



Substitute Senate Bill No. 436

Public Act No. 16-206

**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:

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

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

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

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

(4) "Insurer" means any person or combination of persons doing any kind or form of insurance business, including a fraternal benefit society, as described in chapter 700d of the general statutes, and a health care center, as defined in section 38a-175 of the general statutes, and includes a receiver of any insurer when the context reasonably permits. "Insurer" does not include agencies, authorities or

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instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

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

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

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

(b) (1) Not later than June 1, 2017, and annually thereafter, each domestic insurer or the insurance group of which such insurer is a member shall submit to the Insurance Commissioner a CGAD that contains the information required under subsection (c) of this section, except that if the insurer is a member of an insurance group, such insurer shall submit the CGAD to the lead state commissioner, as determined by the procedures in NAIC's applicable financial analysis handbook, of the insurance group of which such insurer is a member. If the commissioner is the lead state commissioner of such insurance group, the commissioner shall provide, in a manner consistent with the provisions of subdivision (3) of subsection (e) of this section, a copy of the CGAD upon request to the insurance regulatory official of any state in which such insurance group has a domestic insurer. A domestic insurer that is not required to submit a CGAD to the commissioner under this subdivision shall do so if requested by the commissioner.

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

(c) Each CGAD shall contain the following information:

(1) A description of the insurer's or insurance group's corporate governance framework and structure, including (A) (i) its board and each significant committee thereof that is responsible for oversight of the insurer or insurance group 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, and (ii) a description and discussion of its rationale for the current board size and structure, and (B) the duties of the board and such committees, the method by which each is governed, such as through bylaws, a charter or informal mandates, and a description of how the board's leadership is structured, including a discussion of the roles of the chief executive officer and the chairman of the board within the organization;

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

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

(4) A description of the insurer's or insurance group's policies and practices for directing senior management, including (A) any processes or practices, such as suitability standards, to determine whether officers and key individuals in control functions have the appropriate background, experience and integrity to fulfill their roles, including (i) identification of specific positions for which suitability standards have been developed and a description of the standards applied, and (ii) the standards and procedures to monitor and evaluate an officer's or key individual's suitability and any changes in an officer's or key individual's suitability in the previous year as a result of applying such standards or procedures, (B) its 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, (C) its senior management succession plans, and (D) its processes for performance evaluation, compensation and corrective action, to ensure effective senior management throughout the organization, including a description of the general objectives of its significant compensation programs and what such programs are designed to reward. The description under this subdivision shall contain sufficient detail to allow the commissioner to understand how the insurer or insurance group ensures that such compensation programs do not encourage or reward excessive risk-taking, and may include (i) the board's role in overseeing management compensation programs and practices, (ii) the elements of compensation awarded in a compensation program and how the insurer or insurance group determines and calculates the amount of each element of compensation paid, (iii) how the insurer's or insurance group's compensation programs are related to both organizational and

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individual performance over time, (iv) whether the insurer's or insurance group's compensation programs include risk adjustments and how such adjustments are incorporated into its employee compensation programs at different levels, (v) any clawback provisions built into the insurer's or insurance group's compensation programs to recover awards or payments if the performance measures upon which such awards or payments were based are restated or otherwise adjusted, and (vi) any other factors relevant to understanding how the insurer or insurance group monitors its compensation programs to determine whether its risk management objectives are met by incentivizing its employees.

(5) A description of the insurer's or insurance group's processes by which the board, each significant committee thereof and senior management ensure an appropriate amount of oversight of the critical risk areas impacting the insurer's or insurance group's business activities, including a discussion of (A) how oversight and management responsibilities are delegated between the board, such committees and senior management, (B) how the board is kept informed of the insurer's or insurance group's strategic plans, the associated risks and the steps senior management takes or has taken to monitor and manage such risks, and (C) how reporting responsibilities are organized for each critical risk area. The description under subparagraph (C) of this subdivision shall contain sufficient detail to allow 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, and may include the following critical risk areas: (i) Risk management processes. An insurer or insurance group that is required to file an ORSA Summary Report pursuant to section 38a-142 of the general statutes may refer to such report; (ii) actuarial function; (iii) investment decision-making processes; (iv) reinsurance decision-making processes; (v) business strategy and financial decision-making processes; (vi) compliance

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function; (vii) financial reporting and internal auditing; and (viii) market conduct decision-making processes.

(d) (1) For the purposes of completing the CGAD, the insurer or insurance group may 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. Such insurer or insurance group may report information for the CGAD at the level at which (A) such insurer's or insurance group's risk appetite is determined, (B) such insurer's or insurance group's earnings, capital, liquidity, operations and reputation are overseen collectively and the supervision of such factors are coordinated and exercised, or (C) legal liability would be placed for such insurer's or insurance group's failure to comply with its corporate governance duties. An insurer or insurance group that determines its level of CGAD reporting based on the criteria specified in this subdivision shall indicate in the CGAD which of the three criteria was used to determine its level of reporting and explain any subsequent changes in its level of reporting.

