

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 219*

Short Title: NAIC Accreditation Amendments.-AB (Public)

Sponsors: Representatives Setzer, Bumgardner, and Corbin (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Insurance, if favorable, Rules, Calendar, and Operations of the House

February 28, 2019

1 AN ACT TO REVISE VARIOUS INSURANCE LAWS IN ORDER TO MAINTAIN NAIC
2 ACCREDITATION, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

3 The General Assembly of North Carolina enacts:

4 **PART I. SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS**

5 **SECTION 1.(a)** G.S. 58-19-5 is amended by adding a new subdivision to read:

6 "(10a) Group-wide supervisor. – The regulatory official authorized to engage in
7 conducting and coordinating group-wide supervision activities who is
8 determined or acknowledged by the Commissioner under G.S. 58-19-38 to
9 have sufficient significant contacts with the internationally active insurance
10 group."

11 **SECTION 1.(b)** G.S. 58-19-5 is amended by adding a new subdivision to read:

12 "(12a) Internationally active insurance group. – An insurance holding company
13 system that includes an insurer registered under G.S. 58-19-25 and that meets
14 all of the following criteria:

- 15 a. The insurance holding company system writes premiums in at least
16 three countries.
17 b. The percentage of gross premiums of the insurance holding company
18 system written outside the United States is at least ten percent (10%)
19 of the insurance holding company system's total gross written
20 premiums.
21 c. Based on a three-year rolling average, the total assets of the insurance
22 holding company system are at least fifty billion dollars
23 (\$50,000,000,000) or the total gross written premiums of the insurance
24 holding company system are at least ten billion dollars
25 (\$10,000,000,000)."

26 **SECTION 1.(c)** Article 19 of Chapter 58 of the General Statutes is amended by
27 adding a new section to read as follows:

28 "**§ 58-19-38. Group-wide supervision of internationally active insurance groups.**

29 (a) In cooperation with other state, federal, and international regulatory agencies, the
30 Commissioner will identify a single group-wide supervisor for an internationally active insurance
31 group in accordance with the provisions of this section. The Commissioner is authorized to act
32 as the group-wide supervisor for any internationally active insurance group. However, the
33 Commissioner may otherwise acknowledge another regulatory official as the group-wide
34 supervisor where the internationally active insurance group meets any of the following criteria:

- 35 (1) It does not have substantial insurance operations in the United States.



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1 (2) It has substantial insurance operations in the United States, but not in this
2 State.

3 (3) It has substantial insurance operations in the United States and this State, but
4 the Commissioner has determined pursuant to the factors set forth in
5 subsections (b) and (f) of this section that the other regulatory official is the
6 appropriate group-wide supervisor.

7 An insurance holding company system that does not otherwise qualify as an internationally
8 active insurance group may request that the Commissioner make a determination or
9 acknowledgment as to a group-wide supervisor pursuant to this section.

10 (b) The Commissioner shall consider all of the following factors when determining that
11 the Commissioner is the appropriate group-wide supervisor for an internationally active
12 insurance group that conducts substantial insurance operations concentrated in this State or
13 acknowledges that a regulatory official from another jurisdiction is the appropriate group-wide
14 supervisor for the internationally active insurance group:

15 (1) The place of domicile of the insurers within the internationally active
16 insurance group that holds the largest share of the group's written premiums,
17 assets, or liabilities.

18 (2) The place of domicile of the top-tiered insurer(s) in the insurance holding
19 company system of the internationally active insurance group.

20 (3) The location of the executive offices or largest operational offices of the
21 internationally active insurance group.

22 (4) Whether another regulatory official is acting or is seeking to act as the
23 group-wide supervisor under a regulatory system that the Commissioner
24 determines to have either of the following characteristics:

25 a. The system is substantially similar to the system of regulation
26 provided under the laws of this State.

27 b. The system is otherwise sufficient in terms of providing for
28 group-wide supervision, enterprise risk analysis, and cooperation with
29 other regulatory officials.

30 (5) Whether another regulatory official acting or seeking to act as the group-wide
31 supervisor provides the Commissioner with reasonably reciprocal recognition
32 and cooperation.

33 A regulatory official identified under this section as the group-wide supervisor may
34 determine that it is appropriate to acknowledge another regulatory official to serve as the
35 group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made (i) after
36 consideration of the factors listed in subdivisions (1) through (5) of this subsection, (ii) in
37 cooperation with and subject to the acknowledgment of other regulatory officials involved with
38 supervision of members of the internationally active insurance group, and (iii) in consultation
39 with the internationally active insurance group.

