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HOUSE BILL NO. 2195

Offered January 10, 2013

A *BILL to amend and reenact §§ 38.2-1322 through 38.2-1327, 38.2-1329 through 38.2-1333, 38.2-1334.1, and 38.2-4509, as it is currently effective and as it shall become effective, of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 38.2-1332.1 and by adding in Article 5 of Chapter 13 of Title 38.2 sections numbered 38.2-1334.3, 38.2-1334.4, and 38.2-1334.5, and to repeal § 38.2-1331, relating to insurance holding companies; subsidiaries of insurance companies; applicability to certain plans.*

Patron—Ware, R.L.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1322 through 38.2-1327, 38.2-1329 through 38.2-1333, 38.2-1334.1, and 38.2-4509, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1332.1 and by adding in Article 5 of Chapter 13 of Title 38.2 sections numbered 38.2-1334.3, 38.2-1334.4, and 38.2-1334.5 as follows:

§ 38.2-1322. Definitions.

As used in this article:

"Acquiring person" means any person by whom or on whose behalf acquisition of control of any domestic insurer is to be effected.

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

"Control," including the terms "controlling," "controlled by" and "under common control with," means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, through (i) the ownership of voting securities, (ii) by contract other than a commercial contract for goods or nonmanagement services, or (iii) otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively ten 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection I K of § 38.2-1329 that control does not exist. After giving all interested persons notice and opportunity to be heard and making specific findings to support its determination, the Commission may determine that control exists, notwithstanding the absence of a presumption to that effect.

"Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in § 38.2-5503 or would cause the insurer to be in hazardous financial condition pursuant to 14 VAC 5-290-30 and 14 VAC 5-290-40 of the Virginia Administrative Code.

"Insurance holding company system" means two or more affiliated persons, one or more of which is a person licensed pursuant to this title.

"Insurer" means an insurance company as defined in § 38.2-100 and means also a health maintenance organization licensed under Chapter 43 (§ 38.2-4300 et seq.) of this title.

"Material transaction" means (i) any sale, purchase, exchange, loan or extension of credit, or investment; (ii) any dividend or distribution; (iii) any reinsurance treaty or risk-sharing arrangement; (iv) any management contract, service contract or cost-sharing arrangement; (v) any merger with or acquisition of control of any corporation; or (vi) any other transaction or agreement that the Commission by order, rule or regulation determines to be material. Any series of transactions occurring within a twelve-month period that are sufficiently similar in nature as to be reasonably construed as a single transaction and that in the aggregate exceed any minimum limits shall be deemed a material transaction.

"NAIC" means the National Association of Insurance Commissioners.

"SEC" means the U.S. Securities and Exchange Commission.

"Subsidiary" of a specified person means an affiliate directly or indirectly controlled by that person through one or more intermediaries.

"Voting security" means any security that enables the owner to vote for the election of directors.

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59 Voting security includes any security convertible into or evidencing a right to acquire a voting security.

60 **§ 38.2-1323. Acquisition of control of insurers.**

61 A. No person shall acquire or attempt to acquire, through merger or otherwise, control of any
62 domestic insurer, or any person controlling a domestic insurer, unless the person has previously filed
63 with the Commission and has sent to the insurer an application for approval of acquisition of control of
64 the insurer, and the Commission has issued an order approving the application. No such merger or other
65 acquisition of control shall be effective until a statement containing the information required by this
66 article has been filed with the Commission, all other provisions of this section have been complied with,
67 and the merger or acquisition of control has been approved by the Commission pursuant to this article.

68 B. If the merger or acquisition of an insurer not covered by subsection A ~~of this section~~ causes or
69 tends to cause a substantial lessening of competition in any line of insurance and such lessening of
70 competition is detrimental to policyholders or the public in general, then the Commission may suspend
71 such insurer's license after giving the insurer ~~ten~~ 10 days' notice and the opportunity to be heard.

72 C. Any notice issued pursuant to the provisions of subsection B shall be accompanied by a request
73 for such information as required by § 38.2-1324. Any hearing held pursuant to the provisions of this
74 section shall begin, unless waived by the insurer, within ~~forty~~ 40 days of the receipt by the Commission
75 of all material required by this subsection.

