

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 81

An Act to amend and reenact §§ 38.2-1509 and 38.2-1514 of the Code of Virginia, relating to the priority of disbursement of the assets of an insolvent insurer.

[H 430]

Approved March 5, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1509 and 38.2-1514 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1509. Powers of Commission when authorized to rehabilitate or liquidate insurers by court order; disbursement of available assets to an association, etc.

A. Whenever the Commission is authorized by order of the Circuit Court of the City of Richmond to rehabilitate or liquidate any domestic insurer other than an insurer writing exclusively title, fidelity and surety, credit or ocean marine insurance, the Commission shall disburse the assets as they become available to an association. Disbursal shall not be made until an application has been filed with the Commission by an association for an insolvent insurer's available assets.

B. The Commission shall disburse the assets of an insolvent insurer as they become available in the following manner:

1. Pay, after reserving for the payment of the costs and expenses of administration, according to the following priorities: (i) ~~wages entitled to priority as provided in § 38.2-1514~~, (ii) claims of secured creditors with a perfected security interest not voidable under § 38.2-1513 to the extent of the value of their security, ~~(iii) taxes owed to the United States and other debts owed to any person, including the United States, who by the laws of the United States are entitled to priority~~, (iv) (ii) claims of the associations for "covered claims" and "contractual obligations" as defined in §§ 38.2-1603 and 38.2-1701 and claims of other policyholders arising out of insurance contracts apportioned without preference, ~~(iii) taxes owed to the United States and other debts owed to any person, including the United States, which by the laws of the United States are entitled to priority~~, (iv) wages entitled to priority as provided in § 38.2-1514, and (v) other creditors; and

2. Equitably allocate disbursements to each of the entitled associations; and

3. Secure an agreement from each of the entitled associations requiring the return to the Commission of any assets previously disbursed to the association required to pay claims entitled to priority in subdivision 1 of this subsection. No bond shall be required of any entitled association; and

4. Require a full report to be made by the association to the Commission accounting for all assets disbursed to the association, all disbursements made from these assets, any interest earned on these assets and any other matter as the Commission may require.

C. The Commission shall provide for disbursements to the association in an amount estimated at least equal to the claim payments made or to be made by the association for which the association could assert a claim against the Commission. In addition, the Commission shall provide that if the assets available for disbursement do not equal or exceed the amount of claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

D. The Commission shall notify the affected associations and the commissioners of insurance in the other states of any disbursement made according to this section. The notice shall be deemed given when sent by certified mail at least thirty days prior to disbursement.

§ 38.2-1514. Priority of claims for wages.

Before the payment of any other debt or claim, *other than those for which a higher priority is established in § 38.2-1509*, compensation shall be paid to employees other than officers of an insurer for services rendered within three months before the commencement of the delinquency proceedings. The payment shall not exceed \$1,000 for each employee. At the discretion of the Commission, or a receiver other than the Commission with the approval of the court, payment may be made as soon as practicable. This priority shall be superior to any other similar priority authorized by law regarding wages or compensation of the employees.

Nothing in this section shall prohibit a receiver from allocating sufficient funds to cover the expenses of administration.