

**House File 455 - Introduced**

HOUSE FILE 455  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 140)

**A BILL FOR**

1 An Act requiring the submission of a corporate governance  
2 annual disclosure to the commissioner of insurance by  
3 certain insurers or insurance groups, and including  
4 penalties and applicability date provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 521H.1 Purpose and scope.

2 1. The purpose of this chapter is to do all of the  
3 following:

4 a. Provide the commissioner with a summary of an insurer's  
5 or insurance group's corporate governance structure, policies,  
6 and practices to permit the commissioner to gain and maintain  
7 an understanding of the insurer's or insurance group's  
8 corporate governance framework.

9 b. Outline the requirements for an insurer or insurance  
10 group to complete a corporate governance annual disclosure for  
11 submission to the commissioner.

12 c. Provide for the confidential treatment of the corporate  
13 governance annual disclosure and related information that  
14 contains confidential and sensitive information related to  
15 an insurer's or insurance group's internal operations and  
16 proprietary and trade secret information which, if made  
17 public, could potentially cause the insurer or insurance group  
18 competitive harm or disadvantage.

19 2. Nothing in this chapter shall be construed to prescribe  
20 or impose corporate governance standards or internal procedures  
21 beyond those which are required under applicable state  
22 corporate law. In addition, nothing in this chapter shall be  
23 construed to limit the commissioner's authority under chapter  
24 507, or the rights or obligations of third parties thereunder.

25 3. The requirements of this chapter shall apply to all  
26 insurers domiciled in this state.

27 Sec. 2. NEW SECTION. 521H.2 Definitions.

28 1. "Commissioner" means the commissioner of insurance.

29 2. "Corporate governance annual disclosure" or "disclosure"  
30 means a confidential report filed by an insurer or insurance  
31 group pursuant to the requirements of this chapter.

32 3. "Insurance group" means those insurers and affiliates  
33 included within an insurance holding company system.

34 4. "Insurance holding company system" means the same as  
35 defined in section 521A.1.

1 5. "Insurer" means the same as defined in section 521A.1.

2 Sec. 3. NEW SECTION. 521H.3 Corporate governance annual  
3 disclosure requirement.

4 1. An insurer, or the insurance group of which the insurer  
5 is a member, shall, no later than June 1 of each calendar  
6 year, submit to the commissioner a corporate governance annual  
7 disclosure that contains the information described in section  
8 521H.5. Notwithstanding any request from the commissioner  
9 made pursuant to subsection 2, if an insurer is a member of  
10 an insurance group, the insurer shall submit the disclosure  
11 required by this section to the commissioner of insurance of  
12 the lead state of the insurance group of which the insurer is  
13 a member, in accordance with the laws of the lead state, as  
14 determined by procedures contained in the financial analysis  
15 handbook adopted by the national association of insurance  
16 commissioners.

17 2. An insurer or insurance group that is not required to  
18 submit a corporate governance annual disclosure under this  
19 section shall do so upon the commissioner's request.

20 3. Review of the corporate governance annual disclosure and  
21 any additional requests for information shall be made through  
22 the lead state as determined by procedures contained in the  
23 financial analysis handbook adopted by the national association  
24 of insurance commissioners.

25 4. Insurers or insurance groups that provide information  
26 substantially similar to the information required by this  
27 chapter in other documents provided to the commissioner,  
28 including proxy statements filed in conjunction with the form B  
29 insurance holding company system annual registration statement  
30 requirements as provided in section 521A.4, or other state or  
31 federal filings provided to the commissioner, are not required  
32 to duplicate that information in the corporate governance  
33 annual disclosure, but shall cross reference the document in  
34 which the information is included.

35 Sec. 4. NEW SECTION. 521H.4 Rules.

1 The commissioner shall adopt rules pursuant to chapter 17A  
2 to administer this chapter.

3 Sec. 5. NEW SECTION. 521H.5 **Contents of corporate**  
4 **governance annual disclosure.**

5 1. An insurer, or the insurance group of which the insurer  
6 is a member, shall have discretion over the responses to  
7 corporate governance annual disclosure inquiries, provided  
8 the corporate governance annual disclosure contains the  
9 material information necessary to permit the commissioner to  
10 gain an understanding of the insurer's or insurance group's  
11 corporate governance structure, policies, and practices. The  
12 commissioner may request additional information that the  
13 commissioner deems material and necessary to provide a clear  
14 understanding of the insurer's or insurance group's corporate  
15 governance policies, reporting or information systems, or the  
16 controls implementing such policies or systems.