76 D. *For purposes of this section, any controlling person of a domestic insurer seeking to divest its*
77 *controlling interest in the domestic insurer, in any manner, shall file with the Commission, with a copy*
78 *to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of*
79 *control. The Commission shall determine those instances in which the party or parties seeking to divest*
80 *or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the*
81 *transaction. The information shall remain confidential until the conclusion of the transaction unless the*
82 *Commission, in its discretion, determines that confidential treatment will interfere with enforcement of*
83 *this section. If the statement referred to in subsection A is otherwise filed, this subsection shall not*
84 *apply.*

85 E. *With respect to a transaction subject to this section, the acquiring person shall also file a*
86 *pre-acquisition notification with the Commission containing the information as established by the*
87 *Commission.*

88 F. *For purposes of this section:*

89 1. *"Domestic insurer" shall include any person controlling a domestic insurer unless the person, as*
90 *determined by the Commission, is either directly or through its affiliates primarily engaged in business*
91 *other than the business of insurance; and*

92 2. *"Person" shall not include any securities broker holding, in the usual and customary broker's*
93 *function, less than 20 percent of the voting securities of an insurance company or of any person that*
94 *controls an insurance company.*

95 **§ 38.2-1324. Contents of application.**

96 A. The application filed with the Commission under § 38.2-1323 shall be made under oath or
97 affirmation and shall contain the following information:

98 1. The name and address of each acquiring person including:

99 a. If the acquiring person is a natural person, his principal occupation, all offices and positions held
100 during the past five years, and any conviction of crimes other than minor traffic violations during the
101 past ~~ten~~ 10 years; and

102 b. If the acquiring person is not a natural person, (i) a report of the nature of its business operations
103 during the existence of the acquiring person and any of its predecessors, not to exceed five years; (ii) an
104 informative description of the business intended to be done by the person and the person's subsidiaries;
105 and (iii) a list of all individuals who are or who have been selected to become directors or executive
106 officers of the person or who perform or will perform functions appropriate to those positions. The
107 report shall include the information required by subdivision 1 a of this subsection.

108 2. The source, nature, and amount of the consideration used or to be used in effecting the acquisition
109 of control, a description of any transaction in which funds were or are to be obtained for that purpose,
110 and the identity of persons furnishing the consideration. However, where a source of the consideration is
111 a loan made in the lender's ordinary course of business, the identity of the lender shall remain
112 confidential if requested by the person filing the application;

113 3. Fully audited financial information regarding the earnings and financial condition of each
114 acquiring person during the existence of the acquiring person or the predecessors, not to exceed five
115 years, and similar unaudited information as of a date not earlier than ~~ninety~~ 90 days prior to the filing
116 of the application;

117 4. Any plans or proposals that each acquiring person may have to liquidate the insurer, to sell its
118 assets or merge or consolidate it with any person, or to make any other material change in its business
119 or corporate structure or management;

120 5. The number of shares of any security of the insurer that each acquiring person proposes to acquire

and the terms of the acquisition;

6. The amount of each class of any such security that each acquiring person beneficially owns or has a right to acquire beneficial ownership of;

7. A full description of any contracts, arrangements or understandings with respect to any security in which an acquiring person is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been made;

8. A description of any acquiring person's purchase of any such security during the ~~twelve~~ 12 calendar months preceding the filing of the application, including the dates of purchases, names of the purchasers, and consideration paid or agreed to be paid for the security;

9. A description of any recommendations to purchase any such security made by any acquiring person or by any person based upon interviews or at the suggestion of any acquiring person during the ~~twelve~~ 12 calendar months preceding the filing of the application;

10. Copies of all tender offers, requests or invitations for tenders of exchange offers and agreements to acquire or exchange any such security and of additional related soliciting material which has been distributed;

11. The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of these securities for tender and the amount of any associated fees, commissions or other compensation to be paid to broker-dealers;

12. *An agreement by the person required to file the statement referred to in subsection A of § 38.2-1323 that it will provide the annual enterprise risk report specified in subsection L of § 38.2-1329, for so long as control exists;*

13. *An acknowledgment by the person required to file the statement referred to in subsection A of § 38.2-1323 that the person and all subsidiaries within its control in the insurance holding company system will provide information to the Commission upon request as necessary to evaluate enterprise risk to the insurer; and*

14. Any additional information the Commission may prescribe as necessary or appropriate for the protection of the policyholders or the public.

