

State of Wisconsin



2017 Assembly Bill 877

Date of enactment: **April 16, 2018**
Date of publication*: **April 17, 2018**

2017 WISCONSIN ACT 313

AN ACT to repeal 601.427; to amend 626.31 (1) (b); and to create 601.465 (1m) (d), 601.465 (2m) (e) to (i), 601.465 (3) (e), 610.80 and 645.31 (16) of the statutes; relating to: disclosures to the commissioner of insurance and other changes to the insurance laws, extending the time limit for emergency rule procedures, providing an exemption from emergency rule-making procedures, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 601.427 of the statutes is repealed.

SECTION 2. 601.465 (1m) (d) of the statutes is created to read:

601.465 (1m) (d) Biographical data reported under s. 611.54 (1) relating to directors or principal officers of a corporation.

SECTION 3. 601.465 (2m) (e) to (i) of the statutes are created to read:

601.465 (2m) (e) Privileged information is not subject to inspection or copying under s. 19.35 (1).

(f) Privileged information is not subject to subpoena or discovery and is not admissible as evidence in any private civil action.

(g) The commissioner may not be compelled to testify concerning privileged information in any private civil action.

(h) No person, while acting under the authority of the commissioner, may testify concerning privileged information in any private civil action.

(i) The privilege is not waived as a result of the commissioner sharing information as authorized under sub. (1m).

SECTION 4. 601.465 (3) (e) of the statutes is created to read:

601.465 (3) (e) All information protected under s. 610.80 (4), including the corporate governance annual disclosures and related information, which are subject only to the confidentiality provisions in s. 610.80 (4).

SECTION 5. 610.80 of the statutes is created to read:

610.80 Corporate governance annual disclosure.

(1) DEFINITIONS. In this section:

(a) "Insurance holding company system" has the meaning given in s. 622.03 (2).

(b) "Insurer" has the meaning given in s. 622.03 (3).

(c) "Lead state" has the meaning given in s. 622.03 (4).

(2) DISCLOSURE REQUIREMENT. (a) An insurer or insurance holding company system of which an insurer is a member shall, annually no later than June 1, submit to the commissioner a corporate governance annual disclosure that contains the information described in sub. (3). (3). If the insurer is a member of an insurance holding company system, the insurance holding company system shall submit the disclosure to the commissioner of the lead state in accordance with the laws of the lead state. Upon the commissioner's request, the insurer shall pro-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

vide a copy of the disclosure when this state is not the lead state.

(b) The commissioner may request additional information from an insurer or insurance holding company system that the commissioner determines is necessary for the commissioner to understand an insurer's or insurer member of an insurance holding company system's corporate governance policies and the reporting or information system or controls implementing the policies.

(c) With respect to an insurer member of an insurance holding company system, if the commissioner wishes to review the disclosure under par. (a) or make a request for additional information about the disclosure under par. (a), the commissioner shall request the disclosure or additional information through the lead state before seeking the information from the insurer member of the insurance holding company system.

(d) The insurer or insurance holding company system has discretion over responses to inquiries regarding the disclosure under this section, provided that the disclosure is consistent with rules established by the commissioner regarding the disclosure and contains the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurer member of an insurance holding company system's corporate governance structure, policies, and practices.

(e) Insurers providing information substantially similar to the information required by this section in other documents provided to the commissioner, including proxy statements or other state or federal filings provided to the commissioner, are not required to also provide that information in the corporate governance annual disclosure but are required to reference in the corporate governance annual disclosure the document in which the information is included.

(3) CONTENTS OF DISCLOSURE. The disclosure under sub. (2) (a) shall include all of the following:

(a) The signature of the chief executive officer or corporate secretary of the insurer or insurance holding company system attesting that, to the best of that individual's knowledge, the insurer has implemented the corporate governance practices described in the disclosure and that a copy of the disclosure was provided to the insurer's board of directors or an appropriate committee of the insurer's board of directors.

(b) An explanation of the level of corporate governance at which the disclosure provides its reporting, the criteria used to determine the level of reporting, and, if applicable, any change in the level of reporting from the previous disclosure. The insurer or insurance holding company system may provide information regarding corporate governance at the ultimate controlling parent, intermediate holding company, or individual legal entity level, depending upon how the insurer or insurance holding company system has structured its corporate governance. In determining at which level of reporting an

insurer or insurance holding company system will make its disclosure, the insurer or insurance holding company system shall consider at which level the insurer or insurance holding company system does each of the following:

1. Determines risk appetite.
2. Collectively oversees earnings, capital, liquidity, operations, and reputation.
3. Coordinates and exercises supervision over earnings, capital, liquidity, operations, and reputation.
4. Places liability for failure to perform corporate governance duties.

