



General Assembly

Amendment

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LCO No. 4370



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SEN. CRISCO, 17th Dist.

To: Subst. Senate Bill No. 436

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Cal. No. 302

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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

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

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

10 (3) "Insurance group" has the same meaning as provided in section
11 38a-142 of the general statutes;

12 (4) "Insurer" means any person or combination of persons doing any

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

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

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

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

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

45 domestic insurer that is not required to submit a CGAD to the
46 commissioner under this subdivision shall do so if requested by the
47 commissioner.

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

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

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

65 (2) A description of the policies and practices of the board and each
66 significant committee thereof, including a discussion of (A) how the
67 qualifications, expertise and experience of each board member meet
68 the needs of the insurer or insurance group, (B) how the insurer or
69 insurance group ensures an appropriate amount of independence is
70 maintained on the board and such committees, (C) the number of
71 meetings held by the board and such committees during the previous
72 year and information on board member attendance, and (D) how the
73 insurer or insurance group identifies, nominates and elects members to
74 the board and such committees, including (i) whether a nomination
75 committee is in place to identify and select individuals for
76 consideration, (ii) whether term limits are placed on board members,

77 (iii) how the election and reelection processes function, and (iv)
78 whether a board diversity policy is in place and if so, how it functions;

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

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

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

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

145 (d) (1) For the purposes of completing the CGAD, the insurer or
146 insurance group may provide the required information at the ultimate
147 control level, an intermediate holding company level or an individual
148 legal entity level, depending on the structure of such insurer's or
149 insurance group's corporate governance system. Such insurer or
150 insurance group may report information for the CGAD at the level at
151 which (A) such insurer's or insurance group's risk appetite is
152 determined, (B) such insurer's or insurance group's earnings, capital,
153 liquidity, operations and reputation are overseen collectively and the
154 supervision of such factors are coordinated and exercised, or (C) legal
155 liability would be placed for such insurer's or insurance group's failure
156 to comply with its corporate governance duties. An insurer or
157 insurance group that determines its level of CGAD reporting based on
158 the criteria specified in this subdivision shall indicate in the CGAD
159 which of the three criteria was used to determine its level of reporting
160 and explain any subsequent changes in its level of reporting.

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

171 (3) The insurer or insurance group shall have discretion over the
172 information it provides in a CGAD, provided such CGAD is consistent
173 with subsection (c) of this section and contains the material
174 information necessary to allow the commissioner to understand the
175 insurer's or insurance group's corporate governance structure, policies
176 and practices. The insurer or insurance group shall be as descriptive as
177 possible in completing a CGAD and shall include attachments or
178 document examples that such insurer or insurance group uses in its

179 governance process. The commissioner may request additional
180 information the commissioner deems material and necessary to
181 understand the insurer's or insurance group's corporate governing
182 policies, reporting or information system or controls over such policies
183 or systems. The insurer or insurance group shall maintain any CGAD-
184 related documents and supporting information and make such
185 documents and information available to the commissioner upon
186 request.

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

194 (e) (1) All documents, materials or other information, including the
195 CGAD, in the possession or control of the Insurance Department that
196 are obtained by, created by or disclosed to the commissioner or any
197 other person pursuant to this section are deemed to be proprietary and
198 to contain trade secrets and shall be confidential by law and privileged,
199 shall not be subject to disclosure under section 1-210 of the general
200 statutes, shall not be subject to subpoena and shall not be subject to
201 discovery or admissible in evidence in any civil action in this state. The
202 commissioner may use such documents, materials or information in
203 the furtherance of any regulatory or legal action brought as a part of
204 the commissioner's official duties. The commissioner shall not
205 otherwise make such documents, materials or other information public
206 without the prior written consent of the insurer, except that nothing in
207 this subsection shall be construed to require written consent of the
208 insurer prior to the commissioner sharing or receiving CGAD-related
209 documents, materials or other information pursuant to subdivision (3)
210 of this subsection.

211 (2) Neither the commissioner nor any person who, while acting

212 under the authority of the commissioner, obtained or received CGAD-
213 related documents, materials or other information, or to whom such
214 documents, materials or other information were disclosed, shall be
215 permitted or required to testify in any civil action in this state
216 concerning any such documents, materials or information.

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

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

232 (B) May receive CGAD-related documents, materials or other
233 information, including documents, materials or information deemed
234 proprietary and containing trade secrets, confidential and privileged,
235 from other state, federal and international financial regulatory officials,
236 including members of a supervisory college and NAIC. The
237 commissioner shall maintain as confidential and privileged any such
238 documents, materials or information received with notice or the
239 understanding that such documents, materials or information are
240 confidential and privileged under the laws of the jurisdiction that is
241 the source of such documents, materials or information.

