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

Be it enacted by the Legislature of the State of Kansas:

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

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

(b) As used in this section:

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

(2) "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 section.

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

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

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

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

(7) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or
providing this information to shareholders or regulators, including, but not limited to, the chief executive officer, chief financial officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer or any other "C" level executive.

(c) (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 CGAD that contains the information described in subsection (e). Notwithstanding any request from the commissioner made pursuant to subsection (c)(3), if an 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 of the lead state, as determined by the procedures outlined in the most recent financial analysis handbook adopted by the national association of insurance commissioners. An insurer or insurer group shall provide a copy of the CGAD upon request to the chief regulatory official of any state in which the insurance group has a domestic insurer.

(2) The CGAD 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 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 thereof.

(3) An insurer not required to submit a CGAD under this section shall do so upon the commissioner'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 both, depending upon 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 are coordinated and exercised, or at 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 these criteria, it shall indicate which of the three 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 shall be made through the lead state as determined by the procedures within the most recent financial analysis handbook referenced in subsection (c)(1).
(6) Insurers providing information substantially similar to the information required by this section in other documents provided to the commissioner, including proxy statements filed in conjunction with other state or federal filings or other requirements provided to the commissioner, shall not be required to duplicate that information in the CGAD, but shall only be required to cross reference the document in which the information is included.

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

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

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

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

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

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

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

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

(B) the policies and practices of the most senior governing entity and its most significant committees, including the following factors:
(i) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group;
(ii) how an appropriate amount of independence is maintained on the board and its most significant committees;
(iii) the number of meetings held by the board and its significant committees over the past year as well as information on the attendance of directors;
(iv) how the insurer or insurance group identifies, nominates and elects members to the board and its committees including a description of:
   (a) Whether a nomination committee is in place to identify and select individuals for consideration;
   (b) whether term limits are placed on directors; and
   (c) how the election and re-election processes function; and
   (v) the processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place;
(C) the policies and practices for directing senior management, including a description of the following factors:
(i) Any processes or practices such as suitability standards to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
   (a) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
   (b) any changes in an officer's or key person's suitability for the officer's or key person's position as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;
(ii) the insurer's or insurance group's code of business conduct and ethics that addresses compliance with laws, rules and regulations and proactive reporting of any illegal or unethical behavior; and
(iii) the insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk-taking. The description should include, if applicable:
   (a) The board's role in overseeing management compensation programs and practices;
   (b) the various elements of compensation awarded in the insurer's or
insurance group’s compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid:

(c) how compensation programs are related to both company and individual performance over time:

(d) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels:

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

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

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

(E) the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer or insurance group’s business activities, including a discussion of:

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

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

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

(a) Risk management processes or reference to an ORSA summary report:

(b) actuarial functions:

(c) investment decision making processes:

(d) reinsurance decision making processes:

(e) business strategy and finance decision making processes:

(f) compliance function:

(g) financial reporting and internal auditing; and

(h) market conduct decision making processes.

(f) (1) Documents, materials or other information, including the CGAD, in the possession or control of the department of insurance that are obtained, created by or disclosed to the commissioner or any other person
under this section, are recognized by this state as being proprietary and
containing trade secrets. All such documents, materials or other
information shall be confidential by law and privileged, and shall not be
subject to the open records act, K.S.A. 45-215 et seq., and amendments
thereto, 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 the documents, materials or other
information in the furtherance of any regulatory or legal action brought as
part of the commissioner's official duties. The commissioner shall not
otherwise make the documents, materials or other information public
without the prior written consent of the insurer. Nothing in this section
shall be construed to require the written consent of the insurer before the
commissioner may share or receive confidential documents, materials or
other CGAD-related information pursuant to subsection (f)(3) to assist in
the performance of the commissioner's regular duties. The provisions of
this subsection shall expire on July 1, 2022, unless the legislature reviews
and reenacts this provision pursuant to K.S.A 45-229, and amendments
thereto, prior to July 1, 2022.

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

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

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

(B) may 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 as defined in the insurance holding company act and from the NAIC, and 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 commissioner pursuant to this section 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 section.

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

(g) (1) The commissioner may retain, at the insurer'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 the CGAD and related information or the insurer's compliance with this section.

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

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

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

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

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

(B) procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall 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 of insurance and the NAIC or third-party consultant's use of the information is subject to the direction of the commissioner;

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

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

(F) a requirement that the NAIC or a third-party consultant consent to intervention by an insurer 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 pursuant to this section.

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

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

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

(k) The provisions of this section shall be effective on and after

January 1, 2018.

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

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