

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 60

An Act to amend and reenact §§ 38.2-1046, 38.2-1048, 38.2-1413, 38.2-1414, 38.2-1427.3, 38.2-1432, 38.2-2710 and 38.2-4811 of the Code of Virginia, relating to insurance; financial regulation of insurers.

[S 733]

Approved March 7, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1046, 38.2-1048, 38.2-1413, 38.2-1414, 38.2-1427.3, 38.2-1432, 38.2-2710 and 38.2-4811 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1046. Purpose of deposits; enforcement of lien.

A. An insurer's deposits required by § 38.2-1045 shall be held as a special fund in trust for the insurer's liabilities which are incurred or which may be incurred as a result of a loss sustained by (i) this Commonwealth or any of its political subdivisions, (ii) any citizen or inhabitant of this Commonwealth, or (iii) any other person owning property in this Commonwealth, when the insurer fails to meet its obligations incurred in this Commonwealth. Policyholders, without preference, shall have a lien on the deposits for the amounts due or which may become due as a result of any failure of the insurer to meet its obligations. General creditors, without preference, shall be entitled to have a similar lien on the deposits which shall be subordinate to the claims of the policyholders.

B. Whenever any such insurer becomes insolvent or bankrupt, or makes an assignment for the benefit of its creditors, any person given a lien by this section may file a bill in the Circuit Court of the City of Richmond for the benefit of himself and all others given a lien by this section to subject such securities *as may be on deposit with the State Treasurer or its agent* to the payment of the liens thereon. The State Treasurer shall be made a party to such suit and a copy of such bill shall be served upon the Commissioner of Insurance as if he were a party to such suit. The funds shall be distributed by the court.

§ 38.2-1048. Return of deposits.

A. The Commission, at its discretion, may direct the State Treasurer to return to any insurer all or a part of the deposit made by it under § 38.2-1045 if the insurer (i) has complied with § 38.2-1049, or (ii) has ceased to transact business in this Commonwealth. In the case of the latter, the fixed or contingent liabilities secured by the deposit shall have been satisfied or terminated or shall have been assumed by another insurer licensed to transact the business of insurance in this Commonwealth. If the Commission finds that any voluntary deposit of any insurer made under § 38.2-1050 no longer is required in whole or in part to comply with the laws of this or any other state, it may to such extent direct the return of that deposit. The Commission, before directing the return of any deposit, may require evidence it considers satisfactory that the insurer is entitled to the return of all or part of the deposit.

B. Notwithstanding the provisions in § 38.2-1046 and subsection A of this section, if an insurer domiciled in this Commonwealth is placed in receivership, and a receiver is appointed, pursuant to the provisions of Chapter 15 (§ 38.2-1500 et seq.) of this title, the Commission shall direct the State Treasurer to return any deposit made with it by the insurer to such receiver for distribution, disbursement, or other application in accordance with provisions set forth in Chapter 15 (§ 38.2-1500 et seq.) of this title and any applicable order of liquidation, conservation or rehabilitation.

§ 38.2-1413. Investment limits for one obligor, one issue or one loan.

A. ~~Except as otherwise provided in this chapter,~~ No domestic insurer shall have at any one time any combination of investments in or loans upon the security of the property and securities of any one obligor or issuer aggregating an amount exceeding the lesser of five percent of the insurer's total admitted assets or twenty percent of the insurer's surplus to policyholders. The limitations prescribed by this section shall not apply to the following:

1. Investments in or loans upon the security of general obligations of the United States;
2. Investments in foreign securities made eligible by § 38.2-1433;
3. Investments in mortgage pass-through securities made eligible by § 38.2-1437.1; ~~or~~
4. Deposits in institutions insured by a federal deposit insuring agency to the extent of coverage by such deposit insuring agency; *or*
5. *Investments in subsidiaries made eligible by § 38.2-1427.3.*

B. No domestic insurer shall invest in excess of one percent of its total admitted assets in any one issue of any obligations made eligible for investment under § 38.2-1423 or § 38.2-1424.

C. No domestic insurer shall invest in excess of one-half of one percent of its total admitted assets in any one loan made eligible by subdivision 3 of § 38.2-1434.

D. The principal loan amount disbursed, excluding advances made to enforce or protect the security

for the loan, by a domestic insurer under any single wrap-around mortgage made pursuant to § 38.2-1435 shall not exceed one percent of its total admitted assets.

E. The amount loaned under § 38.2-1430 shall be subject to the limitations of this section applicable to the kinds of securities or obligations pledged in connection with the loan.

§ 38.2-1414. Limits by type of investment.