242 (4) A written agreement between the commissioner and NAIC or a
243 third-party consultant governing the sharing and use of documents,

244 materials and information shared or received pursuant to subdivision
245 (3) of this subsection shall expressly require the prior written consent
246 of the insurer to NAIC or such third-party consultant making such
247 documents, materials or information public and shall (A) specify
248 policies and procedures for maintaining the confidentiality and
249 security of such documents, materials or other information that are
250 shared with NAIC or the third-party consultant, including (i)
251 procedures and protocols limiting sharing by NAIC to only regulatory
252 officials of states in which other member insurers of the insurance
253 group of which a domestic insurer is a member are domiciled, and (ii)
254 a provision requiring NAIC or a third-party consultant to agree, in
255 writing, and if applicable, a provision requiring NAIC to obtain from a
256 regulatory official under subparagraph (A)(i) of this subdivision an
257 agreement, in writing, to maintain the confidentiality and privileged
258 status of such documents, materials or other information, and
259 verifying the recipient's legal authority to maintain confidentiality, (B)
260 specify that the commissioner shall retain ownership of such
261 documents, materials or other information and that the use of such
262 documents, materials or other information is subject to the
263 commissioner's discretion, (C) prohibit NAIC or the third-party
264 consultant from storing such documents, materials or other
265 information in a permanent database after the underlying analysis is
266 completed, (D) require NAIC or the third-party consultant to promptly
267 notify the commissioner and the insurer or insurance group whose
268 confidential information is in the possession of NAIC or the third-
269 party consultant if NAIC or the third-party consultant is subject to a
270 request or subpoena for disclosure or production of such documents,
271 materials or other information, and (E) require NAIC or the third-party
272 consultant, if NAIC or such consultant is subject to disclosure of an
273 insurer's or insurance group's confidential documents, materials or
274 other information that has been shared with NAIC or such consultant
275 pursuant to subparagraph (A) of subdivision (3) of this subsection, to
276 allow such insurer or insurance group to intervene in any judicial or
277 administrative action regarding such disclosure.

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

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

290 (2) The commissioner may engage the services of third-party
291 consultants including attorneys, actuaries, accountants and other
292 experts not otherwise a part of the commissioner's staff, at the insurer's
293 or insurance group's expense, as shall be reasonably necessary to assist
294 the commissioner in a review of such insurer's or insurance group's
295 CGAD and related documents, materials and other information or of
296 such insurer's or insurance group's compliance with the requirements
297 of this section. Any such consultant shall (A) be under the direction
298 and control of the commissioner and act in an advisory capacity only,
299 and (B) verify to the commissioner and provide notice to the insurer or
300 insurance group that such consultant is free of any conflict of interest
301 regarding such insurer or insurance group and has internal procedures
302 in place to monitor conflicts of interest that may arise and to comply
303 with the confidentiality standards and requirements of this section.

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

308 (g) The commissioner, after notice and hearing, may impose a civil
309 penalty on an insurer or insurance group that fails, without just cause,

310 to timely file a CGAD, of one hundred seventy-five dollars for each
311 day the failure to file a CGAD continues. The commissioner may
312 reduce the penalty if the insurer or insurance group demonstrates to
313 the commissioner that the imposition of the penalty would constitute a
314 financial hardship to the insurer or insurance group.

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

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

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

325 (2) "Doing business" means effecting any of the following acts in this
326 state by mail or otherwise: (A) The making of or proposing to make, as
327 an insurer, an insurance contract; (B) the making of or proposing to
328 make, as guarantor or surety, any contract of guaranty or suretyship as
329 a vocation and not merely incidental to any other legitimate business
330 or activity of the guarantor or surety; (C) the taking or receiving of any
331 application for insurance; (D) the receiving or collection of any
332 premium, commission, membership fees, assessments, dues or other
333 consideration for any insurance or any party thereof; (E) the issuance
334 or delivery of contracts of insurance to residents of this state or to
335 persons authorized to do business in this state; (F) directly or indirectly
336 acting as an agent for or otherwise representing or aiding on behalf of
337 another any person or insurer in the solicitation, negotiation,
338 procurement or effectuation of insurance or renewals thereof or in the
339 dissemination of information as to coverage or rates, or forwarding of
340 applications, or delivery of policies or contracts, or inspection of risks,
341 a filing of rates or investigation or adjustment of claims or losses or in

