

# SENATE . . . . . No. 2649

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Senate, July 25, 2018 -- Text of amendment (138) (offered by Senator deMacedo) to the House Bill relative economic development in the commonwealth

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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1 by inserting the following sections:-

2 SECTION XX. Chapter 40M of the General Laws is hereby amended by adding the  
3 following section:-

4 "Section 18. Notwithstanding any general or special law to the contrary, chapter 176W  
5 shall apply to groups governed by this chapter."

6 SECTION XX. Section 25E of chapter 152 of the General Laws, as so appearing, is  
7 hereby amended by striking out, in lines 1, 14 and 16, the words "twenty-five V," and inserting  
8 in place thereof, in each instance, the following figure:- "25W".

9 SECTION XX. Said chapter 152 is hereby further amended by inserting after section  
10 25V the following section:-

11 "Section 25W. Notwithstanding any general or special law to the contrary, chapter 176W  
12 shall apply to groups governed by sections 25E to 25U of this chapter."

13 SECTION XX. Subsection (1) of section 20A of chapter 175 of the General Laws, as  
14 appearing in the 2016 Official Edition, is hereby amended by adding the following 2  
15 paragraphs:-

16 "(I) If an accredited or certified reinsurer ceases to meet the requirements for  
17 accreditation or certification, the commissioner may suspend or revoke the reinsurer's  
18 accreditation or certification.

19 (i) The commissioner must give the reinsurer notice and opportunity for hearing. The  
20 suspension or revocation may not take effect until after the commissioner's order on hearing,  
21 unless:

22 (a) The reinsurer waives its right to hearing;

23 (b) The commissioner's order is based on regulatory action by the reinsurer's  
24 domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to  
25 transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary  
26 certifying state of the reinsurer under subparagraph (vi) of paragraph (E) of this subsection; or

27 (c) the commissioner finds that an emergency requires immediate action and a court of  
28 competent jurisdiction has not stayed the commissioner's action.

29 (ii) While a reinsurer's accreditation or certification is suspended, no reinsurance  
30 contract issued or renewed after the effective date of the suspension qualifies for credit except to  
31 the extent that the reinsurer's obligations under the contract are secured in accordance with  
32 subsection (2) of this section. If a reinsurer's accreditation or certification is revoked, no credit  
33 for reinsurance may be granted after the effective date of the revocation except to the extent that

34 the reinsurer's obligations under the contract are secured in accordance with subparagraph (v) of  
35 paragraph (E) of this subsection or subsection (2) of this section.

36 (J)(i) A ceding insurer shall take steps to manage its reinsurance recoverables  
37 proportionate to its own book of business. A domestic ceding insurer shall notify the  
38 commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or  
39 group of affiliated assuming insurers, exceeds 50 per cent of the domestic ceding insurer's last  
40 reported surplus to policyholders, or after it is determined that reinsurance recoverables from any  
41 single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit.  
42 The notification shall demonstrate that the exposure is safely managed by the domestic ceding  
43 insurer.

44 (ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic  
45 ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming  
46 insurer, or group of affiliated assuming insurers, more than 20 per cent of the ceding insurer's  
47 gross written premium in the prior calendar year, or after it has determined that the reinsurance  
48 ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed  
49 this limit. The notification shall demonstrate that the exposure is safely managed by the  
50 domestic ceding insurer."

51 SECTION XX. Said section 20A of said chapter 175, as so appearing, is hereby further  
52 amended by striking out subsection (5) and inserting in place thereof the following subsection:-

53 "(5)(A) The commissioner may in accordance with the provisions of chapter 30A, after  
54 notice and hearing, promulgate reasonable rules and regulations necessary to effectuate the  
55 provisions of this section. (B) The commissioner is further authorized to adopt rules and

56 regulations applicable to reinsurance arrangements described in subparagraph (i) of paragraph  
57 (B) of this subsection. (i) A regulation adopted pursuant to paragraph (B) of this subsection, may  
58 apply only to reinsurance relating to:

59 (a) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed  
60 nonlevel benefits;

61 (b) Universal life insurance policies with provisions resulting in the ability of a  
62 policyholder to keep a policy in force over a secondary guarantee period;

63 (c) Variable annuities with guaranteed death or living benefits;

64 (d) Long-term care insurance policies; or

65 (e) Such other life and health insurance and annuity products as to which the NAIC  
66 adopts model regulatory requirements with respect to credit for reinsurance.

