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HOUSE BILL NO. 574

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 38.2-1704 of the Code of Virginia, relating to the powers of the Virginia Life, Accident and Sickness Insurance Guaranty Association.

Patron—Cole (By Request)

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-1704 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-1704. Powers and duties of Association.

In addition to the powers and duties enumerated in other sections of this chapter:

A. In the case of an impaired domestic insurer and subject to (i) conditions imposed by the Association other than those that impair the contractual obligations of the impaired insurer, (ii) approval by the impaired insurer and (iii) approval by the Commission, the Association may:

1. Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;

2. Provide moneys, pledges, notes, guarantees or other means required for compliance with subdivision 1 of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under that subdivision; and

3. Loan money to the impaired insurer.

B. In the case of an insolvent insurer, the Association shall, subject to the approval of the Commission:

1. Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;

2. Assure payment of the contractual obligations of the insolvent insurer; and

3. Provide moneys, pledges, notes, guarantees, or other means reasonably necessary to discharge its duties.

C. Subsection B shall not apply in the case of a foreign or alien insurer where the Commission has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides protection by statute or regulation for residents of this Commonwealth.

D. 1. In carrying out its duties under subsection B of this section, the Association may request that permanent policy liens or contract liens be imposed in connection with any guarantee, assumption, or reinsurance agreement, and those liens may be imposed if the court:

a. Finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that economic or financial conditions are sufficiently adverse so that policy or contract liens are in the public interest; and

b. Approves the specific policy or contract liens to be used.

2. Before being obligated under subsection B of this section, the Association may request that temporary moratoriums or liens be imposed on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values, and the temporary moratoriums and liens may be imposed if they are approved by the court.

E. If the Association fails to act as provided in subsection B of this section within a reasonable period of time, the Commission, on behalf of the Association, shall exercise the powers and duties of the Association under this chapter with respect to insolvent insurers.

F. Upon request, the Association may provide assistance and advice to the Commission concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

G. The Association shall have standing to appear before any court in this Commonwealth regarding all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the insolvent insurer and the determination of the covered policies and contractual obligations.

H. Any person receiving benefits under this chapter shall be deemed to have assigned the rights under the covered policy to the Association to the extent of the benefits received because of this chapter whether the benefits are payments of contractual obligations or continuation of coverage. The Association shall require an assignment to it of those rights by any payee, policy or contract owner,

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59 beneficiary, insured or annuitant as a condition prior to the receipt of any rights or benefits conferred by
60 this chapter upon that person. The Association shall be subrogated to those rights against the assets of
61 any insolvent insurer. The subrogation rights of the Association under this subsection shall have the
62 same priority against the assets of the insolvent insurer as that possessed by the person entitled to
63 receive benefits under this chapter.

64 I. The contractual obligations for which the Association may become liable shall in no event exceed
65 the lesser of:

66 1. The contractual obligations for which the insurer is liable or would have been liable if it were not
67 an impaired or insolvent insurer; or

68 2. With respect to any one life, regardless of the number of policies or contracts:

69 a. ~~\$300,000~~ \$500,000 in life insurance death benefits, but not more than \$100,000 in net cash
70 surrender and net cash withdrawal values for life insurance;

71 b. \$300,000 in health insurance benefits, including any net cash surrender and net cash withdrawal
72 values;

73 c. \$100,000 in the present value of annuity benefits, including net cash surrender and net cash
74 withdrawal values; and

75 d. \$250,000 in the present value of annuity benefits where the annuity is established and maintained
76 as one of the following types of accounts:

77 (1) Individual retirement accounts described in § 408(a) of the Internal Revenue Code of 1986, 26
78 U.S.C. § 408(a);

79 (2) Eligible deferred compensation plan accounts described in § 457 of the Internal Revenue Code of
80 1986, 26 U.S.C. § 457; and

81 (3) Individual account plans defined in § 3(34) of the Employee Retirement Income Security Act, 29
82 U.S.C. § 1002, and any plan described in § 401(d) of the Internal Revenue Code of 1986, 26 U.S.C.
83 § 401(d), to the extent that participants and beneficiaries under such plans have a right to direct the
84 investment of assets held in individual accounts maintained on their behalf by the plans.

85 However, in no event shall the Association be liable to expend more than \$350,000 in the aggregate
86 with respect to any one individual.

87 J. The Association may:

88 1. Enter into contracts necessary or proper to fulfill the provisions and purposes of this chapter.

89 2. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid
90 assessments under § 38.2-1705.

91 3. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness
92 of the Association not in default shall be Category 1 investments, as defined in § 38.2-1401, for
93 domestic insurers.

94 4. Employ or retain persons necessary to handle the financial transactions of the Association, and to
95 perform other functions required by this chapter.

96 5. Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry
97 out the powers and duties of the Association.

98 6. Take legal action required to avoid payment of improper claims.

99 7. Exercise, for the purposes of this chapter and to the extent approved by the Commission, the
100 powers of a domestic life or accident and sickness insurer, but in no case shall the Association issue
101 insurance policies or annuity contracts other than those issued to perform the contractual obligations of
102 the impaired or insolvent insurer.