

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 414

An Act to amend and reenact §§ 38.2-1403, 38.2-1413, 38.2-1414, 38.2-1415, 38.2-1421, 38.2-1423, and 38.2-1433 of the Code of Virginia, relating to insurance; insurer investment limits.

[H 565]

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1403, 38.2-1413, 38.2-1414, 38.2-1415, 38.2-1421, 38.2-1423, and 38.2-1433 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1403. Category 2 investments limits.

The value of Category 2 investments shall be excluded from the value of admitted assets to the extent the value of Category 2 investments exceeds ~~fifty~~ *seventy-five* percent of the amount by which an insurer's surplus to policyholders exceeds its minimum capital and surplus.

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

A. 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 *subsection A of § 38.2-1433*;
3. Investments in mortgage pass-through securities made eligible by § 38.2-1437.1;
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; *or*

6. Investments in obligations of an agency or instrumentality of the United States made eligible by subsection B of § 38.2-1415; provided that at no time shall the insurer invest pursuant to subsection B of § 38.2-1415 in excess of ten percent of its total admitted assets in any one obligor or issuer of such obligations.

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; *and two percent for the investments made eligible by subsection C 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, 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. *Ten percent for investments made eligible by subsection B of § 38.2-1433, and an amount equal to its deposit and reserve obligations incurred in a foreign country for the investments made eligible by subsection A of § 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.

§ 38.2-1415. Obligations of domestic governmental entities.

A. United States obligations. A domestic insurer may invest in any bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States or for which the full faith and credit of the United States are pledged for the payment of principal and interest.

B. United States agencies obligations. A domestic insurer may invest in any bonds, notes, warrants and other evidence of indebtedness which are direct obligations for the payment of money, issued by an agency or instrumentality of the United States, or obligations for the payment of money to the extent guaranteed or insured as to the payment of principal and interest by an agency or instrumentality of the United States.

C. State government obligations. A domestic insurer may invest in direct, general obligations of any state of the United States for the payment of money, or obligations for the payment of money to the extent guaranteed or insured as to the payment of principal and interest by any state of the United States, on the following conditions:

1. The state has the power to levy taxes for the prompt payment of the principal and interest of its obligations;

2. The state is not in default in the payment of principal or interest on any of its direct, guaranteed or insured obligations as of the date of investment;

3. An insurer shall not invest under this subsection more than five percent of its admitted assets in obligations issued or guaranteed by any one state; and

4. An insurer shall not invest under this subsection more than thirty percent of its admitted assets.

D. Local government obligations. A domestic insurer may invest in direct, general obligations of any political subdivision, of any state of the United States, for the payment of money, or obligations for the payment of money, to the extent guaranteed as to the payment of principal and interest, by any such political subdivision, on the following conditions:

1. The obligations are payable or guaranteed from ad valorem taxes;

2. Such political subdivision is not in default in the payment of principal or interest on any of its direct or guaranteed obligations;

3. No investment shall be made under this subsection in obligations which are secured only by special assessments for local improvements;

4. An insurer shall not invest more than ~~two~~ five percent of its admitted assets in obligations issued or guaranteed by any one such political subdivision; and

5. An insurer shall not invest more than ~~twenty~~ thirty percent of its admitted assets under this subsection.

E. Anticipation obligations. An insurer may invest in the anticipation obligations of any political subdivision of any state, all within the United States, including but not limited to bond anticipation notes, tax anticipation notes, preliminary loan anticipation notes, revenue anticipation notes and construction anticipation notes, for the payment of money within twelve months from the issuance of the obligation, on the following conditions:

1. The anticipation notes must be a direct obligation of the issuer under conditions set forth in subsection D of § 38.2-1415;

2. The political subdivision is not in default in the payment of the principal or interest on any of its direct general obligations or any obligation guaranteed by such political subdivision;

3. The anticipation funds shall be specifically pledged to secure the obligation;

4. An insurer shall not invest more than two percent of its admitted assets in the anticipation obligations issued by any one such political subdivision; and

5. An insurer shall not invest more than ten percent of its admitted assets under this subsection.

F. State or municipal revenue obligations. A domestic insurer may invest in obligations of any state of the United States, a political subdivision thereof, or a public instrumentality of any one or more of the foregoing, for the payment of money, on the following conditions:

1. The obligations are payable from revenues or earnings of a public utility of such state, political subdivision, or public instrumentality which are specifically pledged therefor;