342 the transaction of matters subsequent to effectuation of the contract
343 and arising out of it, or in any other manner representing or assisting a
344 person or insurer in the transaction of insurance with respect to
345 subjects of insurance resident, located or to be performed in this state;
346 (G) the doing of or proposing to do any insurance business in
347 substance equivalent to any of the foregoing in a manner designed to
348 evade the provisions of the general statutes relating to insurance; and
349 (H) any other transactions of business in this state by an insurer. The
350 venue of an act committed by mail is at the point where the matter
351 transmitted by mail is delivered and takes effect;

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

356 (4) "Hazardous financial condition" means that, based on its present
357 or reasonably anticipated financial condition, a risk retention group is
358 unlikely to be able (A) to meet obligations to policyholders with
359 respect to known claims and reasonably anticipated claims, or (B) to
360 pay other obligations in the normal course of business;

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

365 (6) "Liability" means legal liability for damages, including costs of
366 defense, legal costs and fees, and other claims expenses, because of
367 injuries to other persons, damage to their property or other damage or
368 loss to such other persons resulting from or arising out of (A) any
369 business, whether profit or nonprofit, trade, product, services,
370 including professional services, premises or operations, or (B) any
371 activity of any state or local government or any agency or political
372 subdivision thereof. "Liability" does not include personal risk liability
373 and an employer's liability with respect to its employees other than

374 legal liability under the Federal Employers' Liability Act, [(45 USC 51
375 et seq.)] 45 USC 51 et seq.;

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

378 [(7)] (8) "Personal risk liability" means liability for damages because
379 of injury to any person, damage to property or other loss or damage
380 resulting from any personal, familial or household responsibilities or
381 activities, rather than from responsibilities or activities referred to in
382 subdivision (6) of this section;

383 [(8)] (9) "Plan of operation or a feasibility study" means an analysis
384 [which] that presents the expected activities and results of a risk
385 retention group including, at a minimum, (A) for each state in which it
386 intends to operate, the coverages, deductibles, coverage limits, rates
387 and rating classification systems for each line of insurance the group
388 intends to offer, (B) historical and expected loss experience of the
389 proposed members and national experience of similar exposures to the
390 extent that this experience is reasonably available, (C) pro forma
391 financial statements and projections, (D) appropriate opinions by an
392 independent member of the American Academy of Actuaries,
393 including a determination of minimum premium or participation
394 levels required to commence operations and to prevent a hazardous
395 financial condition, (E) information sufficient to verify that its
396 members are engaged in businesses or activities similar or related with
397 respect to the liability to which such members are exposed by virtue of
398 any related, similar or common business, trade, product, services,
399 premises or operations, (F) identification of management,
400 underwriting and claims procedures, marketing methods, managerial
401 oversight methods, investment policies and reinsurance agreements,
402 (G) identification of each state in which the risk retention group has
403 obtained, or sought to obtain, a charter and license, and a description
404 of its status in each such state, and (H) such other matters as may be
405 prescribed by the commissioner of the state in which the risk retention
406 group is chartered for liability insurance companies authorized by the

407 insurance laws of that state;

408 [(9)] (10) "Product liability" means liability for damages because of
409 any personal injury, death, emotional harm, consequential economic
410 damage, or property damage, including damages resulting from loss
411 of use of property, arising out of the manufacture, design, importation,
412 distribution, packaging, labeling, lease or sale of a product. [, but]
413 "Product liability" does not include the liability of any person for those
414 damages if the product involved was in the possession of such a
415 person when the incident giving rise to the claim occurred;

416 [(10)] (11) "Purchasing group" means any group [which] that: (A)
417 Has as one of its purposes the purchase of liability insurance on a
418 group basis; (B) purchases such insurance only for its group members
419 and only to cover their similar or related liability exposure, as
420 described in subparagraph (C) of this subdivision; (C) is composed of
421 members whose businesses or activities are similar or related with
422 respect to the liability to which members are exposed by virtue of any
423 related, similar or common business, trade, product, services, premises
424 or operations; and (D) is domiciled in any state;

425 [(11)] (12) "Risk retention group" means any corporation or other
426 limited liability association: (A) Whose primary activity consists of
427 assuming and spreading all, or any portion, of the liability exposure of
428 its group members; (B) which is organized for the primary purpose of
429 conducting the activity described under subparagraph (A) of this
430 subdivision; (C) [which] that (i) is chartered and licensed as a liability
431 insurance company under the laws of a state and authorized to engage
432 in the business of insurance under the laws of such state, or (ii) before
433 January 1, 1985, was chartered or licensed and authorized to engage in
434 the business of insurance under the laws of Bermuda or the Cayman
435 Islands and, before [such] said date, had certified to the insurance
436 commissioner of at least one state that it satisfied the capitalization
437 requirements of such state, except that any such group shall be
438 considered to be a risk retention group only if it has been engaged in
439 business continuously since such date and only for the purpose of