B. If the person required to file the application referred to in § 38.2-1323 is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for by subsection A of ~~this section~~ be given with respect to (i) each partner of the partnership or limited partnership, (ii) each member of the syndicate or group, and (iii) each person who controls any partner or member. If any partner, member or person is a corporation, or if the person required to file the application referred to in § 38.2-1323 is a corporation, the Commission may require that information be given for the corporation, each officer, and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ~~ten~~ 10 percent of the outstanding voting securities of the corporation as required by subsection A of ~~this section~~.

C. If any material change occurs in the facts set forth in the application filed with the Commission and sent to an insurer pursuant to § 38.2-1323, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the Commission and sent to the insurer within two business days after the person filing the application learns of the change.

§ 38.2-1325. Alternate filing materials.

If any acquisition referred to in § 38.2-1323 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, ~~or under the Take-Over-Bid Disclosure Act (§ 13.1-528 et seq.),~~ the person required by § 38.2-1323 to file an application may use these documents in furnishing the required information.

§ 38.2-1326. Approval by Commission.

The Commission shall approve the application required by § 38.2-1323 unless, after giving notice and opportunity to be heard, it determines that:

1. After the change of control, the insurer would not be able to satisfy the requirements for the issuance of a license to write the classes of insurance for which it is presently licensed;

2. The acquisition of control would lessen competition substantially or tend to create a monopoly in insurance in this Commonwealth;

3. The financial condition of any acquiring person might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

4. Any plans or proposals of the acquiring party to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure

182 or management, are unfair and unreasonable to policyholders of the insurer and not in the public
183 interest;

184 5. The competence, experience, and integrity of those persons who would control the operation of the
185 insurer are such that it would not be in the interest of policyholders of the insurer and of the public to
186 permit the acquisition of control; ~~or~~

187 6. After the change of control, the insurer's surplus ~~to~~ *as regards* policyholders would not be
188 reasonable in relation to its outstanding liabilities or adequate to its financial needs; *or*

189 7. *The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.*

190 **§ 38.2-1327. Time for hearing; order of Commission.**

191 A. Any hearing held pursuant to § 38.2-1326 shall begin within ~~forty~~ 40 days of the date the
192 application is filed with the Commission. In approving any application filed pursuant to § 38.2-1323, the
193 Commission may include in its order any conditions, stipulations, or provisions which the Commission
194 determines to be necessary to protect the interests of the policyholders of the insurer and the public.

195 B. *The Commission at the acquiring person's expense any attorneys, actuaries, accountants, and*
196 *other experts not otherwise a part of the Commission's staff as may be reasonably necessary to assist*
197 *the Commission in reviewing the proposed acquisition of control.*

198 **§ 38.2-1329. Registration of insurers that are members of holding company system.**

199 A. Each insurer licensed to do business in ~~this~~ *the* Commonwealth that is a member of an insurance
200 holding company system shall register with the Commission. ~~Any insurer subject to registration under~~
201 ~~this section shall register within fifteen days after it becomes subject to registration, unless the~~
202 ~~Commission extends the time for registration for good cause shown.~~

203 B. 1. This section shall not apply to:

204 ~~a. Any~~ *any* foreign insurer subject to disclosure requirements and standards adopted by statute or
205 regulation in the jurisdiction of its domicile that are substantially similar to those contained in this
206 section; ~~or~~

207 ~~b. Any insurer, information, or transaction if and to the extent that the Commission exempts the~~
208 ~~same from this section, subsection A of § 38.2-1330, subsection D of § 38.2-1330, § 38.2-1330.1, and~~
209 ~~either (i) a provision substantially similar to subsection B of § 38.2-1330 or (ii) a provision such as the~~
210 ~~following: "Each registered insurer shall keep current the information required to be disclosed in its~~
211 ~~registration statement by reporting all material changes or additions within 15 days after the end of the~~
212 ~~month in which it learns of each change or addition."~~

