



# Senate

General Assembly

**File No. 453**

February Session, 2016

Substitute Senate Bill No. 436

*Senate, April 4, 2016*

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING INSURER CORPORATE GOVERNANCE  
ANNUAL DISCLOSURES AND THE REGULATION OF RISK  
RETENTION GROUPS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2017*) (a) As used in this  
2 section:

3 (1) "Board" means the board of directors of an insurer or insurance  
4 group;

5 (2) "CGAD" or "corporate governance annual disclosure" means a  
6 confidential report filed by an insurer or insurance group in  
7 accordance with the provisions of this section;

8 (3) "Insurance group" has the same meaning as provided in section  
9 38a-142 of the general statutes;

10 (4) "Insurer" means any person or combination of persons doing any  
11 kind or form of insurance business, including a fraternal benefit

12 society, as described in chapter 700d of the general statutes, and a  
13 health care center, as defined in section 38a-175 of the general statutes,  
14 and includes a receiver of any insurer when the context reasonably  
15 permits. "Insurer" does not include agencies, authorities or  
16 instrumentalities of the United States, its possessions and territories,  
17 the Commonwealth of Puerto Rico, the District of Columbia, or a state  
18 or political subdivision of a state;

19 (5) "NAIC" means the National Association of Insurance  
20 Commissioners;

21 (6) "ORSA Summary Report" has the same meaning as provided in  
22 section 38a-142 of the general statutes; and

23 (7) "Senior management" means any corporate officer of an insurer  
24 or insurance group responsible for reporting information to the board  
25 at regular intervals or providing information to shareholders or  
26 regulators, and includes, but is not limited to, a chief executive officer,  
27 chief financial officer, chief operations officer, chief procurement  
28 officer, chief legal officer, chief information officer, chief technology  
29 officer, chief revenue officer and chief visionary officer.

30 (b) (1) Not later than June 1, 2017, and annually thereafter, each  
31 domestic insurer or the insurance group of which such insurer is a  
32 member shall submit to the Insurance Commissioner a CGAD that  
33 contains the information required under subsection (c) of this section,  
34 except that if the insurer is a member of an insurance group, such  
35 insurer shall submit the CGAD to the lead state commissioner, as  
36 determined by the procedures in NAIC's applicable financial analysis  
37 handbook, of the insurance group of which such insurer is a member,  
38 provided such insurance group shall provide a copy of the CGAD  
39 upon request to the chief insurance regulatory official of any state in  
40 which such insurance group has a domestic insurer.

41 (2) Each year after the initial submission of the CGAD, such insurer  
42 or insurance group shall submit an amended version of the previous  
43 year's CGAD that indicates where changes have been made. If no

44 changes were made, such submission shall so state.

45 (c) Each CGAD shall contain the following information:

46 (1) A description of the insurer's or insurance group's corporate  
47 governance framework and structure, including (A) (i) its board and  
48 each significant committee thereof that is responsible for oversight of  
49 the insurer or insurance group and the level at which such oversight  
50 occurs, such as the ultimate control level, an intermediate holding  
51 company level or an individual legal entity level, and (ii) a description  
52 and discussion of its rationale for the current board size and structure,  
53 and (B) the duties of the board and such committees, the method by  
54 which each is governed, such as through bylaws, a charter or informal  
55 mandates, and a description of how the board's leadership is  
56 structured, including a discussion of the roles of the chief executive  
57 officer and the chairman of the board within the organization;

58 (2) A description of the policies and practices of the board and each  
59 significant committee thereof, including a discussion of (A) how the  
60 qualifications, expertise and experience of each board member meet  
61 the needs of the insurer or insurance group, (B) how the insurer or  
62 insurance group ensures an appropriate amount of independence is  
63 maintained on the board and such committees, (C) the number of  
64 meetings held by the board and such committees during the previous  
65 year and information on board member attendance, and (D) how the  
66 insurer or insurance group identifies, nominates and elects members to  
67 the board and such committees, including (i) whether a nomination  
68 committee is in place to identify and select individuals for  
69 consideration, (ii) whether term limits are placed on board members,  
70 (iii) how the election and reelection processes function, and (iv)  
71 whether a board diversity policy is in place and if so, how it functions;

72 (3) A description of the board's processes to evaluate its  
73 performance and the performance of its committees and any recent  
74 measures taken to improve performance, including any board or  
75 committee training programs that have been put in place;

76 (4) A description of the insurer's or insurance group's policies and  
77 practices for directing senior management, including (A) any processes  
78 or practices, such as suitability standards, to determine whether  
79 officers and key individuals in control functions have the appropriate  
80 background, experience and integrity to fulfill their roles, including (i)  
81 identification of specific positions for which suitability standards have  
82 been developed and a description of the standards applied, and (ii) the  
83 standards and procedures to monitor and evaluate an officer's or key  
84 individual's suitability and any changes in an officer's or key  
85 individual's suitability in the previous year as a result of applying such  
86 standards or procedures, (B) its code of business conduct and ethics,  
87 including a discussion of its compliance with laws, rules and  
88 regulations and its proactive reporting of any illegal or unethical  
89 conduct, (C) its senior management succession plans, and (D) its  
90 processes for performance evaluation, compensation and corrective  
91 action, to ensure effective senior management throughout the  
92 organization, including a description of the general objectives of its  
93 significant compensation programs and what such programs are  
94 designed to reward. The description under this subdivision shall  
95 contain sufficient detail to allow the commissioner to understand how  
96 the insurer or insurance group ensures that such compensation  
97 programs do not encourage or reward excessive risk-taking, and may  
98 include (i) the board's role in overseeing management compensation  
99 programs and practices, (ii) the elements of compensation awarded in  
100 a compensation program and how the insurer or insurance group  
101 determines and calculates the amount of each element of  
102 compensation paid, (iii) how the insurer's or insurance group's  
103 compensation programs are related to both organizational and  
104 individual performance over time, (iv) whether the insurer's or  
105 insurance group's compensation programs include risk adjustments  
106 and how such adjustments are incorporated into its employee  
107 compensation programs at different levels, (v) any clawback  
108 provisions built into the insurer's or insurance group's compensation  
109 programs to recover awards or payments if the performance measures  
110 upon which such awards or payments were based are restated or

111 otherwise adjusted, and (vi) any other factors relevant to  
112 understanding how the insurer or insurance group monitors its  
113 compensation programs to determine whether its risk management  
114 objectives are met by incentivizing its employees.

115 (5) A description of the insurer's or insurance group's processes by  
116 which the board, each significant committee thereof and senior  
117 management ensure an appropriate amount of oversight of the critical  
118 risk areas impacting the insurer's or insurance group's business  
119 activities, including a discussion of (A) how oversight and  
120 management responsibilities are delegated between the board, such  
121 committees and senior management, (B) how the board is kept  
122 informed of the insurer's or insurance group's strategic plans, the  
123 associated risks and the steps senior management takes or has taken to  
124 monitor and manage such risks, and (C) how reporting responsibilities  
125 are organized for each critical risk area. The description under  
126 subparagraph (C) of this subdivision shall contain sufficient detail to  
127 allow the commissioner to understand the frequency at which  
128 information on each critical risk area is reported to and reviewed by  
129 the board and senior management, and may include the following  
130 critical risk areas: (i) Risk management processes. An insurer or  
131 insurance group that is required to file an ORSA Summary Report  
132 pursuant to section 38a-142 of the general statutes may refer to such  
133 report; (ii) actuarial function; (iii) investment decision-making  
134 processes; (iv) reinsurance decision-making processes; (v) business  
135 strategy and financial decision-making processes; (vi) compliance  
136 function; (vii) financial reporting and internal auditing; and (viii)  
137 market conduct decision-making processes.

138 (d) (1) For the purposes of completing the CGAD, the insurer or  
139 insurance group may provide the required information at the ultimate  
140 control level, an intermediate holding company level or an individual  
141 legal entity level, depending on the structure of such insurer's or  
142 insurance group's corporate governance system. Such insurer or  
143 insurance group may report information for the CGAD at the level at  
144 which (A) such insurer's or insurance group's risk appetite is

145 determined, (B) such insurer's or insurance group's earnings, capital,  
146 liquidity, operations and reputation are overseen collectively and the  
147 supervision of such factors are coordinated and exercised, or (C) legal  
148 liability would be placed for such insurer's or insurance group's failure  
149 to comply with its corporate governance duties. An insurer or  
150 insurance group that determines its level of CGAD reporting based on  
151 the criteria specified in this subdivision shall indicate in the CGAD  
152 which of the three criteria was used to determine its level of reporting  
153 and explain any subsequent changes in its level of reporting.