17 2. The corporate governance annual disclosure shall be  
18 prepared consistent with rules adopted by the commissioner  
19 pursuant to chapter 17A. Documentation and supporting  
20 information prepared pursuant to this chapter and related rules  
21 shall be maintained and made available upon examination by or  
22 upon request of the commissioner.

23 3. The corporate governance annual disclosure shall include  
24 the signature of the insurer's or insurance group's chief  
25 executive officer or corporate secretary, attesting that to the  
26 best of that individual's belief and knowledge the insurer or  
27 the insurance group has implemented the corporate governance  
28 practices described in the disclosure and that a copy of the  
29 disclosure has been provided to the insurer's or the insurance  
30 group's board of directors or the appropriate committee of the  
31 board.

32 4. *a.* For purposes of completing a corporate governance  
33 annual disclosure, an insurer or insurance group may report  
34 information regarding corporate governance at the ultimate  
35 controlling parent level, at an intermediate holding company

1 level, or at the individual legal entity level, depending upon  
2 how the insurer or insurance group has structured its system  
3 of corporate governance.

4     *b.* An insurer or insurance group is encouraged to report  
5 information in the corporate governance annual disclosure at  
6 the level at which the insurer's or insurance group's risk  
7 tolerance is determined; at the level at which the earnings,  
8 capital, liquidity, operations, and reputation of the insurer  
9 or insurance group are overseen collectively and the level  
10 at which the supervision of these factors is coordinated and  
11 exercised; or at the level at which legal liability for failure  
12 of general corporate governance duties would be placed. If an  
13 insurer or insurance group determines the level of reporting  
14 based upon the criteria set forth in this paragraph, the  
15 insurer or insurance group shall indicate which of the three  
16 criteria was used to determine the level of reporting and  
17 explain any subsequent changes that are made in the level of  
18 reporting.

19     Sec. 6. NEW SECTION. 521H.6 Confidentiality.

20     1. Documents, materials, or other information, including  
21 a corporate governance annual disclosure, in the possession  
22 or control of the insurance division of the department of  
23 commerce, that is obtained by, created by, or disclosed to the  
24 commissioner or to any other person pursuant to this chapter,  
25 is recognized in this state as being proprietary and containing  
26 trade secrets. All such documents, materials, or other  
27 information, including the disclosure, shall be confidential  
28 and privileged, shall not be subject to chapter 22, shall  
29 be considered confidential under chapter 507, shall not be  
30 subject to subpoena, and shall not be subject to discovery  
31 or admissible in evidence in any private civil action.  
32 However, the commissioner is authorized to use such documents,  
33 materials, or other information, including the disclosure, in  
34 the furtherance of any regulatory or legal action brought as a  
35 part of the commissioner's official duties. The commissioner

1 shall not otherwise make the documents, materials, or other  
2 information, including the disclosure, public without the  
3 prior written consent of the insurer or insurance group that  
4 provided the documents, materials, or other information,  
5 including the disclosure. Nothing in this section shall  
6 be construed to require written consent of the insurer or  
7 insurance group before the commissioner may share or receive  
8 confidential documents, materials, or other information related  
9 to governance of an insurer or insurance group pursuant to  
10 subsection 3 to assist in the performance of the commissioner's  
11 regular duties.

12 2. The commissioner or any other person who received  
13 documents, materials, or other information related to corporate  
14 governance, through examination or otherwise, while acting  
15 under the authority of the commissioner or with whom such  
16 documents, materials, or other information is shared pursuant  
17 to this chapter, shall not be permitted or required to testify  
18 in any private civil action concerning any confidential  
19 documents, materials, or information, including disclosures,  
20 subject to subsection 1.

21 3. In order to assist in the performance of the  
22 commissioner's regulatory duties, the commissioner may do any  
23 of the following:

24 a. Upon request, share documents, materials, or corporate  
25 governance annual disclosure-related information, including  
26 the confidential and privileged documents, materials, or  
27 information subject to subsection 1, and including proprietary  
28 and trade secret documents, materials, or information,  
29 with other state, federal, or international financial  
30 regulatory agencies, including members of any supervisory  
31 college as defined in section 521A.1, with the national  
32 association of insurance commissioners, or with any third-party  
33 consultants designated by the commissioner pursuant to  
34 subsection 4, provided that the recipient agrees in writing  
35 to maintain the confidentiality and privileged status of the

1 documents, materials, or other corporate governance annual  
2 disclosure-related information and verifies in writing the  
3 legal authority to maintain such confidentiality and privilege.

