**VIRGINIA**

**PROPERTY AND CASUALTY**

**INSURANCE GUARANTY ASSOCIATION ACT**

**Article 1 Establishment and Operation of the Association.**

Sec.

38.2-1600. Purpose

38.2-1601. Application

38.2-1602. Liberal construction

38.2-1603. Definitions

38.2-1604. Association created; members; divided into three accounts

38.2-1605. Board of directors

38.2-1606. Duties and powers of Association

38.2-1607. Plan of operation

38.2-1608. Duties and powers of Commission; judicial review

38.2-1609. Insured's rights and liabilities; settlements binding on receiver or liquidator; priority of claims; statements to be filed with receiver or liquidator

38.2-1610. Exhaustion of remedies under policy; claims recoverable from more than one association

38.2-1611. Aids in detection and prevention of insurer insolvencies

38.2-1611.1 Tax write-offs of certificates of contribution

38.2-1612. Examination and regulation of Association by Commission; annual financial report

38.2-1613. Exemption from payment of fees and taxes

38.2-1614. Repealed

38.2-1615. No liability for action taken in good faith

38.2-1616. Stay of proceedings against insolvent insurer; setting aside judgment, etc.; access to records

38.2-1617. Termination of operation of Association; expiration of chapter.

**Article 2 Additional Funds Paid to Association.**

38.2-1618. Purpose and applicability of article

38.2-1619. Safety fund

38.2-1620. Financing the safety fund, maximum amount, distribution of excess

38.2-1621. Investment of safety fund

38.2-1622. Use of safety fund, repayment, etc

38.2-1623. Association as a fiduciary

Article 1. Establishment and Operation of the Association.

**§ 38.2-1600. Purpose**

The purpose of this chapter is to establish an association that shall provide prompt payment of covered claims to reduce financial loss to claimants or policyholders resulting from the insolvency of an insurer. This association shall assist in the detection and prevention of insurer insolvencies and shall apportion the cost of this protection among insurers.

(1970, c. 766, § 38.1-757; 1986, c. 562.)

**§ 38.2-1601. Application.**

This chapter shall apply to all classes of direct insurance written by member insurers but shall not be applicable to the following:

1. Life, annuity, health or disability insurance;

2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;

3. Fidelity or surety bonds, or any other bonding obligations;

4. Credit insurance, credit property insurance, and credit involuntary unemployment insurance;

5. Insurance of warranties or service contracts;

6. Title insurance;

7. Insurance of vessels or craft used primarily in a trade or business, their cargoes, and marine builders' risk and marine protection and indemnity;

8. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

9. Any class of insurance written by cooperative nonprofit life benefit companies, mutual assessment life, accident and sickness insurers, burial societies, fraternal benefit societies, captive insurers, risk retention groups, and home protection companies.

(1970, c. 766, § 38.1-758; 1986, c. 562; 1987, c. 529; 1993. cc. 77, 774; 1998. c. 230, eff. 7-1-98; 2000, c. 526.)

**§ 38.2-1602. Liberal construction**

This chapter shall be liberally construed to effect the purpose under § 38.2-1600, which shall constitute an aid and guide to interpretation.

(1970, c. 766, § 38.1-759; 1986, c. 562.)

**§ 38.2-1603. Definitions**

As used in this chapter:

"Account" means any one of the three accounts created by § 38.2-1604.

"Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

"Association" means the Virginia Property and Casualty Insurance Guaranty Association created under § 38.2-1604.

"Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

"Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, that (i) arises out of and is within the coverage and is subject to the applicable limits of a policy covered by this chapter and issued by an insurer who has been declared to be an insolvent insurer or (ii) arises out of and is within the coverage and is subject to the applicable limits of a policy that would not be excluded from the coverage of this chapter under the provisions of § 38.2-1601 if it were a policy of direct insurance and that has been assumed as a direct obligation by an insurer who has been declared to be an insolvent insurer, where such obligation is assumed through a merger or acquisition, or pursuant to an acquisition of assets and assumption of liabilities, an assumption under the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction, or any other novation agreement. The claimant or insured shall be a resident of the Commonwealth at the time of the insured loss, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured loss or the property from which the claim arises shall be permanently located in the Commonwealth. "Covered claim" shall not include any amount awarded as punitive damages or sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise; any amount due under any policy originally issued by a surplus lines carrier or risk retention group; any obligation assumed by an insolvent insurer after the commencement of any delinquency proceeding, as defined in Chapter 15 (§ 38.2-1500 et seq.), involving the insolvent insurer or the original insurer, unless it would have been a "covered claim" absent such assumption; or any obligation assumed by an insolvent insurer in a transaction in which the original insurer remains separately liable. An obligation owing under a contract of reinsurance shall not be deemed a direct obligation for the purposes of this definition unless it shall have been assumed pursuant to the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction. No claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in § 38.2-1606.

"Insolvent insurer" means an insurer that is (i) licensed to transact the business of insurance in the Commonwealth either at the time the policy was issued, when the obligation with respect to the covered claim was assumed or when the insured loss occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after July 1, 1987, by a court of competent jurisdiction in the insurer's state of domicile or of the Commonwealth under the provisions of Chapter 15 (§ 38.2-1500 et sec.), and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

"Member insurer" means any person who (i) writes any class of insurance to which this chapter applies under § 38.2-1601, including reciprocal insurance contracts, and (ii) is licensed to transact the business of insurance in the Commonwealth but shall not include persons listed in subdivision 9 of § 38.2-1601.

"Net direct written premiums" means direct gross premiums written in the Commonwealth on insurance policies applicable to this chapter, less return premiums and dividends paid or credited to policyholders on direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(1970, c. 766, § 38.1-760; 1986, c. 562; 1987, c. 529; 1998, c.230, eff 7-1-98; 2004, c. 285, § 1, eff. 7-1-04; [Acts 2015, c. 710](https://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW15.07&docname=UUID(IC8A2AAE0DD-F411E49742D-445E640C7D7)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=9160448&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=50E60760&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).)

**§ 38.2-1604. Association created; members; divided into three accounts.**

The nonprofit unincorporated legal entity known as the Virginia Property and Casualty Insurance Guaranty Association, created by former §38.1-761, shall continue in existence. All insurers defined as "member insurers" under § 38.2-1603 shall be and remain members of the Association as a condition of their license to transact the business of insurance in this Commonwealth. The Association shall perform its functions under a plan of operation established and approved under § 38.2-1607 and shall exercise its powers through a board of directors established under § 38.2-1605. For purposes of administration and assessment, the Association shall have three separate accounts: (i) the workers' compensation insurance account; (ii) the automobile insurance account; and (iii) the account for all other insurance to which this chapter applies. These accounts shall be in addition to and separate from the safety fund authorized by § 38.2-1619.

(1970, c. 766, § 38.1-761; 1986, c. 562; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1605. Board of directors.**

A. The board of directors of the Association shall consist of at least five but no more than nine persons serving terms specified in the plan of operation. The members of the board shall be elected by member insurers, giving consideration among other things to whether all types of member insurers are fairly represented. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

B. Members of the board may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors.

(1970, c. 766, § 38.1-762; 1986, c. 562.)

**§ 38.2-1606. Duties and powers of Association**

A. The Association shall:

1. Be obligated to pay covered claims that existed prior to the determination of insolvency and which arose before the earliest of (i) ninety-one days after the determination of insolvency, (ii) the policy expiration date, or (iii) the date the insured replaces or cancels the policy.

a. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a workers' compensation insurance coverage; or

(ii) An amount not exceeding $300,000 per claimant for all other covered claims.

b. In no event shall the Association be obligated to pay a claimant for an amount in excess of the insolvent insurer's obligation for a covered claim. Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the Guaranty Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The Association shall pay only that amount of each unearned premium which is in excess of fifty dollars. A covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

