

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 38.2-1401, 38.2-1443.1, and 38.2-3100.2 of the Code of Virginia,*
3 *relating to funding agreements; insurance accounts.*

4 [H 549]

5 Approved

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

7 **1. That §§ 38.2-1401, 38.2-1443.1, and 38.2-3100.2 of the Code of Virginia are amended and**
8 **reenacted as follows:**

9 § 38.2-1401. Definitions.

10 As used in this chapter:

11 "Admitted assets" means, for purposes of the limitations and standards imposed by Articles 1 and 2
12 of this chapter, the amount thereof as permitted to be reported on the statutory financial statement of the
13 insurer most recently required to be filed with the Commission pursuant to §§ 38.2-1300 and 38.2-1301
14 or other similar provisions within this title, but excluding the assets allocated to separate accounts
15 established pursuant to Article 3 (§ 38.2-1443 et seq.) of this chapter.

16 "Business entity" means a corporation, association, partnership, joint venture, trust, church, or
17 religious body.

18 "Category 1 investment" means any investment complying with Article 1 (§ 38.2-1400 et seq.) and
19 either Article 2 (§ 38.2-1412 et seq.) or 3 (§ 38.2-1443 et seq.), or both Articles 2 and 3, of this chapter.

20 "Category 2 investment" means any investment complying with Article 1, but with neither Article 2
21 nor Article 3, of this chapter.

22 "Claimants" means any owners, beneficiaries, assignees, certificate holders, or third-party
23 beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance
24 policy, annuity contract, benefit contract, or subscription contract.

25 "Date of investment" means the date on which funds are disbursed for an investment.

26 "Domestic governmental entity" means the United States, any state, or any municipality or district in
27 any such state, or any political subdivision, civil division, agency or instrumentality of one or more of
28 the foregoing.

29 "Fair market value" means the price that property will bring when (i) offered for sale by one who
30 desires, but who is not obligated, to sell it; (ii) bought by one who is under no necessity of having it;
31 and (iii) sufficient time has elapsed to allow interested buyers the opportunity to become informed of the
32 offer for sale.

33 "Fixed charges" means actual interest incurred in each year on funded and unfunded debt, excluding
34 interest on bank deposit accounts, and annual apportionment of debt discount or premium. Where
35 interest is partially or entirely contingent upon earnings, "fixed charges" includes contingent interest
36 payments.

37 "High grade obligations" means obligations which (i) are rated one or two by the Securities
38 Valuation Office of the National Association of Insurance Commissioners or (ii) if not rated by the
39 Securities Valuation Office, are rated in an equivalent grade by a national rating agency recognized by
40 the Commission.

41 "Insurer" means a company licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.), 11 (§ 38.2-1100 et
42 seq.), 12 (§ 38.2-1200 et seq.), 25 (§ 38.2-2500 et seq.), 26 (§ 38.2-2600 et seq.), 38 (§ 38.2-3800 et
43 seq.), 39 (§ 38.2-3900 et seq.), 40 (§ 38.2-4000 et seq.), 41 (§ 38.2-4100 et seq.), 42 (§ 38.2-4200 et
44 seq.), 43 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 46 (§ 38.2-4600 et seq.), 51 (§ 38.2-5100 et
45 seq.), or 61 (§ 38.2-6100 et seq.) of this title.

46 "Life insurer" means any insurer authorized to transact life insurance or to grant annuities as defined
47 in §§ 38.2-102 through 38.2-107 or authorized pursuant to the provisions of Chapter 38, 39, 40 or 41, or
48 any other chapter of this title, to provide any one of the following contractual benefits in any form:
49 death benefits, endowment benefits, annuity benefits or monument or tombstone benefits.

50 "Lower grade obligations" means obligations which (i) are rated four, five, or six by the Securities
51 Valuation Office of the National Association of Insurance Commissioners or (ii) if not rated by the
52 Securities Valuation Office, are rated in an equivalent grade by a national rating agency recognized by
53 the Commission.

54 "Medium grade obligations" means obligations which (i) are rated three by the Securities Valuation
55 Office of the National Association of Insurance Commissioners or (ii) if not rated by the Securities
56 Valuation office, are rated in an equivalent grade by a national rating agency recognized by the

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57 Commission.

58 "Minimum capital and surplus" means the minimum surplus to policyholders, or minimum net worth,
 59 a particular insurer must have to obtain and maintain its license to transact business in this
 60 Commonwealth pursuant to the applicable provisions of this title. In no case shall an insurer's minimum
 61 capital and surplus be less than zero.

62 "Net earnings available for fixed charges" means income minus operating expenses, maintenance
 63 expenses, taxes other than income taxes, depreciation, and depletion. Extraordinary nonrecurring income
 64 and expense items are excluded from the calculation of "net earnings available for fixed charges."

65 "Obligation" means a bond, debenture, note or other evidence of indebtedness.

66 "Prohibited investment" means any investment prohibited by § 38.2-1407.

67 "Reserve liabilities" means those liabilities which are required to be established by an insurer for all
 68 of its outstanding insurance policies, annuity contracts, benefit contracts and subscription contracts, in
 69 accordance with this title, as amended or as hereafter amended.

