

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 519

An Act to amend and reenact §§ 38.2-1301.1, 38.2-1306.1, 38.2-1320.4, 38.2-1320.5, 38.2-1333, 38.2-3127.1, 38.2-4235, and 38.2-5508 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-221.2, relating to confidentiality and disclosures of insurance information.

[S 1102]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1301.1, 38.2-1306.1, 38.2-1320.4, 38.2-1320.5, 38.2-1333, 38.2-3127.1, 38.2-4235, and 38.2-5508 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-221.2 as follows:

§ 38.2-221.2. Treatment of confidential information pursuant to federal law.

A. Any information denominated in writing as confidential by a federal regulator and received by the Commission pursuant to the Gramm-Leach-Bliley Act of 1999 (Public Law §§ 106-102) (hereafter, the federal act) shall be excluded from, and the Commission shall not be subject to, subpoena or public inspection with respect to such information.

B. Pursuant to the federal act, and notwithstanding any other provision of law, the Commission may provide to a federal regulator any examination or other report, record or information to which the Commission has access with respect to any person who is engaged in the business of insurance in this Commonwealth and is an affiliate or agent of a depository institution or financial holding company, as those terms are defined in the federal act, provided that the federal regulator has the legal authority, and shall agree in writing, as a condition precedent to its receipt of such information, to maintain such information in confidence as provided in the federal act and to take all reasonable steps to oppose any effort to secure disclosure of such information.

C. The provision by the Commission pursuant to this section, or the provision by a federal regulator pursuant to the federal act, of such information shall not constitute, operate as a waiver of, or otherwise affect any existing privilege or any claim of confidentiality to which the information is otherwise subject.

D. Nothing contained herein shall prohibit the Commission from (i) using such confidential information in furtherance of any regulatory or legal action; (ii) publishing any decisions, orders, findings, opinions or judgments; or (iii) publishing any final report or any other report containing aggregated findings, provided that such reports, decisions, orders, findings, opinions or judgments shall not disclose any such confidential information.

E. For purposes of this section, "federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation.

§ 38.2-1301.1. Material transaction disclosures.

A. Every insurer domiciled in this Commonwealth shall file a report with the Commission disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commission for review, approval or information purposes pursuant to other provisions of Title 38.2 or the rules and regulations of the Commission.

1. The report required by this subsection is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

2. One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with the National Association of Insurance Commissioners unless the insurer has applied for and has been granted an exemption from this requirement by the Commission.

*B. All reports obtained by or disclosed to the Commission pursuant to this section, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the Commission, the National Association of Insurance Commissioners, or any other person, ~~except to insurance departments of other states,~~ without the prior written consent of the insurer to which it pertains unless the Commission, after giving the insurer which would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the Commission may publish all or any part thereof in such manner as it may deem appropriate. *Notwithstanding the foregoing, the Commission may at its discretion disclose such reports to (i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. Any such disclosure by the Commission shall not constitute a waiver**

of confidentiality of any such report.

C. No acquisitions or dispositions of assets need be reported pursuant to subsection A if the acquisitions or dispositions are not material. For purposes of this section, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the Commission.

1. Asset acquisitions subject to this section include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

2. Asset dispositions subject to this section include every sale, lease, exchange, merger, consolidation, mortgage, pledge or hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- a. Date of the transaction;
- b. Manner of acquisition or disposition;
- c. Description of the assets involved;
- d. Nature and amount of the consideration given or received;
- e. Purpose of, or reason for, the transaction;
- f. Manner by which the amount of consideration was determined;
- g. Gain or loss recognized or realized as a result of the transaction; and
- h. Name of all persons from whom the assets were acquired or to whom they were disposed.

4. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

D. No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to this section if the nonrenewals, cancellations or revisions are not material. For purposes of this section, a material nonrenewal, cancellation or revision is one that affects for property and casualty business, including accident and health business when written as such, more than fifty percent of an insurer's ceded written premium, or for life, annuity and accident and health business, more than fifty percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's most recently filed statutory statement; however, no filing is required if the insurer's ceded written premium or the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of direct plus assumed written premium or ten percent of the statutory reserve requirement prior to any cession, respectively.

1. Subject to the foregoing criteria, a report is to be filed without regard to which party has initiated the nonrenewal, cancellation or revision of ceded reinsurance whenever one or more of the following conditions exist:

a. The entire cession has been cancelled, nonrenewed or revised and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation or revision represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation or revision not occurred;

b. An authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized reinsurer; or

c. Collateral requirements previously established for unauthorized reinsurers have been reduced; e.g., the requirement to collateralize incurred but not reported (IBNR) claim reserves has been waived with respect to one or more unauthorized reinsurers newly participating in an existing cession.

