

**VIRGINIA ACTS OF ASSEMBLY — CHAPTER**

*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 5.2, consisting of sections numbered 38.2-1334.11 through 38.2-1334.17, relating to the regulation of insurers; corporate governance annual disclosures.*

[H 2102]

Approved

**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 5.2, consisting of sections numbered 38.2-1334.11 through 38.2-1334.17, 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.) 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.), Article 5.2 (§ 38.2-1334.11 et seq.), and Article 6 (§ 38.2-1335 et seq.) of Chapter 13 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 5.2.*

*Corporate Governance Annual Disclosures.*

**§ 38.2-1334.11. Definitions.**

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

*"Commissioner" means the chief insurance regulatory official of a state, however designated.*

*"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this article.*

*"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.*

**§ 38.2-1334.12. Disclosure requirement.**

A. The requirements of this article shall apply to all insurers domiciled in the Commonwealth. An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the Commission a Corporate Governance Annual Disclosure that contains the information described in subsection B of § 38.2-1334.13. Notwithstanding any request from the Commission made pursuant to subsection C, if the insurer is a member of an insurance group, the

insurer shall submit the report required by this section to the Commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC.

B. The CGAD shall include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

C. An insurer not required to submit a CGAD under this section shall do so upon the Commission's request.

D. For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at one or more of the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

E. The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in subsection A.

F. Insurers providing information substantially similar to the information required by this article in other documents provided to the Commission, including proxy statements filed in conjunction with the registration requirements pursuant to § 38.2-1329, or other state or federal filings provided to the Commission shall not be required to duplicate that information in the CGAD, but shall only be required to cross-reference the document in which the information is included.

G. Nothing in this article shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. Notwithstanding the foregoing, nothing in this article shall be construed to limit the Commission's authority, or the rights or obligations of third parties, under § 38.2-1318.

#### **§ 38.2-1334.13. Contents of Corporate Governance Annual Disclosure.**

A. The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided that the CGAD shall contain the material information necessary to permit the Commission to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The Commission may request additional information deemed material and necessary to provide the Commission with a clear understanding of the corporate governance policies, the reporting or information system, or the controls implementing those policies.

B. Notwithstanding subsection A, the CGAD shall be prepared consistent with the rules and regulations promulgated by the Commission to administer the requirements of this article. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commission.

#### **§ 38.2-1334.14. Confidentiality.**

A. The CGAD is recognized by the Commonwealth as containing confidential and sensitive information related to an insurer or insurance group's internal operations. 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 CGAD shall be a confidential document filed with the Commission, the CGAD 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 CGAD be subject to public disclosure.

B. Documents, materials, or other information, including the CGAD, 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. Nothing in this section shall be construed to require written consent of the insurer before the Commission may share or receive confidential documents, materials, or other

CGAD-related information pursuant to subsection C to assist in the performance of the Commission's regular duties.

C. Neither the Commission nor any person who received documents, materials, or other CGAD-related information, through examination or otherwise, 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.

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 CGAD-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 third-party consultants pursuant to § 38.2-1334.15, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

2. May receive documents, materials, or other CGAD-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.

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 CGAD-related information shall occur as a result of disclosure of such CGAD-related information or documents to the Commission under this section or as a result of sharing as authorized in this article.

**§ 38.2-1334.15. NAIC and third-party consultants.**

A. The Commission may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the Commission's staff as may be reasonably necessary to assist the Commission in reviewing the CGAD and related information or the insurer's compliance with this article.

B. Any persons retained under subsection A shall be under the direction and control of the Commission and shall act in a purely advisory capacity.

C. The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the Commission.

D. As part of the retention process, a third-party consultant shall verify to the Commission, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this article.

E. A written agreement with the NAIC or a third-party consultant, or both, governing sharing and use of information provided pursuant to this article shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this article:

1. Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this article;

2. Procedures and protocols for sharing by the NAIC only 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 CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

3. A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the Commission and the NAIC's or third-party consultant's use of the information is subject to the direction of the Commission;

4. A provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

5. A provision requiring the NAIC or third-party consultant to provide prompt notice to the Commission and to the insurer or insurance group regarding any subpoena, request for disclosure, or

request for production of the insurer's CGAD-related information; and

6. A requirement that the NAIC or a third-party consultant 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.

**§ 38.2-1334.16. Rules and regulations.**

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

**§ 38.2-1334.17. Sanctions.**

Any insurer failing, without just cause, to timely file the CGAD 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.) or, Article 5.1 (§ 38.2-1334.3 et seq.), or Article 5.2 (§ 38.2-1334.11 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.), and Article 5.2 (§ 38.2-1334.11 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, 38.2-325, 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.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 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 38.2-3407.19, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 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, 38.2-3541.2, 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, 38.2-325, 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.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 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, 2018.**