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HOUSE BILL NO. 82

Offered January 12, 2022

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A BILL to amend and reenact §§ 38.2-1322, 38.2-1329, 38.2-1330, and 38.2-1333 of the Code of Virginia, relating to insurance holding company systems; group capital calculation and liquidity stress test; hazardous financial conditions.

Patron—Kilgore

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1322, 38.2-1329, 38.2-1330, and 38.2-1333 of the Code of Virginia are amended and reenacted 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.

"Lead state commissioner" means the insurance commissioner, director, or superintendent of the lead state of the insurance holding company system as determined by the Financial Analysis Handbook adopted by the NAIC.

"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.

"NAIC Group Capital Calculation Instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"NAIC Liquidity Stress Test Framework" or "Framework" means an NAIC publication that includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, as adopted by the NAIC and amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"Scope criteria" means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

"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.

"Ultimate controlling person" means the person that is not controlled by any other person.

"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 the Commonwealth that is a member of an insurance holding company system shall register with the Commission.

B. 1. This section shall not apply to any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section, subsection A of § 38.2-1330, subsection D of § 38.2-1330, § 38.2-1330.1, and either (i) a provision substantially similar to subsection B of § 38.2-1330 or (ii) a provision such as the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition."

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

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

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

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

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

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

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

b. Purchases, sales, or exchanges of assets;

c. Transactions not in the ordinary course of business;

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

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

f. Reinsurance agreements or other risk-sharing arrangements;

g. Dividends and other distributions to shareholders; and

h. Consolidated tax allocation agreements;

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

5. If requested by the Commission, financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited

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 corporate governance and internal controls are managed under the direction of the insurer's board of directors in a manner consistent with § 13.1-673 or § 13.1-853 as applicable, 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 C. Unless the Commission prescribes otherwise *and except for the purposes of subsections M and N*, 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.

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 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 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.

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

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.

I. The Commission may allow an insurer that is authorized to do business in this Commonwealth and that is part of an insurance holding company system to register on behalf of any affiliated insurer required to register under subsection A 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.

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. 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 a hearing. 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 be appropriate to the nature, scale, and complexity of the operations of the insurance holding company system, and 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 risk to the insurer. The report shall be filed with the ~~insurance~~ *lead state* commissioner~~, director, or superintendent of the lead state of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC~~.

M. *Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead*

state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filled with the lead state commissioner of the insurance holding company system. The following insurance holding company systems are exempt from filing the group capital calculation:

1. An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and that assumes no business from any other insurer.

2. Any insurance holding company system that is required to perform a group capital calculation specified by the Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. However, if the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company shall not be exempt from filing the group capital calculation.

3. An insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in subsection E of § 38.2-1316.2 that recognizes the U.S. state regulatory approach to group supervision and group capital.

4. An insurance holding system:

a. That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook; and

b. Whose non-U.S. group-wide supervisor that is not located in a reciprocal jurisdiction recognizes and accepts, as specified by the Commission in regulation, the group capital calculation as the worldwide group capital assessment for the U.S. insurance groups that operate in that jurisdiction.

Notwithstanding the exemptions provided for in subdivisions 3 and 4, a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S.-based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competiveness of the insurance market.

Notwithstanding the exemptions provided for in subdivisions 1 through 4, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the Commission in regulation.

If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption specified in subdivisions 1 through 4, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

N. The ultimate controlling person of every insurer subject to registration and scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state commissioner of the insurance holding company system.

1. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped in the Framework for the specified data year unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year. Insurers that do not trigger at least one threshold of the scope criteria shall be considered scoped out of the Framework for the specified data year, unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year.

2. The performance of and filing of the results from a specific year's liquidity stress test shall comply with Framework's instructions and reporting templates for that year and any lead state commissioner determinations, in consultation with the NAIC Financial Stability Task Force or its successor, provided within the Framework.

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

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

A. Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

1. The terms shall be fair and reasonable;

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

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

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

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

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

7. If an insurer subject to this article is deemed by the Commission to be in a hazardous financial condition as defined by 14VAC5-290 or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the Commission may require the insurer to secure and maintain either a deposit held by the Commission or a bond as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract, agreement, or existence of the condition for which the Commission required deposit or bond.

