

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 216

*An Act to amend and reenact §§ 38.2-1401, 38.2-1443.1, and 38.2-3100.2 of the Code of Virginia, relating to funding agreements; insurance accounts.*

[H 549]

Approved March 3, 2008

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

**1. That §§ 38.2-1401, 38.2-1443.1, and 38.2-3100.2 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-1401. Definitions.

As used in this chapter:

"Admitted assets" means, for purposes of the limitations and standards imposed by Articles 1 and 2 of this chapter, the amount thereof as permitted to be reported on the statutory financial statement of the insurer most recently required to be filed with the Commission pursuant to §§ 38.2-1300 and 38.2-1301 or other similar provisions within this title, but excluding the assets allocated to separate accounts established pursuant to Article 3 (§ 38.2-1443 et seq.) of this chapter.

"Business entity" means a corporation, association, partnership, joint venture, trust, church, or religious body.

"Category 1 investment" means any investment complying with Article 1 (§ 38.2-1400 et seq.) and either Article 2 (§ 38.2-1412 et seq.) or 3 (§ 38.2-1443 et seq.), or both Articles 2 and 3, of this chapter.

"Category 2 investment" means any investment complying with Article 1, but with neither Article 2 nor Article 3, of this chapter.

"Claimants" means any owners, beneficiaries, assignees, certificate holders, or third-party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy, annuity contract, benefit contract, or subscription contract.

"Date of investment" means the date on which funds are disbursed for an investment.

"Domestic governmental entity" means the United States, any state, or any municipality or district in any such state, or any political subdivision, civil division, agency or instrumentality of one or more of the foregoing.

"Fair market value" means the price that property will bring when (i) offered for sale by one who desires, but who is not obligated, to sell it; (ii) bought by one who is under no necessity of having it; and (iii) sufficient time has elapsed to allow interested buyers the opportunity to become informed of the offer for sale.

"Fixed charges" means actual interest incurred in each year on funded and unfunded debt, excluding interest on bank deposit accounts, and annual apportionment of debt discount or premium. Where interest is partially or entirely contingent upon earnings, "fixed charges" includes contingent interest payments.

"High grade obligations" means obligations which (i) are rated one or two by the Securities Valuation Office of the National Association of Insurance Commissioners or (ii) if not rated by the Securities Valuation Office, are rated in an equivalent grade by a national rating agency recognized by the Commission.

"Insurer" means a company licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.), 11 (§ 38.2-1100 et seq.), 12 (§ 38.2-1200 et seq.), 25 (§ 38.2-2500 et seq.), 26 (§ 38.2-2600 et seq.), 38 (§ 38.2-3800 et seq.), 39 (§ 38.2-3900 et seq.), 40 (§ 38.2-4000 et seq.), 41 (§ 38.2-4100 et seq.), 42 (§ 38.2-4200 et seq.), 43 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 46 (§ 38.2-4600 et seq.), 51 (§ 38.2-5100 et seq.), or 61 (§ 38.2-6100 et seq.) of this title.

"Life insurer" means any insurer authorized to transact life insurance or to grant annuities as defined in §§ 38.2-102 through 38.2-107 or authorized pursuant to the provisions of Chapter 38, 39, 40 or 41, or any other chapter of this title, to provide any one of the following contractual benefits in any form: death benefits, endowment benefits, annuity benefits or monument or tombstone benefits.

"Lower grade obligations" means obligations which (i) are rated four, five, or six by the Securities Valuation Office of the National Association of Insurance Commissioners or (ii) if not rated by the Securities Valuation Office, are rated in an equivalent grade by a national rating agency recognized by the Commission.

"Medium grade obligations" means obligations which (i) are rated three by the Securities Valuation Office of the National Association of Insurance Commissioners or (ii) if not rated by the Securities Valuation office, are rated in an equivalent grade by a national rating agency recognized by the Commission.

"Minimum capital and surplus" means the minimum surplus to policyholders, or minimum net worth,

a particular insurer must have to obtain and maintain its license to transact business in this Commonwealth pursuant to the applicable provisions of this title. In no case shall an insurer's minimum capital and surplus be less than zero.

"Net earnings available for fixed charges" means income minus operating expenses, maintenance expenses, taxes other than income taxes, depreciation, and depletion. Extraordinary nonrecurring income and expense items are excluded from the calculation of "net earnings available for fixed charges."

"Obligation" means a bond, debenture, note or other evidence of indebtedness.

"Prohibited investment" means any investment prohibited by § 38.2-1407.

"Reserve liabilities" means those liabilities which are required to be established by an insurer for all of its outstanding insurance policies, annuity contracts, benefit contracts and subscription contracts, in accordance with this title, as amended or as hereafter amended.

