Committee Substitute
for
House Bill 2479

BY DELEGATES D. JEFFRIES, WESTFALL, HOTT, AZINGER,
GRAVES, SYPOLT, CRISS, MANDT, NELSON, ESPINOSA
AND PORTERFIELD

[By Request of the Insurance Commission]

[Passed March 9, 2019; in effect ninety days from passage.]
ENROLLED

Committee Substitute

for

House Bill 2479

BY DELEGATES D. JEFFRIES, WESTFALL, HOTT, AZINGER, GRAVES, SYPOLT, CRISS, MANDT, NELSON, ESPINOSA, AND PORTERFIELD

[BY REQUEST OF THE INSURANCE COMMISSION]

[Passed March 9, 2019; in effect ninety days from passage.]
AN ACT to amend and reenact §33-33-2, §33-33-12 and §33-33-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-33-12a; and to amend said code by adding thereto a new article, designated §33-52-1, §33-52-2, §33-52-3, §33-52-4, §33-52-5, §33-52-6, §33-52-7, §33-52-8, and §33-52-9, all relating to the corporate governance practices of an insurance company or a group of insurers; defining internal audit function; making an insurer’s audit committee responsible for overseeing the insurer’s internal audit function; providing that certain insurers must establish an internal audit function with respect to the insurer’s governance, risk management, and internal controls; requiring the head of an insurer’s internal audit function to report to the insurer’s audit committee regularly, but no less than annually, about the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings; exempting certain insurers from the internal audit function requirements; stating purpose of Corporate Governance Annual Disclosure Act; defining terms; requiring an insurer to annually submit to the insurance commissioner a corporate governance annual disclosure; describing the contents of the corporate governance annual disclosure; requiring that the corporate governance annual disclosure include a signature of the insurer’s chief executive officer or corporate secretary; permitting the insurer to choose the corporate level that the corporate governance annual disclosure is applicable, depending upon how the insurer has structured its corporate governance system; allowing the insurer to comply with the corporate governance annual disclosure requirements by cross referencing other documents or referencing documents already in the possession of the insurance commissioner; requiring that documents and other information related to the corporate governance annual disclosure be confidential and privileged; permitting the insurance commissioner to share documents, materials or other corporate governance
annual disclosure-related information with National Association of Insurance
Commissioners and other regulatory bodies; providing that the insurance commissioner
may retain third-party consultants to assist the commissioner in reviewing the corporate
governance annual disclosure and related information; subjecting such third-party
consultants and the National Association of Insurance Commissioners to the same
confidentiality standards as the insurance commissioner; setting forth the penalty for an
insurer that fails to timely provide a corporate governance annual disclosure to the
insurance commissioner; and providing for effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-2. Definitions.

As used in this article:

(1) “Accountant” or “independent certified public accountant” means an independent
certified public accountant or accounting firm in good standing with the American Institute of
Certified Public Accountants and in all states in which the accountant is licensed to practice; for
Canadian and British companies, the terms mean a Canadian-chartered or British-chartered
accountant.

(2) An “affiliate” of, or person “affiliated” with a specific person, is a person that directly, or
indirectly through one or more intermediaries, controls or is controlled by, or is under common
control with, the person specified.

(3) “Audit committee” means a committee or equivalent body established by the board of
directors of an entity for the purpose of overseeing the accounting and financial reporting
processes of an insurer or group of insurers, and audits of financial statements of the insurer or
group of insurers. The audit committee of any entity that controls a group of insurers may be
deemed to be the audit committee for one or more of these controlled insurers solely for the
purposes of this article at the election of the controlling person. If an audit committee is not
designated by the insurer, the insurer’s entire board of directors shall constitute the audit committee.

(4) “Audited financial report” means and includes those items specified in section four of this article.

(5) “Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or other professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(6) “Independent board member” has the same meaning as described in subdivision (4), section 12 of this article.

(7) “Insurer” means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers’ mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

(8) “Group of insurers” means those licensed insurers included in the reporting requirements of article 27 of this chapter, or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

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

(10) “Internal control over financial reporting” means a process effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements. The process includes the requirements set
forth in subdivisions (2) through (7), subsection (b), section four of this article and those policies
and procedures that:

(A) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly
reflect the transactions and dispositions of assets;

(B) Provide reasonable assurance that transactions are recorded as necessary to permit
preparation of the financial statements and that receipts and expenditures are being made only
in accordance with authorizations of management and directors; and

(C) Provide reasonable assurance regarding prevention or timely detection of
unauthorized acquisition, use or disposition of assets that could have a material effect on the
financial statements.


(12) “Section 404” means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s
rules and regulations promulgated thereunder.