40 (c) Notwithstanding any other provision of law, when another regulatory official is acting
41 as the group-wide supervisor of an internationally active insurance group, the Commissioner
42 shall acknowledge that regulatory official as the group-wide supervisor. However, the
43 Commissioner shall make a determination or acknowledgment as to the appropriate group-wide
44 supervisor for such an internationally active insurance group pursuant to subsection (b) of this
45 section when there is a material change in the internationally active insurance group that results
46 in either of the following:

47 (1) The internationally active insurance group's insurers domiciled in this State
48 holding the largest share of the group's premiums, assets, or liabilities.

49 (2) This State being the place of domicile of the top-tiered insurers in the
50 insurance holding company system of the internationally active insurance
51 group.

1 (d) Pursuant to G.S. 58-19-35, the Commissioner is authorized to collect from any insurer
2 registered pursuant to G.S. 58-19-25 all information necessary to determine whether the
3 Commissioner may act as the group-wide supervisor of an internationally active insurance group
4 or if the Commissioner may acknowledge another regulatory official to act as the group-wide
5 supervisor. Prior to issuing a determination that an internationally active insurance group is
6 subject to group-wide supervision by the Commissioner, the Commissioner shall notify the
7 insurer registered pursuant to G.S. 58-19-25 and the ultimate controlling person within the
8 internationally active insurance group. The internationally active insurance group shall have 30
9 days to provide the Commissioner with additional information pertinent to the pending
10 determination.

11 (e) If the Commissioner is the group-wide supervisor for an internationally active
12 insurance group, the Commissioner is authorized to engage in the following group-wide
13 supervision activities:

14 (1) Assess the enterprise risks within the internationally active insurance group to
15 ensure all of the following:

16 a. That the material financial condition and liquidity risks to the members
17 of the internationally active insurance group, that are engaged in the
18 business of insurance, are identified by management.

19 b. That reasonable and effective mitigation measures are in place.

20 (2) Request, from any member of an internationally active insurance group
21 subject to the Commissioner's supervision, information necessary and
22 appropriate to assess enterprise risk. This information includes information
23 about the governance, risk assessment and management, capital adequacy, and
24 material intercompany transactions of the members of the internationally
25 active insurance group.

26 (3) Coordinate and, in reliance on the authority of the regulatory officials of the
27 jurisdictions where members of the internationally active insurance group are
28 domiciled, compel development and implementation of reasonable measures
29 designed to ensure that the internationally active insurance group is able to
30 timely recognize and mitigate enterprise risks to members of the
31 internationally active insurance group that are engaged in the business of
32 insurance.

33 (4) Communicate with other state, federal, and international regulatory agencies
34 with jurisdiction over members within the internationally active insurance
35 group and share relevant information through supervisory colleges as set forth
36 in G.S. 58-19-37 or otherwise subject to the confidentiality provisions of
37 G.S. 58-19-40.

38 (5) Request documents or enter into agreements providing the basis for or
39 otherwise clarifying the Commissioner's role as group-wide supervisor with
40 any insurer registered under G.S. 58-19-25, any member of the internationally
41 active insurance group, and any other state, federal, and international
42 regulatory agencies with jurisdiction over members of the internationally
43 active insurance group. These agreements may include provisions for
44 resolving disputes with other regulatory officials. These agreements or
45 documentation shall not serve as evidence in any proceeding that insurers or
46 other persons within an insurance holding company system, not domiciled or
47 incorporated in this State, are doing business in this State or are otherwise
48 subject to jurisdiction in this State.

49 (6) Other group-wide supervision activities, consistent with the authorities and
50 purposes enumerated above, as considered necessary by the Commissioner.

1 (f) If the Commissioner acknowledges that another regulatory official from a jurisdiction
 2 that is not accredited by the NAIC is the group-wide supervisor, the Commissioner is authorized
 3 to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision
 4 undertaken by the group-wide supervisor, provided that both of the following conditions are met:

5 (1) The Commissioner's cooperation is in compliance with the laws of this State.

6 (2) The regulatory official acknowledged as the group-wide supervisor
 7 recognizes and cooperates with the Commissioner's activities as a group-wide
 8 supervisor for other internationally active insurance groups where applicable.

9 Where recognition and cooperation are not reasonably reciprocal, the Commissioner is
 10 authorized to refuse recognition and cooperation.

11 (g) The Commissioner may enter into agreements with or obtain documentation from any
 12 insurer registered under G.S. 58-19-25, any affiliate of the insurer, and other state, federal, and
 13 international regulatory agencies for members of the internationally active insurance group that
 14 provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

15 (h) The Commissioner may adopt rules necessary for the administration of this section.