67 (ii) A regulation adopted pursuant to clauses (a) and (b) of subparagraph (i) of paragraph  
68 (B) of this subsection may apply to any treaty containing:

69 (a) Policies issued on or after January 1, 2015, and/or

70 (b) Policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is  
71 ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

72 (iii) A regulation adopted pursuant to paragraph (B) of this subsection may require the  
73 ceding insurer, in calculating the amounts or forms of security required to be held under  
74 regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC  
75 under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted

76 by the NAIC and in effect on the date as of which the calculation is made, to the extent  
77 applicable.

78 (iv) A regulation adopted pursuant to this paragraph (B) of this subsection shall not  
79 apply to cessions to an assuming insurer that:

80 (a) Is certified in the commonwealth;

81 (b) Maintains at least \$250,000,000 in capital and surplus when determined in  
82 accordance with the NAIC Accounting Practices and Procedures Manual, including all  
83 amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed  
84 practices; and is (1) licensed in at least 26 states; or (2) licensed in at least 10 states, and licensed  
85 or accredited in a total of at least 35 states.

86 (v) The authority to adopt regulations pursuant to this paragraph (B) does not limit the  
87 commissioner's general authority to adopt regulations pursuant to paragraph (A) of subsection 5  
88 of this section."

89 SECTION XX. Section 206 of said chapter 175, as so appearing, is hereby amended by  
90 inserting after the definition of "Control" the following definition:-

91 "'Group-wide supervisor", the regulatory official authorized to engage in conducting and  
92 coordinating group-wide supervision activities who is determined or acknowledged by the  
93 commissioner under subsection (y) of section 206C to have sufficient significant contacts with  
94 the internationally active insurance group."

95 SECTION XX. Said section 206 of said chapter 175, as so appearing, is hereby further  
96 amended by inserting after the definition of "Insurer" the following definition:-

97 "“Internationally active insurance group”, an insurance holding company system that (1)  
98 includes an insurer registered under section 206C; and (2) meets the following criteria: (a)  
99 premiums written in at least 3 countries, (b) the percentage of gross premiums written outside the  
100 United States is at least 10 per cent of the insurance holding company system’s total gross  
101 written premiums, and (c) based on a 3-year rolling average, the total assets of the insurance  
102 holding company system are at least \$50,000,000,000 or the total gross written premiums of the  
103 insurance holding company system are at least \$10,000,000,000."

104 SECTION XX. Section 206C of said chapter 175, as so appearing, is hereby amended by  
105 inserting, in line 291, after the word “reported,” the following words:- "or provided to the  
106 division of insurance".

107 SECTION XX. Said section 206C of said chapter 175, as so appearing, is hereby further  
108 amended by adding the following subsection:-

109 "(y)(1) The commissioner is authorized to act as the group-wide supervisor for any  
110 internationally active insurance group in accordance with the provisions of this subsection.  
111 However, the commissioner may otherwise acknowledge another regulatory official as the  
112 group-wide supervisor where the internationally active insurance group:

113 (i) Does not have substantial insurance operations in the United States;

114 (ii) Has substantial insurance operations in the United States, but not the commonwealth;

115 or

116 (iii) Has substantial insurance operations in the United States and the commonwealth, but  
117 the commissioner has determined pursuant to the factors set forth in paragraphs (2) and (6) of  
118 this subsection that the other regulatory official is the appropriate group-wide supervisor.

119 An insurance holding company system that does not qualify as an internationally active  
120 insurance group may request that the commissioner make a determination or acknowledgement  
121 as to a group-wide supervisor pursuant to this subsection.

