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HOUSE BILL NO. 1936

Offered January 14, 2015

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A BILL to amend and reenact § 38.2-1700 of the Code of Virginia, relating to the limits on obligations of the Virginia Life, Accident and Sickness Insurance Guaranty Association; annuities.

Patron—Bell, Robert B.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1700 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-1700. Purpose and applicability of chapter.

A. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in subsection B against failure in the performance of contractual obligations, under life and accident and sickness insurance policies and annuity contracts specified in subsection C because of the impairment or insolvency of the member insurer that issued the policies or contracts. This chapter shall be construed to effect this purpose. To provide this protection, an association of insurers is created to pay benefits and to continue coverage as limited by this chapter, and members of the Association are subject to assessments to provide funds to carry out the purpose of this chapter.

B. This chapter shall provide coverage for the policies and contracts specified in subsection C as follows:

1. This chapter shall provide coverage, for the policies and contracts specified in subsection C, to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision B 2.

2. This chapter shall provide coverage, for the policies and contracts specified in subsection C, to persons who are owners of or certificate holders under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

a. Are residents; or

b. Are not residents and (i) the insurer that issued the policies or contracts is domiciled in the Commonwealth, (ii) the states in which the persons reside have associations similar to the Association, and (iii) the persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

3. For unallocated annuity contracts specified in subsection C, subdivisions B 1 and B 2 shall not apply, and this chapter, except as provided in subdivisions B 5 and B 6, shall provide coverage to persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this Commonwealth.

4. For structured settlement annuities specified in subsection C, subdivision B 1 and B 2 shall not apply and this chapter, except as provided in subdivisions B 5 and B 6, shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

a. Is a resident, regardless of where the contract owner resides; or

b. Is not a resident and both (i) the contract owner of the structured settlement annuity is (a) a resident or (b) not a resident but the insurer that issued the structured settlement annuity is domiciled in the Commonwealth and the state in which the contract owner resides has an association similar to the Association; and (ii) neither the payee or beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

5. This chapter shall not provide coverage to:

a. A person who is a payee, or beneficiary, of a contract owner resident of the Commonwealth if the payee, or beneficiary, is afforded any coverage by the association of another state; or

b. A person covered under subdivision B 3 if any coverage is provided by the association of another state to the person.

6. This chapter is intended to provide coverage to a person who is a resident of the Commonwealth and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provisions of this subdivision in situations where a person could be covered by the association of more

than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

C. This chapter shall:

1. Provide coverage to the persons specified in subsection B for direct, nongroup life, accident and sickness, or annuity policies or contracts and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, in each case except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts. This chapter shall apply also to dental benefit contracts entered into with a dental plan organization as provided in Chapter 61 (§ 38.2-6100 et seq.).

2. Not provide coverage for:

a. A portion of a policy or contract not guaranteed by an insurer or under which the risk is borne by the policy or contract owner;

b. A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

c. A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(1) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(2) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

d. A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(1) A multiple employer welfare arrangement as defined in 29 U.S.C. § 1144;

(2) A minimum premium group insurance plan;

(3) A stop-loss agreement described in subsection B of § 38.2-109; or

(4) An administrative services only contract;

e. A portion of a policy or contract to the extent that it provides for:

(1) Dividends or experience rating credits;

(2) Voting rights; or

(3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

f. A policy or contract issued in the Commonwealth by a member insurer at a time when its license to issue the policy or contract in the Commonwealth had been suspended, revoked, not renewed, or voluntarily withdrawn;

g. An unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

h. A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan;

i. A portion of a policy or contract to the extent that the assessments required by § 38.2-1705 with respect to the policy or contract are preempted by federal or state law;

j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(1) Claims based on marketing materials;

(2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

(5) A claim for penalties or consequential or incidental damages;

k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the

member insurer;

l. A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

m. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, chapter 7 of Title 42 of the United States Code (known as Medicare Parts C and D) or any regulations issued pursuant thereto; or

n. A charitable gift annuity as defined in § 38.2-106.1.

D. The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

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

2. With respect to:

a. One life, regardless of the number of policies or contracts:

(1) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(2) In health insurance benefits, (i) $100,000 for coverage not defined as disability insurance, basic hospital, medical and surgical insurance, major medical insurance or long-term care insurance including any net cash surrender and net cash withdrawal values; (ii) $300,000 for accident and sickness insurance that constitutes disability insurance or long-term care insurance; and (iii) $500,000 for accident and sickness insurance that constitutes basic hospital medical and surgical insurance or major medical insurance; and

(3) ~~$250,000 in~~ *In* the present value of annuity benefits, including net cash surrender and net cash withdrawal values, *(i) $500,000 if the annuity was purchased or acquired by the sponsor of an employer's defined benefit pension plan for the benefit of a current or former employee, a dependent of such an individual, or other plan participant, in the course of full or partial termination of a pension plan that prior to such termination was subject to the provisions of the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended, or (ii) $250,000 for an annuity to which clause (i) is inapplicable*;

b. Each individual participating in a benefit plan established under Section 401, 403(b) or 457 of the U.S. Internal Revenue Code who (i) selected an investment option that includes investment in unallocated annuity contracts and (ii) is covered by such an unallocated annuity contract, including the beneficiaries of each such individual if deceased, in the aggregate, $250,000 in present value of annuity benefits, including net cash surrender and net cash withdrawal values;

c. Each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased), $250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any; and

d. One plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts part or all of any of which is not included in subdivision 2 b, $5 million in benefits, irrespective of the number of contracts with respect to the plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit or two or more plan sponsors, coverage shall be afforded by the Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in the Commonwealth and in no event shall the Association be obligated to cover more than $5 million in benefits with respect to all such unallocated contracts.

In no event shall the Association be obligated to cover (i) more than an aggregate of $350,000 in benefits with respect to any one life under subdivisions D 2 a, b, and c except with respect to benefits for *(a)* basic hospital, medical and surgical insurance, and major medical insurance under subdivision D 2 a (2), in which case the aggregate liability of the Association shall not exceed $500,000 with respect to any one individual, *or (b) an annuity described in clause (i) of subdivision D 2 a (3), in which case the aggregate liability of the Association shall not exceed $500,000 with respect to any one individual*, or (ii) with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than $5 million in benefits, regardless of the number of

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policies and contracts held by the owner.

The limitations set forth in this subsection are limitations on the benefits for which the Association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the Association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the Association pursuant to its subrogation and assignment rights.

E. In performing its obligations to provide coverage under § 38.2-1704, the Association shall not be required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that the Association has determined, with the concurrence of the Commission, do not materially affect the economic values or economic benefits of the covered policy or contract.