4     *b.* Receive documents, materials, or other corporate  
5 governance annual disclosure-related information, including  
6 otherwise confidential and privileged documents, materials,  
7 or information, and proprietary and trade secret documents,  
8 materials, and information, from regulatory officials of  
9 other state, federal, or international regulatory agencies,  
10 including members of any supervisory college as defined in  
11 section 521A.1, and from the national association of insurance  
12 commissioners, and shall maintain as confidential or privileged  
13 any documents, materials, or information received with notice  
14 or the understanding that the documents, materials, or other  
15 information received is confidential and privileged under the  
16 laws of the jurisdiction that is the source of the documents,  
17 materials, or information.

18     4. In order to assist in the performance of the  
19 commissioner's regulatory duties under this chapter the  
20 commissioner may retain, at the insurer's or insurance  
21 group's expense, third-party consultants, including attorneys,  
22 actuaries, accountants, and other experts not otherwise a part  
23 of the commissioner's staff, as may be reasonably necessary to  
24 assist the commissioner in reviewing a disclosure and related  
25 information submitted under this chapter or ensuring compliance  
26 of an insurer or insurance group with the requirements of this  
27 chapter.

28     *a.* Any persons retained under this subsection shall be under  
29 the direction and control of the commissioner and shall act in  
30 a purely advisory capacity.

31     *b.* As part of the retention process, a third-party  
32 consultant shall verify to the commissioner, with notice to  
33 the insurer, that the third-party consultant is free of any  
34 conflict of interest and that the third-party consultant  
35 has internal procedures in place to monitor compliance

1 if a conflict arises and to ensure compliance with the  
2 confidentiality standards and requirements of this chapter.

3 5. A written agreement entered into by the commissioner  
4 with the national association of insurance commissioners or  
5 with a third-party consultant governing the sharing and use of  
6 information provided pursuant to this chapter shall expressly  
7 require the written consent of the insurer prior to making  
8 public information provided under this chapter and shall  
9 contain a provision that does each of the following:

10 a. Expressly provides that the national association of  
11 insurance commissioners and any third-party consultants  
12 retained are subject to the same confidentiality standards  
13 and requirements governing the sharing and use of information  
14 provided pursuant to this chapter as the commissioner.

15 b. Specifies procedures and protocols regarding the  
16 confidentiality and security of information related to a  
17 corporate governance annual disclosure that is shared with  
18 the national association of insurance commissioners or with a  
19 third-party consultant pursuant to this chapter and specifies  
20 procedures and protocols for sharing information by the  
21 national association of insurance commissioners only with other  
22 state insurance regulators from states in which an insurance  
23 group has domiciled insurers. The agreement shall require  
24 that the recipient of such information must agree in writing  
25 to maintain the confidentiality and privileged status of the  
26 documents, materials, or other information related to the  
27 corporate governance annual disclosure and verify in writing  
28 the legal authority to maintain confidentiality and privilege.

29 c. Specifies that ownership of information shared with  
30 the national association of insurance commissioners or with  
31 a third-party consultant pursuant to this chapter remains  
32 with the commissioner and that use of the information by  
33 the national association of insurance commissioners or by a  
34 third-party consultant is subject to the direction of the  
35 commissioner.



1     *d.* Prohibits the national association of insurance  
2 commissioners or a third-party consultant from storing the  
3 information shared pursuant to this chapter in a permanent  
4 database after the underlying analysis is completed.

5     *e.* Requires the national association of insurance  
6 commissioners or a third-party consultant to give prompt notice  
7 to the commissioner and to an insurer or insurance group whose  
8 confidential information is in the possession of the national  
9 association of insurance commissioners or a third-party  
10 consultant pursuant to this chapter, that the information is  
11 subject to a request or subpoena to the national association  
12 of insurance commissioners or the third-party consultant for  
13 disclosure or production.

14     *f.* Requires the national association of insurance  
15 commissioners or a third-party consultant to consent to  
16 intervention by an insurer or insurance group in any judicial  
17 or administrative action in which the national association of  
18 insurance commissioners or the third-party consultant may be  
19 required to disclose confidential information about the insurer  
20 or insurance group that was shared with the association or  
21 consultant pursuant to this chapter.

