

LD0668681

SENATE BILL NO. 750

Offered January 13, 1995

A *BILL to amend and reenact §§ 38.2-1322, 38.2-1329, 38.2-4214, 38.2-4319 and 38.2-4408 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 10 of Title 38.2 a section numbered 38.2-1005.1, relating to domestic insurers' principal place of business; definition of control; registration of insurers that are members of holding company system.*

Patrons—Holland, R.J. and Chichester

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1322, 38.2-1329, 38.2-4214, 38.2-4319 and 38.2-4408 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 10 of Title 38.2 a section numbered 38.2-1005.1 as follows:

§ 38.2-1005.1. *Principal place of business.*

A. *Unless the Commission provides otherwise in writing, the books, records and accounts of a domestic insurer shall be kept and maintained at the principal office of the insurer which shall be located within the geographic limits of the Commonwealth.*

B. *Any insurer which on July 1, 1995, is domiciled and licensed to transact the business of insurance in this Commonwealth shall have until July 1, 1996, to come into full compliance with subsection A. An insurer which is not in compliance on July 1, 1995, shall submit a plan of compliance to the Commission prior to December 31, 1995.*

§ 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 percent or more of the voting securities of any other person or if any person by contract or agreement is designated as an attorney-in-fact for a reciprocal. This presumption may be rebutted by a showing made in the manner provided by subsection I 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.

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

"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.

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

A. Each insurer licensed to do business in this Commonwealth that is a member of an insurance holding company system shall register with the Commission. Any insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, unless the

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60 Commission extends the time for registration for good cause shown.

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

62 a. Any foreign insurer subject to disclosure requirements and standards adopted by statute or
63 regulation in the jurisdiction of its domicile that are substantially similar to those contained in this
64 section; or

65 b. Any insurer, information, or transaction if and to the extent that the Commission exempts the
66 same from this section.

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

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

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

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

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

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

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

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

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

85 e. All management and service contracts and all cost-sharing arrangements; ~~other than~~ and cost
86 allocation arrangements based upon generally accepted accounting principles; and

87 f. Reinsurance agreements or other risk-sharing arrangements; and

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

90 D. If information is not material for the purposes of this section, it need not be disclosed on the
91 registration statement filed pursuant to subsection B of this section. Unless the Commission prescribes
92 otherwise, information about transactions that are not material transactions shall not be deemed material
93 for purposes of this section.

94 E. Each registered insurer shall report all additional material transactions with affiliates and any
95 material changes in previously reported material transactions with affiliates on amendment forms
96 provided by the Commission. Each insurer shall make its report within fifteen days after the end of the
97 month in which it learns of each additional material transaction or material change in material
98 transaction. Each insurer shall report to the Commission all dividends and other distributions to
99 shareholders within two business days following their declaration. Each registered insurer shall also keep
100 current the information required by subsection C of this section by filing an amendment to its
101 registration statement within 120 days after the end of each fiscal year of the ultimate controlling person
102 of the insurance holding company system.

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

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

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

112 I. Any person may file with the Commission a disclaimer of affiliation with any authorized insurer.
113 The disclaimer shall fully disclose all material relationships and bases for affiliation between the person
114 and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the
115 insurer shall be relieved of any registering or reporting requirements under this section that may arise
116 out of the insurer's relationship with the person unless and until the Commission disallows the
117 disclaimer. The Commission shall disallow the disclaimer only after giving all interested parties notice
118 and opportunity to be heard. Any disallowance shall be supported by specific findings of fact.

119 § 38.2-4214. Application of certain provisions of law.

120 No provision of this title except this chapter and, insofar as they are not inconsistent with this
121 chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,

38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1005.1, 38.2-1017, 38.2-1018, 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, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3425 through 38.2-3429, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3501, 38.2-3502, 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542, 38.2-3600 through 38.2-3607 and Chapter 53 (§ 38.2-5300 et seq.) of this title shall apply to the operation of a plan.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1005.1, 38.2-1057, 38.2-1306.2 through 38.2-1310, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6, 38.2-3411.2, 38.2-3418.1, 38.2-3418.1:1, 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3525, 38.2-3542, and Chapter 53 (§ 38.2-5300 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

§ 38.2-4408. Application of certain provisions.

No provision of this title except this chapter and insofar as they are not inconsistent with this chapter §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 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, 38.2-700 through 38.2-704, 38.2-800 through 38.2-806, 38.2-1005.1, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.), 2 (§ 38.2-1306.2 et seq.), and 4 (§ 38.2-1317 et seq.) of Chapter 13, and 38.2-1800 through 38.2-1836, insofar as they are not inconsistent with this chapter, and § 58.1-2500 et seq. shall apply to the operation of a plan.