

# ASSEMBLY, No. 6007

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 25, 2019

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Requires insurers and insurance groups to submit corporate governance annual disclosure to DOBI Commissioner.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/10/2020)

1 AN ACT concerning the corporate governance of insurers and  
2 supplementing Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. The purpose of this act is to:

8 a. Provide the Commissioner of Banking and Insurance a  
9 summary of an insurer's or insurance group's corporate governance  
10 structure, policies and practices to permit the commissioner to gain  
11 and maintain an understanding of the insurer's corporate  
12 governance framework.

13 b. Outline the requirements for completing a corporate  
14 governance annual disclosure with the commissioner.

15 c. Provide for the confidential treatment of the Corporate  
16 Governance Annual Disclosure and related information that will  
17 contain confidential and sensitive information related to an insurer's  
18 or insurance group's internal operations and proprietary and trade  
19 secret information which, if made public, could potentially cause  
20 the insurer or insurance group competitive harm or disadvantage.

21

22 2. Nothing in this act shall be construed to prescribe or impose  
23 corporate governance standards and internal procedures beyond that  
24 which is required under applicable State corporate law.  
25 Notwithstanding the foregoing, nothing in this act shall be  
26 construed to limit the commissioner's authority, or the rights or  
27 obligations of third parties, under applicable law, including, but not  
28 limited to, the authority under P.L.1993, c.236 (C.17:23-20 et seq.),  
29 section 5 of P.L.1970, c.22 (C.17:27A-5), and sections 7 and 8 of  
30 P.L.2014, c.81 (C.17:27A-5.1 and C.17:27A-5.2).

31

32 3. The requirements of this act shall apply to all insurers  
33 domiciled in this State, including licensed organized delivery  
34 systems and reciprocal insurance exchanges.

35

36 4. As used in this act:

37 "Commissioner" means the Commissioner of Banking and  
38 Insurance.

39 "Corporate governance annual disclosure" or "disclosure" means  
40 a confidential report filed by the insurer or insurance group made in  
41 accordance with the requirements of this act.

42 "Department" means the Department of Banking and Insurance.

43 "Insurance group" means those insurers and affiliates included  
44 within an insurance holding company system as defined in section 1  
45 of P.L.1970, c.22 (C.17:27A-1).

46 "Insurer" shall have the same meaning as set forth in section 1 of  
47 P.L.1970, c.22 (C.17:27A-1 et seq.), and shall include any insurer  
48 or entity subject to rehabilitation or liquidation pursuant to

1 P.L.1975, c.113 (C.17:30C-1 et seq.) and P.L.1992, c.65 (C.17B:32-  
2 31 et seq.), including licensed organized delivery systems and  
3 reciprocal insurance exchanges.

4 “NAIC” means the National Association of Insurance  
5 Commissioners.

6 “ORSA Summary Report” means the report filed in accordance  
7 with sections 46 through 56 of P.L.2014, c.81 (C.17:23-27 through  
8 37).

9  
10 5. a. An insurer, or the insurance group of which the insurer is  
11 a member, shall, no later than June 1 of each calendar year, submit  
12 to the commissioner a corporate governance annual disclosure that  
13 contains the information described in subsection b. of section 6 of  
14 this act. Notwithstanding any request from the commissioner made  
15 pursuant to subsection c. of this section, if the insurer is a member  
16 of an insurance group, the insurer shall submit the report required  
17 by this section to the commissioner of the lead state, or group-wide  
18 supervisor as defined by section 8 of P.L.2014, c.81 (C.17:27A-  
19 5.2), if applicable, for the insurance group, in accordance with the  
20 laws of that state, as determined by the procedures outlined in the  
21 most recent Financial Analysis Handbook adopted by the NAIC.

22 b. The disclosure shall include a signature of the insurer or  
23 insurance group’s chief executive officer or corporate secretary  
24 attesting to the best of that individual’s belief and knowledge that  
25 the insurer has implemented the corporate governance practices and  
26 that a copy of the disclosure has been provided to the insurer’s  
27 board of directors or the appropriate committee thereof.

28 c. An insurer not required to submit a disclosure under this  
29 section shall do so upon the commissioner’s request.

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

46 e. The review of the disclosure and any additional requests for  
47 information shall be made through the lead state, or group-wide  
48 supervisor as defined by section 8 of P.L.2014, c.81 (C.17:27A-

1 5.2), if applicable, as determined by the procedures within the most  
2 recent Financial Analysis Handbook adopted by the NAIC.

