

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 160

An Act to amend and reenact §§ 38.2-1611.1, 38.2-1709, and 38.2-2806 of the Code of Virginia, relating to amortization of payments to insurance guaranty associations.

[H 2327]

Approved March 6, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1611.1, 38.2-1709, and 38.2-2806 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1611.1. Tax write-offs of certificates of contribution.

A. A member insurer shall have at its option the right to show a certificate of contribution as an asset in the form approved by the Commission pursuant to subdivision 3a of subsection A of § 38.2-1606 at the original face amount for the calendar year of issuance. Such amount may be amortized *as follows*:

1. *Certificates of contribution issued prior to January 1, 1998, shall be amortized in each succeeding calendar year through December 31, 1997, at an amount not to exceed 0.05 of one percent of the member's direct gross premium income for the classes of insurance in the account for which the member insurer is assessed. As used herein, the definition of direct gross premium income shall be the same as that specified in § 58.1-2500. If the amount of the certificate has not been fully amortized by the contributing insurer by December 31, 1997, the unamortized balance of the certificate amount shall be amortized, at the option of the contributing insurer, either (i) in the same manner as the certificate was amortized prior to January 1, 1998; however, if not amortized in full prior to calendar year 2010, the unamortized balance of the certificate shall be amortized in full during calendar year 2010, or (ii) over the ten successive calendar years commencing January 1, 1998, in amounts each equal to ten percent of such unamortized balance. A contributing insurer whose certificate has not been fully amortized by December 31, 1997, shall notify the Commission in writing of the amortization schedule option it has selected on or before March 1, 1998; however, if a contributing insurer fails to notify the Commission by such date, the insurer shall be deemed to have selected the option described in clause (i) of the preceding sentence.*

2. *Certificates of contribution issued on or after January 1, 1998, shall be amortized over the ten calendar years following the year the contribution was paid in amounts each equal to ten percent of the amount of the contribution.*

B. The insurer may offset the amount of the certificate amortized in a calendar year as provided in subsection A ~~of this section~~. This amount shall be deducted from the premium tax liability incurred on business transacted in this Commonwealth for that year. However, the Association shall diligently pursue all rights available to it to recover its expenditures made in the fulfillment of its responsibilities under this chapter. In the event the Commission determines after a hearing that the Association is not diligently pursuing available measures of recovery, participating insurers will not be able to offset amounts amortized during the period that the Commission determines that the Association has not been diligently pursuing available measures of recovery.

C. Any sums that have been (i) amortized by contributing insurers and offset against premium taxes as provided in subsection B ~~of this section~~ and (ii) subsequently refunded pursuant to subdivision 3 of subsection A of § 38.2-1606 or subdivision 6 of subsection B of § 38.2-1606 shall be paid to the Commission and deposited with the State Treasurer for credit to the general fund of this Commonwealth.

D. The amount of any credit against premium taxes provided for in this section for an insurer shall be reduced by the amount of reduction in federal income taxes for any deduction claimed by the insurer for an assessment paid pursuant to this chapter.

§ 38.2-1709. Tax write-offs of certificates of contributions.

A. A member insurer shall have at its option the right to show a certificate of contribution as an asset in the form approved by the Commission pursuant to subsection H of § 38.2-1705 at the original face amount for the calendar year of issuance. Such amount may be amortized *as follows*:

1. *Certificates of contribution issued prior to January 1, 1998, shall be amortized in each succeeding calendar year through December 31, 1997, at an amount not to exceed 0.05 of one percent of the member's direct gross premium income for the classes of insurance in the account for which the member insurer is assessed. As used herein, the definition of direct gross premium income shall be the same as that specified in § 58.1-2500. If the amount of the certificate has not been fully amortized by the contributing insurer by December 31, 1997, the unamortized balance of the certificate amount shall be amortized, at the option of the contributing insurer, either (i) in the same manner as the certificate was*

amortized prior to January 1, 1998; however, if not amortized in full prior to calendar year 2010, the unamortized balance of the certificate shall be amortized in full during calendar year 2010, or (ii) over the ten successive calendar years commencing January 1, 1998, in amounts each equal to ten percent of such unamortized balance. A contributing insurer whose certificate has not been fully amortized by December 31, 1997, shall notify the Commission in writing of the amortization schedule option it has selected on or before March 1, 1998; however, if a contributing insurer fails to notify the Commission by such date, the insurer shall be deemed to have selected the option described in clause (i) of the preceding sentence.

2. Certificates of contribution issued on or after January 1, 1998, shall be amortized over the ten calendar years following the year the contribution was paid in amounts each equal to ten percent of the amount of the contribution.