213 2. *Any insurer that is subject to registration under this section shall register within 15 days after it*
214 *becomes subject to registration, and annually thereafter by April 30 of each year for the previous*
215 *calendar year, unless the Commission for good cause shown extends the time for registration, and then*
216 *within the extended time.*

217 3. Any licensed insurer that is a member of a holding company system but not subject to registration
218 under this section may be required by the Commission to furnish a copy of the registration statement, or
219 other information filed by the insurer, with the insurance regulatory authority of its domiciliary
220 jurisdiction.

221 C. Each insurer subject to registration under this section shall file a registration statement on a form
222 provided by the Commission. Such statement shall contain current information on:

223 1. The capital structure, general financial condition, ownership, and management of the insurer and
224 any person controlling the insurer;

225 2. The identity of every member of the insurance holding company system;

226 3. The following agreements in force, continuing relationships and transactions currently outstanding
227 between the insurer and its affiliates:

228 a. Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the
229 insurer or of the insurer by its affiliates;

230 b. Purchases, sales, or exchanges of assets;

231 c. Transactions not in the ordinary course of business;

232 d. Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent
233 exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary
234 course of the insurer's business;

235 e. All management and service contracts and all cost-sharing arrangements; ~~and~~

236 f. Reinsurance agreements or other risk-sharing arrangements;

237 g. *Dividends and other distributions to shareholders; and*

238 h. *Consolidated tax allocation agreements;*

239 4. *Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a*
240 *loan made to any member of the insurance holding company system;*

241 5. *If requested by the Commission, financial statements of or within an insurance holding company*
242 *system, including all affiliates. Financial statements may include but are not limited to annual audited*
243 *financial statements filed with the SEC pursuant to the Securities Act of 1933, as amended, or the*

Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the Commission with the most recently filed parent corporation financial statements that have been filed with the SEC;

6. Other matters relating to transactions between registered insurers and any affiliates which may be included from time to time in any registration forms adopted or approved by the Commission;

7. Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

8. Any other information required by the Commission by rule or regulation.

D. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

E. If information is not material for the purposes of this section, it need not be disclosed on the registration statement filed pursuant to subsection B of this section C. Unless the Commission prescribes otherwise, information about transactions that are not material transactions shall not be deemed material for purposes of this section sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the immediately preceding December 31 shall not be deemed material for purposes of this section.

E. F. Each registered insurer shall report all additional material transactions with affiliates and any material changes in previously reported material transactions with affiliates on amendment forms provided by the Commission. Each insurer shall make its report within fifteen 15 days after the end of the month in which it learns of each additional material transaction or material change in material transaction. Subject to § 38.2-1330.1, each insurer shall report to the Commission all dividends and other distributions to shareholders within five business days following their declaration, and such declaration shall confer no rights upon shareholders until:

1. The Commission has approved the payment of such dividend or distribution; or

2. Thirty days after the Commission has received written notice of the declaration thereof and has not within such period disapproved such payment.

Each registered insurer shall also keep current the information required by subsection C of this section by filing an amendment to its registration statement within 120 days after the end of each fiscal year of the ultimate controlling person of the insurance holding company system.

F. G. The Commission shall terminate the registration of any insurer that demonstrates it no longer is a member of an insurance holding company system.

G. H. The Commission may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

H. I. The Commission may allow an insurer which is authorized to do business in this Commonwealth and which is part of an insurance holding company system, to register on behalf of any affiliated insurer required to register under subsection A of this section and to file all information and material required to be filed under this section.

J. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Commission by rule, regulation, or order shall exempt the same from the provisions of this section.

