

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 219*
Committee Substitute Favorable 4/11/19

Short Title: NAIC Accreditation Amendments.-AB

(Public)

Sponsors:

Referred to:

February 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE VARIOUS INSURANCE LAWS IN ORDER TO MAINTAIN NAIC
3 ACCREDITATION, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS**

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

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

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

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

- 17 a. The insurance holding company system writes premiums in at least
18 three countries.
19 b. The percentage of gross premiums of the insurance holding company
20 system written outside the United States is at least ten percent (10%)
21 of the insurance holding company system's total gross written
22 premiums.
23 c. Based on a three-year rolling average, the total assets of the insurance
24 holding company system are at least fifty billion dollars
25 (\$50,000,000,000) or the total gross written premiums of the insurance
26 holding company system are at least ten billion dollars
27 (\$10,000,000,000)."

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

30 "**§ 58-19-38. Group-wide supervision of internationally active insurance groups.**

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



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- 1 (1) It does not have substantial insurance operations in the United States.
2 (2) It has substantial insurance operations in the United States, but not in this
3 State.
4 (3) It has substantial insurance operations in the United States and this State, but
5 the Commissioner has determined pursuant to the factors set forth in
6 subsections (b) and (f) of this section that the other regulatory official is the
7 appropriate group-wide supervisor.

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

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

- 16 (1) The place of domicile of the insurers within the internationally active
17 insurance group that holds the largest share of the group's written premiums,
18 assets, or liabilities.
19 (2) The place of domicile of the top-tiered insurer(s) in the insurance holding
20 company system of the internationally active insurance group.
21 (3) The location of the executive offices or largest operational offices of the
22 internationally active insurance group.
23 (4) Whether another regulatory official is acting or is seeking to act as the
24 group-wide supervisor under a regulatory system that the Commissioner
25 determines to have either of the following characteristics:
26 a. The system is substantially similar to the system of regulation
27 provided under the laws of this State.
28 b. The system is otherwise sufficient in terms of providing for
29 group-wide supervision, enterprise risk analysis, and cooperation with
30 other regulatory officials.
31 (5) Whether another regulatory official acting or seeking to act as the group-wide
32 supervisor provides the Commissioner with reasonably reciprocal recognition
33 and cooperation.

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

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

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

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

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

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

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

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

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

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

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

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

41 (5) Enter into agreements with or obtain documentation from any insurer
42 registered under G.S. 58-19-25, any member of the internationally active
43 insurance group, and any other state, federal, and international regulatory
44 agencies for members of the internationally active insurance group, providing
45 the basis for or otherwise clarifying the Commissioner's role as group-wide
46 supervisor, including provisions for resolving disputes with other regulatory
47 officials. Such agreements or documentation shall not serve as evidence in any
48 proceeding that any insurer or person within an insurance holding company
49 system not domiciled or incorporated in this State is doing business in this
50 State or is otherwise subject to jurisdiction in this State.

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

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

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

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

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

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

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

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

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

23 "(a) Documents, materials, or other information in the possession or control of the
24 Department that are obtained by or disclosed to the Commissioner or any other person in the
25 course of an examination or investigation made pursuant to G.S. 58-19-35, and all information
26 reported or provided to the Department pursuant to subdivisions (11a) and (11b) of
27 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
28 confidential by law and privileged, shall not be considered a public record under either
29 G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall
30 not be subject to discovery or admissible in evidence in any private civil action. However, the
31 Commissioner is authorized to use the documents, materials, or other information in the
32 furtherance of any regulatory or legal action brought as a part of the Commissioner's official
33 duties. The Commissioner shall not otherwise make the documents, materials, or other
34 information public without the prior written consent of the insurer to which it pertains unless the
35 Commissioner, after giving the insurer and its affiliates who would be affected thereby notice
36 and opportunity to be heard, determines that the interest of policyholders, shareholders, or the
37 public will be served by the publication thereof, in which event the Commissioner may publish
38 all or any part of the information in such manner as may be deemed appropriate."
39

40 **PART II. OVERSIGHT OF INTERNAL AUDIT FUNCTIONS OF INSURERS OR** 41 **GROUPS OF INSURERS**

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

43 "(3) "Audit committee" means a committee, or equivalent body, established by the
44 board of directors of an entity for the purpose of overseeing the accounting
45 and financial reporting processes of an insurer or group of ~~insurers~~ insurers,
46 any internal audit function of the insurer or group of insurers, and external
47 audits of financial statements of the insurer or group of insurers. The audit
48 committee of any entity that controls a group of insurers may be deemed to be
49 the audit committee for one or more of these controlled insurers at the election
50 of the controlling person as provided in G.S. 58-10-245(f). If an audit

1 committee is not designated by the insurer, the insurer's entire board of
2 directors shall constitute the audit committee."

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

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

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

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

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

15 **"§ 58-10-246. Internal audit function requirements.**

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

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

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

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

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

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

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

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

49 "(g) The requirements of G.S. 58-10-246 become effective January 1, 2020. An insurer or
50 group of insurers exempt from G.S. 58-10-246 that no longer meets the threshold for exemption

1 shall have one calendar year after the year the threshold is exceeded to comply with the
2 requirements of that section.

4 **PART III. CORPORATE GOVERNANCE ANNUAL DISCLOSURE**

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

7 "Part 11. Corporate Governance Annual Disclosure.