154 (2) The insurer or insurance group may utilize other documents  
155 such as ORSA Summary Reports, Holding Company Form B or F  
156 filings, Securities and Exchange Commission proxy statements or  
157 foreign regulatory required filings, that furnish information  
158 comparable to that required under subsection (c) of this section. The  
159 insurer or insurance group shall attach such other documents to the  
160 CGAD and clearly reference the applicable information within the  
161 CGAD that such other documents are intended to supply.

162 (3) The insurer or insurance group shall have discretion over the  
163 information it provides in a CGAD, provided such CGAD is consistent  
164 with subsection (c) of this section and contains the material  
165 information necessary to allow the commissioner to understand the  
166 insurer's or insurance group's corporate governance structure, policies  
167 and practices. The insurer or insurance group shall be as descriptive as  
168 possible in completing a CGAD and shall include attachments or  
169 document examples that such insurer or insurance group uses in its  
170 governance process. The commissioner may request additional  
171 information the commissioner deems material and necessary to  
172 understand the insurer's or insurance group's corporate governing  
173 policies, reporting or information system or controls over such policies  
174 or systems. The insurer or insurance group shall maintain any CGAD-  
175 related documents and supporting information and make such  
176 documents and information available to the commissioner upon  
177 request.

178 (4) Each CGAD shall be signed by the chief executive officer or  
179 corporate secretary of the insurer or insurance group, attesting that to  
180 the best of such individual's belief and knowledge, such insurer or  
181 insurance group has implemented the corporate governance practices  
182 described in the CGAD and that a copy of such CGAD has been  
183 provided to the insurer's or insurance group's board or appropriate  
184 committee thereof.

185 (e) (1) All documents, materials or other information, including the  
186 CGAD, in the possession or control of the Insurance Department that  
187 are obtained by, created by or disclosed to the commissioner or any  
188 other person pursuant to this section shall be confidential by law and  
189 privileged, shall not be subject to disclosure under section 1-210 of the  
190 general statutes, shall not be subject to subpoena and shall not be  
191 subject to discovery or admissible in evidence in any civil action in this  
192 state. The commissioner may use such documents, materials or  
193 information in the furtherance of any regulatory or legal action  
194 brought as a part of the commissioner's official duties. The  
195 commissioner shall not otherwise make such documents, materials or  
196 other information public without the prior written consent of the  
197 insurer or insurance group.

198 (2) Neither the commissioner nor any person who, while acting  
199 under the authority of the commissioner, obtained or received CGAD-  
200 related documents, materials or other information, or to whom such  
201 documents, materials or other information were disclosed, shall be  
202 permitted or required to testify in any civil action in this state  
203 concerning any such documents, materials or information.

204 (3) To assist the commissioner in the performance of the  
205 commissioner's regulatory duties, the commissioner:

206 (A) May share upon request CGAD-related documents, materials or  
207 other information, including documents, materials or information  
208 deemed confidential and privileged or not disclosable pursuant to this  
209 subsection, with (i) other state, federal and international financial  
210 regulatory officials, including members of a supervisory college as

211 described in section 38a-135 of the general statutes, (ii) NAIC, and (iii)  
212 any third-party consultants engaged by the commissioner pursuant to  
213 subsection (f) of this section, provided the recipient of any such  
214 documents, materials or other information agrees, in writing, to  
215 maintain the confidentiality and privileged status of such documents,  
216 materials or other information and has verified, in writing, the  
217 recipient's legal authority to maintain confidentiality; and

218 (B) May receive CGAD-related documents, materials or other  
219 information, including documents, materials or information deemed  
220 confidential and privileged, from other state, federal and international  
221 financial regulatory officials, including members of a supervisory  
222 college and NAIC. The commissioner shall maintain as confidential  
223 and privileged any such documents, materials or information received  
224 with notice or the understanding that such documents, materials or  
225 information are confidential and privileged under the laws of the  
226 jurisdiction that is the source of such documents, materials or  
227 information.

228 (4) A written agreement between the commissioner and NAIC or a  
229 third-party consultant governing the sharing and use of documents,  
230 materials and information shared or received pursuant to subdivision  
231 (3) of this subsection shall expressly require the prior written consent  
232 of the insurer or insurance group to such sharing and shall (A) specify  
233 policies and procedures for maintaining the confidentiality and  
234 security of such documents, materials or other information that are  
235 shared with NAIC or the third-party consultant, including (i)  
236 procedures and protocols limiting sharing by NAIC to only regulatory  
237 officials of states in which other member insurers of the insurance  
238 group of which a domestic insurer is a member are domiciled, and (ii)  
239 a provision requiring NAIC or a third-party consultant to agree, in  
240 writing, and if applicable, a provision requiring NAIC to obtain from a  
241 regulatory official under subparagraph (A)(i) of this subdivision an  
242 agreement, in writing, to maintain the confidentiality and privileged  
243 status of such documents, materials or other information, and  
244 verifying the recipient's legal authority to maintain confidentiality, (B)

245 specify that the commissioner shall retain ownership of such  
246 documents, materials or other information and that the use of such  
247 documents, materials or other information is subject to the  
248 commissioner's discretion, (C) prohibit NAIC or the third-party  
249 consultant from storing such documents, materials or other  
250 information in a permanent database after the underlying analysis is  
251 completed, (D) require NAIC or the third-party consultant to promptly  
252 notify the commissioner and the insurer or insurance group whose  
253 confidential information is in the possession of NAIC or the third-  
254 party consultant if NAIC or the third-party consultant is subject to a  
255 request or subpoena for disclosure or production of such documents,  
256 materials or other information, and (E) require NAIC or the third-party  
257 consultant, if NAIC or such consultant is subject to disclosure of an  
258 insurer's or insurance group's confidential documents, materials or  
259 other information that has been shared with NAIC or such consultant  
260 pursuant to subparagraph (A) of subdivision (3) of this subsection, to  
261 allow such insurer or insurance group to intervene in any judicial or  
262 administrative action regarding such disclosure.

263 (5) No waiver of any applicable privilege or claim of confidentiality  
264 in any CGAD-related documents, materials or other information shall  
265 occur as a result of sharing by or disclosure to the commissioner in  
266 accordance with this subsection. Nothing in this subsection shall be  
267 construed to delegate any regulatory authority of the commissioner to  
268 any person or entity with which any such documents, materials or  
269 other information have been shared.

270 (f) (1) Any review of a CGAD or a request for CGAD-related  
271 documents, materials or other information shall be conducted by or  
272 made through the lead state commissioner, as determined by the  
273 procedures in NAIC's applicable financial analysis handbook, of the  
274 insurance group of which the insurer is a member.

275 (2) The commissioner may engage the services of third-party  
276 consultants including attorneys, actuaries, accountants and other  
277 experts not otherwise a part of the commissioner's staff, at the insurer's

278 or insurance group's expense, as shall be reasonably necessary to assist  
279 the commissioner in a review of such insurer's or insurance group's  
280 CGAD and related documents, materials and other information or of  
281 such insurer's or insurance group's compliance with the requirements  
282 of this section. Any such consultant shall (A) be under the direction  
283 and control of the commissioner and act in an advisory capacity only,  
284 and (B) verify to the commissioner and provide notice to the insurer or  
285 insurance group that such consultant is free of any conflict of interest  
286 regarding such insurer or insurance group and has internal procedures  
287 in place to monitor conflicts of interest that may arise and to comply  
288 with the confidentiality standards and requirements of this section.

289 (3) Nothing in this section shall be construed to (A) prescribe or  
290 impose corporate governance standards or internal procedures beyond  
291 that required under state corporation laws, or (B) affect the provisions  
292 of section 38a-14 or 38a-14a of the general statutes.