I. K. Any person may file with the Commission a disclaimer of affiliation with any authorized insurer. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any registering or reporting requirements under this section that may arise out of the insurer's relationship with the person unless and until the Commission disallows the disclaimer. Within 30 days after a disclaimer has been filed, with all of the information required by the Commission, the Commission shall notify the person filing the disclaimer of the allowance or disallowance of the disclaimer, and in the event of disallowance, the reasons therefore. The Commission shall disallow the disclaimer only after giving all interested parties notice and opportunity to be heard. Any disallowance shall be supported by specific findings of fact. A disclaimer of affiliation shall be deemed to have been granted unless the Commission, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the Commission, or if the disclaimer is deemed to have been approved.

L. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise

305 risk to the insurer. The report shall be filed with the insurance commissioner, director, or
306 superintendent of the lead state of the insurance holding company system as determined by the
307 procedures within the Financial Analysis Handbook adopted by the NAIC.

308 M. The failure to file a registration statement or any summary of the registration statement or
309 enterprise risk filing required by this section within the time specified for filing shall be a violation of
310 this section.

311 **§ 38.2-1330. Standards for transactions within an insurance company holding system; adequacy**
312 **of surplus.**

313 A. ~~Material transactions by registered insurers with their affiliates~~ Transactions within an insurance
314 holding company system to which an insurer subject to registration is a party shall be subject to the
315 following standards:

316 1. The terms shall be fair and reasonable;

317 2. Agreements for cost-sharing services and management shall include such provisions as required by
318 rule and regulation issued by the Commission;

319 3. Charges or fees for services performed shall be reasonable;

320 3- 4. Expenses incurred and payments received shall be allocated to the insurer in conformity with
321 customary insurance accounting practices consistently applied;

322 4- 5. The books, accounts, and records of each party shall disclose clearly and accurately the precise
323 nature and details of the transactions, including such accounting information as is necessary to support
324 the reasonableness of the charges or fees to the respective parties; and

325 5- 6. The insurer's surplus ~~to~~ as regards policyholders following any dividends or distributions to
326 shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to
327 meet its financial needs.

328 B. Transactions described in subdivisions 1 through 7 that involve a domestic insurer and any
329 person in its insurance holding company system, including amendments or modifications of affiliate
330 agreements previously filed pursuant to this section, that are subject to materiality standards contained
331 in such subdivisions, may not be entered into unless the insurer has notified the Commission in writing
332 of its intention to enter into the transaction at least 30 days prior thereto, or such shorter period as the
333 Commission may permit, and the Commission has not disapproved it within that period. The notice for
334 amendments or modifications shall include the reasons for the change and the financial impact on the
335 domestic insurer. Informal notice shall be reported, within 30 days after a termination of a previously
336 filed agreement, to the Commission for determination of the type of filing required, if any. Transactions
337 to which this subsection applies, with their materiality standards, are:

338 1. Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions
339 are equal to or exceed:

340 a. With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25
341 percent of surplus as regards policyholders as of the immediately preceding December 31; and

342 b. With respect to life insurers, three percent of the insurer's admitted assets as of the immediately
343 preceding December 31;

344 2. Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans
345 or extensions of credit with the agreement or understanding that the proceeds of the transactions, in
346 whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets
347 of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit,
348 provided the transactions are equal to or exceed:

349 a. With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25
350 percent of surplus as regards policyholders as of the immediately preceding December 31; and

351 b. With respect to life insurers, three percent of the insurer's admitted assets as of the immediately
352 preceding December 31;

353 3. Reinsurance agreements or modifications thereto, including:

354 a. All reinsurance pooling agreements;

355 b. Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the
356 projected reinsurance premium or a change in the insurer's liabilities in any of the next three years,
357 equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the immediately
358 preceding December 31, including those agreements that may require as consideration the transfer of
359 assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and
360 nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

361 4. All management agreements, service contracts, tax allocation agreements, guarantees, and all
362 cost-sharing arrangements;

363 5. Guarantees when made by a domestic insurer; provided that a guarantee that is quantifiable as to
364 amount is not subject to the notice requirements of this subdivision unless it exceeds the lesser of
365 one-half of one percent of the insurer's admitted assets or 10 percent of surplus as regards
366 policyholders as of the immediately preceding December 31. Further, all guarantees that are not

quantifiable as to amount are subject to the notice requirements of this subdivision;

6. Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. The Commission may exempt such a transaction by regulation; and

7. Any material transactions that the Commission determines may adversely affect the interests of the insurer's policyholders.

