

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2479

BY DELEGATES JEFFRIES, D., WESTFALL, HOTT, AZINGER,

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AND PORTERFIELD

[BY REQUEST OF THE INSURANCE COMMISSION]

[Introduced January 17, 2019; Referred to the
Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-33-2, §33-33-12 and §33-33-16 of the Code of West Virginia,
2 1931, as amended; to amend said code by adding thereto a new section, designated §33-
3 33-12a; and to amend said code by adding thereto a new article, designated §33-52-1,
4 §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
5 relating to the corporate governance practices of an insurance company or a group of
6 insurers; defining internal audit function; making an insurer's audit committee responsible
7 for overseeing the insurer's internal audit function; providing that certain insurers must
8 establish an internal audit function with respect to the insurer's governance, risk
9 management, and internal controls; requiring the head of an insurer's internal audit
10 function to report to the insurer's audit committee regularly, but no less than annually,
11 about the periodic audit plan, factors that may adversely impact the internal audit
12 function's independence or effectiveness, material findings from completed audits and the
13 appropriateness of corrective actions implemented by management as a result of audit
14 findings; exempting certain insurers from the internal audit function requirements; stating
15 purpose of Corporate Governance Annual Disclosure Act; defining terms; requiring an
16 insurer to annually submit to the insurance commissioner a corporate governance annual
17 disclosure; describing the contents of the corporate governance annual disclosure;
18 requiring that the corporate governance annual disclosure include a signature of the
19 insurer's chief executive officer or corporate secretary; permitting the insurer to choose
20 the corporate level that the corporate governance annual disclosure is applicable,
21 depending upon how the insurer has structured its corporate governance system; allowing
22 the insurer to comply with the corporate governance annual disclosure requirements by
23 cross referencing other documents or referencing documents already in the possession
24 of the insurance commissioner; requiring that documents and other information related to
25 the corporate governance annual disclosure be confidential and privileged; permitting the
26 insurance commissioner to share documents, materials or other corporate governance

27 annual disclosure-related information with National Association of Insurance
28 Commissioners and other regulatory bodies; providing that the insurance commissioner
29 may retain third-party consultants to assist the commissioner in reviewing the corporate
30 governance annual disclosure and related information; subjecting such third-party
31 consultants and the National Association of Insurance Commissioners to the same
32 confidentiality standards as the insurance commissioner; setting forth the penalty for an
33 insurer that fails to timely provide a corporate governance annual disclosure to the
34 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.

1 As used in this article:

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

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

10 (3) "Audit committee" means a committee or equivalent body established by the board of
11 directors of an entity for the purpose of overseeing the accounting and financial reporting
12 processes of an insurer or group of insurers, and audits of financial statements of the insurer or
13 group of insurers. The audit committee of any entity that controls a group of insurers may be
14 deemed to be the audit committee for one or more of these controlled insurers solely for the
15 purposes of this article at the election of the controlling person. If an audit committee is not

16 designated by the insurer, the insurer's entire board of directors shall constitute the audit
17 committee.

18 (4) "Audited financial report" means and includes those items specified in section four of
19 this article.

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

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

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

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

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

39 ~~(9)~~ (10) "Internal control over financial reporting" means a process effected by an entity's
40 board of directors, management and other personnel designed to provide reasonable assurance
41 regarding the reliability of the financial statements. The process includes the requirements set

42 forth in subdivisions (2) through (7), subsection (b), section four of this article and those policies
43 and procedures that:

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

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

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

52 ~~(40)~~ (11) "SEC" means the United States Securities and Exchange Commission.

53 ~~(44)~~ (12) "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 and the
54 SEC's rules and regulations promulgated thereunder.

55 ~~(42)~~ (13) "Section 404 report" means management's report on "internal control over
56 financial reporting" as defined by the SEC and the related attestation report of the independent
57 certified public accountant as described in subdivision (1) of this section.

58 ~~(43)~~ (14) "SOX Compliant Entity" means an entity that either is required to be compliant
59 with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of
60 2002:

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

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

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

§33-33-12. Requirements for audit committees.

1 This section ~~shall~~ does not apply to foreign or alien insurers licensed in this state or an
2 insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX
3 Compliant Entity.

