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## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Insurance
<b>Contact Person:</b>	Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-35	Corporate Governance Annual Disclosure
Rule Number	Rule Title
0780-01-35-.01	Authority.
0780-01-35-.02	Purpose.
0780-01-35-.03	Definitions.
0780-01-35-.04	Filing Procedures.
0780-01-35-.05	Contents of Corporate Governance Annual Disclosure.
0780-01-35-.06	Contents of Corporate Governance Annual Disclosure for Nonprofit and Qualified Insurers.
0780-01-35-.07	Severability.

Chapter 0780-01-35, Corporate Governance Annual Disclosure, is adopted as follows:

Chapter 0780-01-35  
Corporate Governance Annual Disclosure

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0780-01-35-.07 Severability

0780-01-35-.01 Authority.

This chapter is promulgated pursuant to the authority granted by T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.02 Purpose.

The purpose of this chapter is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the Commissioner to carry out the provisions of the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.03 Definitions.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Commerce & Insurance.
- (2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in T.C.A. Title 56, chapter 11, part 1.
- (3) "Insurer" shall have the same meaning as "insurance company" as set forth in § 56-1-102, 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.
- (4) "Senior Management" shall mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.04 Filing Procedures.

- (1) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Corporate Governance Annual Disclosure Act, 2018 Tenn. Pub. Acts Ch. 873, § 8, shall submit to the Commissioner a CGAD in accordance with the following:

- (a) All insurers or insurance groups, except those that fall within the scope of subparagraph (b), shall file a CGAD that contains the information described in Rule 0780-01-35-.05.
  - (b) An insurer or insurer group who meets the requirements of 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-906(c)), shall file a CGAD that contains the information described in Rule 0780-01-35-.06. For the purposes of this Rule, "nominal compensation" is defined as where 75% of the voting directors on the insurer or insurance group's Board receive direct compensation of \$10,000 or less per year and indirect compensation and benefits of \$50,000 or less per year, exclusive of per diem and lodging travel expenses.
- (2) The CGAD must include a signature of the insurer's or insurance group's CEO or corporate secretary attesting to the best of the individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors (hereinafter "Board") or the appropriate committee thereof.
  - (3) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.
  - (4) For the purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, 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:
    - (a) at the level at which the insurer's or insurance group's risk appetite is determined;
    - (b) 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
    - (c) at the level at which legal liability for the 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 the level of reporting.

- (5) Notwithstanding paragraph (1) of this rule, and as outlined in 2018 Tenn. Pub. Acts Ch. 873, § 8 (subsection 56-2-904), if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.
- (6) An insurer or insurance group may comply with this chapter by referencing other existing documents (e.g., ORSA summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in Rule 0780-01-35-.05 or Rule 0780-01-35-.06, as applicable. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed with or available to the Commissioner.
- (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 should so state.

0780-01-35-.05 Contents of Corporate Governance Annual Disclosure

- (1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.
- (2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
  - (a) The Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., the ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
  - (b) The duties of the Board and each of its significant committees and how they are governed (e.g. bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of CEO and Chairman of the Board within the organization.
- (3) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:
  - (a) How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.
  - (b) How an appropriate amount of independence is maintained on the Board and its significant committees.
  - (c) The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.
  - (d) How the insurer or insurance group identifies, nominates and elects members to the Board and its committees. The discussion should include, for example:
    1. Whether a nomination committee is in place to identify and select individuals for consideration;
    2. Whether term limits are placed on directors;
    3. How the election and re-election processes function; and
    4. Whether a Board diversity policy is in place and, if so, how it functions.
  - (e) 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).
- (4) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:
  - (a) Any processes or practices (i.e., 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:

1. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
  2. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
- (b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
1. Compliance with laws, rules, and regulations; and
  2. Proactive reporting of any illegal or unethical behavior.
- (c) 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 and/or reward excessive risk taking. Elements to be discussed may include, for example:
1. The Board's role in overseeing management compensation programs and practices;
  2. 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;
  3. How compensation programs are related to both company and individual performance over time;
  4. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
  5. 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
  6. 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 CEO and Senior Management succession.
- (5) The insurer or insurance group shall describe 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's business activities, including a discussion of:
- (a) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
  - (b) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks; and
  - (c) 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 may include, for example, the following critical risk areas of the insurer:

1. Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report filed pursuant to T.C.A. Title 56, Chapter 11, Part 2);
2. Actuarial function;
3. Investment decision-making processes;
4. Reinsurance decision-making processes;
5. Business strategy/finance decision-making processes;
6. Compliance function;
7. Financial reporting/internal auditing; and
8. Market conduct decision-making processes.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

0780-01-35-.06 Contents of Corporate Governance Annual Disclosure for Certain Nonprofit and Qualified Insurers