122 (2) In cooperation with other state, federal and international regulatory agencies, the  
123 commissioner shall identify a single group-wide supervisor for an internationally active  
124 insurance group. The commissioner may determine that the commissioner is the appropriate  
125 group-wide supervisor for an internationally active insurance group that conducts substantial  
126 insurance operations concentrated in the commonwealth. However, the commissioner may  
127 acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide  
128 supervisor for the internationally active insurance group. The commissioner shall consider the  
129 following factors when making a determination or acknowledgement under this subsection:

130 (i) The place of domicile of the insurers within the internationally active insurance group  
131 that hold the largest share of the group's written premiums, assets or liabilities;

132 (ii) The place of domicile of the top-tiered insurer(s) in the insurance holding company  
133 system of the internationally active insurance group;

134 (iii) The location of the executive offices or largest operational offices of the  
135 internationally active insurance group;

136 (iv) Whether another regulatory official is acting or is seeking to act as the group-wide  
137 supervisor under a regulatory system that the commissioner determines to be substantially  
138 similar to the system of regulation provided under the laws of the commonwealth, or otherwise  
139 sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and  
140 cooperation with other regulatory officials; and

141 (v) Whether another regulatory official acting or seeking to act as the group-wide  
142 supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

143 However, a commissioner identified under this subsection as the group-wide supervisor  
144 may determine that it is appropriate to acknowledge another supervisor to serve as the group-  
145 wide supervisor. The acknowledgement of the group-wide supervisor shall be made after  
146 consideration of the factors listed in subparagraphs (i) through (v), and shall be made in  
147 cooperation with and subject to the acknowledgment of other regulatory officials involved with  
148 supervision of members of the internationally active insurance group, and in consultation with  
149 the internationally active insurance group.

150 (3) Notwithstanding any other provision of law, when another regulatory official is  
151 acting as the group-wide supervisor of an internationally active insurance group, the  
152 commissioner shall acknowledge that regulatory official as the group-wide supervisor.  
153 However, in the event of a material change in the internationally active insurance group that  
154 results in: (i) the internationally active insurance group's insurers domiciled in the  
155 commonwealth holding the largest share of the group's premiums, assets or liabilities; or (ii) the  
156 commonwealth being the place of domicile of the top-tiered insurer(s) in the insurance holding  
157 company system of the internationally active insurance group, the commissioner shall make a



158 determination or acknowledgment as to the appropriate group-wide supervisor for such an  
159 internationally active insurance group pursuant to paragraph (2) of this subsection.

160 (4) Pursuant to subsection (u), the commissioner is authorized to collect from any insurer  
161 registered pursuant to subsection (a) all information necessary to determine whether the  
162 commissioner may act as the group-wide supervisor of an internationally active insurance group  
163 or if the commissioner may acknowledge another regulatory official to act as the group-wide  
164 supervisor. Prior to issuing a determination that an internationally active insurance group is  
165 subject to group-wide supervision by the commissioner, the commissioner shall notify the  
166 insurer registered pursuant to subsection (a) and the ultimate controlling person within the  
167 internationally active insurance group. The internationally active insurance group shall have not  
168 less than 30 days to provide the commissioner with additional information pertinent to the  
169 pending determination. The commissioner shall publish on the division of insurance's website  
170 the identity of internationally active insurance groups that the commissioner has determined are  
171 subject to group-wide supervision by the commissioner.

172 (5) If the commissioner is the group-wide supervisor for an internationally active  
173 insurance group, the commissioner is authorized to engage in any of the following group-wide  
174 supervision activities:

175 (i) Assess the enterprise risks within the internationally active insurance group to ensure  
176 that the material financial condition and liquidity risks to the members of the internationally  
177 active insurance group that are engaged in the business of insurance are identified by  
178 management, and reasonable and effective mitigation measures are in place;

179 (ii) Request, from any member of an internationally active insurance group subject to the  
180 commissioner's supervision, information necessary and appropriate to assess enterprise risk,  
181 including but not limited to, information about the members of the internationally active  
182 insurance group regarding governance, risk assessment and management; capital adequacy, and  
183 material intercompany transactions;

184 (iii) Coordinate and, through the authority of the regulatory officials of the jurisdictions  
185 where members of the internationally active insurance group are domiciled, compel development  
186 and implementation of reasonable measures designed to ensure that the internationally active  
187 insurance group is able to timely recognize and mitigate enterprise risks to members of such  
188 internationally active insurance group that are engaged in the business of insurance;

