

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 46

An Act to amend and reenact §§ 38.2-213, 38.2-1306.2, 38.2-1312, 38.2-1315, 38.2-1329, 38.2-4123, 38.2-4319 as it is currently effective and as it may become effective, and 38.2-4604 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 38.2-1306.3, and to repeal §§ 38.2-1307, 38.2-1308, 38.2-1309, and 38.2-1310.1 of the Code of Virginia, relating to accounting practices and procedures applicable to insurers.

[S 52]

Approved March 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-213, 38.2-1306.2, 38.2-1312, 38.2-1315, 38.2-1329, 38.2-4123, 38.2-4319 as it is currently effective and as it may become effective, and 38.2-4604 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1306.3 as follows:

§ 38.2-213. Violation of § 38.2-210 or § 38.2-211.

Any company, officer or director violating any provision of § 38.2-210 or § 38.2-211 shall be guilty upon conviction of a Class 1 misdemeanor. Any funds of any company invested or used in violation of either of § 38.2-210 or § 38.2-211 may not be ~~allowed reported as an admitted assets of the company asset in accordance with guidance set forth in the National Association of Insurance Commissioners accounting practices and procedures manuals.~~

§ 38.2-1306.2. Valuation of investments and other assets.

~~A. The value of investments and other assets, other than those not admitted pursuant to § 38.2-1310.1 38.2-1306.3, and their reporting as admitted or nonadmitted assets shall be determined in accordance with valuations or valuation standards announced by guidance set forth in the National Association of Insurance Commissioners (NAIC) accounting practices and procedures manuals. The Commission may grant exception to or modification of NAIC accounting practices and procedures otherwise prescribed by this section upon petition from an insurer organized and operating under the laws of this Commonwealth and licensed pursuant to the provisions of Chapter 25 (§ 38.2-2500 et seq.) of this title.~~

~~B. Investments as to which the NAIC has not announced valuations or valuation standards shall be valued in a manner consistent with the provisions of this article. Any other assets as to which the NAIC has not announced valuation standards shall be valued in a manner consistent with the provisions of this chapter.~~

~~Any asset valued pursuant to this subsection shall be identified and its valuation method disclosed to the Commission simultaneously with the filing of any annual statement required by § 38.2-1300 or any quarterly supplement required under § 38.2-1301.~~

~~C. If the Commission finds that the valuation or valuation method announced by the NAIC does not reflect economic or financial circumstances relevant to a true and current value of the asset, it may approve an alternative method of valuation provided the alternative valuation method (i) produces values no greater than those which might have been produced under NAIC standards and (ii) is otherwise consistent with the provisions of this article.~~

§ 38.2-1306.3. Nonadmitted assets.

A. "Nonadmitted assets" or "not admitted assets" means those assets identified and reported as nonadmitted assets by or in accordance with the National Association of Insurance Commissioners (NAIC) accounting practices and procedures manuals, and any other asset or category of assets identified as nonadmitted in this title or which the Commission by rule or regulation identifies as an asset which shall be reported as a nonadmitted asset.

B. Goodwill, if admitted, may be admitted on or after January 1, 2001, subject to the guidance in the NAIC accounting practices and procedures manuals.

§ 38.2-1312. Unearned premium reserves.

A. Except for risks or policies for which reserves are required under §§ 38.2-1311 and 38.2-4610.1, each insurer licensed to transact business in this Commonwealth, subject to the applicable provisions of this title, shall maintain reserves equal to not less than the unearned portions of the gross premiums charged on unexpired or unexpired risks and policies.

B. Premiums charged for bulk assumption reinsurance assumed from other insurers shall be included in gross premiums charged on the basis of the original premiums and the original terms of the policies of the ceding insurer.

C. No deduction shall be made from the gross unearned premiums except for premiums paid or credited for risks reinsured as provided in § 38.2-1316.

D. The reserve for unearned premiums shall be computed, at the insurer's option, on the annual,

monthly or daily pro rata fraction basis. However, the Commission, at its discretion, may (i) prescribe the basis to be used; (ii) require that the reserve be computed on each respective risk from the date of issuance of the policy; or (iii) prescribe special rules for computing the reserve for premiums covering indefinite terms. For marine insurance, premiums on unterminated trip risks shall be considered unearned; and the reserve to be carried on unterminated risks at the end of any month shall equal 100% of the premiums on trip risks written during the month unless the Commission prescribes otherwise. The reserve for premium deposits on perpetual fire insurance risks shall equal not less than ninety percent of the gross amount of those deposits. *Reserves required by this section shall be computed, valued, and reported in conformity with guidance set forth in the National Association of Insurance Commissioners accounting practices and procedures manuals.*

§ 38.2-1315. Mortgage guaranty insurance contingency reserve.

