforcement
44 of the provisions of sections 382.600 to 382.640.

45 5. No waiver of any applicable privilege or claim of confidentiality in the
46 documents, proprietary and trade secret materials, or other CGAD-related information
47 shall occur as a result of disclosure of such CGAD-related information or documents to the
48 director under this section or as a result of sharing as authorized under sections 382.600
49 to 382.640.

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

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

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

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

14 5. A written agreement with the NAIC or a third party consultant governing
15 sharing and use of information provided pursuant to sections 382.600 to 382.640 shall

16 contain the following provisions and expressly require the written consent of the insurer
17 prior to making public information provided pursuant to sections 382.600 to 382.640:

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

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

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

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

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

37 (6) A provision requiring the NAIC or a third party consultant to consent to
38 intervention by an insurer in any judicial or administrative action in which the NAIC or
39 a third party consultant may be required to disclose confidential information about the
40 insurer shared with the NAIC or a third party consultant pursuant to sections 382.600 to
41 382.640.

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

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

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

3 provisions of sections 382.600 to 382.640. Any rule or portion of a rule, as that term is
4 defined in section 536.010, that is created under the authority delegated in this section shall
5 become effective only if it complies with and is subject to all of the provisions of chapter
6 536 and, if applicable, section 536.028.

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

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

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