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SENATE BILL NO. 355

Offered January 14, 2004

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A BILL to amend and reenact § 38.2-1230 of the Code of Virginia, relating to insurance reciprocals.

Patron—Colgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-1230 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-1230. Material transactions.

A. Prior written approval of the Commission shall be required for a material transaction between a domestic reciprocal; ~~and any of its related parties or an affiliate of the reciprocal; and between any one two or more of the following: the attorney of the reciprocal; an affiliate of the attorney of the reciprocal; an insurer or other reciprocal managed by the attorney of the reciprocal or by an affiliate of the attorney of the reciprocal; or any other person who, directly or indirectly, by contract or otherwise, acts on behalf of, or at the direction of, the attorney of the reciprocal or any affiliate of the attorney of the reciprocal;~~ reciprocal's related parties when the material transaction occurs on or after July 1, 2004, and involves more than ~~five~~ three percent of the domestic reciprocal's admitted assets as reported in its most recent statutory statement filed with the Commission. All other material transactions between any such parties involving more than 0.5 percent of the domestic reciprocal's admitted assets as reported in its most recent statutory statement filed with the Commission shall be reported to the Commission within ~~fifteen~~ 15 days after the end of the month in which the transaction occurs. In addition, all transactions shall meet the following standards:

1. The terms shall be fair and equitable;
2. Charges or fees for services performed shall be reasonable;
3. Expenses incurred and payments received shall be allocated to the reciprocal on an equitable basis in conformity with statutory insurance accounting practices consistently applied; ~~and~~
4. The books, accounts, and records of each party shall disclose clearly and accurately the precise nature and details of the transaction; *and*

5. *The reciprocal's surplus following any dividends or distribution to any of the reciprocal's related parties shall be reasonable in relation to the reciprocal's outstanding liabilities and adequate to its financial needs.*

B. The Commission, in reviewing a material transaction under this section, shall consider whether the material transaction complies with the standards set forth in subsection A and also whether the transaction may adversely affect the interests of the subscribers or the solvency of the reciprocal.

C. Within ~~sixty~~ 60 days after written notification of any transaction requiring approval pursuant to this section, the Commission shall notify the insurer of its approval or disapproval, and, in the event of disapproval, its reason thereof. Failure of the Commission to act within ~~sixty~~ 60 days of notification by the insurer shall constitute approval of the transaction.

D. For the purposes of this section:

1. "Affiliate" of a specific person means a person that directly or indirectly through one or more intermediaries, owns, is owned by, or is under common ownership with the person specified. An affiliate relationship shall be presumed to exist if any person, directly or indirectly, owns or holds with the power to vote, or holds proxies representing collectively ~~ten~~ 10 percent or more of the voting securities of the person specified.

2. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether (i) through the ownership of voting securities, (ii) by contract, other than a commercial contract for goods or nonmanagement services, (iii) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship, (iv) by common management, or (v) by any other means. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10 percent or more of the voting interests of the entity.

3. "Material transaction" means a transaction, other than a claim payment, or a premium payment or a reinsurance payment made pursuant to a reinsurance contract which reinsurance contract complies with the requirements of this section, occurring on or after July 1, 1996, that (i) affects surplus or involves an exchange of assets or liabilities of the reciprocal, requires performance by or creates an obligation for the reciprocal, or results in transfer of the risks or rewards of ownership to or by the

59 reciprocal and (ii) exceeds any minimum limits set forth in subsection A of this section. Any series of
60 transactions affecting, involving, or impacting the reciprocal as described in clause (i) and occurring
61 within a ~~twelve~~ 12-month period that are sufficiently similar in nature as to be reasonably construed as a
62 single transaction and that in the aggregate exceed any minimum limits set forth in subsection A of this
63 section shall be deemed a material transaction.

64 4. "Related parties" means entities that have common interests as a result of ownership, control, or
65 affiliation or by contract. The related parties of a domestic reciprocal include, but are not limited to: (i)
66 an affiliate of the reciprocal; (ii) the attorney of the reciprocal; (iii) an affiliate of the attorney; (iv) any
67 insurer or other reciprocal managed by the attorney of the reciprocal or by an affiliate of the attorney
68 of the reciprocal; or (v) any other person who, directly or indirectly, by contract or otherwise, acts on
69 behalf of, or at the direction of, the attorney of the reciprocal or any affiliate of the attorney of the
70 reciprocal.

71 E. Any report or other information filed pursuant to this section shall not be open to public
72 inspection and shall receive confidential treatment by the Commission consistent with the treatment
73 described in § 38.2-1320.5.

74 F. A domestic reciprocal and its attorney shall annually file a related parties summary containing
75 current information on:

76 1. The capital structure, general financial condition, ownership, and management of the reciprocal,
77 its attorney, and any person controlling the reciprocal;

78 2. The identity of "related parties";

79 3. The following agreements in force, continuing relationships, and transactions currently outstanding
80 between the reciprocal and any related party or among any two or more related parties:

81 a. Loans, other investments or purchases, or sales or exchanges of securities of the reciprocal or a
82 related party made by the reciprocal or by any one or more related party;

83 b. Purchases, sales, or exchanges of assets;

84 c. Transactions not in the ordinary course of business;

85 d. Guarantees or undertakings by the reciprocal for the benefit of a related party or by a related
86 party for the benefit of the reciprocal that result in an actual contingent exposure of the reciprocal's
87 assets to liability, other than insurance contracts entered into in the ordinary course of the reciprocal's
88 business;

89 e. All management and service contracts and all cost-sharing arrangements;

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

91 g. Dividend and other distributions to any of the reciprocal's related parties.

92 Unless the Commission prescribes otherwise, information about transactions that are not material
93 transactions as defined in subsection D shall not be deemed material for purposes of this subsection and
94 need not be disclosed in the related parties summary required by this subsection.

95 G. A reciprocal shall file its initial related parties summary required by subsection F with the
96 Commission on or before the later of (i) August 15, 2004, or (ii) 15 days after initial licensure as a
97 reciprocal by the Commission. Thereafter, a licensed domestic reciprocal shall file a related parties
98 summary on or before April 1 of each year reporting information as of December 31 of the previous
99 year.