Subject to the materiality criteria, for purposes of the foregoing subdivisions b and c, a report shall be filed if the result of the revision affects more than ten percent of the cession.

2. The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

- a. Effective date of the nonrenewal, cancellation or revision;
- b. The description of the transaction with an identification of the initiator thereof;
- c. Purpose of, or reason for, the transaction; and
- d. If applicable, the identity of the replacement reinsurers.

3. Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the

solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

§ 38.2-1306.1. Insurance companies' analyses confidential.

A. All regulatory or financial analyses, ratios and examination synopses concerning insurance companies *or insurance transactions* that are submitted to the Commission by the National Association of Insurance Commissioners (NAIC), including information generated by any NAIC databases developed for use by regulators, are not open to public inspection and shall receive confidential treatment by the Commission.

B. Financial analyses and test ratios generated by the Commission, pursuant to the NAIC's Insurance Regulatory Information System (IRIS) or Financial Analysis and Solvency Tracking (FAST) System, any successor program, or any similar program developed by the Commission, are not public records, *shall not be subject to subpoena*, and shall receive confidential treatment.

C. Notwithstanding other provisions to the contrary, nothing contained in this chapter shall prevent or be construed as prohibiting the Commission from disclosing otherwise confidential information, administrative or judicial orders, or the content of any analysis or any matter related thereto, ~~to the insurance regulatory officials of any state or country, directly or indirectly through officials at NAIC, or to law-enforcement officials of this or any other state or agency of the federal government~~ at any time to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. *Any such disclosure by the Commission shall not constitute a waiver of confidentiality of any such documents or information.*

D. Documents or information received from the insurance regulatory officials of any state or country which are confidential in those jurisdictions are not open to public inspection and shall receive confidential treatment by the Commission.

§ 38.2-1320.4. Publication and use of examination reports.

A. Upon the filing of the examination report under subdivision 1 of § 38.2-1320.2, the Commission shall continue to hold the content of the examination report as private and confidential information for a period of ten days except to the extent provided in § 38.2-1320.3. Thereafter, the Commission may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

B. Nothing contained in this Code shall prevent or be construed as prohibiting the Commission from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, ~~to the insurance department of any state or country, or to law-enforcement officials of this or any other state or agency of the federal government~~ at any time to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country, so long as such agency, authority or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this article. *Any such disclosure by the Commission shall not constitute a waiver of confidentiality of any such reports or any matter relating thereto.*

C. In the event the Commission determines that regulatory action is appropriate as a result of any examination, it may initiate any proceedings or actions as provided by law.

§ 38.2-1320.5. Confidentiality of ancillary information.

All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commission or any other person in the course of an examination made under this article shall be given confidential treatment, are not subject to subpoena, and may not be made public by the Commission or any other person, except to the extent provided in § 38.2-1320.4. Access may also be granted to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. *Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such papers, recorded information, documents or copies thereof.* Any parties receiving such papers must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

§ 38.2-1333. Confidential treatment of information and documents.

All information, documents, and copies obtained by or disclosed to the Commission or any other person in the course of an examination or investigation made pursuant to § 38.2-1332, and all information reported pursuant to § 38.2-1329, shall be confidential, *shall not be subject to subpoena*, and shall not be made public by the Commission or any other person without the prior written consent of the insurer to which they pertain. However, this provision shall not apply to information ~~given~~ disclosed to ~~insurance departments in other states~~ (i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. *Any such disclosure by the Commission shall not constitute a waiver*

of confidentiality of such information, documents or copies thereof. After an insurer and its affiliates have been given notice and opportunity to be heard, the Commission may publish all or any part of the information and materials referred to in this section in any manner it considers appropriate, if it determines that the interests of policyholders or the public will be served by the publication.

§ 38.2-3127.1. Actuarial opinion of reserves.

A. Effective December 31, 1992, every life insurer doing business in this Commonwealth shall annually submit an actuarial opinion that complies with the provisions of this section. Such an opinion shall be rendered by a qualified actuary and shall state whether the reserves and related actuarial items held in support of designated policies and contracts, are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this Commonwealth. The Commission shall specify by regulation the types of reserves and related actuarial items on which the opinion is to be expressed.