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

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

13 ~~(2)~~ (3) Each member of the audit committee shall be a member of the board of directors
14 of the insurer or a member of the board of directors of an entity elected pursuant to subdivision
15 (3), section two of this article and subdivision ~~(5)~~ (6) of this section.

16 ~~(3)~~ (4) In order to be considered independent for purposes of this section, a member of
17 the audit committee may not, other than in his or her capacity as a member of the audit committee,
18 the board of directors, or any other board committee, accept any consulting, advisory or other
19 compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof.
20 However, if law requires board participation by otherwise nonindependent members, that law shall
21 prevail and such members may participate in the audit committee and be designated as
22 independent for audit committee purposes, unless they are an officer or employee of the insurer
23 or one of its affiliates.

24 ~~(4)~~ (5) If a member of the audit committee ceases to be independent for reasons outside
25 the member's reasonable control, that person, with notice by the responsible entity to the state,
26 may remain an audit committee member of the responsible entity until the earlier of the next

27 annual meeting of the responsible entity or one year from the occurrence of the event that caused
28 the member to be no longer independent.

29 ~~(5)~~ (6) To exercise the election of the controlling person to designate the audit committee
30 for purposes of this article, the ultimate controlling person shall provide written notice to the
31 commissioners of the affected insurers. Notification shall be made timely prior to the issuance of
32 the statutory audit report and include a description of the basis for the election. The election can
33 be changed through notice to the commissioner by the insurer, which shall include a description
34 of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

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

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

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

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

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

50 ~~(7)~~ (8) The proportion of independent audit committee members shall meet or exceed the
51 following criteria with respect to prior calendar year, direct and assumed premiums:

52 ~~Prior Calendar Year Direct Written and Assumed Premiums \$0-\$300,000,000 Over~~
53 ~~\$300,000,000—\$500,000,000 Over \$500,000,000 No minimum requirements. Majority (50% or~~
54 ~~more) of members shall be independent. Supermajority of members (75% or more) shall be~~
55 ~~independent~~

56 \$0 - \$300 million: No minimum requirements:

57 Over \$300 million - \$500 million: Majority (50 percent or more) of members shall be
58 independent;

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

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

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

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

69 ~~(8)~~ (9) An insurer with direct written and assumed premium, excluding premiums reinsured
70 with the Federal Crop Insurance Corporation and Federal Flood Program, ~~for~~ less than \$500
71 million may make application to the commissioner for a waiver from this section's requirements
72 based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief
73 from this section with the states that it is licensed in or doing business in and the National
74 Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with
75 the National Association of Insurance Commissioners, the insurer shall file the approval in an
76 electronic format acceptable to the National Association of Insurance Commissioners.

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

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

2 (1) The insurer has annual direct written and unaffiliated assumed premium, including
3 international direct and assumed premium but excluding premiums reinsured with the Federal
4 Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and

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

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

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

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

24 (e) If an insurer is a member of an insurance holding company system or included in a
25 group of insurers, the insurer may satisfy the internal audit function requirements set forth in this

26 section at the ultimate controlling parent level, an intermediate holding company level or the
27 individual legal entity level.

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

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

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

10 (c) Domestic insurers retaining a certified public accountant on the effective date of this
11 article who qualify as independent shall comply with this article for the year ending December 31,
12 2010, and each year thereafter, unless the commissioner permits otherwise.

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

- 16 (1) As of December 31, 2010, file with the commissioner an audited financial report; and
17 (2) For the year ending December 31, 2010, and each year thereafter, such insurers shall
18 file with the commissioner all reports and communication required by this article.

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

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

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

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

39 (i) The requirements of §33-33-12a of this code are effective on January 1, 2020, and
40 each year thereafter. If an insurer or group of insurers that is exempt from the requirements of
41 §33-33-12a of this code no longer qualifies for that exemption, it shall have one year after the
42 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.

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

2 (b) The purpose of this article is to:

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

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

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

9 (4) Provide for the confidential treatment of the corporate governance annual disclosure
10 and related information that will contain confidential and sensitive information related to an insurer
11 or insurance group's internal operations and proprietary and trade secret information which, if
12 made public, could potentially cause the insurer or insurance group competitive harm or
13 disadvantage.

14 (c) Nothing in this article limits the commissioner's examination authority, or the rights or
15 obligations of third parties, under §33-2-9 of this code.