440 continuing to provide insurance to cover product liability or
441 completed operations liability, as such terms were defined in the
442 Product Liability Risk Retention Act of 1981, [(15 USC 3901 et seq.)] 15
443 USC 3901 et seq., before the date of the enactment of the Liability Risk
444 Retention Act of 1986; (D) [which] that does not exclude any person
445 from membership in the group solely to provide for members of such a
446 group a competitive advantage over such a person; (E) [which] that (i)
447 has as its owners only persons who comprise the membership of the
448 risk retention group and who are provided insurance by such group,
449 or (ii) has as its sole owner an organization which has as its members
450 only persons who comprise the membership of the risk retention
451 group, and as its owners only persons who comprise the membership
452 of the risk retention group and who are provided insurance by such
453 group; (F) whose members are engaged in businesses or activities
454 similar or related with respect to the liability to which such members
455 are exposed by virtue of any related, similar or common business,
456 trade, product, services, premises or operations; (G) whose activities
457 do not include the provision of insurance other than (i) liability
458 insurance for assuming and spreading all or any portion of the similar
459 or related liability exposure of its group members, and (ii) reinsurance
460 with respect to the similar or related liability exposure of any other risk
461 retention group, or any member of such other group, [which] that is
462 engaged in businesses or activities so that such group or member
463 meets the requirement described in subparagraph (F) of this
464 subdivision for membership in the risk retention group [which] that
465 provides such reinsurance; and (H) the name of which includes the
466 phrase "Risk Retention Group";

467 [(12)] (13) "State" means any state of the United States or the District
468 of Columbia.

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

471 (a) A risk retention group seeking to be chartered in this state shall
472 be chartered and licensed as a liability insurance company authorized

473 by the insurance laws of this state and, except as provided in sections
474 38a-250 to 38a-266, inclusive, as amended by this act, shall comply
475 with all [of the] laws, rules, regulations and requirements applicable to
476 such insurers chartered and licensed in this state, and with section 38a-
477 252, as amended by this act, to the extent such requirements are not a
478 limitation on laws, rules, regulations or requirements of this state.

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

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

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

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

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

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

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

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

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

529 (i) The receipt by an individual set forth in subparagraphs (A) to
530 (C), inclusive, of this subdivision, such individual's immediate family
531 member or any business with which such individual is affiliated, from
532 the risk retention group or a consultant to or service provider for such
533 group, of compensation or payment in any one twelve-month period
534 of five per cent or more of the risk retention group's gross written
535 premiums for such twelve-month period or two per cent of its surplus,
536 whichever is greater. Such individual shall not be deemed to be

537 independent for the purposes of this section until one year after such
538 compensation or payment from such group falls below the threshold
539 set forth in subparagraph (E)(i) of this subdivision;

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

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

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

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

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

569 fact for such group.

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

582 (3) The board of directors of each risk retention group shall adopt a
583 written policy in its plan of operation or a feasibility study that
584 requires the board of directors to: (A) Ensure that all owners and
585 members of such group receive evidence of ownership interest; (B)
586 develop a set of governance standards applicable to such group; (C)
587 oversee the evaluation of such group's management, including, but not
588 limited to, the performance of the captive manager, managing general
589 underwriter or other parties responsible for underwriting, determining
590 premium rates, collecting premiums, adjusting and settling claims and
591 preparing financial statements; (D) review and approve the amount to
592 be paid to a service provider under a material contract; and (E) review
593 and approve at least annually (i) such group's goals and objectives
594 relative to the compensation of its officers and service providers, (ii)
595 such officers' and service providers' performances in light of such
596 goals and objectives, and (iii) the continued engagement of such
597 officers and service providers.

598 (4) (A) Each risk retention group shall establish an audit committee
599 composed of at least three independent members of the board of
600 directors. The audit committee may invite a nonindependent member
601 of the board of directors to participate in such committee's activities,

602 but such nonindependent member shall not be a member of such
603 committee.

