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SENATE BILL NO. 755

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on January 22, 2018)

(Patron Prior to Substitute—Senator Sturtevant)

A BILL to amend and reenact § 38.2-3125 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 38.2-3111.1 and 38.2-3122.1, relating to annuity contracts purchased to fund certain retirement benefits; limits on de-risking transactions; limitation on transfers; protection from creditors' claims.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3125 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-3111.1 and 38.2-3122.1 as follows:

§ 38.2-3111.1. Annuity contract purchased to fund retirement benefits; transfer subject to Commission approval.

A. As used in this section:

"Employer" means a person doing business in or operating within the Commonwealth who employs a resident of the Commonwealth to work for wages or a salary or on commission and includes any similar entity acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" does not include the Commonwealth or any of its agencies, institutions, or political subdivisions or any public body.

"ERISA" means the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended.

"Pension plan" has the same meaning ascribed to that term in § 3(2) of ERISA.

"Retirement annuity contract" means an allocated or unallocated group annuity contract that is issued or issued for delivery by an insurer to an employer or a pension plan, pension plan sponsor, or affiliate of such employer, pension plan, or pension plan sponsor, for the purpose of providing retirement benefits to employees or retirees of the employer under a defined benefit plan and that (i) is issued or issued for delivery in the Commonwealth or (ii) affects retired employees residing in the Commonwealth who are certificate holders or beneficiaries of a contract if the Commission has jurisdiction over the insurer issuing the contract.

B. On and after July 1, 2018, no retirement annuity contract shall be transferred to or assumed by another insurer without the prior written approval of the Commission. The Commission shall not approve such a transfer or assumption of a retirement annuity contract until the insurer has provided to the Commission written certification, which shall include a legal opinion by an attorney whom the Commission finds has sufficient experience with and knowledge of ERISA and related relevant issues to render such an opinion, that the annuity benefits payable under the retirement annuity contract either will continue to be or will no longer be protected under ERISA or by the Federal Pension Benefit Guaranty Corporation. If the annuity benefits:

1. Will continue to be protected under ERISA or by the Federal Pension Benefit Guaranty Corporation, the Commission shall approve the proposed transfer or assumption; and

2. Will no longer be protected under ERISA or by the Federal Pension Benefit Guaranty Corporation, the Commission shall not approve the proposed transfer or assumption unless (i) the transfer is made to an assuming insurer that has the financial strength to fulfill its obligations under the retirement annuity contract and (ii) the assuming insurer is licensed in the Commonwealth to write the class or classes of insurance applicable to its assumed obligations under the retirement annuity contract. The Commission shall find that the assuming insurer to which the retirement annuity contract is proposed to be transferred has the financial strength to fulfill its obligations under the retirement annuity contract if it maintains a rating equivalent of A or better from two or more nationally recognized rating agencies.

C. If the Commission determines that an insurer has violated this section or any order or regulation adopted hereunder, the Commission, after notice and opportunity to be heard, may impose a penalty in accordance with §§ 38.2-218 and 38.2-219.

§ 38.2-3122.1. Annuity contract purchased to fund retirement benefits; protection from creditor's claims.

A. As used in this section:

"Employer" means a person doing business in or operating within the Commonwealth who employs another to work for wages or a salary or on commission and includes any similar entity acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" does not include the Commonwealth or any of its agencies, institutions, or political subdivisions or any public body.

"ERISA" means the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended.

"Pension plan" has the same meaning ascribed to that term in § 3(2) of ERISA.

B. Any interest in or amounts payable to a participant or beneficiary from any allocated or unallocated group annuity contract issued or issued for delivery in the Commonwealth to an employer or a pension plan for the purpose of providing retirement benefits to employees or retirees of the employer under a defined benefit plan, which retirement benefits were protected under ERISA or the Federal Pension Benefit Guaranty Corporation prior to the effective date of the group annuity contract and will not be protected under ERISA or the Federal Pension Benefit Guaranty Corporation on and after the effective date of the group annuity contract, shall be exempt from the claims of all creditors of such participant or beneficiary.

C. The exemption from the claims of creditors provided under subsection B shall not apply to claims arising under a qualified domestic relations order.

D. The exemption from the claims of creditors provided under subsection B shall not apply to any claim by a creditor with respect to an annuity contract that was taken out, made, or assigned in writing for the benefit of the creditor.

E. Notwithstanding the provisions of subsection B and subject to the applicable statute of limitations, the amount of any premiums or other amounts paid for the related annuity contract that were paid with the intent to defraud creditors, with the interest thereon, shall inure to the benefit of the creditors from the proceeds of the policy, contract, or deposit.

F. The exemption provided by this section shall not apply to any protected annuity contract issued or effected during the six months preceding the date that the person claiming the exemption (i) files a voluntary petition in bankruptcy; (ii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; or (iii) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.

§ 38.2-3125. Other rights of beneficiaries and assignees protected.

Since the purpose of §§ 38.2-3122, *38.2-3122.1,* and 38.2-3123 is to confer additional rights, privileges, and benefits upon beneficiaries and assignees of policies, no beneficiary or assignee shall by reason of these sections be divested or deprived of or prohibited from exercising or enjoying any right, privilege, or benefit that he would have or could exercise or enjoy had §§ 38.2-3122, *38.2-3122.1,* and 38.2-3123 not been enacted.