16 (i) A registered insurer subject to this section shall be liable for the reasonable expenses
 17 of the Commissioner's participation in the administration of this section, including the
 18 engagement of attorneys, actuaries, and any other professionals and reasonable travel expenses."

19 **SECTION 1.(d)** G.S. 58-19-40(a) reads as rewritten:

20 "(a) Documents, materials, or other information in the possession or control of the
 21 Department that are obtained by or disclosed to the Commissioner or any other person in the
 22 course of an examination or investigation made pursuant to G.S. 58-19-35, and all information
 23 reported or provided to the Department pursuant to subdivisions (11a) and (11b) of
 24 G.S. 58-19-15(b), G.S. 58-19-25, ~~and G.S. 58-19-30,~~ G.S. 58-19-30 and G.S. 58-19-38 shall be
 25 confidential by law and privileged, shall not be considered a public record under either
 26 G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall
 27 not be subject to discovery or admissible in evidence in any private civil action. However, the
 28 Commissioner is authorized to use the documents, materials, or other information in the
 29 furtherance of any regulatory or legal action brought as a part of the Commissioner's official
 30 duties. The Commissioner shall not otherwise make the documents, materials, or other
 31 information public without the prior written consent of the insurer to which it pertains unless the
 32 Commissioner, after giving the insurer and its affiliates who would be affected thereby notice
 33 and opportunity to be heard, determines that the interest of policyholders, shareholders, or the
 34 public will be served by the publication thereof, in which event the Commissioner may publish
 35 all or any part of the information in such manner as may be deemed appropriate."
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37 **PART II. OVERSIGHT OF INTERNAL AUDIT FUNCTIONS OF INSURERS OR** 38 **GROUPS OF INSURERS**

39 **SECTION 2.(a)** G.S. 58-10-190(3) reads as rewritten:

40 "(3) "Audit committee" means a committee, or equivalent body, established by the
 41 board of directors of an entity for the purpose of overseeing the accounting
 42 and financial reporting processes of an insurer or group of ~~insurers-insurers,~~
 43 any internal audit function of the insurer or group of insurers, and external
 44 audits of financial statements of the insurer or group of insurers. The audit
 45 committee of any entity that controls a group of insurers may be deemed to be
 46 the audit committee for one or more of these controlled insurers at the election
 47 of the controlling person as provided in G.S. 58-10-245(f). If an audit
 48 committee is not designated by the insurer, the insurer's entire board of
 49 directors shall constitute the audit committee."

50 **SECTION 2.(b)** G.S. 58-10-190 is amended by adding a new subdivision to read:

1 "(6a) "Internal audit function" means a person or persons that provide independent,
2 objective, and reasonable assurance designed to add value and improve an organization's
3 operations and accomplish its objectives by bringing a systematic, disciplined approach to
4 evaluate and improve the effectiveness of risk management, control, and governance processes."

5 **SECTION 2.(c)** G.S. 58-10-245 is amended by adding a new subsection to read:

6 "(b1) The audit committee of an insurer or group of insurers shall be responsible for
7 overseeing the insurer's internal audit function and granting the person or persons performing the
8 function suitable authority and resources to fulfill the requirements of G.S. 58-10-246."

9 **SECTION 2.(d)** Article 10 of Chapter 58 of the General Statutes is amended by
10 adding a new section to read as follows:

11 **"§ 58-10-246. Internal audit function requirements.**

12 (a) Exemption. – An insurer is exempt from the requirements of this section if both of
13 the following apply:

14 (1) The insurer has annual direct written and unaffiliated assumed premium,
15 including international direct and assumed premium, but excluding premiums
16 reinsured with the Federal Crop Insurance Corporation and Federal Flood
17 Program, less than five hundred million dollars (\$500,000,000).

18 (2) If the insurer is a member of a group of insurers, the group has annual direct
19 written and unaffiliated assumed premium including international direct and
20 assumed premium, but excluding premiums reinsured with the Federal Crop
21 Insurance Corporation and Federal Flood Program, less than one billion
22 dollars (\$1,000,000,000).

23 (b) Function. – The insurer or group of insurers shall establish an internal audit function
24 providing independent, objective, and reasonable assurance to the audit committee and insurer
25 management regarding the insurer's governance, risk management, and internal controls. This
26 assurance shall be provided by performing general and specific audits, reviews, and tests and by
27 employing other techniques deemed necessary to protect assets, evaluate control effectiveness
28 and efficiency, and evaluate compliance with policies and regulations.

