

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 285

*An Act to amend and reenact § 38.2-1603 of the Code of Virginia, relating to the Virginia Property and Casualty Insurance Guaranty Association; covered claim; insolvent insurer.*

[H 596]

Approved March 31, 2004

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-1603 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-1603. Definitions.

As used in this chapter:

"Account" means any one of the three accounts created by § 38.2-1604.

"Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

"Association" means the Virginia Property and Casualty Insurance Guaranty Association created under § 38.2-1604.

"Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or 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, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

"Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, ~~which~~ *that (i) arises out of and is within the coverage and is subject to the applicable limits of a policy covered by this chapter and issued by an insurer who has been declared to be an insolvent insurer or (ii) arises out of and is within the coverage and is subject to the applicable limits of a policy that would not be excluded from the coverage of this chapter under the provisions of § 38.2-1601 if it were a policy of direct insurance and that has been assumed as a direct obligation by an insurer who has been declared to be an insolvent insurer, where such obligation is assumed through a merger or acquisition, or pursuant to an acquisition of assets and assumption of liabilities, an assumption under the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction, or any other novation agreement.* The claimant or insured shall be a resident of ~~this~~ *the* Commonwealth at the time of the insured loss, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured loss or the property from which the claim arises shall be permanently located in ~~this~~ *the* Commonwealth. "Covered claim" shall not include any amount awarded as punitive or exemplary damages or sought as a return of premium under any retrospective rating plan; *any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise; any amount due under any policy originally issued by a surplus lines carrier or risk retention group; any obligation assumed by an insolvent insurer after the commencement of any delinquency proceeding, as defined in Chapter 15 (§ 38.2-1500 et seq.) of this title, involving the insolvent insurer or the original insurer, unless it would have been a "covered claim" absent such assumption; or any obligation assumed by an insolvent insurer in a transaction in which the original insurer remains separately liable.* An obligation owing under a contract of reinsurance shall not be deemed a direct obligation for the purposes of this definition unless it shall have been assumed pursuant to the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction. *No claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in § 38.2-1606.*

"Insolvent insurer" means an insurer that is (i) licensed to transact the business of insurance in ~~this~~ *the* Commonwealth either at the time the policy was issued, *when the obligation with respect to the covered claim was assumed,* or when the insured loss occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after July 1, 1987, by a court of competent jurisdiction in the insurer's state of domicile or of ~~this~~ *the* Commonwealth under the provisions of Chapter 15 (§ 38.2-1500 et seq.) of this title, and which order of liquidation has not been stayed or been

the subject of a writ of supersedeas or other comparable order.

"Member insurer" means any person who (i) writes any class of insurance to which this chapter applies under § 38.2-1601, including reciprocal insurance contracts, and (ii) is licensed to transact the business of insurance in ~~this~~ *the* Commonwealth but shall not include persons listed in subdivision 9 of § 38.2-1601.

"Net direct written premiums" means direct gross premiums written in ~~this~~ *the* Commonwealth on insurance policies applicable to this chapter, less return premiums and dividends paid or credited to policyholders on direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.