293 (g) The commissioner, after notice and hearing, may impose a civil  
294 penalty on an insurer or insurance group that fails, without just cause,  
295 to timely file a CGAD, of one hundred seventy-five dollars for each  
296 day the failure to file a CGAD continues. The commissioner may  
297 reduce the penalty if the insurer or insurance group demonstrates to  
298 the commissioner that the imposition of the penalty would constitute a  
299 financial hardship to the insurer or insurance group.

300 Sec. 2. Section 38a-250 of the general statutes is repealed and the  
301 following is substituted in lieu thereof (*Effective October 1, 2016*):

302 For purposes of this section, sections [38a-250] 38a-251 to 38a-266,  
303 inclusive, as amended by this act, and section 4 of this act:

304 (1) "Completed operations liability" means liability arising out of the  
305 installation, maintenance or repair of any product at a site which is not  
306 owned or controlled by any person who hires an independent  
307 contractor to perform that work, and shall include liability for  
308 activities which are completed or abandoned before the date of the  
309 occurrence giving rise to the liability;

310 (2) "Doing business" means effecting any of the following acts in this  
311 state by mail or otherwise: (A) The making of or proposing to make, as  
312 an insurer, an insurance contract; (B) the making of or proposing to  
313 make, as guarantor or surety, any contract of guaranty or suretyship as  
314 a vocation and not merely incidental to any other legitimate business  
315 or activity of the guarantor or surety; (C) the taking or receiving of any  
316 application for insurance; (D) the receiving or collection of any  
317 premium, commission, membership fees, assessments, dues or other  
318 consideration for any insurance or any party thereof; (E) the issuance  
319 or delivery of contracts of insurance to residents of this state or to  
320 persons authorized to do business in this state; (F) directly or indirectly  
321 acting as an agent for or otherwise representing or aiding on behalf of  
322 another any person or insurer in the solicitation, negotiation,  
323 procurement or effectuation of insurance or renewals thereof or in the  
324 dissemination of information as to coverage or rates, or forwarding of  
325 applications, or delivery of policies or contracts, or inspection of risks,  
326 a filing of rates or investigation or adjustment of claims or losses or in  
327 the transaction of matters subsequent to effectuation of the contract  
328 and arising out of it, or in any other manner representing or assisting a  
329 person or insurer in the transaction of insurance with respect to  
330 subjects of insurance resident, located or to be performed in this state;  
331 (G) the doing of or proposing to do any insurance business in  
332 substance equivalent to any of the foregoing in a manner designed to  
333 evade the provisions of the general statutes relating to insurance; and  
334 (H) any other transactions of business in this state by an insurer. The  
335 venue of an act committed by mail is at the point where the matter  
336 transmitted by mail is delivered and takes effect;

337 (3) "Domicile", for purposes of determining the state in which a  
338 purchasing group is domiciled, means (A) for a corporation, the state  
339 in which the purchasing group is incorporated, and (B) for an  
340 unincorporated entity, the state of its principal place of business;

341 (4) "Hazardous financial condition" means that, based on its present  
342 or reasonably anticipated financial condition, a risk retention group is  
343 unlikely to be able (A) to meet obligations to policyholders with

344 respect to known claims and reasonably anticipated claims, or (B) to  
345 pay other obligations in the normal course of business;

346 (5) "Insurance" means primary insurance, excess insurance,  
347 reinsurance, surplus lines insurance and any other arrangement for  
348 shifting and distributing risk which is determined to be insurance  
349 under applicable state or federal law;

350 (6) "Liability" means legal liability for damages, including costs of  
351 defense, legal costs and fees, and other claims expenses, because of  
352 injuries to other persons, damage to their property or other damage or  
353 loss to such other persons resulting from or arising out of (A) any  
354 business, whether profit or nonprofit, trade, product, services,  
355 including professional services, premises or operations, or (B) any  
356 activity of any state or local government or any agency or political  
357 subdivision thereof. "Liability" does not include personal risk liability  
358 and an employer's liability with respect to its employees other than  
359 legal liability under the Federal Employers' Liability Act, [(45 USC 51  
360 et seq.)] 45 USC 51 et seq.;

361 (7) "NAIC" means the National Association of Insurance  
362 Commissioners;

363 [(7)] (8) "Personal risk liability" means liability for damages because  
364 of injury to any person, damage to property or other loss or damage  
365 resulting from any personal, familial or household responsibilities or  
366 activities, rather than from responsibilities or activities referred to in  
367 subdivision (6) of this section;

368 [(8)] (9) "Plan of operation or a feasibility study" means an analysis  
369 [which] that presents the expected activities and results of a risk  
370 retention group including, at a minimum, (A) for each state in which it  
371 intends to operate, the coverages, deductibles, coverage limits, rates  
372 and rating classification systems for each line of insurance the group  
373 intends to offer, (B) historical and expected loss experience of the  
374 proposed members and national experience of similar exposures to the  
375 extent that this experience is reasonably available, (C) pro forma

376 financial statements and projections, (D) appropriate opinions by an  
377 independent member of the American Academy of Actuaries,  
378 including a determination of minimum premium or participation  
379 levels required to commence operations and to prevent a hazardous  
380 financial condition, (E) information sufficient to verify that its  
381 members are engaged in businesses or activities similar or related with  
382 respect to the liability to which such members are exposed by virtue of  
383 any related, similar or common business, trade, product, services,  
384 premises or operations, (F) identification of management,  
385 underwriting and claims procedures, marketing methods, managerial  
386 oversight methods, investment policies and reinsurance agreements,  
387 (G) identification of each state in which the risk retention group has  
388 obtained, or sought to obtain, a charter and license, and a description  
389 of its status in each such state, and (H) such other matters as may be  
390 prescribed by the commissioner of the state in which the risk retention  
391 group is chartered for liability insurance companies authorized by the  
392 insurance laws of that state;

393 [(9)] (10) "Product liability" means liability for damages because of  
394 any personal injury, death, emotional harm, consequential economic  
395 damage, or property damage, including damages resulting from loss  
396 of use of property, arising out of the manufacture, design, importation,  
397 distribution, packaging, labeling, lease or sale of a product. [, but]  
398 "Product liability" does not include the liability of any person for those  
399 damages if the product involved was in the possession of such a  
400 person when the incident giving rise to the claim occurred;

401 [(10)] (11) "Purchasing group" means any group [which] that: (A)  
402 Has as one of its purposes the purchase of liability insurance on a  
403 group basis; (B) purchases such insurance only for its group members  
404 and only to cover their similar or related liability exposure, as  
405 described in subparagraph (C) of this subdivision; (C) is composed of  
406 members whose businesses or activities are similar or related with  
407 respect to the liability to which members are exposed by virtue of any  
408 related, similar or common business, trade, product, services, premises  
409 or operations; and (D) is domiciled in any state;

410 [(11)] (12) "Risk retention group" means any corporation or other  
411 limited liability association: (A) Whose primary activity consists of  
412 assuming and spreading all, or any portion, of the liability exposure of  
413 its group members; (B) which is organized for the primary purpose of  
414 conducting the activity described under subparagraph (A) of this  
415 subdivision; (C) [which] that (i) is chartered and licensed as a liability  
416 insurance company under the laws of a state and authorized to engage  
417 in the business of insurance under the laws of such state, or (ii) before  
418 January 1, 1985, was chartered or licensed and authorized to engage in  
419 the business of insurance under the laws of Bermuda or the Cayman  
420 Islands and, before [such] said date, had certified to the insurance  
421 commissioner of at least one state that it satisfied the capitalization  
422 requirements of such state, except that any such group shall be  
423 considered to be a risk retention group only if it has been engaged in  
424 business continuously since such date and only for the purpose of  
425 continuing to provide insurance to cover product liability or  
426 completed operations liability, as such terms were defined in the  
427 Product Liability Risk Retention Act of 1981, [(15 USC 3901 et seq.)] 15  
428 USC 3901 et seq., before the date of the enactment of the Liability Risk  
429 Retention Act of 1986; (D) [which] that does not exclude any person  
430 from membership in the group solely to provide for members of such a  
431 group a competitive advantage over such a person; (E) [which] that (i)  
432 has as its owners only persons who comprise the membership of the  
433 risk retention group and who are provided insurance by such group,  
434 or (ii) has as its sole owner an organization which has as its members  
435 only persons who comprise the membership of the risk retention  
436 group, and as its owners only persons who comprise the membership  
437 of the risk retention group and who are provided insurance by such  
438 group; (F) whose members are engaged in businesses or activities  
439 similar or related with respect to the liability to which such members  
440 are exposed by virtue of any related, similar or common business,  
441 trade, product, services, premises or operations; (G) whose activities  
442 do not include the provision of insurance other than (i) liability  
443 insurance for assuming and spreading all or any portion of the similar  
444 or related liability exposure of its group members, and (ii) reinsurance

445 with respect to the similar or related liability exposure of any other risk  
446 retention group, or any member of such other group, [which] that is  
447 engaged in businesses or activities so that such group or member  
448 meets the requirement described in subparagraph (F) of this  
449 subdivision for membership in the risk retention group [which] that  
450 provides such reinsurance; and (H) the name of which includes the  
451 phrase "Risk Retention Group";

452 [(12)] (13) "State" means any state of the United States or the District  
453 of Columbia.