604 (B) The audit committee shall adopt a written charter that defines
605 the committee's purposes that shall, at a minimum, be to: (i) Assist the
606 board of directors with oversight of the integrity of financial
607 statements, compliance with legal and regulatory requirements and
608 the qualifications, independence and performance of any auditor or
609 actuary contracted with by the risk retention group; (ii) discuss the
610 annual audited financial statements and the quarterly financial
611 statements with members of the management of the risk retention
612 group; (iii) discuss the annual audited financial statements and, if
613 advisable, the quarterly financial statements, with such group's
614 external auditor; (iv) discuss policies with respect to such group's risk
615 assessment and risk management; (v) meet separately and
616 periodically, directly or through a designated member of the
617 committee, with members of the management of the risk retention
618 group and with such group's external auditor; (vi) review with such
619 group's external auditor any audit problems or difficulties and the
620 response from members of the management of such group; (vii) set
621 clear hiring policies for the risk retention group for the hiring of
622 employees of or former employees of such group's external auditor;
623 (viii) require such group's external auditor to rotate or coordinate the
624 lead auditor having primary responsibility for such group's audit and
625 the auditor responsible for reviewing such group's audit so that no
626 individual performs audit services for such group for more than five
627 consecutive years; and (ix) report on its activities regularly to the risk
628 retention group's board of directors.

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

634 (5) (A) The board of directors of a risk retention group shall adopt

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

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

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

667 (b) The commissioner may examine any documents or materials

668 relating to the requirements set forth in this section for a risk retention
669 group chartered and licensed in this state.

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

672 (a) Risk retention groups chartered in states other than this state and
673 seeking to do business as a risk retention group in this state shall, prior
674 to offering insurance in this state submit to the Insurance
675 Commissioner: (1) A statement identifying the state or states in which
676 the risk retention group is chartered and licensed as a liability
677 insurance company, date of chartering, its principal place of business
678 [] and such other information, including information on its
679 membership, as the commissioner may require to verify that the risk
680 retention group satisfies the [definitional] requirements of subdivision
681 [(11)] (12) of section 38a-250, as amended by this act; (2) a copy of its
682 plan of operations or a feasibility study and revisions of such plan or
683 study submitted to its state of domicile, [provided] except the
684 provision relating to the submission of a plan of operation or a
685 feasibility study shall not apply with respect to any line or
686 classification of liability insurance [which] that (A) was defined in the
687 Product Liability Risk Retention Act of 1981 before the date of the
688 enactment of the Liability Risk Retention Act of 1986, and (B) was
689 offered before such date by any risk retention group [which] that had
690 been chartered and operating for not less than three years before such
691 date; and (3) a statement of registration [which] that designates the
692 commissioner as its agent for the purpose of receiving service of legal
693 documents or process.

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

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

703 (a) Each risk retention group not domiciled in this state that is doing
704 business in this state shall submit to the Insurance Commissioner: (1) A
705 copy of the group's financial statement submitted to its state of
706 domicile [, which] that shall be certified by an independent public
707 accountant and contain a statement of opinion on loss and loss
708 adjustment expense reserves made by a member of the American
709 Academy of Actuaries or a qualified loss reserve specialist under
710 criteria established by NAIC; (2) a copy of each examination of the risk
711 retention group as certified by the commissioner or public official
712 conducting the examination; (3) upon request by the commissioner, a
713 copy of any information or document pertaining to any external audit
714 performed with respect to the risk retention group; and (4) such
715 information as may be required to verify that [it] the risk retention
716 group satisfies the definitional requirements of subdivision [(11)] (12)
717 of section 38a-250, as amended by this act.

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

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

734 Commissioners' Examiner Handbook.

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

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

741 NOTICE

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

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

749 A purchasing group that intends to do business in this state shall
750 furnish notice to the Insurance Commissioner that shall: (1) Identify
751 the state in which the group is domiciled; (2) specify the lines and
752 classifications of liability insurance that the purchasing group intends
753 to purchase; (3) identify the insurance company from which the group
754 intends to purchase its insurance and the domicile of such company;
755 (4) identify the principal place of business of the group; (5) provide
756 such other information as may be required by the Insurance
757 Commissioner to verify that the purchasing group satisfies the
758 definitional requirements of subdivision [(10)] (11) of section 38a-250,
759 as amended by this act; (6) register with and designate the Insurance
760 Commissioner as its agent solely for the purpose of receiving service of
761 legal documents or process, in accordance with Section 4 of the
762 Liability Risk Retention Act of 1986; (7) identify all other states in
763 which the group intends to do business; and (8) specify the method by
764 which, and the person or persons, if any, through whom insurance will

765 be offered to its members whose risks are resident or located in this
766 state. A purchasing group shall notify the commissioner of any change
767 in any of the items set forth in this section not later than ten days after
768 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