29 (c) Independence. – In order to ensure that internal auditors remain objective, the internal
30 audit function must be organizationally independent. For purposes of this section,
31 "organizationally independent" means that the internal audit function (i) shall not defer ultimate
32 judgment on audit matters to others and (ii) shall appoint an individual to head the internal audit
33 function who will have direct and unrestricted access to the board of directors of the insurer or
34 group of insurers. Organizational independence does not preclude dual-reporting relationships.

35 (d) Reporting. – The head of the internal audit function shall report to the audit committee
36 with a frequency no less than annually on the periodic audit plan, factors that may adversely
37 impact the internal audit function's independence or effectiveness, material findings from
38 completed audits, and the appropriateness of corrective actions implemented by management as
39 a result of audit findings.

40 (e) Additional Requirements. – If an insurer is a member of an insurance holding
41 company system or included in a group of insurers, the insurer may satisfy the internal audit
42 function requirements set forth in this section at the ultimate controlling parent level, an
43 intermediate holding company level, or the individual legal entity level."

44 **SECTION 2.(e)** G.S. 58-10-260 is amended by adding a new subsection to read:

45 "(g) The requirements of G.S. 58-10-246 become effective January 1, 2020. An insurer or
46 group of insurers exempt from G.S. 58-10-246 that no longer meets the threshold for exemption
47 shall have one calendar year after the year the threshold is exceeded to comply with the
48 requirements of that section."

49
50 **PART III. CORPORATE GOVERNANCE ANNUAL DISCLOSURE**

1 SECTION 3.(a) Article 10 of Chapter 58 of the General Statutes is amended by
2 adding a new Part to read:

3 "Part 11. Corporate Governance Annual Disclosure.

4 "**§ 58-10-755. Purpose and scope.**

5 (a) The purpose of this Part is to:

- 6 (1) Provide the Commissioner a summary of an insurer or insurance group's
7 corporate governance structure, policies, and practices to permit the
8 Commissioner to gain and maintain an understanding of the insurer's
9 corporate governance framework.
- 10 (2) Outline the requirements for completing a corporate governance annual
11 disclosure with the Commissioner.
- 12 (3) Provide for the confidential treatment of the corporate governance annual
13 disclosure and related information that will contain confidential and sensitive
14 information related to an insurer or insurance group's internal operations and
15 proprietary and trade secret information which, if made public, could
16 potentially cause the insurer or insurance group competitive harm or
17 disadvantage.
- 18 (4) Set forth the procedures for filing and the required contents of the Corporate
19 Governance Annual Disclosure.

20 (b) Nothing in this Part shall be construed to prescribe or impose corporate governance
21 standards and internal procedures beyond that which is required under applicable state corporate
22 law. Notwithstanding the foregoing, nothing in this Part shall be construed to limit the
23 Commissioner's authority, or the rights or obligations of third parties, under G.S. 58-2-131
24 through G.S. 58-2-134.

25 (c) The requirements of this Part shall apply to all insurers domiciled in this state.

26 "**§ 58-10-760. Definitions.**

27 The following definitions apply in this Part:

- 28 (1) CGAD or Corporate Governance Annual Disclosure. – A confidential report
29 filed by an insurer or insurance group made in accordance with the
30 requirements of this Part.
- 31 (2) Insurance group. – Those insurers and affiliates included within an insurance
32 holding company system as defined in G.S. 58-19-5.
- 33 (3) Insurer. – Defined in G.S. 58-1-5 and includes a person subject to Articles 65
34 or 67 of this Chapter. Insurer does not include an agency, authority, or
35 instrumentality of the United States; any of its possessions and territories; the
36 Commonwealth of Puerto Rico; the District of Columbia; a state, or a political
37 subdivision of a state.
- 38 (4) Senior management. – Any corporate officer responsible for reporting
39 information to the board of directors at regular intervals or providing this
40 information to shareholders or regulators and shall include the chief executive
41 officer, chief financial officer, chief operations officer, chief procurement
42 officer, chief legal officer, chief information officer, chief technology officer,
43 chief revenue officer, and chief visionary officer.

44 "**§ 58-10-765. Disclosure requirement and filing procedures.**

45 (a) An insurer, or the insurance group of which the insurer is a member, shall, no later
46 than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the
47 information described in G.S. 58-10-775. Notwithstanding any request from the Commissioner
48 made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group,
49 the insurer shall submit the report required by this section to the Commissioner of the lead state
50 for the insurance group, in accordance with the laws of the lead state, as determined by the
51 procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In

1 these instances, a copy of the CGAD must also be provided, upon request, to the chief regulatory
2 official of any state in which the insurance group has a domestic insurer.