454 Sec. 3. Section 38a-251 of the general statutes is repealed and the  
455 following is substituted in lieu thereof (*Effective October 1, 2016*):

456 (a) A risk retention group seeking to be chartered in this state shall  
457 be chartered and licensed as a liability insurance company authorized  
458 by the insurance laws of this state and, except as provided in sections  
459 38a-250 to 38a-266, inclusive, as amended by this act, shall comply  
460 with all [of the] laws, rules, regulations and requirements applicable to  
461 such insurers chartered and licensed in this state, and with section 38a-  
462 252, as amended by this act, to the extent such requirements are not a  
463 limitation on laws, rules, regulations or requirements of this state.

464 (b) Before it may offer insurance in any state, each risk retention  
465 group shall [also] submit for approval to the Insurance Commissioner  
466 [of this state] (1) a plan of operation or a feasibility study, and (2)  
467 revisions [of] to such plan or study [if the group intends to] of any  
468 material change in any item of such plan or study, not later than ten  
469 days after any such change occurs or has been made. A risk retention  
470 group shall not offer any additional lines of liability insurance in this  
471 state or any other state until such plan or study has been revised and  
472 the commissioner has approved such revision.

473 (c) A risk retention group shall provide to the commissioner with its  
474 application filing for charter the following information in summary  
475 form: (1) The identity of the initial members of the group; (2) the  
476 identity of the individuals who organized the group or who will

477 provide administrative services or influence or control coverages to be  
478 offered; and (3) the states in which the group intends to operate. The  
479 commissioner shall forward such information upon receipt to NAIC.

480 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) Each risk retention group  
481 seeking to be chartered and licensed in this state shall comply with the  
482 following governance standards at the time of licensure or, for a risk  
483 retention group chartered in this state prior to October 1, 2016, not  
484 later than October 1, 2017:

485 (1) (A) Each risk retention group shall be governed by a board of  
486 directors who are elected by the owners or members of such group. A  
487 majority of the board of directors shall be independent, as described in  
488 subparagraphs (D) and (E) of this subdivision.

489 (B) If a risk retention group is a reciprocal risk retention group, the  
490 attorney-in-fact acting as the agent or manager of such group shall be  
491 independent, as described in subparagraphs (D) and (E) of this  
492 subdivision, and comply with the governance standards set forth in  
493 this section.

494 (C) The members of any member advisory committees established  
495 by the board of directors of a risk retention group shall be  
496 independent, as described in subparagraphs (D) and (E) of this  
497 subdivision, and comply with the governance standards set forth in  
498 this section.

499 (D) (i) For the purposes of this section, no director shall qualify as  
500 independent unless the board of directors affirmatively determines  
501 that such director has no material relationship with such risk retention  
502 group. Any individual who is a direct or an indirect owner of or an  
503 insured in the risk retention group as described in subparagraph (E)(ii)  
504 of subdivision (12) of section 38a-250 of the general statutes, as  
505 amended by this act, or is an officer, director or employee of such an  
506 owner or insured, shall be deemed to be independent unless a different  
507 position or relationship of such owner, member, officer, director or  
508 employee constitutes a material relationship.

509 (ii) Each risk retention group shall disclose such determinations at  
510 least annually to the Insurance Commissioner.

511 (E) As used in this section, "material relationship" includes, but is  
512 not limited to:

513 (i) The receipt by an individual set forth in subparagraphs (A) to  
514 (C), inclusive, of this subdivision, such individual's immediate family  
515 member or any business with which such individual is affiliated, from  
516 the risk retention group or a consultant to or service provider for such  
517 group, of compensation or payment in any one twelve-month period  
518 of five per cent or more of the risk retention group's gross written  
519 premiums for such twelve-month period or two per cent of its surplus,  
520 whichever is greater. Such individual shall not be deemed to be  
521 independent for the purposes of this section until one year after such  
522 compensation or payment from such group falls below the threshold  
523 set forth in subparagraph (E)(i) of this subdivision;

524 (ii) The affiliation or employment in a professional capacity of a  
525 director or a director's immediate family member with a present or  
526 former internal or external auditor of the risk retention group. Such  
527 director shall not be deemed to be independent for the purposes of this  
528 section until one year after the end of such affiliation or employment  
529 or the auditing relationship; and

530 (iii) The employment of a director or a director's immediate family  
531 member, as an executive officer with another company at which any of  
532 the risk retention group's current officers serve as members of such  
533 other company's board of directors. Such director shall not be deemed  
534 independent for the purposes of this section until one year after the  
535 end of such employment or service.

536 (2) (A) No material contract between a risk retention group and a  
537 service provider shall include a term that exceeds five years. A contract  
538 is deemed to be material if the amount paid under such contract is five  
539 per cent or more of the risk retention group's annual gross written  
540 premiums or two per cent of its surplus, whichever is greater. The

541 board of directors shall approve by a majority vote any such contract  
542 or its renewal. The board of directors may terminate any such contract  
543 for cause at any time, provided any notice requirement included in  
544 such contract is satisfied.

545 (B) No service provider contract under which a material  
546 relationship would exist shall be entered into unless the risk retention  
547 group has notified the commissioner in writing of its intent to enter  
548 into such contract at least thirty days prior to entering into such  
549 contract and the commissioner has not disapproved such contract  
550 within such period.

551 (C) Any contract between a reciprocal risk retention group and a  
552 service provider shall be between such group and not the attorney-in-  
553 fact for such group.

554 (D) As used in this subsection, (i) "service provider" means a captive  
555 manager, an auditor, an accountant, an actuary, an investment advisor,  
556 an attorney, a managing general underwriter and any other party  
557 responsible for underwriting, determining premium rates, collecting  
558 premiums, adjusting and settling claims and preparing financial  
559 statements. An attorney under this subparagraph does not include  
560 defense counsel retained by a risk retention group to defend claims  
561 unless the attorneys' fees for such counsel are material, as described in  
562 subparagraph (A) of this subdivision, and (ii) "captive manager" means  
563 an individual or entity contracted by a captive insurance company, as  
564 defined in section 38a-91aa of the general statutes, to manage such  
565 company's affairs.

566 (3) The board of directors of each risk retention group shall adopt a  
567 written policy in its plan of operation or a feasibility study that  
568 requires the board of directors to: (A) Ensure that all owners and  
569 members of such group receive evidence of ownership interest; (B)  
570 develop a set of governance standards applicable to such group; (C)  
571 oversee the evaluation of such group's management, including, but not  
572 limited to, the performance of the captive manager, managing general  
573 underwriter or other parties responsible for underwriting, determining

574 premium rates, collecting premiums, adjusting and settling claims and  
575 preparing financial statements; (D) review and approve the amount to  
576 be paid to a service provider under a material contract; and (E) review  
577 and approve at least annually (i) such group's goals and objectives  
578 relative to the compensation of its officers and service providers, (ii)  
579 such officers' and service providers' performances in light of such  
580 goals and objectives, and (iii) the continued engagement of such  
581 officers and service providers.

582 (4) (A) Each risk retention group shall establish an audit committee  
583 composed of at least three independent members of the board of  
584 directors. The audit committee may invite a nonindependent member  
585 of the board of directors to participate in such committee's activities,  
586 but such nonindependent member shall not be a member of such  
587 committee.