(2) The insurer or insurance group may utilize and reference other existing documents such as ORSA Summary Reports, Holding Company Form B or F filings, Securities and Exchange Commission proxy statements or foreign regulatory required filings, that furnish information comparable to that required under subsection (c) of this section. The insurer or insurance group shall attach such other documents to the CGAD, if such documents are not already filed with or available to the commissioner, and clearly reference the applicable information within the CGAD that such other documents are intended to supply.

(3) The insurer or insurance group shall have discretion over the information it provides in a CGAD, provided such CGAD is consistent with subsection (c) of this section and contains the material

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information necessary to allow the commissioner to understand the insurer's or insurance group's corporate governance structure, policies and practices. The insurer or insurance group shall be as descriptive as possible in completing a CGAD and shall include attachments or document examples that such insurer or insurance group uses in its governance process. The commissioner may request additional information the commissioner 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 insurer or insurance group shall maintain any CGAD-related documents and supporting information and make such documents and information available to the commissioner upon request.

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

(e) (1) All documents, materials or other information, including the CGAD, in the possession or control of the Insurance Department that are obtained by, created by or disclosed to the commissioner or any other person pursuant to this section are deemed to be proprietary and to contain trade secrets and shall be confidential by law and privileged, shall not be subject to disclosure under section 1-210 of the general statutes, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any civil action in this state. The commissioner may use such documents, materials or information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not

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otherwise make such documents, materials or other information public without the prior written consent of the insurer, except that nothing in this subsection shall be construed to require written consent of the insurer prior to the commissioner sharing or receiving CGAD-related documents, materials or other information pursuant to subdivision (3) of this subsection.

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

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

(A) May share upon request CGAD-related documents, materials or other information, including documents, materials or information deemed proprietary and containing trade secrets, confidential and privileged or not disclosable pursuant to this subsection, with (i) other state, federal and international financial regulatory officials, including members of a supervisory college as described in section 38a-135 of the general statutes, (ii) NAIC, and (iii) any third-party consultants engaged by the commissioner pursuant to subsection (f) of this section, provided the recipient of any such documents, materials or other information agrees, in writing, to maintain the confidentiality and privileged status of such documents, materials or other information and has verified, in writing, the recipient's legal authority to maintain confidentiality; and

(B) May receive CGAD-related documents, materials or other information, including documents, materials or information deemed proprietary and containing trade secrets, confidential and privileged,

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from other state, federal and international financial regulatory officials, including members of a supervisory college and NAIC. The commissioner shall maintain as confidential and privileged any such documents, materials or information received with notice or the understanding that such documents, materials or information are confidential and privileged under the laws of the jurisdiction that is the source of such documents, materials or information.

(4) A written agreement between the commissioner and NAIC or a third-party consultant governing the sharing and use of documents, materials and information shared or received pursuant to subdivision (3) of this subsection shall expressly require the prior written consent of the insurer to NAIC or such third-party consultant making such documents, materials or information public and shall (A) specify policies and procedures for maintaining the confidentiality and security of such documents, materials or other information that are shared with NAIC or the third-party consultant, including (i) procedures and protocols limiting sharing by NAIC to only regulatory officials of states in which other member insurers of the insurance group of which a domestic insurer is a member are domiciled, and (ii) a provision requiring NAIC or a third-party consultant to agree, in writing, and if applicable, a provision requiring NAIC to obtain from a regulatory official under subparagraph (A)(i) of this subdivision an agreement, in writing, to maintain the confidentiality and privileged status of such documents, materials or other information, and verifying the recipient's legal authority to maintain confidentiality, (B) specify that the commissioner shall retain ownership of such documents, materials or other information and that the use of such documents, materials or other information is subject to the commissioner's discretion, (C) prohibit NAIC or the third-party consultant from storing such documents, materials or other information in a permanent database after the underlying analysis is completed, (D) require NAIC or the third-party consultant to promptly

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notify the commissioner and the insurer or insurance group whose confidential information is in the possession of NAIC or the third-party consultant if NAIC or the third-party consultant is subject to a request or subpoena for disclosure or production of such documents, materials or other information, and (E) require NAIC or the third-party consultant, if NAIC or such consultant is subject to disclosure of an insurer's or insurance group's confidential documents, materials or other information that has been shared with NAIC or such consultant pursuant to subparagraph (A) of subdivision (3) of this subsection, to allow such insurer or insurance group to intervene in any judicial or administrative action regarding such disclosure.