(13) “Section 404 report” means management’s report on “internal control over financial
reporting” as defined by the SEC and the related attestation report of the independent certified
public accountant as described in subdivision (1) of this section.

(14) “SOX Compliant Entity” means an entity that either is required to be compliant with,
or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(A) The preapproval requirements of Section 201, Section 10A(i) of the Securities
Exchange Act of 1934;

(B) The audit committee independence requirements of Section 301, Section 10A(m)(3)
of the Securities Exchange Act of 1934; and

(C) The internal control over financial reporting requirements of Section 404, Item 308 of
SEC Regulation S-K.

§33-33-12. Requirements for audit committees.
This section does not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(1) The audit committee is directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this article. Each accountant shall report directly to the audit committee.

(2) The audit committee of an insurer or group of insurers is responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities as required by §33-33-12a of this code.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subdivision (3), section two of this article and subdivision (6) of this section.

(4) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual
meeting of the responsible entity or one year from the occurrence of the event that caused the
member to be no longer independent.

(6) To exercise the election of the controlling person to designate the audit committee for
purposes of this article, the ultimate controlling person shall provide written notice to the
commissioners of the affected insurers. Notification shall be made timely prior to the issuance of
the statutory audit report and include a description of the basis for the election. The election can
be changed through notice to the commissioner by the insurer, which shall include a description
of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(7)(A) The audit committee shall require the accountant that performs for an insurer any
audit required by this article to timely report to the audit committee in accordance with the
requirements of Statement of Auditing Standards (SAS) No. 61, "Communication with Audit
Committees" or its replacement, including:

(i) All significant accounting policies and material permitted practices;

(ii) All material alternative treatments of financial information within statutory accounting
principles that have been discussed with management officials of the insurer, ramifications of the
use of the alternative disclosures and treatments, and the treatment preferred by the accountant;

and

(iii) Other material written communications between the accountant and the management
of the insurer, such as any management letter or schedule of unadjusted differences.

(B) If an insurer is a member of an insurance holding company system, the reports
required by paragraph (A) of this subdivision may be provided to the audit committee on an
aggregate basis for insurers in the holding company system, provided that any substantial
differences among insurers in the system are identified to the audit committee.

(8) The proportion of independent audit committee members shall meet or exceed the
following criteria with respect to prior calendar year, direct and assumed premiums:

$0 - $300 million: No minimum requirements;
Over $300 million - $500 million: Majority (50 percent or more) of members shall be independent;

Over $500 million: Supermajority (75 percent or more) of members shall be independent.

(A) The commissioner has authority afforded by state law to require the entity’s board to enact improvements to the independence of the audit committee membership if the insurer is in a risk based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

(B) All insurers with less than $500 million in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

(C) Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(9) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500 million may make application to the commissioner for a waiver from this section’s requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

§33-33-12a. Internal Audit Function Requirements.

(a) An insurer is exempt from the requirements of this section if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $500 million; and
(2) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1 billion.

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

(c) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function may not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(d) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

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

§33-33-16. Exemptions and effective dates.

(a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this article if the commissioner finds, upon review
of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer’s written request for an exemption from this article, the insurer may request in writing a hearing on its application for an exemption.

(b) Unless otherwise provided in this section, the provisions of this article shall become effective on January 1, 2010.

(c) Domestic insurers retaining a certified public accountant on the effective date of this article who qualify as independent shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(d) Domestic insurers not retaining a certified public accountant on the effective date of this article who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise:

(1) As of December 31, 2010, file with the commissioner an audited financial report; and

(2) For the year ending December 31, 2010, and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this article.

(e) Foreign insurers shall comply with this article for the year ending December 31, 2010, and each year thereafter, unless the commissioner permits otherwise.

(f) The requirements of subsection (d), section six of this article shall be in effect for audits of the year beginning January 1, 2010, and each year thereafter.

(g) The requirements of section twelve of this article are to be in effect January 1, 2010, and each year thereafter. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold exceeded to comply
with the independence requirements. An insurer that becomes subject to one of the independence
requirements as a result of a business combination shall have one calendar year following the
date of acquisition or combination to comply with the independence requirements.

(h) The requirements of section fifteen of this article are effective beginning with the
reporting period ending December 31, 2010, and each year thereafter. An insurer or group of
insurers that is not required to file a report because the total written premium is below the
threshold and subsequently becomes subject to the reporting requirements shall have two years
following the year the threshold is exceeded to file a report. An insurer acquired in a business
combination shall have two calendar years following the date of acquisition or combination to
comply with the reporting requirements.