70 "Wrap-around mortgage" means a loan made by an insurer to a borrower, secured by a mortgage or
 71 deed of trust on real property encumbered by a first mortgage or first deed of trust, where the total
 72 amount of the obligation of the borrower to the insurer under the loan is not less than the sum of (i) the
 73 principal amount initially disbursed by the insurer on account of the loan and (ii) the unpaid principal
 74 balance of the obligation secured by the preexisting mortgage or deed of trust.

75 § 38.2-1443.1. Investment of amounts allocated to separate accounts for modified guaranteed life
 76 insurance, modified guaranteed annuities, and funding agreements.

77 A. Unless otherwise provided by regulation, the amounts allocated to separate accounts for modified
 78 guaranteed life insurance and modified guaranteed annuities, pursuant to the provisions of § 38.2-3113.1,
 79 *and for funding agreements pursuant to the provisions of § 38.2-3100.2*, and accumulations on them,
 80 may be invested and reinvested by a domestic insurer in any type of Category 1 investment.

81 B. Investments made pursuant to this section shall be taken into account in applying the investment
 82 limitations of §§ 38.2-1413 and 38.2-1414 to investments made by the insurer, by combining the
 83 investments under this section with all other investments subject to such limitations. In addition to the
 84 general account meeting these investment limitations, both the separate account and the general account
 85 together shall meet these investment limitations. The limitations of §§ 38.2-1413 and 38.2-1414 shall not
 86 otherwise apply to investments made pursuant to this section.

87 § 38.2-3100.2. Funding agreements.

88 A. Any insurer that is licensed to write life insurance or annuities in the Commonwealth may deliver,
 89 or issue for delivery, funding agreements in the Commonwealth.

90 B. As used in this section "funding agreement" is inclusive but not limited to guaranteed investment
 91 contracts, guaranteed interest contracts, unallocated group contracts, investment contracts, or other
 92 similar instrument by whatever name, and means an agreement that authorizes the insurer to accept
 93 funds and that provides for an accumulation of funds for the purpose of making one or more payments
 94 in fixed or variable amounts, or in both, that are not based on mortality or morbidity contingencies.

95 C. Funding agreements may be issued to persons to fund (i) benefits under any employee benefit
 96 plan as defined in the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (3))
 97 maintained in the United States or a foreign country; (ii) the activities of any organization exempt from
 98 taxation under section 501 (c) of the Internal Revenue Code or any similar organization in any foreign
 99 country; (iii) any program of the government of the United States, the government of any state, foreign
 100 country, or political subdivision thereof; (iv) any agreement providing for one or more payments in
 101 satisfaction of a claim; (v) any program of any individual or entity that has assets in excess of
 102 \$25,000,000; or (vi) any program of any individual or entity that is registered with the federal Securities
 103 and Exchange Commission.

104 D. Amounts paid to the insurer and proceeds applied under optional modes of settlement under a
 105 funding agreement may be allocated by the insurer to its general account ~~or~~ *and* to one or more separate
 106 accounts. *The assets of any such separate account shall not be chargeable with liabilities arising out of*
 107 *any other business that the insurer conducts. Where separate accounts are not chargeable with*
 108 *liabilities arising out of any other business of the insurer, a risk charge shall be paid on not less than a*
 109 *quarterly basis from the respective separate account to the general account to provide appropriate*
 110 *compensation and to fund an appropriate reserve, if any, for the risks to the general account.*

111 E. *No licensed insurer shall make an agreement in the Commonwealth providing for the allocation of*
 112 *funding agreement amounts to a separate account until such insurer has filed with the Commission a*
 113 *statement as to its methods of operation of such separate account and the Commission has approved*
 114 *such statement. Subject to the approval of the Commission, any such statement may apply to one or*
 115 *more groups of separate accounts classified by investment policy, number or kinds of separate account*
 116 *participants, methods of distribution of such agreements or otherwise. In determining whether or not to*
 117 *approve any such statement, the Commission shall consider, among other things, the history, reputation*

and financial stability of the insurer and the character, experience, responsibility, competence, and general fitness of the officers and directors of the insurer. An amendment of any such statement that changes the investment policy of a separate account shall be treated as an original filing.

F. A funding agreement delivered or issued for delivery in the Commonwealth shall not qualify as or be considered to be life insurance, an annuity, or any other form of insurance defined and classified in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title, but shall constitute transacting an insurance business in the Commonwealth.

G. For purposes of clause (ii) of subdivision B 1 of § 38.2-1509, a any funding agreement assets held in the insurer's general account, or for any other obligations due under the funding agreement from the insurer's general account, the funding agreement shall be treated as an insurance contract, and the holders thereof holder of the funding agreement shall be entitled to the same priority of distribution as other policyholders for the purposes of clause (ii) of subdivision B 1 of § 38.2-1509.

H. Any domestic insurer that has established separate accounts in connection with funding agreements and has allocated funds to such separate accounts shall file with the Commission, in addition to the annual statement required by § 38.2-1300, any other periodic or special reports the Commission prescribes.

I. An insurer that has established a separate account pursuant to this section shall not transfer any assets to such separate account from any of its other accounts, including its general account, unless the transfer to such separate account is authorized by the Commission.