588 (B) The audit committee shall adopt a written charter that defines  
589 the committee's purposes that shall, at a minimum, be to: (i) Assist the  
590 board of directors with oversight of the integrity of financial  
591 statements, compliance with legal and regulatory requirements and  
592 the qualifications, independence and performance of any auditor or  
593 actuary contracted with by the risk retention group; (ii) discuss the  
594 annual audited financial statements and the quarterly financial  
595 statements with members of the management of the risk retention  
596 group; (iii) discuss the annual audited financial statements and, if  
597 advisable, the quarterly financial statements, with such group's  
598 external auditor; (iv) discuss policies with respect to such group's risk  
599 assessment and risk management; (v) meet separately and  
600 periodically, directly or through a designated member of the  
601 committee, with members of the management of the risk retention  
602 group and with such group's external auditor; (vi) review with such  
603 group's external auditor any audit problems or difficulties and the  
604 response from members of the management of such group; (vii) set  
605 clear hiring policies for the risk retention group for the hiring of  
606 employees of or former employees of such group's external auditor;  
607 (viii) require such group's external auditor to rotate or coordinate the

608 lead auditor having primary responsibility for such group's audit and  
609 the auditor responsible for reviewing such group's audit so that no  
610 individual performs audit services for such group for more than five  
611 consecutive years; and (ix) report on its activities regularly to the risk  
612 retention group's board of directors.

613 (C) The commissioner may waive the requirement to establish an  
614 audit committee if a risk retention group demonstrates to the  
615 commissioner that it is impracticable to do so and such group's board  
616 of directors is itself able to accomplish the purposes of such committee,  
617 as set forth in subparagraph (B) of this subdivision.

618 (5) (A) The board of directors of a risk retention group shall adopt  
619 governance standards for such group and a code of business conduct  
620 and ethics for the officers, directors and employees of such group.  
621 Such code shall include, but not be limited to, standards regarding (i)  
622 conflicts of interest, (ii) the matters covered under the corporate  
623 opportunities doctrine in the risk retention group's state of domicile,  
624 (iii) confidentiality, (iv) fair dealing, (v) the protection and proper use  
625 of the assets of such group, (vi) compliance with all laws, rules,  
626 regulations and requirements applicable to such group, (vii) the  
627 required reporting of any illegal or unethical behavior that affects the  
628 operations of the risk retention group, and (viii) any waivers of such  
629 code for officers or directors.

630 (B) The board of directors shall disclose the standards and code set  
631 forth in subparagraph (A) of this subdivision by posting such  
632 standards and code on the risk retention group's Internet web site or  
633 by other means. The board of directors shall provide to members and  
634 insureds, upon request, additional information that includes (i) the  
635 process by which members of the board of directors are elected, (ii) the  
636 qualifications required to be a member of the board of directors, (iii)  
637 the responsibilities of the board of directors, (iv) the access of a  
638 member of the board of directors to members of the management of  
639 the risk retention group and to independent advisors, (v) the  
640 compensation for serving as a member of the board of directors, (vi)

641 the orientation process for and continuing education requirements or  
642 opportunities for a member of the board of directors, (vii) the policies  
643 and procedures followed by the risk retention group for management  
644 succession, and (viii) the policies and procedures followed by the risk  
645 retention group for the annual performance evaluation of the members  
646 of the board of directors.

647 (6) The captive manager, president or chief executive officer of a risk  
648 retention group shall notify the commissioner promptly in writing if  
649 such manager, president or chief executive officer becomes aware of  
650 any material noncompliance with the provisions of this section.

651 (b) The commissioner may examine any documents or materials  
652 relating to the requirements set forth in this section for a risk retention  
653 group chartered and licensed in this state.

654 Sec. 5. Section 38a-252 of the general statutes is repealed and the  
655 following is substituted in lieu thereof (*Effective October 1, 2016*):

656 (a) Risk retention groups chartered in states other than this state and  
657 seeking to do business as a risk retention group in this state shall, prior  
658 to offering insurance in this state submit to the Insurance  
659 Commissioner: (1) A statement identifying the state or states in which  
660 the risk retention group is chartered and licensed as a liability  
661 insurance company, date of chartering, its principal place of business  
662 [ ] and such other information, including information on its  
663 membership, as the commissioner may require to verify that the risk  
664 retention group satisfies the [definitional] requirements of subdivision  
665 [(11)] (12) of section 38a-250, as amended by this act; (2) a copy of its  
666 plan of operations or a feasibility study and revisions of such plan or  
667 study submitted to its state of domicile, [provided] except the  
668 provision relating to the submission of a plan of operation or a  
669 feasibility study shall not apply with respect to any line or  
670 classification of liability insurance [which] that (A) was defined in the  
671 Product Liability Risk Retention Act of 1981 before the date of the  
672 enactment of the Liability Risk Retention Act of 1986, and (B) was  
673 offered before such date by any risk retention group [which] that had

674 been chartered and operating for not less than three years before such  
675 date; and (3) a statement of registration [which] that designates the  
676 commissioner as its agent for the purpose of receiving service of legal  
677 documents or process.

678 (b) A risk retention group under subsection (a) of this section shall  
679 submit to the commissioner a copy of any material revisions of its plan  
680 of operations or a feasibility study submitted to its state of domicile not  
681 later than thirty days after the date the chief insurance regulatory  
682 official of such group's state of domicile approves such revisions or, if  
683 no such approval is required, not later than thirty days after  
684 submission to such group's state of domicile.

685 Sec. 6. Section 38a-253 of the general statutes is repealed and the  
686 following is substituted in lieu thereof (*Effective October 1, 2016*):

687 (a) Each risk retention group not domiciled in this state that is doing  
688 business in this state shall submit to the Insurance Commissioner: (1) A  
689 copy of the group's financial statement submitted to its state of  
690 domicile [, which] that shall be certified by an independent public  
691 accountant and contain a statement of opinion on loss and loss  
692 adjustment expense reserves made by a member of the American  
693 Academy of Actuaries or a qualified loss reserve specialist under  
694 criteria established by NAIC; (2) a copy of each examination of the risk  
695 retention group as certified by the commissioner or public official  
696 conducting the examination; (3) upon request by the commissioner, a  
697 copy of any information or document pertaining to any external audit  
698 performed with respect to the risk retention group; and (4) such  
699 information as may be required to verify that [it] the risk retention  
700 group satisfies the definitional requirements of subdivision [(11)] (12)  
701 of section 38a-250, as amended by this act.

702 (b) Each risk retention group doing business in this state shall,  
703 annually, on or before the first day of March, submit to the  
704 commissioner, by electronically filing with [the National Association of  
705 Insurance Commissioners] NAIC, a true and complete report, signed  
706 and sworn to by its president or a vice president, and secretary or an

707 assistant secretary, of its financial condition on the thirty-first day of  
708 December next preceding, prepared as submitted to its state of  
709 domicile.

710 (c) Each risk retention group shall submit to an examination by the  
711 Insurance Commissioner to determine its financial condition if the  
712 commissioner of the jurisdiction in which the group is chartered and  
713 licensed has not initiated an examination or does not initiate an  
714 examination within sixty days after a request by the Insurance  
715 Commissioner of this state. Any such examination shall be coordinated  
716 to avoid unjustified repetition and conducted in an expeditious  
717 manner and in accordance with the National Association of Insurance  
718 Commissioners' Examiner Handbook.

719 Sec. 7. Section 38a-255 of the general statutes is repealed and the  
720 following is substituted in lieu thereof (*Effective October 1, 2016*):

721 [Any] Each application for insurance from a risk retention group  
722 and each policy issued by a risk retention group shall contain in ten  
723 point type on the front page and the declaration page, the following  
724 notice:

725 NOTICE

726 This policy is issued by your risk retention group. Your risk retention  
727 group may not be subject to all of the insurance laws and regulations  
728 of your state. State insurance insolvency guaranty funds are not  
729 available for your risk retention group.