189 (iv) Communicate with other state, federal and international regulatory agencies for  
190 members within the internationally active insurance group and share relevant information subject  
191 to the confidentiality provisions of subsection (v), through supervisory colleges as set forth in  
192 subsection (x) or otherwise;

193 (v) Enter into agreements with or obtain documentation from any insurer registered  
194 under subsection (a), any member of the internationally active insurance group, and any other  
195 state, federal and international regulatory agencies for members of the internationally active  
196 insurance group, providing the basis for or otherwise clarifying the commissioner's role as  
197 group-wide supervisor, including provisions for resolving disputes with other regulatory  
198 officials. Such agreements or documentation shall not serve as evidence in any proceeding that  
199 any insurer or person within an insurance holding company system not domiciled or incorporated

200 in the commonwealth is doing business in the commonwealth or is otherwise subject to  
201 jurisdiction in this state; and

202 (vi) Other group-wide supervision activities, consistent with the authorities and purposes  
203 enumerated in this paragraph, as considered necessary by the commissioner.

204 (6) If the commissioner acknowledges that another regulatory official from a jurisdiction  
205 that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized  
206 to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision  
207 undertaken by the group-wide supervisor, provided that (i) the commissioner's cooperation is in  
208 compliance with the laws of the commonwealth; and (ii) the regulatory official acknowledged as  
209 the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a  
210 group-wide supervisor for other internationally active insurance groups where applicable. Where  
211 such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to  
212 refuse recognition and cooperation.

213 (7) The commissioner is authorized to enter into agreements with or obtain  
214 documentation from any insurer registered under subsection (a), any affiliate of the insurer, and  
215 other state, federal and international regulatory agencies for members of the internationally  
216 active insurance group that provide the basis for or otherwise clarify a regulatory official's role  
217 as group-wide supervisor.

218 (8) A registered insurer subject to this subsection shall be liable for and shall pay the  
219 reasonable expenses of the commissioner's participation in the administration of this subsection,  
220 including the engagement of attorneys, actuaries and any other professionals and all reasonable  
221 travel expenses."

222 SECTION XX. Chapter 175 of the General Laws is hereby amended by adding the  
223 following section:-

224 "Section 230. Notwithstanding any general or special law to the contrary, chapter 176W  
225 shall apply to insurers governed by this chapter."

226 SECTION XX. Chapter 176 of the General Laws is hereby amended by inserting after  
227 section 1A the following section:-

228 "Section 1B. Notwithstanding any general or special law to the contrary, chapter 176W  
229 shall apply to fraternal benefit societies governed by this chapter."

230 SECTION XX. Section 18 of chapter 176A of the General Laws, as appearing in the  
231 2016 Official Edition, is hereby amended by adding the following paragraph:-

232 "Notwithstanding any general or special law to the contrary, chapter 176W shall apply to  
233 every corporation subject to this chapter."

234 SECTION XX. Chapter 176B of the General Laws is hereby amended by inserting after  
235 section 8B the following section:-

236 "Section 8C. Notwithstanding any general or special law to the contrary, chapter 176W  
237 shall apply to a medical service corporation governed by this chapter."

238 SECTION XX. Chapter 176E of the General Laws is hereby amended by inserting after  
239 section 8B the following section:-

240 "Section 8C. Notwithstanding any general or special law to the contrary, chapter 176W  
241 shall apply to a dental service corporation governed by this chapter."

242 SECTION XX. Chapter 176F of the General Laws is hereby amended by inserting after  
243 section 8A the following section:-

244 "Section 8B. Notwithstanding any general or special law to the contrary, chapter 176W  
245 shall apply to an optometric service corporation governed by this chapter."

246 SECTION XX. Chapter 176G of the General Laws is hereby amended by inserting after  
247 section 10A the following section:-

248 "Section 10B. Notwithstanding any general or special law to the contrary, chapter 176W  
249 shall apply to a health maintenance organization governed by this chapter."

