

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 577

An Act to amend and reenact §§ 38.2-1329 and 38.2-1330 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1330.1, relating to dividends and other distributions by certain insurance companies.

[S 546]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1329 and 38.2-1330 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1330.1, as follows:

§ 38.2-1329. Registration of insurers that are members of holding company system.

A. Each insurer licensed to do business in this Commonwealth that is a member of an insurance holding company system shall register with the Commission. Any insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, unless the Commission extends the time for registration for good cause shown.

B. 1. This section shall not apply to:

a. Any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section; or

b. Any insurer, information, or transaction if and to the extent that the Commission exempts the same from this section.

2. Any licensed insurer that is a member of a holding company system but not subject to registration under this section may be required by the Commission to furnish a copy of the registration statement, or other information filed by the insurer, with the insurance regulatory authority of its domiciliary jurisdiction.

C. Each insurer subject to registration under this section shall file a registration statement on a form provided by the Commission. Such statement shall contain current information on:

1. The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

2. The identity of every member of the insurance holding company system;

3. The following agreements in force, continuing relationships and transactions currently outstanding between the insurer and its affiliates:

a. Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

b. Purchases, sales, or exchanges of assets;

c. Transactions not in the ordinary course of business;

d. Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

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

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

4. Other matters relating to transactions between registered insurers and any affiliates which may be included from time to time in any registration forms adopted or approved by the Commission.

D. If information is not material for the purposes of this section, it need not be disclosed on the registration statement filed pursuant to subsection B of this section. Unless the Commission prescribes otherwise, information about transactions that are not material transactions shall not be deemed material for purposes of this section.

E. Each registered insurer shall report all additional material transactions with affiliates and any material changes in previously reported material transactions with affiliates on amendment forms provided by the Commission. Each insurer shall make its report within fifteen days after the end of the month in which it learns of each additional material transaction or material change in material transaction. ~~Each Subject to § 38.2-1330.1, each~~ insurer shall report to the Commission all dividends and other distributions to shareholders within ~~two~~ five business days following their declaration ~~thereof and at least 30 days prior to payment thereof~~. Each registered insurer shall also keep current the information required by subsection C of this section by filing an amendment to its registration statement within 120 days after the end of each fiscal year of the ultimate controlling person of the insurance holding company system.

F. The Commission shall terminate the registration of any insurer that demonstrates it no longer is a member of an insurance holding company system.

G. The Commission may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

H. The Commission may allow an insurer which is authorized to do business in this Commonwealth and which is part of an insurance holding company system, to register on behalf of any affiliated insurer required to register under subsection A of this section and to file all information and material required to be filed under this section.

I. Any person may file with the Commission a disclaimer of affiliation with any authorized insurer. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any registering or reporting requirements under this section that may arise out of the insurer's relationship with the person unless and until the Commission disallows the disclaimer. The Commission shall disallow the disclaimer only after giving all interested parties notice and opportunity to be heard. Any disallowance shall be supported by specific findings of fact.

§ 38.2-1330. Standards for transactions with affiliates; adequacy of surplus.

A. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

1. The terms shall be fair and reasonable;
2. Charges or fees for services performed shall be reasonable;
3. Expenses incurred and payments received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
4. The books, accounts, and records of each party shall disclose clearly and accurately the precise nature and details of the transactions; and
5. The insurer's surplus to policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

B. For purposes of this article, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

1. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
2. The extent to which the insurer's business is diversified among different classes of insurance;
3. The number and size of risks insured in each class of business;
4. The extent of the geographical dispersion of the insurer's insured risk;
5. The nature and extent of the insurer's reinsurance program;
6. The quality, diversification, and liquidity of the insurer's investment portfolio;
7. The recent past and projected future trend in the size of the insurer's surplus to policyholders;
8. The surplus to policyholders maintained by other comparable insurers;
9. The adequacy of the insurer's reserves; and
10. *The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items; and*

11. The quality and liquidity of investments in subsidiaries. The Commission in its judgment may classify any investment as a nonadmitted asset for the purpose of determining the adequacy of surplus to policyholders.

C. No domestic insurer subject to registration under ~~§ 38.2-1329~~ shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders or confer any rights on its shareholders regarding the dividend or distribution until approved by the Commission. The Commission must approve or disapprove the distribution within thirty days after receiving notice of the declaration of distribution. If the Commission does not disapprove the distribution within the thirty-day period, the distribution shall be considered approved *enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that otherwise would be required.*

D. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of either (i) *The Commission shall be notified in writing within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of the insurer's surplus to policyholders as of the immediately preceding December 31, or* (ii) *the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the immediately preceding December 31, but shall not include pro rata distributions of any class of the insurer's own such corporation's voting securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and*

~~immediately preceding calendar years.~~

§ 38.2-1330.1. Dividends and other distributions.

A. Except as otherwise provided by law, a domestic insurer shall not declare or pay a dividend or other distribution from any source other than earned surplus without the Commission's prior written approval. For purposes of this section, "earned surplus" means an amount equal to the unassigned funds (surplus) of an insurer as set forth in the most recent annual statement of the insurer filed with the Commission including all or part of the surplus arising from unrealized capital gains or revaluation of assets. No domestic insurer shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until the earlier of:

1. Thirty days after the Commission has received written notice of the declaration thereof and has not within such period disapproved such payment; or

2. The Commission's approval of such payment.

B. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10% of such insurer's surplus as regards policyholders as of the immediately preceding December 31 or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12 month period ending the immediately preceding December 31, but shall not include pro rata distributions of any class of the insurer's own securities.

C. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the Commission's approval thereof, and such declaration shall confer no rights upon shareholders until:

1. The Commission has approved the payment of such dividend or distribution; or

2. The Commission has not disapproved such payment within the 30-day period described in subsection A.

D. The Commission may limit or disallow the payment of ordinary dividends by a domestic insurer if the insurer is presently or potentially financially distressed or troubled. The Commission shall set forth the specific reasons for limiting or disallowing the payment of any ordinary dividends.