730 Sec. 8. Section 38a-261 of the 2016 supplement to the general statutes  
731 is repealed and the following is substituted in lieu thereof (*Effective*  
732 *October 1, 2016*):

733 A purchasing group that intends to do business in this state shall  
734 furnish notice to the Insurance Commissioner that shall: (1) Identify  
735 the state in which the group is domiciled; (2) specify the lines and  
736 classifications of liability insurance that the purchasing group intends  
737 to purchase; (3) identify the insurance company from which the group

738 intends to purchase its insurance and the domicile of such company;  
 739 (4) identify the principal place of business of the group; (5) provide  
 740 such other information as may be required by the Insurance  
 741 Commissioner to verify that the purchasing group satisfies the  
 742 definitional requirements of subdivision [(10)] (11) of section 38a-250,  
 743 as amended by this act; (6) register with and designate the Insurance  
 744 Commissioner as its agent solely for the purpose of receiving service of  
 745 legal documents or process, in accordance with Section 4 of the  
 746 Liability Risk Retention Act of 1986; (7) identify all other states in  
 747 which the group intends to do business; and (8) specify the method by  
 748 which, and the person or persons, if any, through whom insurance will  
 749 be offered to its members whose risks are resident or located in this  
 750 state. A purchasing group shall notify the commissioner of any change  
 751 in any of the items set forth in this section not later than ten days after  
 752 any such change.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	New section
Sec. 2	<i>October 1, 2016</i>	38a-250
Sec. 3	<i>October 1, 2016</i>	38a-251
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>October 1, 2016</i>	38a-252
Sec. 6	<i>October 1, 2016</i>	38a-253
Sec. 7	<i>October 1, 2016</i>	38a-255
Sec. 8	<i>October 1, 2016</i>	38a-261

**Statement of Legislative Commissioners:**

In Section 1(d)(1), "such insurer or insurance group report information" was changed to "such insurer or insurance group may report information" for clarity.

**INS**            *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes changes to the annual disclosure of corporate governance practices and the regulation of risk retention groups. There is no state or municipal fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 436*****AN ACT CONCERNING INSURER CORPORATE GOVERNANCE ANNUAL DISCLOSURES AND THE REGULATION OF RISK RETENTION GROUPS.*****SUMMARY**

This bill adopts provisions substantially similar to the National Association of Insurance Commissioners' (NAIC) Corporate Governance Annual Disclosure and Risk Retention Group model acts. Among other things, the bill requires (1) domestic insurers or the insurance group (see below) to which they belong to file with the insurance commissioner or other regulatory official confidential corporate governance annual disclosures (CGADs) and (2) risk retention groups (RRGs) chartered in Connecticut to meet specific governance standards.

Beginning by June 1, 2017, the bill requires domestic insurers or their insurance groups to annually submit to the insurance commissioner or certain other lead regulators CGADs containing, among other things, detailed information on their corporate structure, compensation, performance evaluations, oversight, and risks. Under the bill, CGADs are confidential, privileged, and exempt from subpoenas and state Freedom of Information Act (FOIA) requests. Domestic insurers are insurers chartered, incorporated, organized, or constituted under Connecticut laws.

The bill specifies CGAD requirements must not be construed to (1) prescribe or impose corporate governance standards or internal procedures beyond that required by state corporation laws or (2) affect the commissioner's authority to examine insurers.

This bill also requires an RRG seeking to be chartered and licensed

in Connecticut on or after October 1, 2016 to meet specific governance standards at the time of licensure. An RRG chartered prior to October 1, 2016 must comply with the standards by October 1, 2017. An RRG is a self-insured group organized under state and federal laws and formed to spread its commercial liability risks among its members. An RRG may operate in multiple states, but is primarily regulated by its domiciled state (see BACKGROUND).

The standards require an RRG to, among other things, be governed by a board of directors elected by owners or members. A majority of the board must be independent (i.e., have no conflict of interest).

The bill also (1) requires an RRG's captive manager, president, or chief executive officer (CEO) to promptly notify the insurance commissioner, in writing, if he or she becomes aware of any material noncompliance with the standards and (2) gives the insurance commissioner the authority to examine any documents or materials relating to the standards.

The bill (1) expands provisions regarding information certain RRGs, including those chartered outside Connecticut, must submit to the commissioner and (2) adds a notice requirement, already required on policies issued by RRGs, to applications.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2017 for the CGAD provisions, and October 1, 2016 for the RRG provisions.

## **§1 — CGADS**

### ***Reporting Requirements***

Domestic insurers or the insurance group to which they belong must by June 1 annually submit CGADs to the insurance commissioner or the insurance group's lead state commissioner, respectively. Insurance groups submitting CGADs to a lead state commissioner must also provide a copy to the chief regulatory official of any state in which the group has a domestic insurer. The lead state

commissioner is determined by the NAIC applicable financial analysis handbook. (By law, insurers may be part of an insurance group, which is a group of insurers and affiliates operating under an insurance holding company, see BACKGROUND).

After the initial submission, subsequent CGADs must be amended versions which indicate where any changes have been made. If the subsequent submission is identical to the previous one, it must state that no changes were made.

The bill gives insurers and insurance groups discretion over the information they provide in a CGAD, as long as it is (1) consistent with the bill's requirements and (2) contains material necessary to allow the commissioner to understand the corporate governance structure, policies, and practices. Insurers must also (1) be as descriptive as possible and include attachments or document examples of corporate governing processes and (2) maintain any CGAD-related documents and supporting information and make them available to the commissioner on request.

### ***CGAD Required Information***

The bill requires CGADs to include specified information on insurers' (1) corporate governance framework and structure, (2) policies and practices, (3) critical risk oversight processes, (4) performance evaluation processes, and (5) policies and practices directing senior management. In addition, the bill authorizes the commissioner to request any additional information she deems material and necessary to understand the insurer's or insurance group's corporate governing policies, reporting or information system, or controls over such policies or systems.

The bill details the required components for each category of information, as described below.

***Corporate Governance Framework.*** CGADs must describe the insurer or insurance group's corporate governance framework and structure, including:

1. its board and each significant committee responsible for insurer or insurance group oversight and the level at which such oversight occurs, such as the ultimate control level, an intermediate holding company level, or an individual legal entity level;
2. its rationale for the current board size and structure;
3. its board's and significant committees' duties and governing methods (i.e., bylaws, charter, informal mandates); and
4. the board's leadership structure, including a discussion of the roles of the chief executive officer and board chairman.

**Policies and Practices.** CGADs must describe the board's and any of its significant committees' policies and practices, including:

1. how board member's qualifications, expertise, and experience meet the insurer's or insurance group's needs;
2. how the insurer or insurance group ensures that the board and committees are appropriately independent;
3. the number of board and committee meetings, including board member attendance information, from the previous year.
4. how board and committee members are identified, nominated, and elected, and whether a nomination committee identifies and selects individuals for consideration;
5. whether board members are term-limited;
6. how election and reelection processes function; and
7. whether a board diversity policy exists, and how it functions.

**Critical Risk Oversight Processes.** CGADs must describe how the board, significant committees, and senior management ensure an appropriate amount of oversight of critical risk areas, including how

(1) oversight and management responsibilities are delegated; (2) the board is informed of the insurer's or insurance group's strategic plans, associated risks, and any steps senior management take to monitor and manage such risks; and (3) critical risk areas' reporting responsibilities are organized. The descriptions for critical risk areas must contain enough detail for the commissioner to understand the frequency at which information on each critical risk area is reported to, and reviewed by, the board and senior management. Critical risk areas may include:

1. risk management processes,
2. actuarial functions,
3. investment and reinsurance decision-making processes,
4. businesses strategy and financial decision-making processes,
5. compliance functions,
6. financial reporting and internal auditing, and
7. market conduct decision-making processes.

The bill specifies that an insurer or insurance group required to file an Own Risk and Solvency Assessment Summary (ORSA) Report may refer to it to meet the risk management processes requirement.

**Performance Evaluation Processes.** CGADs must contain performance evaluation processes for each insurer's or insurance group's board, including descriptions of the board's and committees' performance evaluation processes and any training programs or recent other performance improvement measures.