"Wrap-around mortgage" means a loan made by an insurer to a borrower, secured by a mortgage or deed of trust on real property encumbered by a first mortgage or first deed of trust, where the total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of (i) the principal amount initially disbursed by the insurer on account of the loan and (ii) the unpaid principal balance of the obligation secured by the preexisting mortgage or deed of trust.

§ 38.2-1443.1. Investment of amounts allocated to separate accounts for modified guaranteed life insurance, modified guaranteed annuities, and funding agreements.

A. Unless otherwise provided by regulation, the amounts allocated to separate accounts for modified guaranteed life insurance and modified guaranteed annuities, pursuant to the provisions of § 38.2-3113.1, *and for funding agreements pursuant to the provisions of § 38.2-3100.2*, and accumulations on them, may be invested and reinvested by a domestic insurer in any type of Category 1 investment.

B. Investments made pursuant to this section shall be taken into account in applying the investment limitations of §§ 38.2-1413 and 38.2-1414 to investments made by the insurer, by combining the investments under this section with all other investments subject to such limitations. In addition to the general account meeting these investment limitations, both the separate account and the general account together shall meet these investment limitations. The limitations of §§ 38.2-1413 and 38.2-1414 shall not otherwise apply to investments made pursuant to this section.

§ 38.2-3100.2. Funding agreements.

A. Any insurer that is licensed to write life insurance or annuities in the Commonwealth may deliver, or issue for delivery, funding agreements in the Commonwealth.

B. As used in this section "funding agreement" is inclusive but not limited to guaranteed investment contracts, guaranteed interest contracts, unallocated group contracts, investment contracts, or other similar instrument by whatever name, and means an agreement that authorizes the insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments in fixed or variable amounts, or in both, that are not based on mortality or morbidity contingencies.

C. Funding agreements may be issued to persons to fund (i) benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (3)) maintained in the United States or a foreign country; (ii) the activities of any organization exempt from taxation under section 501 (c) of the Internal Revenue Code or any similar organization in any foreign country; (iii) any program of the government of the United States, the government of any state, foreign country, or political subdivision thereof; (iv) any agreement providing for one or more payments in satisfaction of a claim; (v) any program of any individual or entity that has assets in excess of \$25,000,000; or (vi) any program of any individual or entity that is registered with the federal Securities and Exchange Commission.

D. Amounts paid to the insurer and proceeds applied under optional modes of settlement under a funding agreement may be allocated by the insurer to its general account ~~or~~ *and* to one or more separate accounts. *The assets of any such separate account shall not be chargeable with liabilities arising out of any other business that the insurer conducts. Where separate accounts are not chargeable with liabilities arising out of any other business of the insurer, a risk charge shall be paid on not less than a quarterly basis from the respective separate account to the general account to provide appropriate compensation and to fund an appropriate reserve, if any, for the risks to the general account.*

E. *No licensed insurer shall make an agreement in the Commonwealth providing for the allocation of funding agreement amounts to a separate account until such insurer has filed with the Commission a statement as to its methods of operation of such separate account and the Commission has approved such statement. Subject to the approval of the Commission, any such statement may apply to one or more groups of separate accounts classified by investment policy, number or kinds of separate account participants, methods of distribution of such agreements or otherwise. In determining whether or not to approve any such statement, the Commission shall consider, among other things, the history, reputation and financial stability of the insurer and the character, experience, responsibility, competence, and general fitness of the officers and directors of the insurer. An amendment of any such statement that changes the investment policy of a separate account shall be treated as an original filing.*

F. A funding agreement delivered or issued for delivery in the Commonwealth shall not qualify as or be considered to be life insurance, an annuity, or any other form of insurance defined and classified in

Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title, but shall constitute transacting an insurance business in the Commonwealth.

~~F. G. For purposes of clause (ii) of subdivision B 1 of § 38.2-1509, a~~ *any funding agreement assets held in the insurer's general account, or for any other obligations due under the funding agreement from the insurer's general account, the funding agreement shall be treated as an insurance contract, and the holders thereof holder of the funding agreement shall be entitled to the same priority of distribution as other policyholders for the purposes of clause (ii) of subdivision B 1 of § 38.2-1509.*

*H. Any domestic insurer that has established separate accounts in connection with funding agreements and has allocated funds to such separate accounts shall file with the Commission, in addition to the annual statement required by § 38.2-1300, any other periodic or special reports the Commission prescribes.*

*I. An insurer that has established a separate account pursuant to this section shall not transfer any assets to such separate account from any of its other accounts, including its general account, unless the transfer to such separate account is authorized by the Commission.*