VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 38.2-1705 of the Code of Virginia, relating to the Virginia Life, Accident and Sickness Insurance Guaranty Association; assessments.

[S 1482]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1705 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-1705. Assessments.

A. For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the board of directors shall assess the member insurers, separately for each account, at such time and for any amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice has been given to the member insurers. Late payments shall accrue interest from the due date compounded quarterly, based upon the average 90 day treasury bill rate for the most recently completed calendar quarter as published in the Federal Reserve Bulletin and shall be subject to a minimum charge of $50.

B. There shall be two classes of assessments, as follows:

1. Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

2. Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the Association under § 38.2-1704 with regard to an impaired or an insolvent insurer.

C. 1. The amount of any Class A assessment shall be determined by the board and may be authorized and called for current member insurers on a pro-rata or nonpro-rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The total of all nonpro-rata assessments shall not exceed $500 per member insurer in any one calendar year. The amount of a Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

2. Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this Commonwealth by each assessed member insurer on policies or contracts covered by each account and subaccount for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bear to such premiums received on business in this Commonwealth for those calendar years by all assessed member insurers.

3. Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection B and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The Association shall notify each member insurer of its anticipated pro-rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

D. The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association.

E. 1. a. Subject to the provisions of subdivision E 1 b, the total of all assessments authorized by the Association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the accident and sickness insurance account shall not in any one calendar year exceed two percent of that member insurer's average annual premiums received in the Commonwealth on the policies and contracts covered by the subaccount or account during the three calendar years preceding

the year in which the insurer became an impaired or insolvent insurer.

b. If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision E 1 a shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

c. If the maximum assessment, together with the other assets of the Association in an account, does not provide in one year in that account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

2. The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

3. If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subdivision C 2, the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision E 1.

F. ~~The board, by an equitable method as established in the plan of operation, may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments.~~ *If the Board of Directors of the Association determines that it has surplus funds on hand with respect to an insolvency, the Association shall, in accordance with the process set forth in the certificate of contribution for adjusting or cancelling the unamortized portion of the member insurer's certificate of contribution in the event of a reimbursement of assessment payments, use such surplus funds to reimburse member insurers for assessment costs not otherwise amortized and offset pursuant to § 38.2-1709 and pay the remaining surplus to the Commission, for deposit with the State Treasurer for credit to the general fund of the Commonwealth. Within 90 days of making payment of surplus funds to the Commission for deposit with the State Treasurer, the Association shall notify its member insurers of such payment. If any member insurer contends that it is entitled to any portion of the surplus refunded to the Commonwealth in order to recover assessment costs not otherwise amortized and offset pursuant to § 38.2-1709, then the member insurer may present evidence of such entitlement to the Commission. If the Commission determines that the member insurer is entitled to a portion of the surplus funds in order to recover assessment costs not otherwise amortized and offset pursuant to § 38.2-1709, then the State Treasurer shall pay to the member insurer the sum that the Commission determines that the member insurer is entitled to receive.* A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses and claims. *For purposes of this subsection, "surplus funds" includes funds that the Association obtains by way of distributions or recoveries from receivers and third parties as reimbursement for its costs in connection with insolvencies and impairments in excess of reasonable amounts retained in an account to provide funds for the continuing expenses of the Association and for future losses and claims.*

G. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

H. The Association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commission, for the amount of the assessment so paid excluding interest penalties. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the Commission may approve.

I. 1. A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

2. Within 60 days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

3. Within 30 days after a final decision has been made, the Association shall notify the protesting

member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Commission.

4. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer the protest to the Commission for a final decision, with or without a recommendation from the Association.

5. If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the Association.

J. The Association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.