**Policies and Practices Directing Senior Management.** CGADs must contain policies and practices for directing senior management, including the senior management's (1) code of business conduct and ethics, including a discussion of its compliance with laws, rules, and regulations and its proactive reporting of any illegal or unethical

conduct and (2) succession plans. It also includes processes or practices, such as suitability standards, to determine whether officers and key individuals in control functions have the appropriate background, experience, and integrity. The CGAD must describe (1) suitability standards and identify any specific positions for which standards have been developed, (2) suitability monitoring and evaluation standards and procedures for officers and key individuals, and (3) any changes in an officer's or key individual's suitability as a result of applying the standards or procedures. (The bill does not define "key individual.")

The CGAD must also describe performance evaluation, compensation, and corrective action processes that ensure effective senior management throughout the organization, including descriptions of significant compensation programs' general objectives and what such programs are designed to reward. The description must be detailed enough to allow the commissioner to understand how the insurer or insurance group ensures compensation programs do not encourage or reward excessive risk taking, and may include:

1. the board's role in overseeing management compensation programs and practices,
2. the compensation elements and calculations;
3. the relationship between the compensation programs and organizational and individual performance over time,
4. whether the compensation programs include risk adjustments and how such adjustments are incorporated into different levels of employee compensation programs,
5. any clawback provisions to recover awards or payments if the performance measures are restated or adjusted, and
6. any other factors relevant to monitoring compensation programs and determining whether employee incentives meet risk management objectives.

Under the bill, senior management is any corporate officer responsible for reporting information to the board at regular intervals or providing information to shareholder or regulators. It includes chief financial, operations, procurement, legal, information, technology, revenue, and visionary officers.

### ***Reporting Levels***

The bill allows the insurer or insurance group to provide the required information at the ultimate control level, an intermediate holding company level, or an individual legal entity level, depending on the structure of such insurer's or insurance group's corporate governance system.

Under the bill, the insurer or insurance group may report CGAD information at the level at which (1) it determines risk appetite, (2) its earnings, capital, liquidity, operations, and reputation are collectively overseen and such factors are supervised, coordinated, and exercised, or (3) it would be legally liable for failing to comply with corporate governance duties. The bill requires insurers or insurance groups using these criteria to indicate which of them it used to determine its reporting level and explain any subsequent changes in reporting levels.

### ***Additional Documents and Information***

The insurer or insurance group may use other documents that include comparable information to fulfill CGAD reporting requirements, including ORSA Summary Reports, Holding Company Form B or F filings, Security and Exchange Commission proxy statements, and foreign regulatory filings. It must attach these documents to the CGAD and clearly reference the attachments within the appropriate section.

### ***Verification***

CGADs must be signed by the CEO or corporate secretary, who must attest that to the best of his or her belief and knowledge, the corporate governance practices described in the CGAD are

implemented and that a copy of the CGAD has been provided to the insurer's or insurance group's board or appropriate committee.

### ***Confidentiality***

The bill makes all CGAD-related documents, materials, or other information, confidential, privileged, and exempt from subpoena and disclosure under FOIA. The information is also not subject to discovery or admissible as evidence in any civil action. The confidentiality provisions apply to the documents in the possession or control of the insurance department and obtained by, created by, or disclosed to the commissioner or anyone else under the bill.

The bill prohibits the commissioner, or any person acting under her authority who obtained, received, or was disclosed CGAD-related documents, material, or other information, from being required or allowed to testify in any civil action in Connecticut concerning the documents, information, or materials.

The bill allows the commissioner, as part of her official duties, to use the information in any regulatory or legal action. However, the bill prohibits her from otherwise making such information public without prior written consent of the insurer or insurance group.

### ***Sharing and Receiving CGAD Documents***

The commissioner may share, upon request, CGAD-related documents, material, or information, including those deemed confidential and privileged or not disclosable, with (1) other state, federal, and international financial regulatory officials, including members of a supervisory college (i.e., a group of insurance regulatory officials), (2) NAIC, and (3) any third-party consultants she engages to review the CGAD and associated documents. The recipients, in writing, must (1) agree to maintain the confidentiality and privileged status of the information and (2) verify their legal authority to maintain confidentiality.

The commissioner may also receive CGADs and related information from other state, federal, and international financial regulatory

officials, including NAIC and members of a supervisory college. The commissioner must maintain any information she receives as privileged and confidential, with notice and the understanding that the information is confidential and privileged under the laws of the jurisdiction in which the information originates.

Under the bill, any written agreement between the commissioner and NAIC or a consultant governing the sharing or use of CGAD documents must expressly require the prior written consent of the insurer or insurance group. The agreement must specify policies and procedures for maintaining the shared information's confidentiality and security, including:

1. procedures and protocols limiting sharing by NAIC to only regulatory officials in states where the insurance group has domiciled insurers;
2. a provision requiring NAIC or a consultant to agree in writing to maintain the information's confidentiality and privileged status and verifying his or her legal authority to maintain confidentiality; and
3. a provision, if applicable, requiring NAIC to obtain from a requesting regulatory official a written agreement to maintain the information's confidentiality and privileged status and verifying his or her legal authority to maintain confidentiality.

The agreement must also:

1. specify that the commissioner retains ownership of the information, and that she uses it at her discretion;
2. prohibit NAIC or consultants from storing any received information in a permanent database after they complete the underlying analysis;
3. require NAIC or third party consultants, if they are subject to a subpoena or request for disclosure, to promptly notify the

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commissioner and the insurer or insurance group; and

4. require NAIC or consultants, if they are required to disclose any CGAD information, to allow the insurer's insurance groups to intervene in any judicial or administrative action regarding the disclosure.

The bill specifies that (1) the commissioner sharing or disclosing CGAD information according to the bill's requirements does not waive any applicable privilege or confidentiality and (2) these requirements must not be construed to delegate the commissioner's regulatory authority to any person or entity with which the information is shared.

### ***CGAD Reviews and Information Requests***

The bill requires CGAD reviews and requests for related documents to be conducted by, or made through, the insurance group's lead state commissioner. (The lead state commissioner is determined by NAIC's applicable financial analysis handbook.)

The commissioner may engage third party consultants, including attorneys, actuaries, accountants, and other experts, as is reasonably necessary to assist in reviewing CGADs. Consultants must (1) be under the commissioner's direction and control and act in an advisory capacity only, (2) verify to the commissioner and provide notice to the insurer or insurance group that he or she does not have a conflict of interest, (3) have internal procedures in place to monitor conflicts of interest that may arise, and (4) comply with the bill's confidentiality standards and requirements. The bill requires insurers or insurance groups to pay for the consultant services.

### ***Penalties***

The commissioner, after notice and a hearing, may impose a civil penalty of \$175 per day on an insurer or insurance group that fails, without just cause, to timely file a CGAD. She may reduce the penalty if the insurer or insurance group demonstrates the penalty causes financial hardship.

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**§§ 2-8 — RISK RETENTION GROUPS*****Board of Directors' Independence***

The bill requires RRGs seeking to be chartered and licensed in Connecticut to be governed by a board of directors, a majority of whom must be independent as described below. It also requires (1) all committee members of any member advisory committee the board establishes and (2) in the case of a reciprocal RRG, the attorney-in-fact acting as the RRG agent or manager, to be independent and comply with all governing standards. (Members of a reciprocal RRG exchange insurance contracts through an attorney-in-fact, who manages the group. Profits and losses are distributed to each member.)

To qualify as independent, a director, member, or attorney-in-fact must be affirmatively determined by the board to have no material relationship (see below) with the RRG. However, for an RRG owned solely by an organization that is comprised exclusively of the RRG's members, the following individuals must be deemed independent unless a different position or relationship constitutes a material relationship: a direct or indirect owner, insured, officer, director, or employee of an owner or insured.

The bill prohibits the board from determining that an individual is independent until one year after he or she no longer has a material relationship with the RRG. It requires an RRG to disclose to the commissioner, at least annually, all such determinations.

***Material Relationship***

The bill defines a material relationship as:

1. a board member, attorney-in-fact, advisory committee member, their immediate family members, or any of their affiliated businesses receiving compensation above certain thresholds in any previous 12-month period from the RRG or its consultants or service providers;
2. the affiliation or employment in a professional capacity of a director or a member of his or her immediate family with the

RRG's present or former internal or external auditor; or

3. the employment of a director or a member of his or her immediate family as an executive officer with another company on which any of the RRG's current officers serve as board members.