250 SECTION XX. Chapter 176H of the General Laws is hereby amended by inserting after  
251 section 13A the following section:-

252 "Section 13B. Notwithstanding any general or special law to the contrary, chapter 176W  
253 shall apply to legal services plans governed by this chapter."

254 SECTION XX. Chapter 176P of the General Laws is hereby amended by inserting after  
255 section 38A the following section:-

256 "Section 38B. Notwithstanding any general or special law to the contrary, chapter 176W  
257 shall apply to a limited society governed by this chapter."

258 SECTION XX. The General Laws, as appearing in the 2016 Official Edition, are hereby  
259 amended by inserting after chapter 176V the following chapter:

260 "CHAPTER 176W

261 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

262 Section 1. As used in this chapter, the following words shall, unless the context clearly  
263 requires otherwise, have the following meanings:

264 “Commissioner”, the commissioner of insurance.

265 “Corporate Governance Annual Disclosure (CGAD)”, a confidential report filed by the  
266 insurer or insurance group made in accordance with the requirements of this chapter.

267 “Corporate Governance Annual Disclosure Model Regulation”, the current version of the  
268 Corporate Governance Annual Disclosure Model Regulation developed and adopted by the  
269 NAIC and as amended from time to time. A change in the Corporate Governance Annual  
270 Disclosure Model Regulation shall be effective on the January 1 following the calendar year in  
271 which the changes have been adopted by the NAIC.

272 “Division”, the division of insurance.

273 “Insurance group”, those insurers and affiliates included within an insurance holding  
274 company system as defined in section 206 of chapter 175; health maintenance organizations and  
275 affiliates included within a health maintenance organization holding company system, as defined  
276 in section 1 of chapter 176G; public employer self-insurance groups and their affiliates organized  
277 pursuant to chapter 40M; workers compensation self-insurance groups and their affiliates  
278 organized pursuant to sections 25E to 25U, inclusive, of chapter 152; fraternal benefit societies  
279 and their affiliates organized pursuant to chapter 176; non-profit hospital service corporations  
280 and their affiliates organized pursuant to chapter 176A; medical service corporations and their  
281 affiliates organized pursuant to chapter 176B; dental service corporations and their affiliates  
282 organized pursuant to chapter 176E; optometric service corporations and their affiliates  
283 organized pursuant to chapter 176F; insured legal services plans and their affiliates organized

284 pursuant to chapter 176H; and limited societies and their affiliates organized pursuant to chapter  
285 176P.

286 “Insurer”, the same meaning as in section 1 of chapter 175 and shall also include public  
287 employer self-insurance groups organized pursuant to chapter 40M; workers compensation self-  
288 insurance groups organized pursuant to sections 25E to 25U, inclusive, of chapter 152; fraternal  
289 benefit societies organized pursuant to chapter 176; non-profit hospital service corporations  
290 organized pursuant to chapter 176A; medical service corporations organized pursuant to chapter  
291 176B; dental services corporations organized pursuant to chapter 176E; optometric service  
292 corporations organized pursuant to chapter 176F; health maintenance organizations organized  
293 pursuant to chapter 176G; insured legal services plans organized pursuant to chapter 176H; and  
294 limited societies organized pursuant to chapter 176P; except that “insurer” shall not include  
295 agencies, authorities or instrumentalities of the United States, its possessions and territories, the  
296 commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a  
297 state.

298 “NAIC”, the National Association of Insurance Commissioners.

299 “ORSA summary report”, the report filed in accordance with chapter 176V.

300 Section 2. (a) An insurer, or the insurance group of which the insurer is a member, shall,  
301 no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the  
302 information described in section 4(b). Notwithstanding any request from the commissioner made  
303 pursuant to subsection (c), if the insurer is a member of an insurance group, the insurer shall  
304 submit the report required by this section to the commissioner of the lead state for the insurance

305 group, in accordance with the laws of the lead state, as determined by the procedures outlined in  
306 the most recent Financial Analysis Handbook adopted by the NAIC.

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

312 (c) An insurer not required to submit a CGAD under this section shall do so upon the  
313 commissioner's request.