8 **"§ 58-10-755. Purpose and scope.**

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

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

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

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

30 **"§ 58-10-760. Definitions.**

31 The following definitions apply in this Part:

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

48 **"§ 58-10-765. Disclosure requirement and filing procedures.**

49 (a) An insurer, or the insurance group of which the insurer is a member, shall, no later
50 than June 1 of each calendar year, submit to the Commissioner a CGAD that contains the
51 information described in G.S. 58-10-775. Notwithstanding any request from the Commissioner

1 made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group,
2 the insurer shall submit the report required by this section to the Commissioner of the lead state
3 for the insurance group, in accordance with the laws of the lead state, as determined by the
4 procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In
5 these instances, a copy of the CGAD must also be provided, upon request, to the chief regulatory
6 official of any state in which the insurance group has a domestic insurer.

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

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

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

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

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

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

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

45 **"§ 58-10-770. Rules and regulations.**

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

48 **"§ 58-10-775. Contents of corporate governance annual disclosure.**

49 (a) The insurer or insurance group shall have discretion over the responses to the CGAD
50 inquiries, provided the CGAD shall contain the material information necessary to permit the
51 Commissioner to gain an understanding of the insurer's or insurance group's corporate

1 governance structure, policies, and practices. The Commissioner may request additional
2 information that he or she deems material and necessary to provide the Commissioner with a
3 clear understanding of the corporate governance policies, the reporting or information system, or
4 controls implementing those policies.

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

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

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

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

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

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

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

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

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

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

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

37 a. Whether a nomination committee is in place to identify and select
38 individuals for consideration.

39 b. Whether term limits are placed on directors.

40 c. How the election and reelection processes function.

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

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

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

49 (1) Any processes or practices, such as suitability standards, to determine whether
50 officers and key persons in control functions have the appropriate background.

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

1 senior management and the board of directors. This description may include
2 any of the following critical risk areas of the insurer:

- 3 a. Risk management processes.
- 4 b. Actuarial function.
- 5 c. Investment decision-making processes.
- 6 d. Reinsurance decision-making processes.
- 7 e. Business strategy/finance decision-making processes.
- 8 f. Compliance function.
- 9 g. Financial reporting/internal auditing.
- 10 h. Market conduct decision-making processes.

11 **"§ 58-10-780. Confidentiality.**

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

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

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

- 34 (1) Upon request, share documents, materials, or other CGAD-related
35 information including the confidential and privileged documents, materials,
36 or information subject to subsection (a) of this section, including proprietary
37 and trade secret documents and materials, with other state, federal, and
38 international financial regulatory agencies, including members of any
39 supervisory college as described in G.S. 58-19-37, with the NAIC, and with
40 third-party consultants pursuant to G.S. 58-10-785, provided that the recipient
41 agrees in writing to maintain the confidentiality and privileged status of the
42 CGAD-related documents, material, or other information and has verified in
43 writing the legal authority to maintain confidentiality.
- 44 (2) Receive documents, materials, or other CGAD-related information, including
45 otherwise confidential and privileged documents, materials, or information,
46 including proprietary and trade-secret information or documents, from
47 regulatory officials of other state, federal, and international financial
48 regulatory agencies, including members of any supervisory college as
49 described in G.S. 58-19-37, and from the NAIC, and shall maintain as
50 confidential or privileged any documents, materials, or information received
51 with notice or the understanding that it is confidential or privileged under the

1 laws of the jurisdiction that is the source of the document, material, or
2 information.

3 (d) The sharing of information and documents by the Commissioner pursuant to this Part
4 shall not constitute a delegation of regulatory authority or rule making, and the Commissioner is
5 solely responsible for the administration, execution, and enforcement of the provisions of this
6 Part.

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

11 **"§ 58-10-785. NAIC and third-party consultants.**

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

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

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

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

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

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

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

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

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

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

48 (6) A requirement that the NAIC or a third-party consultant to consent to
49 intervention by an insurer in any judicial or administrative action in which the
50 NAIC or a third-party consultant may be required to disclose confidential

1 information about the insurer shared with the NAIC or a third-party consultant
 2 pursuant to this Part.

3 **"§ 58-10-790. Sanctions.**

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

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

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

14 (d) Reduction of Civil Penalties. – The Commissioner may reduce the penalty if the
 15 insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a
 16 financial hardship to the insurer."

17 **SECTION 3.(b)** If any provision of Section 3 other than G.S. 58-10-780, or the
 18 application thereof to any person or circumstance, is held invalid, such determination shall not
 19 affect the provisions or applications of this section which can be given effect without the invalid
 20 provision or application, and to that end the provisions of this section, with the exception of
 21 G.S. 58-10-780, are severable.

22 **SECTION 3.(c)** Section 3 shall become effective on January 1, 2020. The first filing
 23 of the CGAD shall be made on or before June 1, 2020.

24
 25 **PART IV. OTHER PROVISIONS**

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

27 "(a1) As used in this section:

28 ...

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

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

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

- 47 1. The certified reinsurer's financial strength rating from an
 48 acceptable rating agency. The maximum rating that a certified
 49 reinsurer may be assigned will correspond to its financial
 50 strength rating as outlined in the table below. The
 51 Commissioner shall use the lowest financial strength rating

received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

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

SECTION 6. Except as otherwise provided, the remainder of this act is effective when it becomes law.