B. The insurer may offset the amount of the certificate amortized in a calendar year as provided in subsection A ~~of this section~~. This amount shall be deducted from the premium tax liability incurred on business transacted in this Commonwealth for that year. However, the Association shall diligently pursue all rights available to it to recover its expenditures made in the fulfillment of its responsibilities under this chapter. In the event the Commission determines after a hearing that the Association is not diligently pursuing available measures of recovery, participating insurers will not be able to offset amounts amortized during the period that the Commission determines that the Association has not been diligently pursuing available measures of recovery.

C. Any sums that have been (i) amortized by contributing insurers and offset against premium taxes as provided in subsection B ~~of this section~~ and (ii) subsequently refunded pursuant to subsection F of § 38.2-1705 shall be paid to the Commission and deposited with the State Treasurer for credit to the general fund of this Commonwealth.

D. The amount of any credit against premium taxes provided for in this section for an insurer shall be reduced by the amount of reduction in federal income taxes for any deduction claimed by the insurer for an assessment paid pursuant to this chapter.

§ 38.2-2806. Policy forms; applicants to be issued policies; cancellation of policies; rates; examination of business of association.

A. All policies issued by the association shall be subject to the group retrospective premium adjustment and to the stabilization reserve fund required by § 38.2-2807. No policy form shall be used by the association unless it has been filed with the Commission and either (i) the Commission has approved it or (ii) thirty days have elapsed and the Commission has not disapproved the form or endorsement for one or more of the reasons enumerated in subsection A of § 38.2-317.

B. Policies shall be issued by the association, after receipt of the premium or portion of the premium prescribed by the plan of operation, to applicants that (i) meet the minimum underwriting standards, and (ii) have no unpaid or uncontested premium due as evidenced by the applicant having failed to make written objection to premium charges within thirty days after billing.

C. Any policy issued by the association may be cancelled for any one of the following reasons: (i) nonpayment of premium or portion of the premium; (ii) suspension or revocation of the insured's license; (iii) failure of the insured to meet the minimum underwriting standards; (iv) failure of the insured to meet other minimum standards prescribed by the plan of operation; and (v) nonpayment of any stabilization reserve fund charge.

D. The rates, rating plans, rating rules, rating classifications, premium payment plans and territories applicable to the insurance written by the association, and related statistics shall be subject to the provisions of Chapter 20 (§ 38.2-2000 *et seq.*) of this title. Due consideration shall be given to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this Commonwealth, trends in the frequency and severity of losses, the investment income of the association, and other information the Commission requires. All rates shall be on an actuarially sound basis, giving due consideration to the stabilization reserve fund, and shall be calculated to be self-supporting. The Commission shall take all appropriate steps to make available to the association the loss and expense experience of insurers writing or having written medical malpractice insurance in this Commonwealth.

E. All policies issued by the association shall be subject to a nonprofit group retrospective premium adjustment to be approved by the Commission under which the final premium for all policyholders of the association, as a group, will be calculated based upon the experience of all policyholders. The experience of all policyholders shall be calculated following the end of each fiscal period and shall be based upon earned premiums, administrative expenses, loss and loss adjustment expenses, and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. Any final premium resulting from a retrospective premium adjustment will be collected from the stabilization fund set forth in § 38.2-2807. The maximum premium for all policyholders as a group shall be limited as provided in § 38.2-2807.

F. 1. The association shall certify to the Commission the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all

policyholders of the association. Within sixty days after such certification, the Commission shall authorize the association to recover from the members their respective share of the deficit.

2. Members shall be permitted to recover any assessment made by the association under subdivision 1 of this subsection by deducting the members' share of the deficit from future premium taxes due the Commonwealth. The amount of premium tax deduction for each member's share of the deficit shall be apportioned by the Commission so that in the aggregate the total premium tax deduction permitted for all members in any one taxable year shall not exceed 0.05 of one percent of the direct gross premium income for the classes of insurance in the account for which the member insurer is assessed. To the extent that the said 0.05 of one percent is reached in any one taxable year any amount not so offset may be carried over to a subsequent year or years the amount of each member's premium tax deduction in each of the ten calendar years following the payment of the member's assessment is equal to ten percent of the assessment paid by the member.

G. In the event that sufficient funds are not available for the sound financial operation of the association, subject to recoupment as provided in this chapter and the plan of operation, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided in this chapter. The contribution shall be reimbursed to the members by the procedure set forth in subdivision F 2 of this section.

H. The Commission shall examine the business of the association as often as it deems appropriate to make certain that the group retrospective premium adjustments are being calculated and applied in a manner consistent with this section. If the Commission finds that they are not being calculated and applied in a manner consistent with this section, it shall issue an order to the association, specifying (i) how the calculation and application are not consistent and (ii) stating what corrective action shall be taken.