3 f. Insurers providing information substantially similar to the  
4 information required by this act in other documents provided to the  
5 commissioner, including proxy statements filed in conjunction with  
6 registration statements filed pursuant to section 3 of P.L. 1970, c.  
7 22 (C. 17:27A-3), known as "Form B filings," or other state or  
8 federal filings provided to this department shall not be required to  
9 duplicate that information in the disclosure, but shall only be  
10 required to cross reference the document in which the information  
11 is included.

12

13 6. a. The insurer or insurance group shall have discretion over  
14 the responses to the disclosure inquiries, provided the disclosure  
15 shall contain the material information necessary to permit the  
16 commissioner to gain an understanding of the insurer's or group's  
17 corporate governance structure, policies, and practices. The  
18 commissioner may request additional information that the  
19 commissioner deems material and necessary to provide the  
20 commissioner with a clear understanding of the corporate  
21 governance policies, the reporting or information system or controls  
22 implementing those policies.

23 b. Notwithstanding subsection a. of this section, the disclosure  
24 shall be prepared consistent with rules promulgated by the  
25 commissioner. Documentation and supporting information shall be  
26 maintained and made available upon examination or upon request of  
27 the commissioner.

28

29 7. a. Documents, materials or other information including the  
30 disclosure, in the possession or control of the department that are  
31 obtained by, created by or disclosed to the commissioner or any  
32 other person under this act, shall be recognized by this State as  
33 being proprietary and to contain trade secrets. All such documents,  
34 materials or other information shall be confidential by law and  
35 privileged, shall not be subject to disclosure by the commissioner  
36 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), shall not be subject  
37 to subpoena, and shall not be subject to discovery from the  
38 commissioner or admissible in evidence in any private civil action.  
39 However, the commissioner shall be authorized to use the  
40 documents, materials or other information in the furtherance of any  
41 regulatory or legal action brought as a part of the commissioner's  
42 official duties. The commissioner shall not otherwise make the  
43 documents, materials or other information public without the prior  
44 written consent of the insurer. Nothing in this section shall be  
45 construed to require written consent of the insurer before the  
46 commissioner may share or receive confidential documents,  
47 materials or other disclosure-related information pursuant to

1 subsection c. of this section to assist in the performance of the  
2 commissioner's regular duties.

3 b. Neither the commissioner nor any person who received  
4 documents, materials or other disclosure-related information,  
5 through examination or otherwise, while acting under the authority  
6 of the commissioner, or with whom those documents, materials or  
7 other information are shared pursuant to this act shall be subject to  
8 subpoena, permitted or required to testify in any private civil action  
9 concerning any confidential documents, materials, or information  
10 subject to subsection a. of this section.

11 c. In order to assist in the performance of the commissioner's  
12 regulatory duties, the commissioner may:

13 (1) upon request, share documents, materials or other  
14 disclosure-related information including the confidential and  
15 privileged documents, materials or information subject to  
16 subsection a. of this section, including proprietary and trade secret  
17 documents and materials. with other state, federal and international  
18 financial regulatory agencies, including members of any  
19 supervisory college as provided in section 7 of  
20 P.L. 2014, c. 81 (C. 17:27A-5.1), with the NAIC, and with third  
21 party consultants pursuant to section 8 of this act, provided that the  
22 recipient agrees in writing to maintain the confidentiality and  
23 privileged status of the disclosure-related documents, material or  
24 other information and has verified in writing the legal authority to  
25 maintain confidentiality; and

26 (2) receive documents, materials or other disclosure-related  
27 information, including otherwise confidential and privileged  
28 documents, materials or information, including proprietary and  
29 trade-secret information or documents, from regulatory officials of  
30 other state, federal and international financial regulatory agencies,  
31 including members of any supervisory college as provided in  
32 section 7 of P.L.2014, c. 81 (C. 17:27A-5.1), and from the NAIC,  
33 and shall maintain as confidential or privileged any documents,  
34 materials or information received with notice or the understanding  
35 that it is confidential or privileged under the laws of the jurisdiction  
36 that is the source of the document, material or information.

37 d. The sharing of information and documents by the  
38 commissioner pursuant to this act shall not constitute a delegation  
39 of regulatory authority or rulemaking, and the commissioner is  
40 solely responsible for the administration, execution and  
41 enforcement of the provisions of this act.