A. To protect against the effect of adverse economic cycles, each insurer transacting the business of mortgage guaranty insurance in this Commonwealth shall establish and maintain a contingency reserve equal to fifty percent of its earned premium.

B. Allocations to the contingency reserve shall be maintained for 120 months. That portion of the contingency reserve that has been maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve and shall be allocated to surplus to policyholders.

C. Upon ~~notification to approval~~ by the Commission, the contingency reserve shall be available for loss payments only when the incurred losses in any one twelve-month period, less any amounts already released from the contingency reserve during that period, exceed thirty-five percent of the corresponding earned premium.

D. In the event of release of the contingency reserve for payment of losses, the contributions required by subsection A of this section shall be treated on a first-in-first-out basis.

E. Whenever the laws of any other state require a greater unearned premium reserve than that set forth in § 38.2-1312, the mortgage guaranty insurance contingency reserve of mortgage guaranty insurers organized under the laws of that state may be an amount that, when added to such unearned premium reserve, will result in a reserve equal to the sum of the unearned premium reserve required by § 38.2-1312 and the contingency reserve required by this section.

F. The authority of the Commission under § 38.2-223 to issue rules and regulations includes the authority to require that a greater reserve be established for mortgage guaranty insurance on liens other than first liens.

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

B. 1. This section shall not apply to:

a. 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; or

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

2. Any licensed insurer that is a member of a 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; ~~other than cost allocation arrangements based upon generally accepted accounting principles;~~ and

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

4. 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.

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

E. 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 fifteen days after the end of the month in which it learns of each additional material transaction or material change in material transaction. Each insurer shall report to the Commission all dividends and other distributions to shareholders within two business days following their declaration. Each registered insurer shall also keep current the information required by subsection C of this section 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.

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

G. 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.

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

I. 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. After a disclaimer has been filed, the insurer shall be relieved of any registering or reporting requirements under this section that may arise out of the insurer's relationship with the person unless and until the Commission disallows the disclaimer. The Commission shall disallow the disclaimer only after giving all interested parties notice and opportunity to be heard. Any disallowance shall be supported by specific findings of fact.

§ 38.2-4123. Exemptions.

Except as herein provided, societies shall be governed by this chapter and §§ 38.2-100 through 38.2-134, Chapters 2 through 9, §§ ~~38.2-1301.1, 38.2-1304, 38.2-1307~~ 38.2-1300 through 38.2-1315, and ~~38.2-1322 38.2-1317~~ through 38.2-1340, Chapters 14, 15 and 18, §§ 38.2-3100 through 38.2-3125, 38.2-3127.1 and 38.2-3300 through 38.2-3317, Chapter 34, §§ 38.2-3500 through 38.2-3520, and Chapter 36 and shall be exempt from all other provisions of this title unless expressly designated therein, or unless they are specifically made applicable by this chapter.

§ 38.2-4319. (Effective until July 1, 2004) 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, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 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.), §§ 38.2-1057, ~~38.2-1306.2 through 38.2-1309~~, Articles 2 (§ 38.2-1306.2 et seq.), 4 (§ 38.2-1317 et seq.), and 5 (§ 38.2-1322 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, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 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.

§ 38.2-4319. (Effective July 1, 2004) 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, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 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.), §§ 38.2-1057, ~~38.2-1306.2 through 38.2-1309~~, Articles 2 (§ 38.2-1306.2 et seq.), 4 (§ 38.2-1317 et seq.), and 5 (§ 38.2-1322 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, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.16, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 58 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 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.

§ 38.2-4604. Investment in plant and equipment.

Notwithstanding the provisions of Chapter 14 of this title, any domestic title insurance company may invest in title records and equipment ~~an amount that is not in excess of fifty percent of its assets comprising its minimum capital and surplus, and any of its assets comprising its excess capital and surplus and its reserves other than unearned premium and loss reserves; however, the reporting of all such amounts as an admitted asset shall be subject to the valuation restrictions as provided for in the National Association of Insurance Commissioners accounting practices and procedures manuals.~~

2. That §§ 38.2-1307, 38.2-1308, 38.2-1309, and 38.2-1310.1 of the Code of Virginia are repealed.

3. That the provisions of this act shall become effective on January 1, 2001.