3 (b) The CGAD must include a signature of the insurer's or insurance group's chief
4 executive officer or corporate secretary attesting to the best of that individual's belief and
5 knowledge that the insurer or insurance group has implemented the corporate governance
6 practices and that a copy of the disclosure has been provided to the insurer's or insurance group's
7 board of directors or the appropriate committee thereof.

8 (c) An insurer not required to submit a CGAD under this section shall do so upon the
9 Commissioner's request.

10 (d) The insurer or insurance group shall have discretion regarding the appropriate format
11 for providing the required information and may customize the CGAD to provide the most
12 relevant information necessary to permit the Commissioner to gain an understanding of the
13 corporate governance structure, policies, and practices utilized by the insurer or insurance group.

14 (e) For purposes of completing the CGAD, the insurer or insurance group may provide
15 information regarding corporate governance at the ultimate controlling parent level, an
16 intermediate holding company level, or the individual legal entity level, depending upon how the
17 insurer or insurance group has structured its system of corporate governance. The insurer or
18 insurance group is encouraged to make the CGAD disclosures (i) at the level at which the
19 insurer's or insurance group's risk appetite is determined, (ii) at the level at which the earnings,
20 capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which
21 the supervision of those factors are coordinated and exercised, or (iii) at the level at which legal
22 liability for failure of general corporate governance duties would be placed. If the insurer or
23 insurance group determines the level of reporting based on these criteria, it shall indicate which
24 of the three criteria was used to determine the level of reporting and explain any subsequent
25 changes in level of reporting.

26 (f) The review of the CGAD and any additional requests for information shall be made
27 through the lead state as determined by the procedures within the most recent Financial Analysis
28 Handbook adopted by the NAIC.

29 (g) An insurer or insurance group providing information substantially similar to the
30 information required by this Part in other documents provided to the Commissioner, including
31 proxy statements filed in conjunction with Form B requirements, or other state or federal filings
32 provided to the Commissioner, shall not be required to duplicate that information in the CGAD,
33 but shall only be required to cross reference the document in which the information is included.
34 The insurer or insurance group shall clearly reference the location of the relevant information
35 within the CGAD and attach the referenced document if it is not already filed or available to the
36 Commissioner.

37 (h) Each year following the initial filing of the CGAD, the insurer or insurance group
38 shall file an amended version of the previously filed CGAD indicating where changes have been
39 made. If no changes were made in the information or activities reported by the insurer or
40 insurance group, the filing shall so state.

41 **"§ 58-10-770. Rules and regulations.**

42 The Commissioner may adopt such rules and issue such orders as shall be necessary to carry
43 out the provisions of this Part.

44 **"§ 58-10-775. Contents of corporate governance annual disclosure.**

45 (a) The insurer or insurance group shall have discretion over the responses to the CGAD
46 inquiries, provided the CGAD shall contain the material information necessary to permit the
47 Commissioner to gain an understanding of the insurer's or insurance group's corporate
48 governance structure, policies, and practices. The Commissioner may request additional
49 information that he or she deems material and necessary to provide the Commissioner with a
50 clear understanding of the corporate governance policies, the reporting or information system, or
51 controls implementing those policies.

1 (b) Notwithstanding subsection (a) of this section, the CGAD shall be prepared consistent
2 with this Part. Documentation and supporting information shall be maintained and made
3 available upon examination or upon request of the Commissioner.

4 (c) The insurer or insurance group shall be as descriptive as possible in completing the
5 CGAD, with inclusion of attachments or example documents that are used in the governance
6 process that may provide a means to demonstrate the strengths of their governance framework
7 and practices.

8 (d) The CGAD shall describe the insurer's or insurance group's corporate governance
9 framework and structure, including consideration of all of the following:

10 (1) The board of directors and various committees thereof ultimately responsible
11 for overseeing the insurer or insurance group and the level at which that
12 oversight occurs, such as the ultimate control level, intermediate holding
13 company level, or legal entity level. The insurer or insurance group shall
14 describe and discuss the rationale for the current board of directors' size and
15 structure.

16 (2) The duties of the board of directors and each of its significant committees and
17 how they are governed, such as by bylaws, charters, or informal mandates.

18 (3) How the board of directors' leadership is structured, including a discussion of
19 the roles of chief executive officer and chairman of the board of directors
20 within the organization.