For the first provision, the bill specifies the compensation threshold is the greater of (1) 5% of the RRG's gross written premiums or (2) 2% of its surplus.

### ***Board of Directors' Duties***

Under the bill, such an RRG's board of directors must adopt a written policy in its plan of operation or a feasibility study that requires the board to (1) ensure that all of the RRG's owners and members receive evidence of their ownership interest; (2) develop a set of governance standards; (3) oversee the evaluation of the RRG's management, including the performance of the captive manager, managing general underwriter, or other parties responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims, and preparing financial statements; and (4) review and approve the amount to be paid to a service provider under a material service contract (see below).

Under the policy, the board must also, at least annually, review and approve (1) the RRG's goals and objectives relative to the compensation of its officers and service providers, (2) such officers' and service providers' performances in light of the goals and objectives, and (3) the continued engagement of such officers and service providers.

The bill also requires the board to adopt governance standards for the RRG and a code of business conduct and ethics for the RRG's officers, directors, and employees. The code must include provisions relating to:

1. conflicts of interest;

2. matters covered under the corporate opportunities doctrine in the RRG's state of domicile;
3. confidentiality;
4. fair dealing;
5. the protection and proper use of the RRG's assets;
6. compliance with all applicable laws, rules, regulations, and requirements;
7. the required reporting of any illegal or unethical behavior that affects the RRG's operations; and
8. any waivers of the code of conduct and ethics for officers or directors.

The board must post the governance standards and code of conduct and ethics on the RRG's website or disclose them through other means.

The board must also provide to members and insureds, on request, additional information that includes the:

1. process for electing the board,
2. qualifications to be a board member,
3. responsibilities of the board,
4. access of a board member to the RRG's management and independent advisors,
5. board members' compensation,
6. board member orientation process and continuing education requirements or opportunities,
7. RRG's policies and procedures for management succession, and
8. RRG's policies and procedures for board members' annual

performance evaluations.

### ***Material Service Contracts***

Under the bill, the board of directors must approve an initial or renewed material contract by a majority vote. The board may terminate such a contract for cause at any time, as long as it provides any notice the contract requires. A material contract is a contract that includes a payment for services of at least (1) 5% of the RRG's annual gross written premiums or (2) 2% of its surplus, whichever is greater.

The bill prohibits:

1. material contracts between an RRG and a service provider (see below) that include a term longer than five years and
2. the board from entering a contract with a service provider with a material relationship to the RRG, unless (a) the RRG notifies the commissioner, in writing, of its intent within thirty days before entering into such a contract and (b) the commissioner has not disapproved it within that time.

For a reciprocal RRG, the bill specifies that any contract must be between the RRG and a service provider, instead of between the RRG's attorney-in-fact and the service provider.

The bill defines a service provider as a captive manager, auditor, accountant, actuary, investment advisor, managing general underwriter, or any other party responsible for underwriting, determining premium rates, collecting premiums, adjusting and settling claims, or preparing financial statements. Service provider also includes an attorney, unless retained by the RRG as defense counsel (except that an attorney whose fees constitute a material contract is still considered a service provider).

### ***Reporting Requirements and Prior Commissioner Approval***

The bill requires an RRG seeking to be chartered in Connecticut to provide to the commissioner with its charter application a summary of

the (1) identity of the initial members of the group, (2) identity of the individuals who organized the group or who will provide administrative services or influence or control coverages to be offered, and (3) states in which the group intends to operate. The commissioner must forward this information to NAIC upon receipt.

By law, before offering insurance, such an RRG must submit to the commissioner for approval its plan of operation or feasibility study. Current law also requires it to submit revisions to the plan or study if it intends to offer additional lines of liability insurance. The bill requires the revisions to be submitted (1) within 10 days of the change and (2) only for material changes. The bill specifies that RRGs are prohibited from offering additional liability insurance lines (in any state) until the commissioner approves the revised plan or study.

By law, the plan or study must include, among other components:

1. the historical and expected loss experience of the proposed members;
2. expert opinions on minimum premium or participation levels;
3. proof that its members are engaged in activity with similar risks; and
4. identification of its management, underwriting and claims procedures, and reinsurance agreements.

By law, all RRGs, regardless of where they are chartered or licensed, must include in the plan or study the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the RRG offers. The bill specifies that the plan or study must include this information for all states in which the RRG intends to operate.

### ***Audit Committee***

The bill requires each RRG seeking to be chartered and licensed in Connecticut to establish an audit committee composed of at least three independent board members. The audit committee may invite non-

independent board members to participate in committee activities, although they are prohibited from becoming committee members.

The audit committee must adopt a written charter that defines the committee's purposes. At a minimum, the charter must require the committee to:

1. assist the board with oversight of the integrity of financial statements, compliance with legal and regulatory requirements, and the qualifications, independence, and performance of any auditor or actuary under contract with the RRG;
2. discuss the annual audited financial statements and quarterly financial statements with members of the RRG's management;
3. discuss the annual audited financial statements and, if advisable, the quarterly financial statements, with the RRG's external auditor;
4. discuss the RRG's risk assessment and risk management policies;
5. meet separately and periodically, directly or through a designated committee member, with the RRG's management and external auditor;
6. review with the external auditor any audit problems and the RRG management's response;
7. set clear hiring policies for the RRG's hiring of current or former employees of the RRG's external auditor;
8. require the external auditor to rotate or coordinate the lead auditor and the auditor responsible for reviewing the RRG's audit so that no individual performs the RRG's audit for more than five consecutive years; and
9. report on its activities regularly to the RRG's board of directors.

The bill allows the commissioner to exempt an RRG from the requirement to establish an audit committee if it demonstrates that it is impracticable to do so and the board is able to accomplish the above purposes.

***Risk Retention Groups Chartered or Domiciled in Another State***

By law, an RRG chartered in other states and seeking to do business here must submit to the commissioner its plan of operations or a feasibility study and any revisions to the plan or study that were submitted to the RRG's domiciled state. The bill requires the submission of such material revisions within 30 days after the RRG receives the approval of its domiciled state's chief insurance regulatory official. If no approval is required, the RRG must submit the revisions to the commissioner within 30 days after its submission to its domiciled state.

By law, an RRG doing business in Connecticut but not domiciled here must submit to the commissioner certain financial information, including a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The bill requires such a statement to be made under criteria established by NAIC.

Under the bill, such RRGs must also submit to the commissioner on request a copy of any information or document pertaining to any outside audit of the RRG. Current law requires an RRG to submit only a copy of the audit.

Under current law, the commissioner may request an examination of the financial condition of an RRG chartered in another state, to be conducted by the commissioner in the RRG's chartered jurisdiction. If such an examination is not initiated within 60 days, an RRG must submit to such an examination by the Connecticut commissioner. The bill limits this provision to RRGs that are both chartered and licensed, instead of only chartered, in another state.

***Notice Requirement***

Existing law requires an RRG to publish a notice on the front and declaration pages of each issued policy that (1) RRGs may not be subject to all of the state's insurance laws and regulations and (2) state insurance insolvency guaranty funds are not available for policies issued through RRGs. The bill requires this notice on insurance applications as well.

## **BACKGROUND**

### ***Insurance Groups and Insurance Holding Companies***

Insurance groups are insurers and affiliates within an insurance holding company. Insurance holding companies are affiliations between insurance companies and other people, corporations, partnerships, limited liability companies, associations, joint stock companies, business trusts, unincorporated organizations, or other legal entities.

### ***Risk Retention Groups and Related Federal Law***

A risk retention group is a corporation or other limited liability association formed to assume and distribute the risk exposure of its members. By law, a risk retention group must meet certain chartering, licensing, and anti-trust criteria and be owned by, and provide insurance to, only its members (or an organization comprised solely of its members). Its members must share similar commercial risks, and insurance provided by an RRG to its members must be limited to coverage of the shared risks. Under the federal Liability Risk Retention Act and with certain exceptions, an RRG is primarily regulated by its domiciled state, regardless of whether it also sells insurance in other states. In practice, RRGs are formed as captives. (Captives are insurance companies or entities formed to insure or reinsure the risks of their owners.)

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 18 Nay 0 (03/17/2016)