

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 647

*An Act to amend and reenact §§ 38.2-1316.2 and 38.2-4811 of the Code of Virginia, relating to insurance; underwriting; solvency regulation and control.*

[H 646]

Approved April 10, 1994

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

**1. That §§ 38.2-1316.2 and 38.2-4811 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-1316.2. Credit allowed a domestic ceding insurer.

A. Except as provided in § 38.2-1316.4, credit shall be allowed a domestic ceding insurer for reinsurance ceded only when the assuming insurer meets one of the following criteria:

1. Credit shall be allowed when the assuming insurer is licensed to transact insurance in this Commonwealth.

2. Credit shall be allowed when the assuming insurer is accredited as a reinsurer in this Commonwealth. An accredited reinsurer is one which:

a. Files with the Commission evidence of its submission to the Commission's jurisdiction;

b. Submits to the Commission's authority to examine its books and records;

c. Is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

d. Files annually with the Commission a copy of its annual statement filed with the insurance department of its state of domicile or entry and a copy of its most recent audited financial statement, and either (i) maintains a surplus to policyholders or, in the case of an alien insurer, a trustee surplus, in an amount which is not less than \$20 million and whose accreditation has not been denied by the Commission within ninety days of its initial submission; or (ii) maintains a surplus to policyholders or, in the case of an alien insurer, a trustee surplus, in an amount less than \$20 million and whose accreditation has been approved by the Commission.

However, no credit shall be allowed for reinsurance ceded to an accredited reinsurer if the assuming insurer's standing as an accredited reinsurer has been denied or revoked by the Commission. Such standing shall not be revoked by the Commission until after the assuming insurer has been given ten days' notice of the reasons for the proposed revocation and an opportunity to introduce evidence and be heard. Any hearing authorized by this subsection may be informal, and the required notice may be waived by the Commission and the insurer. Furthermore, the Commission may require additional reports, exhibits or statements as it determines necessary to secure complete information concerning the condition and affairs of any accredited reinsurer.

3. Credit shall be allowed when the assuming insurer is domiciled and licensed in or, in the case of a United States branch of an alien insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

a. Submits to the authority of the Commission to examine its books and records;

b. Maintains a surplus to policyholders in an amount not less than \$20 million. However, unless specifically required by the Commission, this surplus requirement shall be deemed waived when reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. Credit shall be allowed when the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commission information substantially the same as that required to be reported on the National Association of Insurance Commissioners (NAIC) Annual Statement form by licensed insurers to enable the Commission to determine the sufficiency of the trust fund.

a. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a trustee surplus amount not less than \$20 million; ;

b. In the case of a group of, *including incorporated and* individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and in addition, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group, *the incorporated members of which shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the*

*group's domiciliary regulator as are the unincorporated members; and the group shall make available to the Commission an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accounts; ; and*

c. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three years, and submits to the Commission's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10 billion; the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group. In addition, the group shall maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commission an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

B. The trusts described in subdivision 4 of subsection A shall be established in a form acceptable to the Commission.

1. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

2. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest.

3. The trust and the assuming insurer shall be subject to examination as determined by the Commission.

4. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

5. No later than February 28 of each year the trustees of the trust shall report to the Commission in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

§ 38.2-4811. Surplus lines coverage to be placed only with unlicensed insurers approved by Commission.

A. No surplus lines broker shall procure a policy of insurance with any insurer not licensed to transact insurance business in this Commonwealth, unless such unlicensed insurer has prior approval of the Commission to issue surplus lines insurance.

B. Any unlicensed insurer wishing to be approved by the Commission to issue surplus lines coverage may receive such approval upon providing:

1. Satisfactory evidence of good repute and financial integrity; and

2. Proof that it qualifies under a, b or c of this subdivision:

a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equal the greater of (i) the minimum capital and surplus requirements under §§ 38.2-1028, 38.2-1029, 38.2-1030 or § 38.2-1031, or (ii) \$2.5 million three years after June 30, 1984; \$3.5 million five years after June 30, 1984; and five million dollars six years after June 30, 1984.

After June 30, 1990, the requirements of subdivision 2 a of this subsection may be satisfied by an unlicensed insurer possessing less than five million dollars in capital and surplus upon an affirmative finding of acceptability by the Commission. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, and company record and reputation within the industry. In no event, however, shall the Commission make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$3.5 million. In addition, an alien insurer may qualify under this paragraph if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than \$1.5 million for the protection of all of its policyholders in the United States. This trust fund shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like classes of insurance in this Commonwealth. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; and

b. In the case of any Lloyd's or other similar ~~unincorporated group of alien individual insurers group~~, *including incorporated and individual unincorporated underwriters, the incorporated members of which shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members*, maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subdivision 2 a of this subsection for alien insurers; and

c. In the case of an "insurance exchange" created by the laws of individual states, maintains capital

and surplus, or the substantial equivalent of capital and surplus, of not less than fifteen million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent of capital and surplus, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision 2 a of this subsection.

C. Any such unlicensed insurer shall cause to be provided to the Commission not later than six months after the close of the period reported upon a copy of its current annual statement certified by the insurer. The report shall be:

1. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
2. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or
3. In the case of an insurance exchange, may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon.

The Commission, at its discretion, may extend the period for filing an annual statement by a maximum of two months.

D. If at any time the Commission has reason to believe that an eligible surplus lines insurer (i) is in unsound financial condition, (ii) is no longer eligible under subdivision 2 above, (iii) has willfully violated the laws of this Commonwealth, or (iv) does not make reasonably prompt payment of just losses and claims in this Commonwealth or elsewhere, the Commission may declare it ineligible. The Commission shall promptly mail notice of all such declarations to each surplus lines licensee.