21 (e) The insurer or insurance group shall describe the policies and practices of the most
22 senior governing entity and significant committees thereof, including a discussion of each of the
23 following factors:

24 (1) How the qualifications, expertise, and experience of each board of directors
25 member meet the needs of the insurer or insurance group.

26 (2) How an appropriate amount of independence is maintained on the board of
27 directors and its significant committees.

28 (3) The number of meetings held by the board of directors and its significant
29 committees over the past year as well as information on director attendance.

30 (4) How the insurer or insurance group identifies, nominates, and elects members
31 to the board of directors and its committees, including information on all of
32 the following:

33 a. Whether a nomination committee is in place to identify and select
34 individuals for consideration.

35 b. Whether term limits are placed on directors.

36 c. How the election and reelection processes function.

37 d. Whether a board of directors' diversity policy is in place and, if so,
38 how it functions.

39 (5) The processes in place for the board of directors to evaluate its performance
40 and the performance of its committees, as well as any recent measures taken
41 to improve performance, including any board of directors or committee
42 training programs that have been put in place.

43 (f) The insurer or insurance group shall describe the policies and practices for directing
44 senior management, including a description of each of the following factors:

45 (1) Any processes or practices, such as suitability standards, to determine whether
46 officers and key persons in control functions have the appropriate background,
47 experience, and integrity to fulfill their prospective roles, including both of
48 the following:

49 a. Identification of the specific positions for which suitability standards
50 have been developed and a description of the standards employed.

- 1 b. Any changes in an officer's or key person's suitability as outlined by
2 the insurer's or insurance group's standards and procedures to monitor
3 and evaluate those changes.
- 4 (2) The insurer's or insurance group's code of business conduct and ethics,
5 including information regarding compliance with laws, rules, and regulations
6 as well as proactive reporting of any illegal or unethical behavior.
- 7 (3) The insurer's or insurance group's processes for performance evaluation,
8 compensation, and corrective action to ensure effective senior management
9 throughout the organization, including a description of the general objectives
10 of significant compensation programs and what the programs are designed to
11 reward. The description shall include sufficient detail to allow the
12 Commissioner to understand how the organization ensures that compensation
13 programs do not encourage or reward excessive risk taking. Elements to be
14 discussed include the following:
- 15 a. The board of directors' role in overseeing management compensation
16 programs and practices.
- 17 b. The various elements of compensation awarded in the insurer's or
18 insurance group's compensation programs and how the insurer or
19 insurance group determines and calculates the amount of each element
20 of compensation paid.
- 21 c. How compensation programs are related to both company and
22 individual performance over time.
- 23 d. Whether compensation programs include risk adjustments and how
24 those adjustments are incorporated into the programs for employees at
25 different levels.
- 26 e. Any clawback provisions built into the programs to recover awards or
27 payments if the performance measures upon which they are based are
28 restituted or otherwise adjusted.
- 29 f. Any other factors relevant in understanding how the insurer or
30 insurance group monitors its compensation policies to determine
31 whether its risk management objectives are met by incentivizing its
32 employees.
- 33 (4) The insurer's or insurance group's plans for chief executive officer and senior
34 management succession.
- 35 (g) The insurer or insurance group shall describe the processes by which the board of
36 directors, its committees, and senior management ensure an appropriate amount of oversight to
37 the critical risk areas impacting the insurer's business activities, including a discussion of all of
38 the following:
- 39 (1) How oversight and management responsibilities are delegated between the
40 board of directors, its committees, and senior management.
- 41 (2) How the board of directors is kept informed of the insurer's strategic plans,
42 the associated risks, and steps that senior management is taking to monitor
43 and manage those risks.
- 44 (3) How reporting responsibilities are organized for each critical risk area. The
45 description should allow the Commissioner to understand the frequency at
46 which information on each critical risk area is reported to and reviewed by
47 senior management and the board of directors. This description may include
48 any of the following critical risk areas of the insurer:
- 49 a. Risk management processes.
- 50 b. Actuarial function.
- 51 c. Investment decision-making processes.

- d. Reinsurance decision-making processes.
- e. Business strategy/finance decision-making processes.
- f. Compliance function.
- g. Financial reporting/internal auditing.
- h. Market conduct decision-making processes.