Nothing in this subsection shall be deemed to authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

C. In addition:

1. Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this article;

2. Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection A;

3. Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof;

4. The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers;

5. The provisions of subdivisions 3 and 4 shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of subdivisions 3 and 4 with respect to such controlling entity;

6. An insurer may make application to the Commission for a waiver from the requirements of this subsection if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, is less than \$300 million. An insurer may also make application to the Commission for a waiver from the requirements of this subsection based upon unique circumstances. The Commission may consider various factors including the type of business entity, volume of business written, availability of qualified board members, or ownership or organizational structure of the entity.

D. For purposes of this article, in determining whether an insurer's surplus ~~to~~ as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

1. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

2. The extent to which the insurer's business is diversified among different ~~classes~~ lines of insurance;

3. The number and size of risks insured in each ~~class~~ line of business;

4. The extent of the geographical dispersion of the insurer's insured risk;

5. The nature and extent of the insurer's reinsurance program;

6. The quality, diversification, and liquidity of the insurer's investment portfolio;

7. The recent past and projected future trend in the size of the insurer's surplus to policyholders;

8. ~~The recent past and projected future trend in the size of the insurer's investment portfolio;~~

9. The surplus ~~to~~ as regards policyholders maintained by other comparable insurers;

9-10. The adequacy of the insurer's reserves;

~~10-11.~~ 11. The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items; and

~~11-12.~~ 12. The quality and liquidity of investments in ~~subsidiaries~~ affiliates. The Commission in its judgment may classify any investment as a nonadmitted asset for the purpose of determining the adequacy of surplus ~~to~~ as regards policyholders.

428 ~~C. E.~~ No domestic insurer shall enter into transactions that are part of a plan or series of like
429 transactions with persons within the holding company system if the purpose of those separate
430 transactions is to avoid the statutory threshold amount and thus avoid the review that otherwise would
431 be required. *If the Commission determines that separate transactions were entered into over any*
432 *12-month period for that purpose, the Commission may exercise its authority under § 38.2-1334.5.*

433 *F. The Commission, in reviewing transactions pursuant to subsection B, shall consider whether the*
434 *transactions comply with the standards set forth in subsection A and whether they may adversely affect*
435 *the interests of policyholders.*

436 ~~D. G.~~ The Commission shall be notified in writing within 30 days of any investment of the domestic
437 insurer in any one corporation if the total investment in such corporation by the insurance holding
438 company system exceeds ~~ten~~ 10 percent of such corporation's voting securities.

439 **§ 38.2-1330.1. Dividends and other distributions.**

440 A. Except as otherwise provided by law, a domestic insurer shall not declare or pay a dividend or
441 other distribution from any source other than earned surplus without the Commission's prior written
442 approval. For purposes of this section, "earned surplus" means an amount equal to the unassigned funds
443 (surplus) of an insurer as set forth in the most recent annual statement of the insurer filed with the
444 Commission including all or part of the surplus arising from unrealized capital gains or revaluation of
445 assets. No domestic insurer shall pay an extraordinary dividend or make any other extraordinary
446 distribution to its shareholders until the earlier of:

447 1. Thirty days after the Commission has received written notice of the declaration thereof and has
448 not within such period disapproved such payment; or

449 2. The Commission's approval of such payment.

450 B. For purposes of this section, an extraordinary dividend or distribution includes any dividend or
451 distribution of cash or other property whose fair market value together with that of other dividends or
452 distributions made within the preceding 12 months exceeds the greater of (i) ~~40%~~ 10 percent of such
453 insurer's surplus as regards policyholders as of the immediately preceding December 31 or (ii) the net
454 gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer
455 is not a life insurer, not including realized capital gains, for the ~~12 month~~ 12-month period ending the
456 immediately preceding December 31, but shall not include pro rata distributions of any class of the
457 insurer's own securities.

