

SENATE No. 2649

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

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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."