314 (d) For purposes of completing the CGAD, the insurer or insurance group may provide  
315 information regarding corporate governance at the ultimate controlling parent level, an  
316 intermediate holding company level or the individual legal entity level, depending upon how the  
317 insurer or insurance group has structured its system of corporate governance. The insurer or  
318 insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's  
319 or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity,  
320 operations, and reputation of the insurer are overseen collectively and at which the supervision of  
321 those factors are coordinated and exercised, or the level at which legal liability for failure of  
322 general corporate governance duties would be placed. If the insurer or insurance group  
323 determines the level of reporting based on these criteria, it shall indicate which of the three  
324 criteria was used to determine the level of reporting and explain any subsequent changes in level  
325 of reporting.



326 (e) The review of the CGAD and any additional requests for information shall be made  
327 through the lead state as determined by the procedures within the most recent Financial Analysis  
328 Handbook referenced in subsection (a).

329 (f) Insurers providing information substantially similar to the information required by  
330 this chapter in other documents provided to the commissioner, including proxy statements filed  
331 in conjunction with Form B requirements pursuant to section 206C of chapter 175, or other state  
332 or federal filings provided to the Division shall not be required to duplicate that information in  
333 the CGAD, but shall only be required to cross reference the document in which the information  
334 is included.

335 Section 3. The commissioner may, upon notice and opportunity for all interested persons  
336 to be heard, issue such rules, regulations and orders as shall be necessary to carry out the  
337 provisions of this chapter.

338 Section 4. (a) The insurer or insurance group shall have discretion over the responses to  
339 the CGAD inquiries, provided the CGAD shall contain the material information necessary to  
340 permit the commissioner to gain an understanding of the insurer's or group's corporate  
341 governance structure, policies, and practices. The commissioner may request additional  
342 information that he or she deems material and necessary to provide the commissioner with a  
343 clear understanding of the corporate governance policies, the reporting or information system or  
344 controls implementing those policies.

345 (b) Notwithstanding subsection (a) of this section, the CGAD shall be prepared  
346 consistent with the NAIC Corporate Governance Annual Disclosure Model Regulation, subject

347 to the requirements of this chapter. Documentation and supporting information shall be  
348 maintained and made available upon examination or upon request of the commissioner.

349         Section 5. (a) Documents, materials or other information including the CGAD, in the  
350 possession or control of the Division that are obtained by, created by or disclosed to the  
351 commissioner or any other person under this chapter shall be proprietary and recognized to  
352 contain trade secrets. All such documents, materials or other information shall be kept  
353 confidential, shall not be considered a public record pursuant to section 10 of chapter 66, shall  
354 not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any  
355 private civil action. However, the commissioner is authorized to use the documents, materials or  
356 other information in the furtherance of any regulatory or legal action brought as a part of the  
357 commissioner's official duties. The commissioner shall not otherwise make the documents,  
358 materials or other information public without the prior written consent of the insurer. Nothing in  
359 this section shall be construed to require written consent of the insurer before the commissioner  
360 may share or receive confidential documents, materials or other CGAD-related information  
361 pursuant to subsection (c) to assist in the performance of the commissioner's regular duties.

362         (b) Neither the commissioner nor any person who received documents, materials or other  
363 CGAD-related information, through examination or otherwise, while acting under the authority  
364 of the commissioner, or with whom such documents, materials or other information are shared  
365 pursuant to this chapter shall be permitted or required to testify in any private civil action  
366 concerning any confidential documents, materials, or information subject to paragraph (a).

367         (c) In order to assist in the performance of the commissioner's regulatory duties, the  
368 commissioner:

369 (i) May, upon request, share documents, materials or other CGAD-related information  
370 including the confidential and privileged documents, materials or information subject to  
371 subsection (a), including proprietary and trade secret documents and materials with other state,  
372 federal and international financial regulatory agencies, including members of any supervisory  
373 college as defined in subsection (x) of section 206C of chapter 175, with the NAIC, and with  
374 third party consultants pursuant to section 6, provided that the recipient agrees in writing to  
375 maintain the confidentiality and privileged status of the CGAD-related documents, material or  
376 other information and has verified in writing the legal authority to maintain confidentiality; and

377 (ii) May receive documents, materials or other CGAD-related information, including  
378 otherwise confidential and privileged documents, materials or information, including proprietary  
379 and trade-secret information or documents, from regulatory officials of other state, federal and  
380 international financial regulatory agencies, including members of any supervisory college as  
381 defined in subsection (x) of section 206C of chapter 175, and from the NAIC, and shall maintain  
382 as confidential or privileged any documents, materials or information received with notice or the  
383 understanding that it is confidential or privileged under the laws of the jurisdiction that is the  
384 source of the document, material or information.