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

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

(2) The commissioner may engage the services of third-party consultants including attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff, at the insurer's or insurance group's expense, as shall be reasonably necessary to assist the commissioner in a review of such insurer's or insurance group's CGAD and related documents, materials and other information or of such insurer's or insurance group's compliance with the requirements of this section. Any such consultant shall (A) be under the direction

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and control of the commissioner and act in an advisory capacity only, and (B) verify to the commissioner and provide notice to the insurer or insurance group that such consultant is free of any conflict of interest regarding such insurer or insurance group and has internal procedures in place to monitor conflicts of interest that may arise and to comply with the confidentiality standards and requirements of this section.

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

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

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

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

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

(2) "Doing business" means effecting any of the following acts in this state by mail or otherwise: (A) The making of or proposing to make, as

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an insurer, an insurance contract; (B) the making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety; (C) the taking or receiving of any application for insurance; (D) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any party thereof; (E) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state; (F) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a filing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state; (G) the doing of or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the general statutes relating to insurance; and (H) any other transactions of business in this state by an insurer. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect;

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

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is

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unlikely to be able (A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or (B) to pay other obligations in the normal course of business;

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

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

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

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

[(8)] (9) "Plan of operation or a feasibility study" means an analysis [which] that presents the expected activities and results of a risk retention group including, at a minimum, (A) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates

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and rating classification systems for each line of insurance the group intends to offer, (B) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available, (C) pro forma financial statements and projections, (D) appropriate opinions by an independent member of the American Academy of Actuaries, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition, (E) information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations, (F) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements, (G) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state, and (H) such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

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

[(10)] (11) "Purchasing group" means any group [which] that: (A) Has as one of its purposes the purchase of liability insurance on a

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group basis; (B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C) of this subdivision; (C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and (D) is domiciled in any state;

[(11)] (12) "Risk retention group" means any corporation or other limited liability association: (A) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members; (B) which is organized for the primary purpose of conducting the activity described under subparagraph (A) of this subdivision; (C) [which] that (i) is chartered and licensed as a liability insurance company under the laws of a state and authorized to engage in the business of insurance under the laws of such state, or (ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before [such] said date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981, [(15 USC 3901 et seq.)] 15 USC 3901 et seq., before the date of the enactment of the Liability Risk Retention Act of 1986; (D) [which] that does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; (E) [which] that (i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or (ii) has as its sole owner an organization which has as its members

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only persons who comprise the membership of the risk retention group, and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; (F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; (G) whose activities do not include the provision of insurance other than (i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members, and (ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of such other group, [which] that is engaged in businesses or activities so that such group or member meets the requirement described in subparagraph (F) of this subdivision for membership in the risk retention group [which] that provides such reinsurance; and (H) the name of which includes the phrase "Risk Retention Group";

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

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

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

(b) Before it may offer insurance in any state, each risk retention

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group seeking to be chartered in this state shall [also] submit for approval to the Insurance Commissioner [of this state] (1) a plan of operation or a feasibility study, and (2) revisions [of] to such plan or study [if the group intends to] of any material change in any item of such plan or study. A risk retention group shall not offer any additional lines of liability insurance in this state or any other state or operate under any other material change, including a change in rates, until such plan or study has been revised and the commissioner has approved such revision.

(c) A risk retention group shall provide to the commissioner with its application filing for charter the following information in summary form: (1) The identity of the initial members of the group; (2) the identity of the individuals who organized the group or who will provide administrative services or influence or control coverages to be offered; and (3) the states in which the group intends to operate. The commissioner shall forward such information upon receipt to NAIC.

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

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

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

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

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

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

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

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

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

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

(2) (A) No material contract between a risk retention group and a service provider shall include a term that exceeds five years. A contract is deemed to be material if the amount paid under such contract is five per cent or more of the risk retention group's annual gross written premiums or two per cent of its surplus, whichever is greater. The board of directors shall approve by a majority vote any such contract or its renewal. The board of directors may terminate any such contract for cause at any time, provided any notice requirement included in such contract is satisfied.

(B) No service provider contract under which a material relationship would exist shall be entered into unless the risk retention group has submitted such contract as part of or as a revision to the risk retention group's plan of operation and the commissioner approves such plan or revision pursuant to subsection (b) of section 38a-251 of the general statutes, as amended by this act.

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

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

(3) The board of directors of each risk retention group shall adopt a written policy in its plan of operation or a feasibility study that requires the board of directors to: (A) Ensure that all owners and members of such group receive evidence of ownership interest; (B) develop a set of governance standards applicable to such group; (C) oversee the evaluation of such group's management, including, but not limited to, 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; (D) review and approve the amount to be paid to a service provider under a material contract; and (E) review and approve at least annually (i) such group's goals and objectives relative to the compensation of its officers and service providers, (ii) such officers' and service providers' performances in light of such goals and objectives, and (iii) the continued engagement of such officers and service providers.

