

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 248

An Act to amend and reenact §§ 38.2-1005.1:7, 38.2-1339, 38.2-1342, and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 38.2 an article numbered 5.1, consisting of sections numbered 38.2-1334.3 through 38.2-1334.10, relating to risk management by insurance companies; Own Risk and Solvency Assessments.

[S 88]

Approved March 17, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1005.1:7, 38.2-1339, 38.2-1342, and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 38.2 an article numbered 5.1, consisting of sections numbered 38.2-1334.3 through 38.2-1334.10, as follows:

§ 38.2-1005.1:7. Regulation and authority of a mutual holding company.

A. A mutual holding company organized under Title 13.1 pursuant to the authority granted by this article shall have all of the powers granted to a domestic mutual insurance company licensed under Chapter 10 (§ 38.2-1000 et seq.) ~~of this title~~ and shall be subject to the same limitations and restrictions imposed on insurance holding companies by Article 5 (§ 38.2-1322 et seq.), *Article 5.1 (§ 38.2-1334.3 et seq.)*, and Article 6 (§ 38.2-1335 et seq.) of Chapter 13 ~~of this title~~ as well as all requirements and provisions of the laws of this Commonwealth that are not inconsistent with the provisions of this article except that a mutual holding company shall not have authority to transact insurance pursuant to this title.

B. Neither the mutual holding company nor any intermediate holding company shall issue or reinsure policies of insurance.

C. A mutual holding company may enter into an affiliation agreement or merger agreement either at the time of the conversion, or at some later time with the approval of the Commission, with any mutual insurance company licensed to transact insurance in this Commonwealth or another mutual holding company. Any such merger agreement may authorize members of the mutual insurance company or other mutual holding company to become members of the mutual holding company. Any such affiliation or merger agreement shall be subject to the provisions of this title relating to transactions entered into by a mutual insurance company organized and licensed under the laws of this Commonwealth.

D. The assets of the mutual holding company shall be held in trust under such arrangements and on such terms as the Commission may approve for the benefit of the policyholders of the converted company. Any residual rights of the MHC in such assets or any of the assets of the MHC determined not to be held in trust shall be subject to a lien in favor of the policyholders of the converted company under such terms as the Commission may approve. Upon conversion of the mutual holding company as provided for in § 38.2-1005.1:9, such assets shall be released from trust in accordance with the plan of conversion approved by the Commission.

Article 5.1.

Risk Management Framework; Own Risk and Solvency Assessments.

§ 38.2-1334.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in § 38.2-1322.

"Insurer" means an insurance company as defined in § 38.2-100, except that "insurer" shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means the National Association of Insurance Commissioners.

"ORSA Guidance Manual" means the current version of the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual developed and adopted by the NAIC and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC.

"ORSA summary report" means a confidential high-level summary of an insurer or insurance group's ORSA.

"Own Risk and Solvency Assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

§ 38.2-1334.4. Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying,

assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

§ 38.2-1334.5. ORSA requirement.

Subject to § 38.2-1334.7, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually, but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

§ 38.2-1334.6. ORSA summary report.

A. Upon the Commission's request, and no more than once each year, an insurer shall submit to the Commission an ORSA summary report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer or the insurance group of which it is a member, or both. The first filing of an ORSA summary report shall be made in 2015. Notwithstanding any request from the Commission, if the insurer is a member of an insurance group, the insurer shall submit any report required by this subsection if the Commission is the lead state of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

B. The report shall include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his belief and knowledge that the insurer has applied the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

C. An insurer may comply with subsection A by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

§ 38.2-1334.7. Scope of article; exemption.

A. The requirements of this article shall apply to all insurers domiciled in the Commonwealth unless exempt pursuant to this section.

B. An insurer shall be exempt from the requirements of this article if:

1. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, less than \$500 million; and

2. The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, less than \$1 billion.

C. If an insurer qualifies for exemption pursuant to subdivision B 1, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision B 2, then the ORSA summary report that may be required pursuant to § 38.2-1334.6 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers, provided any combination of reports includes every insurer within the insurance group.