(i) The requirements of §33-33-12a of this code are effective on January 1, 2020, and
each year thereafter. If an insurer or group of insurers that is exempt from the requirements of
§33-33-12a of this code no longer qualifies for that exemption, it shall have one year after the
year the threshold is exceeded to comply with the requirements of this article.

ARTICLE 52. CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT.

§33-52-1. Short title, purpose and scope of article.

(a) This article may be cited as the “Corporate Governance Annual Disclosure Act”.

(b) The purpose of this article is to:

(1) Provide the commissioner a summary of an insurer’s or insurance group’s corporate
governance structure, policies and practices to permit the commissioner to gain and maintain an
understanding of the insurer’s corporate governance framework;

(2) Outline the requirements for completing a corporate governance annual disclosure with
the commissioner;

(3) Set forth the procedures for filing the corporate governance annual disclosure; and

(4) Provide for the confidential treatment of the corporate governance annual disclosure
and related information that will contain confidential and sensitive information related to an insurer
or insurance group’s internal operations and proprietary and trade secret information which, if
made public, could potentially cause the insurer or insurance group competitive harm or
disadvantage.
(c) Nothing in this article limits the commissioner’s examination authority, or the rights or
obligations of third parties, under §33-2-9 of this code.
(d) The requirements of this article apply to all licensed insurers domiciled in this state.
As used in this article:
(1) “Board” means the board of directors of an insurer or insurance group.
(2) “Corporate Governance Annual Disclosure” or “CGAD” means a confidential report
filed by the insurer or insurance group made in accordance with the requirements of this article.
(3) “Insurance group” means those insurers and affiliates included within an insurance
holding company system as defined in §33-27-2 of this code.
(4) “Insurer” means every person engaged in the business of making contracts of
insurance, except that it shall not include agencies, authorities or instrumentalities of the United
States, its possessions and territories, the Commonwealth of Puerto Rico, the District of
Columbia, or a state or political subdivision of a state.
(5) “ORSA summary report” means the report filed in accordance with §33-40B-5 of this
code.
(6) “Senior management” means any corporate officer responsible for reporting
information to the board at regular intervals or providing this information to shareholders or
regulators and shall include, for example and without limitation, the chief executive officer (CEO),
chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief
legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue
officer (CRO), chief visionary officer (CVO), or any other “C” level executive.
(a) An insurer, or the insurance group of which the insurer is a member, shall annually submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code. Notwithstanding any request from the commissioner made pursuant to subsection (c) of this section, if the insurer is a member of an insurance group, the insurer shall submit the report required by this section to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners.

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

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

(d) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer’s or insurance group’s risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria
Enr. CS for HB 2479

was used to determine the level of reporting and explain any subsequent changes in level of
reporting.

(e) The review of the CGAD and any additional requests for information shall be made
through the lead state as determined by the procedures within the most recent financial analysis
handbook referenced in subsection (a) of this section.

(f) Insurers providing information substantially similar to the information required by this
article in other documents provided to the commissioner, including proxy statements filed in
conjunction with a holding company's Form B requirements or other state or federal filings
provided to the commissioner, are not required to duplicate that information in the CGAD, but are
only required to cross reference the document in which the information is included.

(g) Documentation and supporting information relevant to the CGAD shall be maintained
by the insurer or insurance group and made available upon examination or upon request of the
commissioner.


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

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

(1) The board and various committees thereof ultimately responsible for overseeing the
insurer or insurance group and the level(s) at which that oversight occurs, including, but not limited
to, ultimate control level, intermediate holding company or legal entity. The insurer or insurance
group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are
governed, including, but not limited to, bylaws, charters or informal mandates, as well as how the
board’s leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

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

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

(2) How an appropriate amount of independence is maintained on the board and its significant committees;

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

(4) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place; and

(5) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

(A) Whether a nomination committee is in place to identify and select individuals for consideration;

(B) Whether term limits are placed on directors;

(C) How the election and reelection processes function; and

(D) Whether a board diversity policy is in place and if so, how it functions.

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

(1) Any processes or practices, such as suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
(A) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(B) Any changes in an officer’s or key person’s suitability as outlined by the insurer’s or insurance group’s standards and procedures to monitor and evaluate such changes.

(2) The insurer’s or insurance group’s code of business conduct and ethics, the discussion of which considers, for example:

(A) Compliance with laws, rules, and regulations; and

(B) Proactive reporting of any illegal or unethical behavior.

(3) The insurer’s or insurance group’s processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

(A) The board’s role in overseeing management compensation programs and practices;

(B) The various elements of compensation awarded in the insurer’s or insurance group’s compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) How compensation programs are related to both company and individual performance over time;

(D) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
(F) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for chief executive officer and senior management succession.