6 **"§ 58-10-780. Confidentiality.**

7 (a) Documents, materials, or other information, including the CGAD, in the possession
8 or control of the Department that are obtained by, created by, or disclosed to the Commissioner
9 or any other person under this Part, are recognized as proprietary and to contain trade secrets. All
10 such documents, materials, or other information shall be confidential by law and privileged, shall
11 not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General
12 Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
13 evidence in any private civil action. However, the Commissioner is authorized to use the
14 documents, materials, or other information in the furtherance of any regulatory or legal action
15 brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise
16 make the documents, materials, or other information public without the prior written consent of
17 the insurer. Nothing in this section shall be construed to require written consent of the insurer
18 before the Commissioner may share or receive confidential documents, materials, or other
19 CGAD-related information pursuant to subsection (c) of this section to assist in the performance
20 of the Commissioner's duties.

21 (b) Neither the Commissioner nor any person who received documents, materials, or
22 other CGAD-related information, through examination or otherwise, while acting under the
23 authority of the Commissioner, or with whom such documents, materials, or other information
24 are shared pursuant to this Part shall be permitted or required to testify in any private civil action
25 concerning any confidential documents, materials, or information subject to subsection (a) of this
26 section.

27 (c) In order to assist in the performance of the Commissioner's regulatory duties, the
28 Commissioner may do all of the following:

29 (1) Upon request, share documents, materials, or other CGAD-related
30 information including the confidential and privileged documents, materials,
31 or information subject to subsection (a) of this section, including proprietary
32 and trade secret documents and materials, with other state, federal, and
33 international financial regulatory agencies, including members of any
34 supervisory college as described in G.S. 58-19-37, with the NAIC, and with
35 third-party consultants pursuant to G.S. 58-10-785, provided that the recipient
36 agrees in writing to maintain the confidentiality and privileged status of the
37 CGAD-related documents, material, or other information and has verified in
38 writing the legal authority to maintain confidentiality.

39 (2) Receive documents, materials, or other CGAD-related information, including
40 otherwise confidential and privileged documents, materials, or information,
41 including proprietary and trade-secret information or documents, from
42 regulatory officials of other state, federal, and international financial
43 regulatory agencies, including members of any supervisory college as
44 described in G.S. 58-19-37, and from the NAIC, and shall maintain as
45 confidential or privileged any documents, materials, or information received
46 with notice or the understanding that it is confidential or privileged under the
47 laws of the jurisdiction that is the source of the document, material, or
48 information.

49 (d) The sharing of information and documents by the Commissioner pursuant to this Part
50 shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is

1 solely responsible for the administration, execution, and enforcement of the provisions of this
2 Part.

3 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
4 proprietary and trade secret materials or other CGAD-related information shall occur as a result
5 of disclosure of CGAD-related information or documents to the Commissioner under this section
6 or as a result of sharing as authorized in this Part.

7 **"§ 58-10-785. NAIC and third-party consultants.**

8 (a) The Commissioner may retain, at the insurer's expense, third-party consultants,
9 including attorneys, actuaries, accountants, and other experts not otherwise a part of the
10 Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing
11 the CGAD-related information or the insurer's compliance with this Part.

12 (b) Any persons retained under subsection (a) of this section shall be under the direction
13 and control of the Commissioner and shall act in a purely advisory capacity.

14 (c) The NAIC and third-party consultants shall be subject to the same confidentiality
15 standards and requirements as the Commissioner.

16 (d) As part of the retention process, a third-party consultant shall verify to the
17 Commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has
18 internal procedures in place to monitor compliance with a conflict and to comply with the
19 confidentiality standards and requirements of this Part.

20 (e) A written agreement with the NAIC or a third-party consultant governing sharing and
21 use of information provided pursuant to this Part shall contain all of the following provisions and
22 expressly require the written consent of the insurer prior to making public information provided
23 under this Part:

24 (1) Specific procedures and protocols for maintaining the confidentiality and
25 security of CGAD-related information shared with the NAIC or a third-party
26 consultant pursuant to this Part.

27 (2) Procedures and protocols for sharing by the NAIC only with other state
28 regulators from states in which the insurance group has domiciled insurers.
29 The agreement shall provide that the recipient agrees in writing to maintain
30 the confidentiality and privileged status of the CGAD-related documents,
31 materials, or other information and has verified in writing the legal authority
32 to maintain confidentiality.

33 (3) A provision specifying that ownership of the CGAD-related information
34 shared with the NAIC or a third-party consultant remains with the Department
35 and the NAIC's or third-party consultant's use of the information is subject to
36 the direction of the Commissioner.

37 (4) A provision that prohibits the NAIC or a third-party consultant from storing
38 the information shared pursuant to this Part in a permanent database after the
39 underlying analysis is completed.

40 (5) A provision requiring the NAIC or third-party consultant to provide prompt
41 notice to the Commissioner and to the insurer or insurance group regarding
42 any subpoena, request for disclosure, or request for production of the insurer's
43 CGAD-related information.

