

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 692

An Act to amend and reenact §§ 38.2-1322 and 38.2-1333 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1332.2, relating to insurance holding companies; supervision of internationally active insurance groups.

[H 1759]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1322 and 38.2-1333 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1332.2 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 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 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 14VAC5-290-30 and 14VAC5-290-40 of the Virginia Administrative Code.

"Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commission under § 38.2-1332.2 to have sufficient significant contacts with the internationally active insurance group.

"Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

"Insurer" means an insurance company as defined in § 38.2-100.

"Internationally active insurance group" means an insurance holding company system that includes an insurer registered under § 38.2-1329 and that meets the following criteria: (i) premiums written in at least three countries; (ii) the percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and (iii) based on a three year rolling average, (a) the total assets of the insurance holding company system are at least \$50 billion or (b) the total gross written premiums of the insurance holding company system are at least \$10 billion.

"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 12-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. "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

§ 38.2-1332.2. Group-wide supervision of internationally active insurance groups.

A. The Commission is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the Commission may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

1. Does not have substantial insurance operations in the United States;
2. Has substantial insurance operations in the United States but not in the Commonwealth; or
3. Has substantial insurance operations in the United States and the Commonwealth, but the Commission has determined pursuant to the factors set forth in subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Commission make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

B. In cooperation with other state, federal, and international regulatory agencies, the Commission shall identify a single group-wide supervisor for an internationally active insurance group. The Commission may determine that the Commission is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in the Commonwealth. However, the Commission may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The Commission shall consider the following factors when making a determination or acknowledgment under this subsection:

1. The place of domicile of the insurers within the internationally active insurance group that holds the largest share of the internationally active insurance group's written premiums, assets, or liabilities;
2. The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group;
3. The location of the executive offices or largest operational offices of the internationally active insurance group;
4. Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the Commission determines to be:
 - a. Substantially similar to the system of regulation provided under the laws of the Commonwealth; or
 - b. Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
5. Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the Commission with reasonably reciprocal recognition and cooperation.

However, a regulatory official identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subdivisions 1 through 5, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group and in consultation with the internationally active insurance group.

C. Notwithstanding any other provision of this section, the Commission's regulatory authority under this section shall not be impaired. To the extent that the Commission acknowledges a regulatory official from another jurisdiction as a group-wide supervisor and in the event of a material change in the internationally active insurance group that results in (i) the internationally active insurance group's insurers domiciled in the Commonwealth holding the largest share of the group's premiums, assets, or liabilities or (ii) the Commonwealth being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group, the Commission may make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection B.

D. Pursuant to § 38.2-1332, the Commission is authorized to collect from any insurer registered pursuant to § 38.2-1329 all information necessary to determine whether the Commission may act as the group-wide supervisor of an internationally active insurance group or if the Commission may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the Commission, the Commission shall notify the insurer registered pursuant to § 38.2-1329 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the Commission with additional information pertinent to the pending determination. The Commission shall publish in any manner it considers appropriate and on its website the identity of internationally active insurance groups that the Commission has determined are subject to group-wide supervision by the Commission.

E. If the Commission is the group-wide supervisor for an internationally active insurance group, the

Commission is authorized to engage in any of the following group-wide supervision activities:

- 1. Assess the enterprise risks within the internationally active insurance group to ensure that:*
 - a. The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and*
 - b. Reasonable and effective mitigation measures are in place;*
- 2. Request, from any member of an internationally active insurance group subject to the Commission's supervision, information necessary and appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:*
 - a. Governance, risk assessment, and management;*
 - b. Capital adequacy; and*
 - c. Material intercompany transactions;*
- 3. Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;*
- 4. Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information, subject to the confidentiality provisions of § 38.2-1333, through supervisory colleges as set forth in § 38.2-1332.1 or otherwise;*
- 5. Enter into agreements with or obtain documentation from any insurer registered under § 38.2-1329, any member of the internationally active insurance group, and any other state, federal, or international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the Commission's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in the Commonwealth is doing business in the Commonwealth or is otherwise subject to jurisdiction in the Commonwealth; and*
- 6. Engage in other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the Commission.*

F. If the Commission acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the Commission is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

- 1. The Commission's cooperation is in compliance with the laws of the Commonwealth; and*
- 2. The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the Commission's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the Commission is authorized to refuse recognition and cooperation.*

G. The Commission is authorized to enter into agreements with or obtain documentation from any insurer registered under § 38.2-1329, any affiliate of the insurer, and other state, federal, or international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

H. Each registered insurer subject to this section shall be liable for and shall pay the necessary traveling and other expenses incurred by the Commission for its participation in the administration of this section. The Commission may retain at the registered insurer's expense any attorneys, actuaries, accountants, and other experts reasonably necessary to assist in the administration 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. 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.

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

A. All documents, materials, or other information 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 or provided to the Commission pursuant to subdivisions A 12 and 13 of § 38.2-1324 and §§ 38.2-1329, 38.2-1330, and 38.2-1330.1, and 38.2-1332.2 shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. 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. The Commission shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which they pertain. 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 documents, materials, or other information 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, materials, or information reported pursuant to subsection L of § 38.2-1329 with insurance commissioners in any states that have 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 documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; 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 that 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 confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.