(e) The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(2) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

(A) Risk management processes: Provided, That an insurer or insurance group may refer to its ORSA summary report;

(B) Actuarial function;

(C) Investment decision-making processes;

(D) Reinsurance decision-making processes;

(E) Business strategy/finance decision-making processes;

(F) Compliance function;

(G) Financial reporting/internal auditing; and

(H) Market conduct decision-making processes.
(f) The insurer or insurance group has discretion over the responses to the CGAD inquiries: Provided, That the CGAD shall contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The commissioner may request additional information that he or she deems material and necessary to provide the commissioner with a clear understanding of the corporate governance policies, the reporting or information system or controls implementing those policies.

§33-52-5. Filing procedures.

(a) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by §33-52-3 of this code, shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in §33-52-4 of this code.

(b) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by this article and is permitted to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(c) Notwithstanding subsection (a) of this section, and as outlined in §33-52-3 of this code, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(d) An insurer or insurance group may comply with this section by referencing other existing documents, including, but not limited to, ORSA summary report, holding company Form B or F filings, Securities and Exchange Commission (SEC) proxy statements or foreign regulatory reporting requirements, if the documents provide information that is comparable to the information
described in §33-52-4 of this code. The insurer or insurance group shall clearly reference the
location of the relevant information within the CGAD and attach the referenced document if it is
not already filed or available to the commissioner.
(e) Each year following the initial filing of the CGAD, the insurer or insurance group shall
file an amended version of the previously filed CGAD indicating where changes have been made.
If no changes were made in the information or activities reported by the insurer or insurance
group, the filing should so state.
§33-52-6. Confidentiality.
(a) Documents, materials or other information, including the CGAD, in the possession or
control of the commissioner that are obtained by, created by or disclosed to the commissioner or
any other person under this article, are recognized by this state as being proprietary and to contain
trade secrets. All such documents, materials or other information are confidential by law and
privileged, are not subject to the provisions of chapter 29e-b of this code, are not subject to
subpoena, and are not subject to discovery or admissible in evidence in any private civil action.
The commissioner may use the documents, materials or other information in the furtherance of
any regulatory or legal action brought as a part of the commissioner's official duties. The
commissioner shall not otherwise make the documents, materials or other information public
without the prior written consent of the insurer. Nothing in this section requires written consent of
the insurer before the commissioner may share or receive confidential documents, materials or
other CGAD-related information pursuant to subsection (c) of this section to assist in the
performance of the commissioner's regulatory duties.
(b) Neither the commissioner nor any person who received documents, materials or other
CGAD-related information, through examination or otherwise, while acting under the authority of
the commissioner, or with whom such documents, materials or other information are shared
pursuant to this article is permitted or required to testify in any private civil action concerning any
confidential documents, materials, or information subject to subsection (a) of this section.
(c) In order to assist in the performance of the commissioner’s regulatory duties, the commissioner may:

(1) Share documents, materials or other CGAD-related information including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, members of any supervisory college as defined in §33-27-6a of this code, the National Association of Insurance Commissioners, and third party consultants pursuant to §33-52-7 of this code: *Provided,* That the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) Receive documents, materials or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal and international financial regulatory agencies, members of any supervisory college as defined in §33-27-6a of this code, and the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

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

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other CGAD-related information may occur as a result of disclosure of such CGAD-related information or documents to the commissioner under this section or as a result of sharing as authorized in this article.

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

(b) Any persons retained under subsection (a) of this section is under the direction and control of the commissioner and may act only in a purely advisory capacity.

(c) The National Association of Insurance Commissioners and third-party consultants are subject to the same confidentiality standards and requirements as the commissioner.

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

(e) A written agreement with the National Association of Insurance Commissioners and/or a third-party consultant governing sharing and use of information provided pursuant to this article shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this article:

1. Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article;

2. Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;
(3) A provision specifying that ownership of the CGAD-related information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the commissioner and the use of the information by the National Association of Insurance Commissioners or third-party consultant is subject to the direction of the commissioner;

(4) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(5) A provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer’s CGAD-related information; and

(6) A requirement that the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this article.


Any insurer failing, without just cause, to timely file the CGAD as required in this article shall be required, after notice and hearing, to pay a penalty of up to $1,000 for each day’s delay, to be recovered by the commissioner. Any penalty so recovered shall be paid into the General Revenue Fund of this state. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.


The requirements of this article are effective on January 1, 2020. The first filing of the CGAD shall be in 2020.
Enr. CS for HB 2479

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Member, Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of 2019.

[Signature]

Governor