42 e. No waiver of any applicable privilege or claim of  
43 confidentiality in the documents, proprietary and trade-secret  
44 materials or other disclosure-related information shall occur as a  
45 result of disclosure of disclosure-related information or documents  
46 to the commissioner under this section or as a result of sharing as  
47 authorized in this act.

1       8. a. The commissioner 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 commissioner's staff as  
4 may be reasonably necessary to assist the commissioner in  
5 reviewing the disclosure and related information or the insurer's  
6 compliance with this act.

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

10      c. The NAIC and third-party consultants shall be subject to the  
11 same confidentiality standards and requirements as the  
12 commissioner.

13      d. As part of the retention process, a third-party consultant  
14 shall verify to the commissioner, with notice to the insurer, that it is  
15 free of a conflict of interest and that it has internal procedures in  
16 place to monitor compliance with a conflict and to comply with the  
17 confidentiality standards and requirements of this act.

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

23       (1) Specific procedures and protocols for maintaining the  
24 confidentiality and security of disclosure-related information shared  
25 with the NAIC or a third-party consultant pursuant to this act;

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

33       (3) A provision specifying that ownership of the disclosure-  
34 related information shared with the NAIC or a third-party  
35 consultant remains with the department and the NAIC's or third-  
36 party consultant's use of the information is subject to the direction  
37 of the commissioner;

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

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

46       (6) A requirement that the NAIC or a third-party consultant to  
47 consent to intervention by an insurer in any judicial or  
48 administrative action in which the NAIC or a third-party consultant

1 may be required to disclose confidential information about the  
2 insurer shared with the NAIC or a third-party consultant pursuant to  
3 this act.

4

5 9. Any insurer failing, without just cause, to timely file the  
6 disclosure as required in this act shall be required, after notice and  
7 hearing, to pay a penalty of up to \$5,000 for each day's delay, to be  
8 recovered by the commissioner.

9

10 10. The commissioner may promulgate regulations pursuant to  
11 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
12 1 et seq.) and issue such orders as shall be necessary to carry out the  
13 provisions of this act.

14

15 11. If any provision of this act, other than section 7, or the  
16 application thereof to any person or circumstance, is held invalid,  
17 such determination shall not affect the provisions or applications of  
18 this act which can be given effect without the invalid provision or  
19 application, and to that end the provisions of this act, with the  
20 exception of section 7, are severable.

21

22 12. The requirements of this act shall become effective  
23 immediately upon enactment. The first filing of the disclosure shall  
24 be in 2020.

25

26 13. This act shall take effect immediately and shall be  
27 retroactive to January 1, 2020.

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#### STATEMENT

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32 This bill requires an insurer or insurance group to submit an  
33 annual report to the Commissioner of Banking and Insurance  
34 summarizing its corporate governance structure, policies and  
35 practices.

36

37 No later than June 1 of each calendar year, insurers and insurer  
38 groups domiciled in New Jersey will be required to file a corporate  
39 governance annual disclosure that contains the material information  
40 necessary to permit the commissioner to gain an understanding of  
41 the insurer's or group's corporate governance structure, policies,  
42 and practices. Although the corporate governance annual disclosure  
43 will be prepared consistent with rules promulgated by the  
44 commissioner, the insurer or insurance group will retain discretion  
45 regarding the appropriate format for providing the information  
46 required. Nothing in the bill should be construed to prescribe or  
47 impose corporate governance standards and internal procedures.

48

The documents, materials or other information including the  
corporate governance annual disclosure will be confidential and

1 will not be subject to the open public records law, subpoena,  
2 discovery, and the information will not be admissible in evidence in  
3 any private civil action.

4 The commissioner may retain, at the insurer's expense, third-  
5 party consultants as may be reasonably necessary to assist the  
6 commissioner in reviewing the corporate governance annual  
7 disclosure or the insurer's compliance with the bill's provisions.

8 An insurer that fails, without just cause, to timely file the  
9 corporate governance annual disclosure as required, must pay, after  
10 notice and hearing, a penalty of up to \$5,000 for each day's delay.

11 The provisions of the bill, except for the confidentiality  
12 provisions, are severable if found to be invalid.

13 The Department of Banking and Insurance is required to have  
14 this legislation in place as part of its accreditation review by the  
15 National Association of Insurance Commissioners (NAIC). It is  
16 based on the NAIC Corporate Governance Annual Disclosure  
17 Model Act and must be enacted by January 1, 2020 for compliance  
18 with accreditation standards.