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SENATE BILL NO. 199

Offered January 9, 2002
Prefiled January 8, 2002

A BILL to amend and reenact §§ 38.2-1426, 38.2-1427.2, 38.2-1446, 38.2-4008, and 38.2-4111 of the Code of Virginia, relating to the regulation of the business of insurance.

Patron—Miller, Y.B.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1426, 38.2-1427.2, 38.2-1446, 38.2-4008, and 38.2-4111 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1426. Application of earnings tests.

If the issuing, assuming or guaranteeing business entity has not been in operation for the entire period for which earnings are being applied pursuant to ~~§§ 38.2-1423 and~~ § 38.2-1424, the earnings tests shall be based upon pro forma statements incorporating statements of any predecessor or constituent business entity for that portion of the earnings tests period that the current business entity was not in operation, if:

1. The current business entity was formed as a consolidation or a merger of two or more business entities, at least one of which was in operation at the beginning of the period; or

2. The current business entity has acquired all of the assets of a business entity or any division or other unit of a business entity that was in operation at the beginning of the test period.

§ 38.2-1427.2. Investment company shares and units of beneficial interest.

A domestic insurer may invest in shares of common stock or units of beneficial interest issued by any solvent business corporation or trust incorporated or organized under the laws of the United States, or of any state of the United States, under the following conditions:

1. If the issuing corporation or trust is advised by an investment advisor which is the insurer or an affiliate of the insurer, the issuing corporation or trust shall have assets of $100,000 or more (which may be provided by the insurer or affiliate), or if the issuing corporation or trust has an unaffiliated investment advisor, the issuing corporation or trust shall have net assets of ten million dollars or more, and

2. The issuing corporation or trust is registered as an investment company with the Federal Securities and Exchange Commission under the Investment *Company* Act of 1940, as amended.

§ 38.2-1446. Prohibition of hypothecation.

A. Every domestic insurer subject to the provisions of this chapter shall at all times have and maintain free and unencumbered admitted assets in an amount equal to the sum total of its reserve liabilities and minimum capital and surplus, and no such insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its surplus to policyholders; nor shall such insurer pledge, hypothecate or otherwise encumber more than five percent of its admitted assets. However, the Commission, upon written application, may approve the hypothecation or encumbrance of any of the assets of such an insurer in any amount upon a determination that such hypothecation or encumbrance will not adversely affect the solvency of such insurer.

B. Any such insurer which pledges, hypothecates, or otherwise encumbers any of its assets shall within ten days thereafter report in writing to the Commission the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of such transaction. In addition, each such insurer shall annually, or more often if required by the Commission, file with the Commission a statement sworn to by ~~a chief~~ *an* executive officer of the insurer that (i) title to assets in an amount equal to the reserve liability and minimum capital and surplus of the insurer ~~which~~*that* are not pledged, hypothecated or otherwise encumbered is vested in the insurer, (ii) the only assets of the insurer ~~which~~*that* are pledged, hypothecated or otherwise encumbered are as identified and reported in the sworn statement and no other assets of the insurer are pledged, hypothecated or otherwise encumbered, and (iii) the terms and limitations of any such transaction of pledge, hypothecation or encumbrance are as reported in the sworn statement.

C. Any person ~~which~~*who* accepts a pledge, hypothecation or encumbrance of any asset of a domestic insurer as security for a debt or other obligation of such insurer not in accordance with the terms and limitations of this article shall be deemed to have accepted such asset subject to a superior, preferential and automatically perfected lien in favor of claimants; however, such superior, preferential and automatically perfected lien in favor of claimants shall not apply to assets of a company in receivership

pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title, if the receiver approves the pledge, hypothecation or encumbrance of such assets.

D. In the event of involuntary or voluntary liquidation of any domestic insurer subject to this chapter, claimants of such insurer shall have a prior and preferential claim against all assets of the insurer except those ~~which~~*that* have been pledged, hypothecated or encumbered in accordance with the terms and limitations of this article. All claimants shall have equal status and their prior and preferential claim shall be superior to any claim or cause of action against the insurer by any person, corporation, association or legal entity.

§ 38.2-4008. Fidelity bond required.

~~Prior to~~ *As a condition of* licensing, each burial society, on behalf of its officers who are charged with the duty of handling its funds, shall ~~certify to the Commission~~*obtain,* and thereafter for as long as the license remains in effect keep in force, a surety bond with corporate security approved by the Commission. The bond shall be *in an amount,* not less than $10,000 nor more than $100,000, to be fixed by the Commission. The bond shall secure to the society and its members the faithful performance of its officers' duties and a proper accounting of its funds. *The Commission may require the society to provide certification of compliance with the requirements of this section.*

§ 38.2-4111. Amendments to laws.

A. A domestic society may amend its laws in accordance with the provisions of those laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission of the amendment, a majority of the members voting shall have signified their consent to such amendment by one of the methods herein specified.

B. No amendment to the laws of any domestic society shall take effect unless filed with the Commission.

C. Within ninety days from the filing specified in subsection B of this section, all such amendments, or a synopsis of the amendments, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis of the amendments, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or their synopsis have been furnished the addressee.

D. ~~Every~~ *At the request of the Commissioner, a* foreign or alien society authorized to do business in this Commonwealth shall file with the ~~Commission~~*Commissioner* a duly certified copy of all amendments of, or additions to, its laws ~~within ninety days after their enactment~~.

E. Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of their legal adoption.