16 (d) The requirements of this article apply to all licensed insurers domiciled in this state.

§33-52-2. Definitions.

1 As used in this article:

2 (1) "Board" means the board of directors of an insurer or insurance group.

3 (2) "Corporate Governance Annual Disclosure" or "CGAD" means a confidential report
4 filed by the insurer or insurance group made in accordance with the requirements of this article.

5 (3) "Insurance group" means those insurers and affiliates included within an insurance
6 holding company system as defined in §33-27-2 of this code.

7 (4) "Insurer" means every person engaged in the business of making contracts of
8 insurance, except that it shall not include agencies, authorities or instrumentalities of the United
9 States, its possessions and territories, the Commonwealth of Puerto Rico, the District of
10 Columbia, or a state or political subdivision of a state.

11 (5) "ORSA summary report" means the report filed in accordance with §33-40B-5 of this
12 code.

13 (6) "Senior management" means any corporate officer responsible for reporting
14 information to the board at regular intervals or providing this information to shareholders or
15 regulators and shall include, for example and without limitation, the chief executive officer (CEO),
16 chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief
17 legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue
18 officer (CRO), chief visionary officer (CVO), or any other "C" level executive.

§33-52-3. Disclosure Requirements.

1 (a) An insurer, or the insurance group of which the insurer is a member, shall annually
2 submit to the commissioner a CGAD that contains the information described in §33-52-4 of this
3 code. Notwithstanding any request from the commissioner made pursuant to subsection (c) of
4 this section, if the insurer is a member of an insurance group, the insurer shall submit the report
5 required by this section to the commissioner of the lead state for the insurance group, in
6 accordance with the laws of the lead state, as determined by the procedures outlined in the most
7 recent financial analysis handbook adopted by the National Association of Insurance
8 Commissioners.

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

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

16 (d) For purposes of completing the CGAD, the insurer or insurance group may provide
17 information regarding corporate governance at the ultimate controlling parent level, an

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

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

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

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

§33-52-4. Contents of Corporate Governance Annual Disclosure.

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

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

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

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

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

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

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

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

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

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

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

31 (B) Whether term limits are placed on directors;

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

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

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

36 (1) Any processes or practices, such as suitability standards, to determine whether officers
37 and key persons in control functions have the appropriate background, experience and integrity
38 to fulfill their prospective roles, including:

39 (A) Identification of the specific positions for which suitability standards have been
40 developed and a description of the standards employed; and

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

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

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

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

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

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

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

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

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

62 (E) Any clawback provisions built into the programs to recover awards or payments if the
63 performance measures upon which they are based are restated or otherwise adjusted; and

64 (F) Any other factors relevant in understanding how the insurer or insurance group
65 monitors its compensation policies to determine whether its risk management objectives are met
66 by incentivizing its employees.

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

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

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

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

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

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

82 (B) Actuarial function;

83 (C) Investment decision-making processes;

84 (D) Reinsurance decision-making processes;

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

86 (F) Compliance function;

87 (G) Financial reporting/internal auditing; and

88 (H) Market conduct decision-making processes.

89 (f) The insurer or insurance group has discretion over the responses to the CGAD
90 inquiries: *Provided*, That the CGAD shall contain the material information necessary to permit
91 the commissioner to gain an understanding of the insurer's or insurance group's corporate
92 governance structure, policies, and practices. The commissioner may request additional
93 information that he or she deems material and necessary to provide the commissioner with a clear
94 understanding of the corporate governance policies, the reporting or information system or
95 controls implementing those policies.

§33-52-5. Filing procedures.

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

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

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

15 (d) An insurer or insurance group may comply with this section by referencing other
16 existing documents, including, but not limited to, ORSA summary report, holding company Form
17 B or F filings, Securities and Exchange Commission (SEC) proxy statements or foreign regulatory
18 reporting requirements, if the documents provide information that is comparable to the information
19 described in §33-52-4 of this code. The insurer or insurance group shall clearly reference the
20 location of the relevant information within the CGAD and attach the referenced document if it is
21 not already filed or available to the commissioner.

