

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 503

An Act to amend and reenact §§ 38.2-1034, 38.2-1225, 38.2-1314, 38.2-1401, 38.2-4222 and 38.2-4517 of the Code of Virginia, relating to insurance; financial regulation provisions; licensing fee for health, dental or optometric plan.

[S 134]

Approved April 9, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1034, 38.2-1225, 38.2-1314, 38.2-1401, 38.2-4222 and 38.2-4517 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1034. How domestic mutual insurers may acquire initial surplus.

Any domestic mutual insurer or mutual assessment property and casualty insurer may, without pledging any of its assets, provide a guaranty fund sufficient to defray the expenses of its organization and its initial minimum surplus required to obtain a license to do the business of insurance. The fund may be increased with the prior approval of the Commission by receiving advances or by borrowing funds upon an agreement that the funds, including interest at a rate not exceeding the one-year treasury bill interest rate plus three percentage points at the time the loan is made or renewed, shall be repaid only if the insurer has sufficient earned surplus. The agreement shall provide that the insurer may repay the advances or loans or any part of them whenever it is able to do so in accordance with the requirements of this article. No commission or brokerage shall be paid in acquiring the funds; ~~and no repayment.~~ *No repayments of the funds principal, either in whole or in part, and no payments of interest, shall be made without the prior written approval of the Commission. Any funds Neither the principal advanced or borrowed nor any interest accrued thereon under this provision shall not form a part of the legal liabilities of the insurer until the Commission approves the repayment of such principal or the payment of interest thereon.* However, all statements published or filed by the insurer shall show accrued interest and the amount of ~~the funds principal~~ remaining unpaid. *All claims under the instrument shall be subordinated to policyholder, claimant and beneficiary claims as well as debts owed to all other classes of creditors.*

§ 38.2-1225. Contributions.

The attorney or other interested persons may advance to a domestic reciprocal any funds required in its operations. *No repayment of the principal, or any payment of interest thereon, in whole or in part, shall be made without the approval of the Commission. The funds principal advanced and any interest accrued thereon shall not be treated as a liability of the reciprocal and until the repayment of principal or payment of interest is approved by the Commission; nonetheless, all statements published or filed shall show accrued interest and the amount of principal remaining unpaid. In the event of a liquidation or dissolution, all claims under the instrument shall be subordinated to subscriber, claimant and beneficiary claims as well as debts owed to all other classes of creditors. The principal advanced shall not be withdrawn or repaid except out of and no payments of interest thereon shall be made unless the reciprocal's reciprocal has sufficient earned surplus in excess of its minimum required surplus. No commission or brokerage shall be paid in acquiring the funds. Interest on the principal advanced shall be at a rate not exceeding the one-year treasury bill interest rate plus three percentage points at the time the loan is made or renewed.*

§ 38.2-1314. Loss or claim reserves.

Except as provided in §§ 38.2-1311 and 38.2-4609, each insurer licensed to transact the business of insurance in this Commonwealth shall maintain reserves:

1. In an amount estimated in the aggregate as being sufficient to provide for reported and unreported unpaid losses or claims arising on or prior to the date of any annual or other statement for which the insurer may be liable;

2. In an amount estimated to provide for loss adjustment expenses; and

3. For those classes of insurance specified by the Commission, any additional reserves for unpaid losses, *policy obligations, or deficiencies in the unearned premium reserve* as required by the Commission. Each insurer authorized to write these classes of insurance shall file with its annual statement, schedules of its experience for such insurance in the form the Commission requires and shall calculate the reserves required by this paragraph in the manner prescribed by the Commission.

§ 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 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 are (i) 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.), 45 (§ 38.2-4500 et seq.), 46 (§ 38.2-4600 et seq.) or 51 (§ 38.2-5100 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 are (i) 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 are (i) 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 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.

§ 38.2-4222. Licensing of nonstock corporations.

A. No person shall deliver or issue for delivery in this Commonwealth a subscription contract without a license issued by the Commission. Each nonstock corporation shall apply for a license and furnish any relevant information the Commission requires. Each license shall expire at midnight on the following June 30. *Application for a license shall be accompanied by a nonrefundable application fee*

of \$500.

B. The Commission may refuse to issue or renew a license to a nonstock corporation if it is not satisfied that the financial condition, the method of operation, and the manner of doing business of the nonstock corporation enable it to meet its contractual obligations to all subscribers and that the nonstock corporation has otherwise complied with all the requirements of law.

§ 38.2-4517. Licensing of nonstock corporation.

A. No person shall operate a dental or optometric services plan in this Commonwealth without a license issued by the Commission. Each nonstock corporation shall apply for a license and furnish any relevant information the Commission requires. Each license shall expire at midnight on the following June 30. *Application for a license shall be accompanied by a nonrefundable application fee of \$500.*

B. The Commission shall not issue to or renew a license of a nonstock corporation unless it is satisfied that the financial condition, the method of operation, and the manner of doing business of the nonstock corporation enable it to meet its contractual obligations to all subscribers and that the nonstock corporation has otherwise complied with all the requirements of law.