

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 249

An Act to amend and reenact § 38.2-1317.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1317.2, relating to confidentiality of market analyses of insurance companies and transactions.

[H 336]

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1317.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1317.2 as follows:

§ 38.2-1317.1. Examinations; nature and scope.

A. In scheduling and determining the nature, scope and frequency of examinations, the Commission shall consider such matters as the conduct of business in the marketplace, results of financial statement analyses and ratios, *results of market analyses*, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in any Examiners' Handbook, or any successor publications, adopted by the NAIC and in effect when the Commission exercises discretion under this article.

Procedures for examinations concerning the conduct of business in the marketplace shall be exclusively subject to the provisions of §§ 38.2-218 through 38.2-222 and §§ 38.2-1318 ~~and~~, 38.2-1319, 38.2-1320.5, and 38.2-1321.1.

B. For purposes of completing an examination of any company under this article, the Commission may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the Commission, necessary or material to the examination of the company.

C. The examination of any alien insurer or person shall be limited to its insurance transactions in the United States unless the Commission considers a complete examination of the alien insurer or person to be necessary.

D. As used in this article:

"Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who, pursuant to the provisions of this title, Title 58.1, or any rule or regulation promulgated by the Commission, may otherwise be subject to the administrative or regulatory authority of the Commission as set forth in the provisions of this title.

"Insurance department" means the supervising regulatory officials of a given state who are responsible for administering the insurance laws of said state.

"Insurer" means an insurance institution as defined by § 38.2-602.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means any association, aggregate of individuals, business, company, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society, or any affiliate thereof.

§ 38.2-1317.2. *Market analyses confidential.*

A. *All market analyses concerning companies or insurance transactions that are obtained by the Commission from the NAIC, including information generated by any NAIC databases developed for use by regulators, and all market analyses generated by the Commission based on documents or information submitted to the Commission by a company or person, including its officers, directors, and agents, shall receive confidential treatment by the Commission, shall not be subject to subpoena, and are not public records. 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 a market analysis or market conduct action shall receive confidential treatment by the Commission, shall not be subject to subpoena, and are not public records. Any such disclosure to the Commission shall not constitute a waiver of confidentiality of any such documents or information.*

B. *Notwithstanding other provisions to the contrary, nothing 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, 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.*

C. *Documents or information received in the course of a market analysis or market conduct action*

from the NAIC, a law-enforcement official of any state or country, or regulatory officials of any state or country that are confidential in those jurisdictions shall receive confidential treatment by the Commission, shall not be subject to subpoena, and are not public records.

D. Nothing in this section shall prohibit the Commission from releasing a report containing aggregated findings.