385 (d) The sharing of information and documents by the commissioner pursuant to this  
386 chapter shall not constitute a delegation of regulatory authority or rulemaking, and the  
387 commissioner is solely responsible for the administration, execution and enforcement of the  
388 provisions of this chapter.

389 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,  
390 proprietary and trade-secret materials or other CGAD-related information shall occur as a result

391 of disclosure of such CGAD-related information or documents to the commissioner under this  
392 section or as a result of sharing as authorized in this chapter.

393 Section 6. (a) The commissioner may retain, at the insurer's expense, third-party  
394 consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of  
395 the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing  
396 the CGAD and related information or the insurer's compliance with this chapter.

397 (b) Any persons retained under subsection (a) shall be under the direction and control of  
398 the commissioner and shall act in a purely advisory capacity.

399 (c) The NAIC and third-party consultants shall be subject to the same confidentiality  
400 standards and requirements as the commissioner.

401 (d) As part of the retention process, a third-party consultant shall verify to the  
402 commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has  
403 internal procedures in place to monitor compliance with a conflict and to comply with the  
404 confidentiality standards and requirements of this chapter.

405 (e) A written agreement with the NAIC or a third-party consultant governing sharing and  
406 use of information provided pursuant to this chapter shall contain the following provisions and  
407 expressly require the written consent of the insurer prior to making public information provided  
408 under this chapter:

409 (i) Specific procedures and protocols for maintaining the confidentiality and security of  
410 CGAD-related information shared with the NAIC or a third-party consultant pursuant to this  
411 chapter;

412 (ii) Procedures and protocols for sharing by the NAIC only with other state regulators  
413 from states in which the insurance group has domiciled insurers. The agreement shall provide  
414 that the recipient agrees in writing to maintain the confidentiality and privileged status of the  
415 CGAD-related documents, materials or other information and has verified in writing the legal  
416 authority to maintain confidentiality;

417 (iii) A provision specifying that ownership of the CGAD-related information shared with  
418 the NAIC or a third-party consultant remains with the Division and the NAIC's or third-party  
419 consultant's use of the information is subject to the direction of the commissioner;

420 (iv) A provision that prohibits the NAIC or a third-party consultant from storing the  
421 information shared pursuant to this chapter in a permanent database after the underlying analysis  
422 is completed;

423 (v) A provision requiring the NAIC or third-party consultant to provide prompt notice to  
424 the commissioner and to the insurer or insurance group regarding any subpoena, request for  
425 disclosure, or request for production of the insurer's CGAD-related information; and

426 (vi) A requirement that the NAIC or a third-party consultant consent to intervention by  
427 an insurer in any judicial or administrative action in which the NAIC or a third-party consultant  
428 may be required to disclose confidential information about the insurer shared with the NAIC or a  
429 third-party consultant pursuant to this chapter.

430 Section 7. Any insurer failing, without just cause, to timely file the CGAD as required in  
431 this chapter shall be required, after notice and hearing, to pay a penalty of \$500 for each day of  
432 delay, to be recovered by the commissioner. The maximum penalty under this section is  
433 \$10,000. The commissioner may reduce the penalty if the insurer demonstrates to the

434 commissioner that the imposition of the penalty would constitute a financial hardship to the  
435 insurer.

436           Section 8. If any provision of this chapter other than Section 5, or the application thereof  
437 to any person or circumstance, is held invalid, such determination shall not affect the provisions  
438 or applications of this chapter which can be given effect without the invalid provision or  
439 application, and to that end the provisions of this chapter, with the exception of Section 5, are  
440 severable."