1. The Commission by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

2. The opinion shall be submitted with the annual statement filed pursuant to § 38.2-1300 and shall reflect the valuation of such reserve liabilities for each year ending on or after December 31, 1992.

3. The opinion shall apply to all business in force, including individual and group health insurance plans, in a form and substance acceptable to the Commission as specified by regulation.

4. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the Commission may by regulation prescribe.

5. In the case of an opinion required to be submitted by a foreign or alien insurer, the Commission may accept the opinion filed by that insurer with the insurance supervisory official of another state if the Commission determines that the opinion reasonably meets the requirements applicable to a *an* insurer domiciled in this Commonwealth.

6. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations promulgated by the Commission.

7. Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurer and the Commission, for any act, error, omission, decision or conduct with respect to the actuary's opinion.

B. 1. Effective December 31, 1992, every life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection A of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The Commission shall specify by regulation the types of reserves and related actuarial items on which the opinion is to be expressed.

2. The Commission may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

3. A memorandum, in form and substance acceptable to the Commission as specified by regulation, shall be prepared to support each actuarial opinion.

4. If the insurer fails to provide a supporting memorandum at the request of the Commission within a period specified by regulation or the Commission determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the Commission, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commission.

5. Any supporting memorandum, and any other material provided by the insurer to the Commission in connection therewith, shall be kept confidential by the Commission and shall not be made public and shall not be subject to subpoena. However, the memorandum or other material may otherwise be released by the Commission (i) with the written consent of the insurer or, (ii) to the American Academy of Actuaries upon the Academy's written request stating that the memorandum or other material is required for professional disciplinary proceedings and that the American Academy of Actuaries will observe procedures satisfactory to the Commission to preserve the confidentiality of the memorandum or other material, or (iii) to a regulatory official of any state or country; the National Association of Insurance Commissioners, its affiliate or its subsidiary; or a law-enforcement authority of any state or country. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such supporting memorandum or any other material provided by the insurer in connection therewith. Once any portion of the confidential memorandum is cited by the insurer in its marketing efforts or is cited before any governmental agency other than a state insurance department or is released by the insurer to

the news media, all portions of the memorandum shall be no longer confidential.

§ 38.2-4235. Confidential treatment of information and documents.

All information, documents and copies obtained by or disclosed to the Commission or any other person in the course of an examination or investigation made pursuant to § 38.2-4234, and all information reported pursuant to § 38.2-4231, shall be confidential, *shall not be subject to subpoena*, and shall not be made public by the Commission or any other person without the prior written consent of the nonstock corporation to which they pertain. However, this provision shall not apply to information ~~given disclosed to insurance departments in other states~~ *(i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such information.* After the licensed nonstock corporation and its affiliates have been given notice and opportunity to be heard, the Commission may publish all or any part of the information and materials referred to in this section in any manner it considers appropriate, if it determines that the interests of subscribers or the public will be served by the publication.

§ 38.2-5508. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.

A. All RBC Plans and RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, which are filed with the Commission with respect to any domestic licensee or foreign licensee, constitute information that might be damaging to the licensee if made available to its competitors, and therefore shall be kept confidential by the Commission. This information shall not be made public nor shall it be subject to subpoena, other than by the Commission and then only for the purpose of enforcement actions taken by the Commission pursuant to this Act or any other provision of the insurance laws of this Commonwealth; *however, the Commission may at its discretion disclose such confidential information to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such plans, reports, and information.* As used in this subsection, RBC Reports and RBC Plans shall include the results or report of any examination or analysis of a licensee performed by the Commission pursuant to the provisions of this Act or by the insurance regulatory officials of another state pursuant to the provisions of a substantially similar risk-based capital statute.

B. The comparison of a licensee's Total Adjusted Capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the licensee, and is not intended as a means to rank licensees generally. Therefore, except as otherwise required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement ranking any licensee relative to other licensees solely on the basis of comparisons between Total Adjusted Capital and RBC Levels or any component derived in the calculation of RBC Levels, by any licensee, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. If any materially false statement comparing a licensee's Total Adjusted Capital to its RBC Levels, or any of them, or a misleading comparison of any other amount to the licensee's RBC Levels is published in any written publication and the licensee is able to demonstrate to the Commission with substantial proof the falsity or misleading nature of such statement, as the case may be, then the licensee may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false or misleading statement.

C. RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the Commission in monitoring the solvency of licensees and the need for possible corrective action with respect to licensees and shall not be used by the Commission for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the Commission to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which a licensee or any affiliate is authorized to write.