(4) CONFIDENTIALITY. (a) All of the following apply to documents, materials, and other information in the possession or control of the commissioner that are obtained by, created by, or disclosed to the commissioner or any other person under this section:

1. The documents, materials, and other information are considered proprietary and contain trade secrets.
2. The documents, materials, and other information are confidential and privileged.
3. The documents, materials, and other information are not open to inspection or copying under s. 19.35 (1).
4. The documents, materials, and other information are not subject to subpoena or discovery and are not admissible as evidence in a civil action.
5. The commissioner may use the documents, materials, and other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
6. The commissioner may not make the documents, materials, or other information public without first obtaining written consent of the insurer.

(b) Neither the commissioner nor any person who received documents, materials, or other information related to the corporate governance annual disclosure required under this section may testify or be required to testify in any private civil action regarding documents, materials, or other information related to the corporate governance annual disclosure required under this section.

(c) Notwithstanding par. (a), the commissioner may share, upon request, documents, materials, or other information related to the corporate governance annual disclosure required under this section with other state, federal, and international financial regulatory agencies if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified that it has the legal authority to maintain confidentiality. The commissioner may receive documents, materials, or other information related to similar corporate governance disclosures from other state, federal, and international financial regulatory agencies and shall maintain as confidential or privileged any documents, materials, or other information that is treated as confidential or privileged under the laws of the

jurisdiction that is the source of the documents, materials, or other information. The sharing of documents under this paragraph does not constitute a delegation of regulatory authority and does not act as a waiver of privilege.

(d) Notwithstanding par. (a), the commissioner may share documents, materials, or other information related to the corporate governance annual disclosure required under this section with 3rd-party contractors and the National Association of Insurance Commissioners if the contractor or the National Association of Insurance Commissioners enters into an agreement with the commissioner that provides for all of the following:

1. Procedures and protocols for maintaining the confidentiality and security of documents, materials, and other information shared under this section.

2. Procedures for sharing by the National Association of Insurance Commissioners only with other state regulators in which the insurance group has domiciled insurers and who receive the information confidentially. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to the corporate governance annual disclosure required to be filed under this section and has verified in writing the legal authority to maintain confidentiality.

3. A provision specifying that the ownership of documents, materials, or other information shared under this section remains with the commissioner and the use of the information is at the direction of the commissioner.

4. A provision that prohibits the National Association of Insurance Commissioners or 3rd-party contractor from storing information shared under this paragraph in a permanent database after the underlying analysis is complete.

5. A provision requiring the National Association of Insurance Commissioners or 3rd-party contractor to provide prompt notice to the commissioner and to the insurer regarding any subpoena, request for disclosure, or request for production of information shared under this paragraph.

6. A requirement that the National Association of Insurance Commissioners or the 3rd-party contractor consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or the 3rd-party contractor may be required to disclose confidential information about the insurer shared under this paragraph.

(5) CONSULTANTS. The commissioner may retain, at the insurer's or insurer member of an insurance holding company system's expense, consultants that the commissioner determines are necessary to assist the commissioner in reviewing documents, materials, or other information submitted under this section.

(6) CONSTRUCTION. This section may not be read to prescribe or impose any standards or procedures with respect to corporate governance.

(7) RULE MAKING. The commissioner may promulgate any rules necessary to carry out the purposes of this section.

(8) INITIAL FILING DEADLINE. Notwithstanding the June 1 deadline under sub. (2) (a), an insurer, or the insurance holding company system of which the insurer is a member, that is required to file a corporate governance annual disclosure under this section shall file its first corporate governance annual disclosure no later than 60 days after the date the final rules implementing this section are promulgated.

SECTION 6. 626.31 (1) (b) of the statutes is amended to read:

626.31 (1) (b) *Representation.* The rating committee shall consist of ~~40 members~~ an even number of members, up to 12 and no fewer than 8. Two members of the rating committee shall represent noninsurer, employer interests and shall be appointed by and serve at the pleasure of the governor. Of the remaining ~~8~~ members, ~~4~~ half of the members shall be chosen by stock insurers and ~~4~~ half of the members shall be chosen by mutual insurers. Both stock and mutual insurers shall be represented equally on all other committees, including the managing committee. Each member of a committee shall have one vote, with the commissioner deciding the matter in the event of a tie.

SECTION 7. 645.31 (16) of the statutes is created to read:

645.31 (16) That the insurer has corporate governance deficiencies such that the commissioner determines that the continued operation of the insurer may be hazardous to the insurer's policyholders, creditors, or the general public.

SECTION 8. Nonstatutory provisions.

(1) EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE. The commissioner of insurance may promulgate emergency rules under section 227.24 of the statutes implementing section 610.80 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until January 1, 2019, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the commissioner is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.