458 C. *In determining whether a dividend or distribution is extraordinary, an insurer other than a life*
459 *insurer may carry forward net income from the previous two calendar years that has not already been*
460 *paid out as dividends. This carry-forward shall be computed by taking the net income from the second*
461 *and third preceding calendar years, not including realized capital gains, less dividends paid in the*
462 *second and immediate preceding calendar years.*

463 D. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or
464 distribution that is conditional upon the Commission's approval thereof, and such declaration shall confer
465 no rights upon shareholders until:

466 1. The Commission has approved the payment of such dividend or distribution; or

467 2. The Commission has not disapproved such payment within the 30-day period described in
468 subsection A.

469 ~~D. E.~~ The Commission may limit or disallow the payment of ordinary dividends by a domestic
470 insurer if the insurer is presently or potentially financially distressed or troubled. The Commission shall
471 set forth the specific reasons for limiting or disallowing the payment of any ordinary dividends.

472 **§ 38.2-1332. Examinations.**

473 A. In addition to the powers the Commission has under Article 4 (§ 38.2-1317 et seq.) of this
474 ~~chapter~~, the Commission shall also have the power to ~~order~~ examine any insurer registered under
475 § 38.2-1329 to produce any records, books, or other information papers in the possession of the insurer
476 or its affiliates necessary to determine the financial condition or legality of conduct of the insurer. If the
477 insurer fails to comply with the order, the Commission shall have the power to examine its affiliates to
478 obtain the information and its affiliates to ascertain the financial condition of the insurer, including the
479 enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of
480 entities within the insurance holding company system, or by the insurance holding company system on a
481 consolidated basis.

482 B. The Commission shall exercise its power under subsection A of this section only if the
483 examination of the insurer under Article 4 of this chapter is inadequate or the interests of the
484 policyholders of the insurer may be adversely affected may order any insurer registered under
485 § 38.2-1329 to produce such records, books, or other information papers in the possession of the insurer
486 or its affiliates as are reasonably necessary to determine compliance with this article.

487 C. *To determine compliance with this article, the Commission may order any insurer registered*
488 *under § 38.2-1329 to produce information not in the possession of the insurer if the insurer can obtain*
489 *access to such information pursuant to contractual relationships, statutory obligations, or other method.*

In the event the insurer cannot obtain the information requested by the Commission, the insurer shall provide the Commission a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the Commission that the detailed explanation is without merit, the Commission may require, after notice and hearing, the insurer to pay a penalty pursuant to § 38.2-218 for each day's delay, or may suspend or revoke the insurer's license.

D. The Commission may retain at the registered insurer's expense any attorneys, actuaries, accountants and other experts reasonably necessary to assist in the conduct of the examination under subsection A of this section. Any persons so retained shall be under the direction and control of the Commission and shall act in a purely advisory capacity.

~~D. E. Each insurer producing books and papers for examination records pursuant to subsection A of this section shall be liable for and shall pay the expense of the examination in accordance with the provisions of Article 4 of this chapter (§ 38.2-1317 et seq.).~~

E. ~~The~~ F. In the event the insurer fails to comply with an order, the Commission may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts reasonably necessary to assist in the review of the contents of any application filed pursuant to § 38.2-1323 shall have the power to examine the affiliates to obtain the information.

§ 38.2-1332.1. Supervisory colleges.

A. With respect to any insurer registered under § 38.2-1329, and in accordance with subsection C, the Commission shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this article. The powers of the Commission with respect to supervisory colleges include the following:

- 1. Initiating the establishment of a supervisory college;*
- 2. Clarifying the membership and participation of other supervisors in the supervisory college;*
- 3. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;*
- 4. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and*
- 5. Establishing a crisis management plan.*

B. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the Commission's participation in a supervisory college in accordance with subsection C, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the Commission may establish a regular assessment to the insurer for the payment of these expenses. If an assessment is required by this subsection it shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

C. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with § 38.2-1332, the Commission may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The Commission may enter into agreements in accordance with subsection C of § 38.2-1333 providing the basis for cooperation between the Commission and the other regulatory agencies and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the Commission to regulate or supervise the insurer or its affiliates within its jurisdiction.

