

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 95

An Act to amend and reenact § 38.2-1039 of the Code of Virginia, relating to unlicensed foreign and alien insurers.

[S 207]

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1039 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-1039. Enjoining unlicensed foreign or alien insurers from transacting the business of insurance in Commonwealth.

A. For the purposes of issuing a temporary or permanent injunction under § 38.2-220 to restrain unlicensed foreign or alien insurers from transacting the business of insurance in this Commonwealth, the following acts, effected by mail or otherwise, shall constitute transacting the business of insurance in this Commonwealth:

1. The issuance or delivery of insurance contracts to residents of this Commonwealth or to corporations authorized to do business in this Commonwealth;

2. The solicitation of applications for such contracts;

3. The collection of premiums, membership fees, assessments or other considerations for such contracts; or

4. The transaction of any other insurance business in connection with such contracts.

B. Process may be served in accordance with § 13.1-758 or in any other manner prescribed by law.

C. This section shall not apply to any nonprofit life insurance or annuity company which is organized and operated for the purpose of issuing insurance and annuity contracts, exclusively to or for the benefit of nonprofit educational or scientific institutions and individuals engaged in the service of those institutions. The clerk of the Commission shall be considered the attorney for service of process in this Commonwealth for all of such insurer's policy and contract holders in this Commonwealth. The appointment shall (i) be irrevocable, (ii) bind the insurer and any successors in interest, and (iii) remain in effect as long as there is in force in this Commonwealth any contract made by the insurer or any obligation arising from the contract.

D. This section shall not apply to the following acts:

1. The procuring of a policy of insurance upon a risk within this Commonwealth in compliance with Chapter 48 of this title;

2. Issuance of contracts of reinsurance;

3. Acts in this Commonwealth involving a policy lawfully solicited, written and delivered outside this Commonwealth covering only subjects of insurance not resident, located, or to be performed in this Commonwealth at the time of issuance of the policy;

4. Acts in this Commonwealth involving a group or blanket insurance policy or a group annuity lawfully issued and delivered in a state where the insurer was licensed to transact the business of insurance;

5. ~~The procuring of~~ *Acts in the Commonwealth involving* insurance contracts issued to an "industrial insured." For the purposes of this section, an "industrial insured" is an insured (i) who procures the insurance of any risk *or risks other than life and annuity contracts* by use of the services of a full-time employee acting as an insurance manager or buyer *or the services of a regularly and continuously retained licensed insurance consultant*, (ii) whose aggregate annual premiums for insurance on all risks, *except for life, annuity, and accident and sickness insurance*, total at least ~~\$25,000~~ \$100,000, ~~and~~ (iii) who has at least 25 full-time employees, *and* (iv) *either has gross assets in excess of \$3 million or has annual gross revenues in excess of \$5 million.*

E. Nothing in this section shall apply to nonprofit Railroad Brotherhood or other similar fraternal organizations.