A. The portion of a domestic insurer's total admitted assets in the following types of investments shall not exceed:

1. Ten percent for the aggregate of investments made eligible by §§ 38.2-1416 and 38.2-1417;
2. Five percent for the investments in each agency made eligible by § 38.2-1418, and ten percent for the aggregate of investments made eligible by § 38.2-1418;
3. Ten percent for the investments made eligible by § 38.2-1419;
4. Ten percent for the investments made eligible by § 38.2-1420;
5. For the aggregate of investments made eligible under §§ 38.2-1421 and 38.2-1422, (i) ninety percent for any life insurer and (ii) forty percent for all other insurers;
6. Ten percent for the investments made eligible by subsection B of § 38.2-1421;
7. Twenty percent for the investments made eligible by § 38.2-1422;
8. Ten percent for the investments made eligible by § 38.2-1423;
9. Five percent for the investments made eligible by § 38.2-1424;
10. Five percent for the investments made eligible by § 38.2-1425;
11. The lesser of fifteen percent or the amount by which an insurer's surplus to policyholders exceeds its minimum capital and surplus for the aggregate of investments made eligible by §§ 38.2-1427, 38.2-1427.1 and 38.2-1427.2, of which no more than five percent of the total admitted assets shall be in investments made eligible by § 38.2-1427.1;
12. *For the aggregate of investments made eligible by § 38.2-1427.3, when combined with the insurer's total investment in affiliates, the lesser of ten percent of the insurer's admitted assets or fifty percent of the insurer's surplus to policyholders in excess of its minimum capital and surplus for investments made eligible by § 38.2-1427.3, provided that total investments in affiliates do not include investments made by the insurer in money market mutual funds made eligible by § 38.2-1432;*
13. An amount equal to its deposit and reserve obligations incurred in a foreign country for the investments made eligible by § 38.2-1433;
14. Two percent for the investments made eligible (including those that the insurer is obligated to make as well as those made) by subdivision 3 of § 38.2-1434;
15. Two percent for the investments made eligible by § 38.2-1435;
16. Ten percent for the investments made eligible by § 38.2-1436;
17. For the aggregate of investments made eligible by § 38.2-1437.1, when combined with the insurer's investments in mortgages under §§ 38.2-1434 through 38.2-1436 and § 38.2-1439, (i) sixty percent for any life insurer and (ii) thirty percent for all other insurers;
18. Two percent for the investments made eligible by § 38.2-1440; and
19. Twenty-five percent for the total of investments made eligible by § 38.2-1441, of which no more than five percent of the total admitted assets shall be in investments in real property to be used primarily for hotel purposes.

B. The amount loaned under § 38.2-1430 shall be subject to the limitations of this section applicable to the kinds of securities or obligations pledged in connection with the loan.

§ 38.2-1427.3. Investment authority; subsidiary corporations.

A. In addition to investments in obligations, preferred stock, guaranteed stock and common stock permitted under §§ 38.2-1421 through 38.2-1427, an A domestic insurer may also invest and maintain investments in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries if, on the date of investment, the sum of the insurer's cost of such investment and the aggregate values of all existing investments in affiliates of the insurer shall not exceed the lesser of: a subsidiary.

1. Ten percent of the insurer's admitted assets; or
2. Fifty percent of the insurer's surplus to policyholders in excess of its minimum capital and surplus.

B. For purpose of this section, the terms "affiliate" and "subsidiary" shall have the meanings set forth in § 38.2-1322.

C. As used in subsection A of this section, the term "aggregate values of all existing investments in affiliates of the insurer" shall not include investments by the insurer in money market mutual funds sponsored by affiliates of the insurer, provided:

1. Any such money market mutual fund meets the requirements set forth in subdivisions 1 and 2 of § 38.2-1427.2; and
2. The Commission has granted prior written approval to the insurer with respect to its investment in any such money market mutual fund.

D. On and after December 31, 1992, all investments in subsidiary corporations shall be classified subject to the provisions of this section. In applying the limitations imposed by subsection A of this

section, December 31, 1992, may be deemed the date of investment For investments in subsidiary corporations made prior to July 1, 1992 1995, July 1, 1995, may be deemed the date of investment.

§ 38.2-1432. Savings, certificates, etc.

A domestic insurer may invest in any of the following:

1. Interest-bearing checking or savings accounts, certificates of deposit, or other short-term investments made available or issued by any solvent bank or trust company that is a member of the Federal Deposit Insurance Corporation;

2. Interest-bearing savings or share accounts, certificates of deposit or any other short-term investments made available or issued by any solvent building and loan or savings and loan association insured by the Federal Deposit Insurance Corporation or other federal insurance agency;

3. Bankers acceptances of the kinds and maturities made eligible by law for rediscount with Federal Reserve Banks, provided that these securities are accepted by a bank or trust company that is a member of the Federal Reserve System;

4. Money market mutual funds, *provided that the Commission has granted prior written approval to the insurer with respect to its investment in any money market mutual fund sponsored by affiliates of the insurer and that such money market fund sponsored by affiliates meets the requirements set forth in subdivisions 1 and 2 of § 38.2-1427.2*; or

5. United States government bond mutual funds.

§ 38.2-2710. Supervision and regulation by Commission.

The residual market facility, any inspection service, and any joint underwriting association shall at all times be subject to the supervision and regulation of the Commission. The Commission, or any person designated by it, shall have the power:

1. To visit and examine the operations of the residual market facility, any inspection service, and any joint underwriting association;

2. To examine directors, officers, agents, employees, or any other person having knowledge of those operations; ~~and~~

3. To summon and qualify witnesses under oath; ~~and~~, pursuant to these powers, ~~the Commission shall to~~ have free access to all books, records, files, papers and documents that relate to those operations; ~~; and~~

4. *To require that the association file annually a financial report that is approved by the board of directors and prepared in a form prescribed by the Commission. Unless the Commission provides otherwise, the report shall be filed within 120 days after the end of each fiscal year and shall be for the preceding twelve months.*

§ 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~~ \$15 million except that *nonadmitted insurers already qualified under this chapter shall have \$5 million up to and including June 30, 1996; \$10 million after June 30, 1996; \$12.5 million after June 30, 1997; and \$15 million after June 30, 1998.*

After June 30, ~~1990~~ 1995, the requirements of subdivision 2 a of this subsection may be satisfied by an unlicensed insurer possessing less than ~~five million dollars in the aforementioned~~ 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~~ 4.5 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 a qualified U.S. financial institution on behalf of U.S. policyholders of not less than \$2.5 million.~~ 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 *the capital and statutory reserves of* 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 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~~ \$50 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~~ \$3 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 of *subsection B* 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.