22     6. The sharing of documents, materials, or information by  
23 the commissioner pursuant to this chapter shall not constitute  
24 a delegation of regulatory authority or rulemaking, and the  
25 commissioner is solely responsible for the administration,  
26 execution, and enforcement of the provisions of this chapter.

27     7. No waiver of any applicable privilege or claim of  
28 confidentiality in the documents, proprietary and trade  
29 secret materials, or other corporate governance annual  
30 disclosure-related information shall occur as a result of the  
31 disclosure of such documents, materials, or information to the  
32 commissioner under this section or as a result of sharing those  
33 documents, materials, or information as authorized in this  
34 chapter.

35     Sec. 7. NEW SECTION.   **521H.7 Penalties.**

1 1. If an insurer or insurance group fails, without just  
2 cause, to timely file a corporate governance annual disclosure  
3 as required in this chapter, the commissioner shall, after  
4 notice and hearing, impose a penalty of five hundred dollars  
5 for each day's delay. The penalty shall be collected by the  
6 commissioner and paid to the treasurer of state for deposit  
7 as provided in section 505.7. The maximum penalty which may  
8 be imposed under this section for any single failure is five  
9 thousand dollars.

10 2. The commissioner may reduce the penalty to be imposed if  
11 the insurer or insurance group demonstrates to the commissioner  
12 that imposition of the penalty would constitute a financial  
13 hardship to the insurer or insurance group.

14 Sec. 8. NEW SECTION. 521H.8 Severability.

15 If any provision of this chapter other than section  
16 521H.6, or the application of this chapter to any person or  
17 circumstance, is held invalid, such holding shall not affect  
18 the provisions or applications of this chapter which can be  
19 given effect without the invalid provision or application, and  
20 to that end the provisions of this chapter, with the exception  
21 of section 521H.6, are severable.

22 Sec. 9. APPLICABILITY. The provisions of this Act are  
23 applicable beginning January 1, 2016, and the first filings of  
24 corporate governance annual disclosures shall be made pursuant  
25 to chapter 521H, as enacted in this Act, in 2016.

26 EXPLANATION

27 The inclusion of this explanation does not constitute agreement with  
28 the explanation's substance by the members of the general assembly.

29 This bill creates new Code chapter 521H which requires  
30 certain insurers domiciled in the state, or the insurance group  
31 of which such an insurer is a member, to file a corporate  
32 governance annual disclosure with the commissioner of  
33 insurance. The purpose of the new Code chapter's requirements  
34 is to provide the commissioner with a yearly summary of an  
35 insurer's or insurance group's governance structure, policies,

1 and practices to permit the commissioner to understand the  
2 insurer's or insurance group's corporate governance framework.

3 Beginning in 2016, an insurer or insurance group is  
4 required to submit by June 1, annually, a corporate governance  
5 annual disclosure to the commissioner that contains material  
6 information necessary to permit the commissioner to gain an  
7 understanding of the insurer's or insurance group's corporate  
8 governance structure, policies, and practices. The disclosure  
9 must be signed by the insurer's or insurance group's chief  
10 executive officer or secretary attesting that the corporate  
11 practices described in the disclosure have been implemented  
12 and that a copy of the disclosure has been provided to the  
13 insurer's or insurance group's board of directors or the  
14 appropriate committee of the board. If an insurer is a member  
15 of an insurance group, the insurer shall submit the disclosure  
16 to the commissioner of insurance of the lead state of the  
17 insurance group as determined by procedures contained in the  
18 financial analysis handbook adopted by the national association  
19 of insurance commissioners.

20 For purposes of the disclosure, the insurer or insurance  
21 group may report information regarding corporate governance  
22 at the ultimate parent controlling level, an intermediate  
23 holding company level, or at the individual legal entity  
24 level depending on how its system of corporate governance is  
25 structured. The insurer or insurance group is encouraged to  
26 make its disclosure at the level at which its risk tolerance  
27 is determined; at the level at which its earnings, capital,  
28 liquidity, operations, and reputation are overseen collectively  
29 and the level at which the supervision of these factors is  
30 coordinated and exercised; or at the level at which legal  
31 liability for failure of general corporate governance duties  
32 would be placed, and to indicate which of these factors  
33 were used to determine the level of reporting, including any  
34 subsequent changes.

35 The commissioner is directed to adopt rules to administer

1 new Code chapter 521H.

