

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 254

An Act to amend the Code of Virginia by adding a section numbered 38.2-3100.2, relating to insurance; funding agreements.

[S 535]

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3100.2 as follows:

§ 38.2-3100.2. Funding agreements.

A. Any insurer that is licensed to write life insurance or annuities in the Commonwealth may deliver, or issue for delivery, funding agreements in the Commonwealth.

B. As used in this section "funding agreement" is inclusive but not limited to guaranteed investment contracts, guaranteed interest contracts, unallocated group contracts, investment contracts, or other similar instrument by whatever name, and means an agreement that authorizes the insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments in fixed or variable amounts, or in both, that are not based on mortality or morbidity contingencies.

C. Funding agreements may be issued to persons to fund (i) benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (3)) maintained in the United States or a foreign country; (ii) the activities of any organization exempt from taxation under section 501 (c) of the Internal Revenue Code or any similar organization in any foreign country; (iii) any program of the government of the United States, the government of any state, foreign country, or political subdivision thereof; (iv) any agreement providing for one or more payments in satisfaction of a claim; (v) any program of any individual or entity that has assets in excess of \$25,000,000; or (vi) any program of any individual or entity that is registered with the federal Securities and Exchange Commission.

D. Amounts paid to the insurer and proceeds applied under optional modes of settlement under a funding agreement may be allocated by the insurer to its general account or to one or more separate accounts.

E. A funding agreement delivered or issued for delivery in the Commonwealth shall not qualify as or be considered to be life insurance, an annuity, or any other form of insurance defined and classified in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title, but shall constitute transacting an insurance business in the Commonwealth.

F. For purposes of clause (ii) of subdivision B 1 of § 38.2-1509, a funding agreement shall be treated as an insurance contract, and the holders thereof shall be entitled to the same priority of distribution as other policyholders.