44 (6) A requirement that the NAIC or a third-party consultant to consent to
45 intervention by an insurer in any judicial or administrative action in which the
46 NAIC or a third-party consultant may be required to disclose confidential
47 information about the insurer shared with the NAIC or a third-party consultant
48 pursuant to this Part.

49 **"§ 58-10-790. Sanctions.**

1 (a) Civil Penalties. – Any insurer failing, without just cause, to timely file the CGAD as
2 required in this Part shall be subject to a civil penalty of one hundred dollars (\$100.00) for each
3 day's delay, not to exceed a total penalty of one thousand dollars (\$1,000).

4 (b) Notice and Opportunity to Be Heard Required. – After providing notice and
5 opportunity to be heard in accordance with the provisions of Article 3A of Chapter 150B of the
6 General Statutes, the Commissioner may order the respondent to pay the assessment and civil
7 penalty imposed by this section.

8 (c) Disposition of Civil Penalties. – The clear proceeds of civil penalties provided for in
9 this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
10 G.S. 115C-457.2.

11 (d) Reduction of Civil Penalties. – The Commissioner may reduce the penalty if the
12 insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a
13 financial hardship to the insurer.

14 **"§ 58-10-795. Severability clause.**

15 If any provision of this Part other than G.S. 58-10-780, or the application thereof to any
16 person or circumstance, is held invalid, such determination shall not affect the provisions or
17 applications of this Part which can be given effect without the invalid provision or application,
18 and to that end the provisions of this Part, with the exception of G.S. 58-10-780, are severable.

19 **"§ 58-10-800. Effective date.**

20 The requirements of this Part shall become effective on January 1, 2020. The first filing of
21 the CGAD shall be made on or before June 1, 2020."

22
23 **PART IV. OTHER PROVISIONS**

24 **SECTION 4.** G.S. 58-58-50(a1)(2) reads as rewritten:

25 "(a1) As used in this section:

26 ...

27 (2) Company. – An ~~entity~~ entity, including a fraternal benefit society as defined
28 in Article 24, which has written, issued, or reinsured life insurance contracts,
29 accident and health insurance contracts, annuity contracts, pure endowment
30 contracts, or deposit-type contracts (i) in this State and has at least one such
31 policy in force or on claim or (ii) in any state and is required to hold a
32 certificate of authority to write life insurance, accident and health insurance,
33 annuity contract, pure endowment, or deposit-type contracts in this State."

34 **SECTION 5.** G.S. 58-7-21(b)(4a)d. reads as rewritten:

35 "d. Certified reinsurer rating. – The Commissioner shall assign a rating to
36 each certified reinsurer on a legal entity basis, with due consideration
37 being given to the group rating where appropriate, except that an
38 association, including incorporated and individual unincorporated
39 underwriters, that has been approved to do business as a single
40 certified reinsurer may be evaluated on the basis of its group rating.
41 The Commissioner shall publish a list of all certified reinsurers and
42 their ratings. Factors that may be considered as part of the evaluation
43 process ~~include, but are not limited to,~~ include the following:

- 44 1. The certified reinsurer's financial strength rating from an
45 acceptable rating agency. The maximum rating that a certified
46 reinsurer may be assigned will correspond to its financial
47 strength rating as outlined in the table below. The
48 Commissioner shall use the lowest financial strength rating
49 received from an approved rating agency in establishing the
50 maximum rating of a certified reinsurer. A failure to obtain or

1 maintain at least two financial strength ratings from acceptable
 2 rating agencies will result in loss of eligibility for certification;

3 Ratings	Best	S&P	Moody's	Fitch
4 Secure – 1	A++	AAA	Aaa	AAA
5 Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
6 Secure – 3	A	A+, A	A1, A2	A+, A
7 Secure – 4	A-	A-	A3	A-
8 Secure – 5	B++, B+	BBB+, BBB,	Baa1, Baa2,	BBB+, BBB,
9		BBB-	Baa3	BBB-
10 Vulnerable	B, B-,	BB+, BB, BB-,	Ba1, Ba2, Ba3,	BB+, BB, BB-,
11 – 6	C++, C+,	B+, B, B-,	B1, B2, B3,	B+, B, B-,
12	C, C-, D,	CCC, <u>CC</u> , C, D, R	Caa, Ca, C	CCC+, CC,
13	E, F			CCC-, DD
14"			

15 **SECTION 6.** Section 3 of this act becomes effective January 1, 2020. Except as
 16 otherwise provided, the remainder of this act is effective when it becomes law.