2. The law under which the obligations are issued requires that rates for service shall be charged and collected at all times such that they will produce sufficient revenue or earnings which, together with any other revenues or moneys pledged, are sufficient to pay all operating and maintenance charges of the public utility and all principal and interest on such obligations;

3. No prior or parity obligations payable from the revenues or earnings of that public utility are in default as of the date of the investment;

4. An insurer shall not invest under this subsection more than two percent of its admitted assets in the revenue obligations issued in connection with any one facility;

5. An insurer shall not invest under this subsection more than two percent of its admitted assets in revenue obligations payable from revenue or earning sources which are the contractual responsibility of any one single credit risk; and

6. An insurer shall not invest under this subsection more than twenty-five percent of its admitted assets.

G. Other revenue obligations of state and local governments. A domestic insurer may invest in other state and local government revenue obligations of any state of the United States, a political subdivision thereof, or a public instrumentality of any of the foregoing, for the payment of money, on the following conditions:

1. The obligations are payable from revenues or earnings, excluding revenues or earnings from public utilities, specifically pledged therefor by such state, political subdivision, or public instrumentality;

2. An insurer shall not invest under this subsection more than two percent of its admitted assets in the revenue obligations issued in connection with any one facility;

3. No prior or parity obligation of the same issuer payable from revenues or earnings from the same source has been in default as to principal or interest during the five years next preceding the date of such investment, but the issuer need not have been in existence for that period, and obligations acquired under this subsection may have been newly issued;

4. An insurer shall not invest under this subsection more than two percent of its admitted assets in revenue obligations payable from sources which are the contractual responsibility of any one single credit risk; and

5. An insurer shall not invest under this subsection more than twenty-five percent of its admitted assets.

§ 38.2-1421. Business entity obligations.

A. High grade. A domestic insurer may invest in any high grade obligations issued, assumed or guaranteed by any solvent business entity that is not in default as to principal or interest on the date of investment and which is created or existing under the laws of the United States or any state.

B. Medium grade. A domestic issuer may invest in medium grade obligations issued, assumed or guaranteed by any solvent business entity that is not in default as to principal or interest on the date of investment and which is created or existing under the laws of the United States or any state.

C. Lower grade. A domestic insurer may invest in lower grade obligations rated 4 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not rated by the Securities Valuation Office, rated in an equivalent grade by a national rating agency recognized by the Commission that are issued, assumed or guaranteed by any solvent business entity that is not in default as to principal or interest on the date of investment and which is created or existing under the laws of the United States or any state.

~~C. D.~~ D. As used in this section, "business entity obligations" shall not include any mortgage pass-through securities described in § 38.2-1437.1.

§ 38.2-1423. Preferred stocks.

A domestic insurer may invest in preferred stocks of any company incorporated under the laws of the United States or any state if:

1. a. The preferred stock under consideration is not in arrears as to dividends if cumulative, or

b. Full dividends on the preferred stock under consideration have been paid in the last three years, or since issue if issued less than three years before the date of investment, if noncumulative;

2. Required sinking fund payments are on a current basis; and

3. For each of the most recently completed three years, net earnings available for fixed charges of the issuer are at least equal to $1\frac{1}{4}$ times the sum of (i) the issuer's fixed charges and (ii) dividend requirements both of the preferred stock under consideration and of all preferred stock on a parity with it or having a greater priority. To the extent the preferred stock under consideration was issued less than three years before the date of investment, its pro forma dividend requirements shall be included in item (ii) in the preceding sentence. The preferred stock is rated P1, P2, P3, PSF1, PSF2 or PSF3 by the

Securities Valuation Office of the National Association of Insurance Commissioners, or if not rated by the Securities Valuation Office, is rated in an equivalent grade by a national rating agency recognized by the Commission.

§ 38.2-1433. Foreign securities.

A. A domestic insurer transacting the business of insurance in a foreign country may invest in securities of or issued in that country of substantially the same kinds, classes, and investment grades as the insurer may acquire in the United States.

B. A domestic insurer may invest in securities of or issued in a foreign country of substantially the same kinds, classes and investment grades as the insurer may acquire in the United States, provided (i) all such securities are rated medium grade or higher by the Securities Valuation Office of the National Association of Insurance Commissioners or by a national rating agency recognized by the Commission and no more than one percent of the insurer's admitted assets are invested in such securities which are rated medium grade, and (ii) the aggregate amount of foreign investment held by the insurer under this section for a single foreign jurisdiction does not exceed three percent of the insurer's admitted assets.

~~B.~~ C. These investments shall be payable in lawful currency of the United States, except where payment in other lawful currencies is required to match obligations denominated in such other lawful currencies.