

025438652

HOUSE BILL NO. 1126

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 38.2-3122, 38.2-3124, and 38.2-3125 of the Code of Virginia and to repeal § 38.2-3123 of the Code of Virginia, relating to insurance policy proceeds; claims of creditors.

Patron—Bryant

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3122, 38.2-3124, and 38.2-3125 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3122. Proceeds of policies free of claims against insured.

A. The assignee or lawful beneficiary of an insurance policy shall be entitled to its proceeds against any claims of the creditors or representatives of the insured or the person effecting the policy, except in cases of transfer with intent to defraud creditors, subject to the following conditions:

1. The policy shall have been effected by a person on his own life or on another life, in favor of a person other than himself;

2. The assignee of the policy, or the payee, if the policy is otherwise made payable to another, shall not be the insured, nor the person effecting the policy, nor the executors or administrators;

3. The right to change the beneficiary may or may not have been reserved or permitted;

4. The policy may be payable to the person whose life is insured if the beneficiary or assignee predeceases the insured; and

5. Subject to the statute of limitations, the amount of any premiums for such policy paid with the intent to defraud creditors, or paid under such circumstances as to be void under § 55-81, with the interest thereon, shall be to the benefit of the creditors from the proceeds of the policy.

B. Any cash surrender or loan value of any insurance policy or annuity contract that has been in force for a period of not less than five years and is effected by a person on his own life or on that of another person, in favor of a person other than himself, shall not be subject to the claims of creditors of the insured or the person effecting the policy or contract during the lifetime of such person, whether or not the policy or contract reserves to the insured or the person effecting the policy or contract during his lifetime the right to change the beneficiary. However, the exemption provided by this subsection shall not apply to any portion of the cash surrender or loan value of any insurance policy or annuity contract in excess of \$100,000 that accumulated during the twenty-four months preceding the date that the insured or person effecting the policy or contract (i) files a voluntary petition in bankruptcy; (ii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; or (iii) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation.

C. In addition, if a creditor of the insured or the person effecting the policy or contract is named as beneficiary of such policy or contract, then the portion of the cash surrender or loan value of the insurance policy or annuity contract that is subject to the claim of the creditor shall not exceed the amount of the insured's or effecting person's indebtedness to such creditor.

§ 38.2-3124. Protection of insurers from creditor's claims.

Notwithstanding §§ 38.2-3122 and ~~38.2-3123~~, any insurer issuing any insurance policy shall be discharged of all liability on that policy by payment of its proceeds in accordance with its terms, unless before payment the insurer receives written notice by or on behalf of a creditor of a claim, stating the amount claimed and the nature of the claim.

§ 38.2-3125. Rights of beneficiaries and assignees protected.

Since the purpose of §§ 38.2-3122 and ~~38.2-3123~~ is to confer additional rights, privileges and benefits upon beneficiaries and assignees of policies, no beneficiary or assignee shall by reason of these sections be divested or deprived of or prohibited from exercising or enjoying any right, privilege or benefit that he would have or could exercise or enjoy had §§ 38.2-3122 and ~~38.2-3123~~ not been enacted.

2. That § 38.2-3123 of the Code of Virginia is repealed.

INTRODUCED

HB1126