In determining if a deposit or bond is required, the Commission shall consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit or bond is necessary, the Commission has the discretion to determine the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond shall be required for a single contract, multiple contracts, or a contract only with a specific person;

8. All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to the control of the insurer, are identifiable, and are segregated or readily capable of segregation at no additional cost to the insurer from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver may (i) obtain a complete set of all records of any type that pertain to the insurer's business, (ii) obtain access to the operating systems on which the data is maintained, (iii) obtain the software that runs those systems either through assumption of licensing agreements or otherwise, and (iv) restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and

9. Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and subject to the control of the insurer. Any right of offset in the event that an insurer is placed into receivership shall be subject to Chapter 15 (§ 38.2-1500 et seq.).

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

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

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

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

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

provided the transactions are equal to or exceed:

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

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

3. Reinsurance agreements or modifications thereto, including:

a. All reinsurance pooling agreements; and

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

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

5. Guarantees when made by a domestic insurer, provided, however, that a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subdivision unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or 10 percent of surplus as regards 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 shall 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 composed 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; and

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 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 lines of insurance;

3. The number and size of risks insured in each 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 as regards policyholders maintained by other comparable insurers;

10. The adequacy of the insurer's reserves;

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

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

E. No domestic insurer shall enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that otherwise would be required. If the Commission determines that separate transactions were entered into over any 12-month period for that purpose, the Commission may exercise its authority under § 38.2-1334.2:2.

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

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

H. Any affiliate that is party to a contract or agreement described in subdivision B 4 with a domestic insurer shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to Chapter 15 (§ 38.2-1500 et seq.) for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are (i) an integral part of the insurer's operation, including management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions or (ii) essential to the insurer's ability to fulfill its obligations under insurance policies. The Commission may require that an agreement or contract described in subdivision B 4 for the provision of services described in clause (i) or (ii) specify that the affiliate consents to the jurisdiction as set forth in this subsection.

§ 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, 38.2-1330.1, and 38.2-1332.2 *is declared to be proprietary and to contain trade secrets and* 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.

1. For the purposes of the information reported to the Commission pursuant to subsection M of § 38.2-1329, the Commission shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company system supervised by the Federal Reserve Board or U.S. group-wide supervisor.

2. For the purposes of the information reported to the Commission pursuant to subsection N of § 38.2-1329, the Commission shall maintain the confidentiality of the liquidity stress test results and

supporting disclosures and any liquidity stress test information received from an insurance holding company system supervised by the Federal Reserve Board and non-U.S. group-wide supervisor.

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, *including proprietary and trade secret documents and materials,* with other state, federal, and international regulatory agencies; with the NAIC ~~and its affiliates and subsidiaries~~; *with any third-party consultants designated by the Commission;* 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, *including proprietary and trade secret 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 *and any third-party consultant designated by the Commission* 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~~ *or a third-party consultant designated by the Commission* pursuant to this article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. *The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality*;

b. Specify that ownership of information shared with the NAIC ~~and its affiliates and subsidiaries~~ *or a third-party consultant designated by the Commission* pursuant to this article remains with the Commission and that the NAIC's *or third party consultant's* use of the information is subject to the direction of the Commission;

c. *Except for documents, material, or information reported pursuant to subsection N of § 38.2-1329, prohibit the NAIC or third-party consultant designated by the Commission 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 designated by the Commission* pursuant to this article is subject to a request or subpoena to the NAIC *or a third-party consultant designated by the Commission* for disclosure or production; ~~and~~

~~d.~~ *e.* Require the NAIC ~~and its affiliates and subsidiaries~~ *or a third-party consultant designated by the Commission* 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~~ *or a third-party consultant designated by the Commission* pursuant to this article*; and*

f. For documents, materials, and information reported pursuant to subsection N of § 38.2-1329, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.

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 *or a third-party consultant designated by the Commission* 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.

G. Except as otherwise provided by the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, liquidity stress test results, or supporting disclosures for the liquidity stress test, of any insurer or any insurer group, or of any component derived in the calculation by an insurer, broker, or other person engaged in any manner in the insurance business, shall be prohibited. However, if any materially false statement with respect to the group capital calculation, the resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, the liquidity stress test result, or supporting disclosures is published in any written publication, and the insurer is able to demonstrate to the Commission with substantial proof the falsity or the inappropriateness of such statement, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false or inappropriate statement.