22 (e) Each year following the initial filing of the CGAD, the insurer or insurance group shall
23 file an amended version of the previously filed CGAD indicating where changes have been made.
24 If no changes were made in the information or activities reported by the insurer or insurance
25 group, the filing should so state.

§33-52-6. Confidentiality.

1 (a) Documents, materials or other information, including the CGAD, in the possession or
2 control of the commissioner that are obtained by, created by or disclosed to the commissioner or
3 any other person under this article, are recognized by this state as being proprietary and to contain
4 trade secrets. All such documents, materials or other information are confidential by law and
5 privileged, are not subject to the provisions of chapter 29e-b of this code, are not subject to
6 subpoena, and are not subject to discovery or admissible in evidence in any private civil action.
7 The commissioner may use the documents, materials or other information in the furtherance of
8 any regulatory or legal action brought as a part of the commissioner's official duties. The

9 commissioner shall not otherwise make the documents, materials or other information public
10 without the prior written consent of the insurer. Nothing in this section requires written consent of
11 the insurer before the commissioner may share or receive confidential documents, materials or
12 other CGAD-related information pursuant to subsection (c) of this section to assist in the
13 performance of the commissioner's regulatory duties.

14 (b) Neither the commissioner nor any person who received documents, materials or other
15 CGAD-related information, through examination or otherwise, while acting under the authority of
16 the commissioner, or with whom such documents, materials or other information are shared
17 pursuant to this article is permitted or required to testify in any private civil action concerning any
18 confidential documents, materials, or information subject to subsection (a) of this section.

19 (c) In order to assist in the performance of the commissioner's regulatory duties, the
20 commissioner may:

21 (1) Share documents, materials or other CGAD-related information including the
22 confidential and privileged documents, materials or information subject to subsection (a) of this
23 section, including proprietary and trade secret documents and materials with other state, federal
24 and international financial regulatory agencies, members of any supervisory college as defined in
25 §33-27-6a of this code, the National Association of Insurance Commissioners, and third party
26 consultants pursuant to §33-52-7 of this code: *Provided*, That the recipient agrees in writing to
27 maintain the confidentiality and privileged status of the CGAD-related documents, material or
28 other information and has verified in writing the legal authority to maintain confidentiality; and

29 (2) Receive documents, materials or other CGAD-related information, including otherwise
30 confidential and privileged documents, materials or information, including proprietary and trade-
31 secret information or documents, from regulatory officials of other state, federal and international
32 financial regulatory agencies, members of any supervisory college as defined in §33-27-6a of this
33 code, and the National Association of Insurance Commissioners, and shall maintain as
34 confidential or privileged any documents, materials or information received with notice or the

35 understanding that it is confidential or privileged under the laws of the jurisdiction that is the source
36 of the document, material or information.

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

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

§33-52-7. National Association of Insurance Commissioners and third-party consultants.

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

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

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

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

13 (e) A written agreement with the National Association of Insurance Commissioners and/or
14 a third-party consultant governing sharing and use of information provided pursuant to this article

15 shall contain the following provisions and expressly require the written consent of the insurer prior
16 to making public information provided under this article:

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

20 (2) Procedures and protocols for sharing by the National Association of Insurance
21 Commissioners only with other state regulators from states in which the insurance group has
22 domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain
23 the confidentiality and privileged status of the CGAD-related documents, materials or other
24 information and has verified in writing the legal authority to maintain confidentiality;

25 (3) A provision specifying that ownership of the CGAD-related information shared with the
26 National Association of Insurance Commissioners or a third-party consultant remains with the
27 commissioner and the use of the information by the National Association of Insurance
28 Commissioners or third-party consultant is subject to the direction of the commissioner;

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

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

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

§33-52-8. Sanctions.

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

§33-52-9. Effective date.

1 The requirements of this article are effective on January 1, 2020. The first filing of the
2 CGAD shall be in 2020.

NOTE: The purpose of this bill is to require insurers writing more than \$500 million, or insurance groups writing more than \$1 billion, in annual premium to maintain an internal audit function providing independent, objective and reasonable assurance to the insurer's or insurance group's audit committee regarding the insurer's governance, risk management, and internal controls. The bill also requires an insurer or insurer group to annually provide a confidential disclosure regarding its corporate governance practices. The legislation is needed for the State of West Virginia to remain accredited with the National Association of Insurance Commissioners.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.