2 Documents, materials, or other information, including a  
3 corporate governance annual disclosure, in the possession or  
4 control of the insurance division of the department of commerce  
5 or any other person pursuant to the bill that is obtained by,  
6 created by, or disclosed to the commissioner or to any other  
7 person pursuant to the bill, is recognized as being proprietary  
8 and containing trade secrets. Such documents, materials, or  
9 other information, including the disclosure, is confidential,  
10 is not subject to Code chapter 22 (open records), shall be  
11 considered confidential under Code chapter 507 (examination of  
12 insurance companies), shall not be subject to subpoena, and  
13 shall not be subject to discovery or admissible in evidence in  
14 any private civil action. The commissioner is authorized to  
15 use such information in the furtherance of any regulatory or  
16 legal action brought as part of the commissioner's official  
17 duties. The commissioner shall not otherwise make such  
18 information public without the prior written consent of  
19 the insurer or insurance group. The commissioner or any  
20 other person with access to such information shall not be  
21 permitted or required to testify in any civil action concerning  
22 confidential information.

23 In performing regulatory duties, the commissioner may  
24 share confidential and privileged information with specified  
25 regulatory and other entities including certain third-party  
26 consultants, and may receive such information from specified  
27 regulatory and other entities.

28 In order to assist in the performance of the commissioner's  
29 regulatory duties, the commissioner may retain, at the  
30 insurer's or insurance group's expense, third-party  
31 consultants, including attorneys, actuaries, accountants, and  
32 other experts not otherwise part of the commissioner's staff,  
33 as necessary to assist in reviewing a disclosure and related  
34 information or ensuring compliance with the requirements of  
35 the new Code chapter. Third-party consultants retained are

1 under the direction and control of the commissioner and act  
2 in an advisory capacity only. Such third-party consultants  
3 must verify that they are free of any conflict of interest  
4 and that they have internal procedures in place to monitor  
5 compliance if there is a conflict and to ensure compliance with  
6 the confidentiality standards and requirements of the new Code  
7 chapter.

8 A written agreement entered into by the commissioner with  
9 the national association of insurance commissioners or with  
10 a third-party consultant that governs the sharing and use of  
11 information provided pursuant to new Code chapter 521H shall  
12 expressly require the written consent of the insurer prior to  
13 making information provided under the new Code chapter public.  
14 The agreement must specify that those parties are subject to  
15 the same confidentiality standards and requirements governing  
16 the sharing and use of information as the commissioner; specify  
17 procedures and protocols for the confidentiality and security  
18 of information shared and require that the recipient of such  
19 information agree in writing to maintain the confidentiality  
20 and privileged status of the information and verify the  
21 legal authority to do so; specify that ownership of shared  
22 information remains with the commissioner, who directs its  
23 use; prohibit storage of the information in a permanent  
24 database after analysis is complete; require prompt notice to  
25 the commissioner and to an insurer or insurance group if the  
26 insurer's or insurance group's information is subject to a  
27 request or subpoena for disclosure or production; and require  
28 that an insurer or insurance group be allowed to intervene in  
29 any judicial or administrative action in which the national  
30 association of insurance commissioners or a third-party  
31 consultant may be required to disclose confidential information  
32 that was shared pursuant to the new Code chapter.

33 The sharing of information pursuant to new Code chapter 521H  
34 does not constitute a delegation of regulatory authority or  
35 rulemaking by the commissioner, or a waiver of any applicable

1 privilege or claim of confidentiality.

2 If an insurer or insurance group fails, without just cause  
3 to timely file a corporate governance annual disclosure as  
4 required in new Code chapter 521H, the commissioner shall,  
5 after notice and hearing, impose a penalty of \$500 for each  
6 day's delay, up to a maximum penalty of \$5,000 for any single  
7 failure to file. The penalties collected by the commissioner  
8 are to be paid to the treasurer of state for deposit in the  
9 department of commerce revolving fund as provided in Code  
10 section 505.7. The commissioner may reduce the penalty if the  
11 insurer or insurance group demonstrates that imposition of the  
12 penalty would constitute a financial hardship to the insurer  
13 or insurance group.

14 The provisions of the new Code chapter are severable,  
15 with the exception of Code section 521H.6, relating to  
16 confidentiality, in the event that application of the Code  
17 chapter to any person or circumstance is held to be invalid.

18 New Code chapter 521H is applicable beginning on January 1,  
19 2016.