(4) (A) Each risk retention group shall establish an audit committee composed of at least three independent members of the board of directors. The audit committee may invite a nonindependent member

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of the board of directors to participate in such committee's activities, but such nonindependent member shall not be a member of such committee.

(B) The audit committee shall adopt a written charter that defines the committee's purposes that shall, at a minimum, be to: (i) Assist the board of directors 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 contracted with by the risk retention group; (ii) discuss the annual audited financial statements and the quarterly financial statements with members of the management of the risk retention group; (iii) discuss the annual audited financial statements and, if advisable, the quarterly financial statements, with such group's external auditor; (iv) discuss policies with respect to such group's risk assessment and risk management; (v) meet separately and periodically, directly or through a designated member of the committee, with members of the management of the risk retention group and with such group's external auditor; (vi) review with such group's external auditor any audit problems or difficulties and the response from members of the management of such group; (vii) set clear hiring policies for the risk retention group for the hiring of employees of or former employees of such group's external auditor; (viii) require such group's external auditor to rotate or coordinate the lead auditor having primary responsibility for such group's audit and the auditor responsible for reviewing such group's audit so that no individual performs audit services for such group for more than five consecutive years; and (ix) report on its activities regularly to the risk retention group's board of directors.

(C) The commissioner may waive the requirement to establish an audit committee if a risk retention group demonstrates to the commissioner that it is impracticable to do so and such group's board

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of directors is itself able to accomplish the purposes of such committee, as set forth in subparagraph (B) of this subdivision.

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

(B) The board of directors shall disclose the standards and code set forth in subparagraph (A) of this subdivision by posting such standards and code on the risk retention group's Internet web site or by other means. The board of directors shall provide to members and insureds, upon request, additional information that includes (i) the process by which members of the board of directors are elected, (ii) the qualifications required to be a member of the board of directors, (iii) the responsibilities of the board of directors, (iv) the access of a member of the board of directors to members of the management of the risk retention group and to independent advisors, (v) the compensation for serving as a member of the board of directors, (vi) the orientation process for and continuing education requirements or opportunities for a member of the board of directors, (vii) the policies and procedures followed by the risk retention group for management succession, and (viii) the policies and procedures followed by the risk retention group for the annual performance evaluation of the members of the board of directors.

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

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

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

(a) Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state shall, prior to offering insurance in this state submit to the Insurance Commissioner: (1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business [] and such other information, including information on its membership, as the commissioner may require to verify that the risk retention group satisfies the [definitional] requirements of subdivision [(11)] (12) of section 38a-250, as amended by this act; (2) a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile, [provided] except the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance [which] that (A) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986, and (B) was offered before such date by any risk retention group [which] that had been chartered and operating for not less than three years before such date; and (3) a statement of registration [which] that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

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

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

(a) Each risk retention group not domiciled in this state that is doing business in this state shall submit to the Insurance Commissioner: (1) A copy of the group's financial statement submitted to its state of domicile [, which] that shall be certified by an independent public accountant and contain 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 under criteria established by NAIC; (2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination; (3) upon request by the commissioner, a copy of any information or document pertaining to any external audit performed with respect to the risk retention group; and (4) such information as may be required to verify that [it] the risk retention group satisfies the definitional requirements of subdivision [(11)] (12) of section 38a-250, as amended by this act.

(b) Each risk retention group doing business in this state shall, annually, on or before the first day of March, submit to the commissioner, by electronically filing with [the National Association of Insurance Commissioners] NAIC, a true and complete report, signed and sworn to by its president or a vice president, and secretary or an assistant secretary, of its financial condition on the thirty-first day of December next preceding, prepared as submitted to its state of

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domicile.

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

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

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

NOTICE

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

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

A purchasing group that intends to do business in this state shall furnish notice to the Insurance Commissioner that shall: (1) Identify the state in which the group is domiciled; (2) specify the lines and classifications of liability insurance that the purchasing group intends

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to purchase; (3) identify the insurance company from which the group intends to purchase its insurance and the domicile of such company; (4) identify the principal place of business of the group; (5) provide such other information as may be required by the Insurance Commissioner to verify that the purchasing group satisfies the definitional requirements of subdivision [(10)] (11) of section 38a-250, as amended by this act; (6) register with and designate the Insurance Commissioner as its agent solely for the purpose of receiving service of legal documents or process, in accordance with Section 4 of the Liability Risk Retention Act of 1986; (7) identify all other states in which the group intends to do business; and (8) specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state. A purchasing group shall notify the commissioner of any change in any of the items set forth in this section not later than ten days after any such change.

Approved June 7, 2016