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

A. 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 disclosed 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 such information, documents or copies thereof. However, the Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's official duties.~~ 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.

B. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission or with whom such documents, materials, or other information are shared pursuant to this article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A.

C. In order to assist in the performance of the Commission's duties, the Commission:

1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection A, with other state, federal, and international regulatory agencies; with the NAIC and its affiliates and subsidiaries; and with state, federal, and international law-enforcement authorities, including members of any supervisory college described in § 38.2-1332.1, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality;

2. May, notwithstanding subdivision 1, only share confidential and privileged documents, material, or information reported pursuant to subsection L of § 38.2-1329 with insurance regulatory commissions of states having statutes or regulations substantially similar to subsection A and that have agreed in writing not to disclose such information;

3. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, 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; and

4. Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;

b. Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this article remains with the Commission and the NAIC's use of the information is subject to the direction of the Commission;

c. Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this article is subject to a request or subpoena to the NAIC for disclosure or production; and

d. Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this article.

D. The sharing of information by the Commission pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the Commission 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, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subsection C.

F. Documents, materials, or other information in the possession or control of the NAIC pursuant to 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.

§ 38.2-1334.1. Voting of securities, injunctions and sequestration of voting securities.

A. No security ~~which~~ that is the subject of any agreement or arrangement regarding acquisition, or ~~which~~ that is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation, or order issued by the Commission hereunder, may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding. However, no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of an insurer subject to any provision of this article or unless the Commission or other court of this Commonwealth has so ordered. If the insurer or the Commissioner of Insurance has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the Commission hereunder, the insurer or the Commissioner of Insurance may apply to the Commission to enter an order (i) enjoining any offer or agreement of merger made in contravention of § 38.2-1331; (ii) enjoining any offer, request, invitation, agreement, or acquisition made in contravention of § 38.2-1323;

(iii) (ii) enforcing any rule, regulation, or order issued by the Commission under the foregoing sections to enjoin the voting of any security so acquired; or (iv) (iii) voiding any vote of such security already cast at any meeting of shareholders or providing for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

B. Whenever it appears to the Commission that any person has committed or is about to commit a violation of this article, the Commission may enter an order enjoining such person from violating or continuing to violate this article or any such rule or order, and for such other equitable relief as the nature of the case and the interests of the domestic insurer's policyholders or the public may require.

C. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation, or order issued by the Commission hereunder, the Commission may, after reasonable notice, upon application of the insurer or application of the Commissioner of Insurance, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the order with respect thereto as may be appropriate to effectuate the provisions of this article.

Notwithstanding any other provisions of law, for the purposes of this article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in ~~this~~ the Commonwealth.

D. The actions authorized by this section are in addition to any remedies provided for by other sections of this title and may be imposed, in addition to or in lieu of any other penalties or actions provided for by law, whenever such actions involve a person that is neither domiciled nor licensed in this Commonwealth.

§ 38.2-1334.3. Rules and regulations.

The Commission may adopt rules and regulations implementing the provisions of this article.

§ 38.2-1334.4. Sanctions.

Whenever it appears to the Commission that any person has committed a violation of §§ 38.2-1323 through 38.2-1328 and the violation prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for instituting delinquency proceedings pursuant to § 38.2-1503.

§ 38.2-1334.5. Statutory construction and relationship to other laws.

Provisions of this title, insofar as they are not inconsistent with this article, shall be applicable to any insurer subject to registration under this article.

§ 38.2-4509. (Effective until July 1, 2014) Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, ~~Article~~ Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3407.17, 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

§ 38.2-4509. (Effective July 1, 2014) Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, ~~Article~~ Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3407.17, 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

674 2. That § 38.2-1331 of the Code of Virginia is repealed.

675 3. That the provisions of Article 5 (§ 38.2-1322 et seq.) of Chapter 13 of Title 38.2 of the Code of
676 Virginia as such Article was in effect on June 30, 2013, shall apply to any insurance holding
677 company transaction that was commenced prior to January 1, 2014, unless otherwise provided in
678 such Article as amended by the first and second enactment of this act.