- (1) The CGAD should describe the insurer or insurance group's corporate governance framework and structure and include an overview and description of the Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occur and the role of the chairman of the Board within the organization. The CGAD description of the Board should include biographical information for each Board member.
- (2) The CGAD should include a narrative and description of the policies and practices of the Board, including discussion of the duties of any advisors utilized by the Board, and a description of the processes in place for the Board to evaluate its performance and the performance of its committees.
- (3) The CGAD should include a description of the interaction between the Board and senior management, which include:
  - (a) A description of the role of the CEO and other senior management that makes periodic reports to the Board;
  - (b) A description of how the Board reviews significant financial management decisions by senior management; and
  - (c) A description of how the Board provides periodic feedback and instruction to senior management.
- (4) The CGAD should include a description of the processes by which the Board ensures an appropriate amount of oversight to critical risk areas impacting the insurer's business activities, including a discussion of:
  - (a) Risk management processes;
  - (b) Actuarial information;
  - (c) Investment decision-making processes;
  - (d) Reinsurance decision-making processes;
  - (e) Business strategy;
  - (f) Compliance function;

- (g) Financial reporting/internal auditing; and
- (h) Market conduct decision-making processes.

0780-01-35-.07 Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

Authority: T.C.A. § 56-2-301 and 2018 Tenn. Pub. Acts Ch. 873, § 8.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 07/31/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 5/4/2018

Rulemaking Hearing(s) Conducted on: (add more dates). 7/10/2018



Date: 7/31/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 7/31/18

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-01-35

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter

8/17/2018  
Date

RECEIVED  
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Filed with the Department of State on: 8/20/18

Effective on: 11/18/18

Tre Hargett

Tre Hargett  
Secretary of State

## **Public Hearing Comments**

One comment was received from Benjamin Sanders, Executive Director of Government Affairs at Farm Bureau Insurance – Tennessee. Mr. Sanders praised the Department's efforts in working to ensure that these rules' disclosure requirements were fair and appropriate for all insurers of all sizes.

**RESPONSE:** The Department thanks all industry stakeholders and interested parties for their input on developing these rules.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rules affects small business.

These rules apply only to insurance companies licensed by the Tennessee Department of Commerce & Insurance. Some insurance companies, especially those licensed as county mutual insurance companies, see Tenn. Code Ann. §§ 56-22-101 through 56-22-120, are small businesses.

The CGAD filing requirements are designed to minimize the burden of additional regulatory reporting. To that end, items required in the CGAD report may be reported by referencing other filings made to the Department or other regulatory bodies without having to reproduce the same information. In this manner, where CGAD filing requirements do overlap or duplicate the reporting requirements of other state or federal government agencies, the company can merely cite to those previous filings.

The purpose of this rule is to give the Department a better understanding of the corporate governance makeup of a company and any significant changes from year to year. The CGAD filing requirements were designed to give insurance companies maximum flexibility in formatting their report.

These rules adopt the National Association of Insurance Commissioners (NAIC) Corporate Governance Annual Disclosure Model Regulation, and their adoption is required to maintain NAIC accreditation. These rules differ from the model regulation to further lessen the reporting burden on small and nonprofit insurers who only write insurance policies in Tennessee. The difference between these rules and the model regulation are that these rules reduce the regulatory burden on small businesses and nonprofits by simplifying their reporting requirements. The General Assembly directed the Department to make this distinction when it adopted 2018 Tenn. Public Acts Ch. 873, § 8 (subsection 56-2-906(c)).

Large multistate insurers are structured and run differently than community-based local insurers. These rules recognize that distinction and allow small insurers to complete the CGAD filing more easily while maintaining adherence to NAIC accreditation standards.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules establish the Corporate Governance Annual Disclosure (CGAD) filing procedures and identify the information insurance companies must file with the Department of Commerce and Insurance. Previously, the corporate governance of an insurer was only reviewed during an examination of an insurer once every five years. The CGAD is designed to give insurance examiners a clearer picture of an insurance corporate governance structure and a better understanding of any changes to a company's corporate governance that may occur between examination cycles. While this is a new regulatory filing requirement, the CGAD is designed to minimize the cost of compliance by allowing companies to reference information available in filings already filed with the Department or any other state or federal agency.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are required pursuant to the enactment of 2018 Tenn. Public Acts Ch. 873, § 8, the Corporate Governance Annual Disclosure Act. Promulgation of these rules is necessary for the Department to maintain its accreditation by the National Association of Insurance Commissioners (NAIC).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rulemaking will impact all insurance companies in Tennessee. Non-resident insurance companies will have to make a similar CGAD filing in their home state. The Department has not been advised of any affected insurer that urges rejection of this rule. Tennessee insurance companies are likely to urge adoption of this rule as its promulgation is necessary for the Department to maintain its NAIC accreditation. By maintaining our accreditation, Tennessee insurance companies are able to more effectively and efficiently operate in other states.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None known.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jade-Rice, Director of Insurance; Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.