D. If an insurer does not qualify for exemption pursuant to subdivision B 1, but the insurance group of which it is a member qualifies for exemption pursuant to subdivision B 2, then the only ORSA summary report that may be required pursuant to § 38.2-1334.6 shall be the report applicable to that insurer.

E. An insurer that does not qualify for exemption pursuant to subsection B may apply to the Commission for a waiver from the requirements of this article based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the Commission may consider the type and volume of business written, ownership and organizational structure, and any other factor the Commission considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the Commission shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

F. Notwithstanding the exemptions stated in this section:

1. The Commission may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report based on unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

2. The Commission may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA summary report if the insurer has risk-based capital for company action level

event as set forth in § 38.2-5503, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in 14 VAC 5-290-30 of the Virginia Administrative Code, or otherwise exhibits qualities of a troubled insurer as determined by the Commission.

G. If an insurer that qualifies for an exemption pursuant to subsection B subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this article.

§ 38.2-1334.8. Contents of ORSA summary report.

A. The ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection B. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commission.

B. The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

§ 38.2-1334.9. Confidentiality.

A. The ORSA summary report is recognized by the Commonwealth as containing confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information includes proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. The ORSA summary report shall be a confidential document filed with the Commission, the report may be shared only as stated in this article and to assist the Commission in the performance of its duties, and in no event shall the report be subject to public disclosure.

B. Documents, materials, or other information, including the ORSA summary report, in the possession of or control of the Commission that is obtained by, created by, or disclosed to the Commission or any other person under this article is declared to be proprietary and to contain trade secrets. All such documents, materials, or other information 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.

C. Neither the Commission nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the Commission or with whom such documents, materials, or other information is 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 subsections A and B.

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

1. May, upon request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information subject to subsection A, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including any forum for cooperation and communication between insurance supervisors, known as a supervisory college, that is established for the purpose of facilitating the effectiveness of supervision of insurers, with the NAIC, and with any third-party consultants designated by the Commission, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

2. May receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college, and from the NAIC 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

3. Shall enter into a written agreement with the NAIC or a third-party consultant governing the sharing and use of information provided pursuant to this article, consistent with this subsection. The agreement shall:

a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this article, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

b. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this article remains with the Commission and that the use of information by the NAIC or a third-party consultant is subject to the direction of the Commission;

c. Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

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

e. Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this article; and

f. In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

E. The sharing of information and documents 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.

F. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the Commission under this section or as a result of sharing as authorized in this article.

G. Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant 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.

§ 38.2-1334.10. Sanctions.

Any insurer failing, without just cause, to timely file the ORSA summary report as required in this article shall be subject to the enforcement and penalty provisions set forth in Chapter 2 (§ 38.2-200 et seq.).

§ 38.2-1339. Exemptions.

Nothing in this article shall exempt any domestic insurer from the provisions of Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 5.1 (§ 38.2-1334.3 et seq.).

§ 38.2-1342. Applicability.

A. All provisions of this article shall apply to domestic insurers.

B. Effective January 1, 1994, any foreign insurer not domiciled and licensed in an accredited state shall confirm, at least once every five years, as a condition of licensing and licensing renewal, its compliance with the provisions of this article or those of a substantially similar law enacted by an accredited state in which the insurer is licensed. The method of confirmation shall be determined by the Commission and may include examination of such foreign insurer and its controlling producer pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13. Any foreign insurer that is unable to confirm substantial compliance in a manner satisfactory to the Commission shall be subject to all of the provisions of this title.

C. All provisions of Article 5 (§ 38.2-1322 et seq.) and Article 5.1 (§ 38.2-1334.3 et seq.) of this chapter and Article 2 (§ 38.2-4230 et seq.) of Chapter 42, to the extent they are not superseded by the provisions of this article, shall continue to apply to all parties within holding company systems subject to this article.

§ 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, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 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.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.18, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.1, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) 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.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 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.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.) ~~and~~, 5 (§ 38.2-1322 et seq.), *and 5.1 (§ 38.2-1334.3 et seq.)* of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) 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.) except with respect to the activities of its health maintenance organization.

C. 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.

D. 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.

E. 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.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

2. That the provisions of this act shall become effective on January 1, 2015.