

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 157

An Act to amend and reenact §§ 38.2-800, 38.2-4811, and 38.2-4812 of the Code of Virginia, relating to surplus lines insurance.

[S 1113]

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-800, 38.2-4811, and 38.2-4812 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-800. Definition.

For the purposes of this article, "insurer" includes health services plans, health maintenance organizations, legal services plans, ~~and~~ dental or optometric services plans, *and unlicensed insurers approved by the Commission to issue surplus lines coverage* as respectively provided for in Chapters 42, 43, 44 ~~and~~, 45, *and* 48 of this title.

§ 38.2-4811. Surplus lines coverage to be placed only with unlicensed insurers approved by Commission.

A. No surplus lines broker shall procure a policy of insurance with any insurer not licensed to transact insurance business in this Commonwealth, unless such unlicensed insurer has prior approval of the Commission to issue surplus lines insurance.

B. Any unlicensed insurer wishing to be approved by the Commission to issue surplus lines coverage may receive such approval upon providing:

1. Satisfactory evidence of good repute and financial integrity; and
2. Proof that it qualifies under a, b or c of this subdivision:

a. ~~Has~~ *The unlicensed insurer has* capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equal the greater of (i) the minimum capital and surplus requirements under §§ 38.2-1028, 38.2-1029, 38.2-1030 or § 38.2-1031, or (ii) \$15 million ~~except that nonadmitted insurers already qualified under this chapter shall have \$5 million up to and including June 30, 1996; \$10 million after June 30, 1996; \$12.5 million after June 30, 1997; and \$15 million after June 30, 1998.~~

~~After June 30, 1995, the (1) The capital and surplus requirements of this subsection~~ may be satisfied by an unlicensed insurer possessing less than the aforementioned capital and surplus upon an affirmative finding of acceptability by the Commission. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, *market availability*, and company record and reputation within the industry. In no event, ~~however~~, shall the Commission make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4.5 million.

~~In addition, an (2) An unlicensed alien insurer may qualify under this paragraph if also shall provide evidence that it maintains in the United States an irrevocable trust fund in a qualified U.S. financial institution on behalf of U.S. policyholders of not less than \$2.5 million. This trust fund at all times shall be valued at not less than \$2.5 million and shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those which that are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like classes of insurance in this Commonwealth. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; and~~

b. In the case of any Lloyd's or other similar group, including incorporated and individual unincorporated underwriters, the incorporated members of which shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members, *the Lloyd's or other similar group maintains a trust fund of not less than fifty \$50 million dollars* as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subdivision 2 a (2) ~~of this subsection~~ for alien insurers; and

c. In the case of an "insurance exchange" created by the laws of individual states, *the insurance exchange maintains capital and surplus, or the substantial equivalent of capital and surplus, of not less than \$50 million in the aggregate. For insurance exchanges which that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent of capital and surplus, of not less than \$3 million. If the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision 2 a of this subsection.*

C. Any such unlicensed insurer shall cause to be provided to the Commission, not later than ~~six months after the close of the period reported upon~~ *March 1 or the later date established by the insurer's state of domicile or entry*, a copy of its current annual statement certified by the insurer. *Such later date established by the insurer's state of domicile or entry shall not be later than August 31.* The report shall be:

1. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
2. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile.

In the case of an insurance exchange, such report may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon.

The Commission, at its discretion, may extend the period for filing an annual statement by a maximum of two months.

D. If at any time the Commission has reason to believe that an eligible surplus lines insurer (i) is in unsound financial condition, (ii) is no longer eligible under subdivision B 2 of subsection B above, (iii) has willfully violated the laws of this Commonwealth, or (iv) does not make reasonably prompt payment of just losses and claims in this Commonwealth or elsewhere, the Commission may declare it ineligible. The Commission shall promptly mail notice of all such declarations to each surplus lines licensee.

§ 38.2-4812. Surplus lines insurers subject to Unlicensed Insurers Process.

Every insurer issuing surplus lines coverage under this chapter shall be subject to the provisions of ~~§§ 38.2-801 through 38.2-807~~ *Article 1 (§ 38.2-800 et seq.) of Chapter 8 of this title.*