2. Be deemed the insurer to the extent of the insolvent insurer's obligation on the covered claims and to that extent shall have all the rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

3. Allocate claims paid and expenses incurred among the three accounts and assess member insurers separately for each account (i) the amounts necessary to pay the obligations of the Association under subdivision 1 of this subsection subsequent to an insolvency, (ii) the expenses of handling covered claims subsequent to an insolvency, and (iii) other expenses authorized by this chapter. The assessment of each member insurer shall be based on the ratio of the net direct written premiums of the member insurer to the net direct written premiums of all member insurers. This ratio shall be determined using the premiums for the calendar year preceding the assessment on the classes of insurance in the account. Each member insurer shall be notified of the assessment at least thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the classes of insurance in the account. If the sum of the maximum assessment and the assets of the account does not provide in any one year an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The Association shall pay claims in any order which it may deem reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer if payment of the assessment would cause the member insurer's financial statement to reflect an impairment of the insurer's minimum capital and surplus in any jurisdiction in which the member insurer is authorized to transact insurance; provided, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payments shall not cause an impairment of minimum capital and surplus. These payments shall be refunded to those members receiving larger assessments by virtue of the deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, payments authorized by the Association and made on covered claims and expenses incurred in the payment of those claims. The offset shall be allowed only if the payments are chargeable to the account for which the assessment is made.

3a. The Association shall issue to each insurer paying an assessment under this chapter, other than assessments paid pursuant to subdivision 3 (iii) of this subsection, a certificate of contribution in a form prescribed by the Commission, for the amount of the assessment paid, excluding interest penalties. All outstanding certificates shall be of equal priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer on its financial statement as an asset. This shall be shown in a form, in an amount, and for a period of time approved by the Commission.

4. Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims. The Association may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases and judgments may be properly contested.

5. Notify those persons as the Commission directs under subdivision 8 of this subsection.

6. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to (i) the approval of the Commission, and (ii) acceptance by the designated insurer.

7. Reimburse each servicing facility for the Association's obligations paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association. The Association shall pay the other expenses authorized by this chapter.

8. Notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Notification shall be sent by mail to the insureds' last known address. If the Association is unable to obtain the information required to mail the notice in a timely manner, the Association shall publish the notice in newspapers of general circulation likely to cover geographical areas occupied by the policyholders.

B. The Association may:

1. Employ or retain persons necessary to perform the duties of the Association.

2. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

3. Sue or be sued.

4. Negotiate and become a party to those contracts necessary to carry out the purpose of this chapter.

5. Perform any other acts necessary or proper to achieve the purpose of this chapter.

6. Pay refunds to the member insurers in proportion to their contributions made to each account during the five years immediately preceding the date of the refund. The total refund shall be the amount by which the assets of the account are expected to exceed the liabilities for the coming year as determined by the board of directors.

7. Obtain commitments or lines of credit, and in the event a natural disaster such as an earthquake, windstorm or fire results in covered claims, with the approval of its board of directors and the Commission, secure indebtedness for borrowed money to be used for the purpose set forth in subsection A of § 38.2-1622 in an amount not to exceed the amount reasonably estimated by its board of directors and the Commission as the aggregate amount of assessments which the Association will be authorized to make during the succeeding calendar year, by pledge, assignment, transfer in trust or hypothecation of any or all of the assessments to be made against its member insurers.

(1970, c. 766, §§ 38.1-763, 38.1-765; 1971, Ex.Sess., c. 1; 1982, c. 353; 1983, c. 486; 1986, c. 562; 1987, cc. 529, 565, 655; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1607. Plan of operation**

A.1. The plan of operation and any amendments to it shall be submitted to the Commission by the Association and shall not become effective until approved by the Commission in writing. The Commission shall approve the plan or amendment to the plan if it complies with this chapter and assures the fair, reasonable, and equitable administration of the Association.

2. The plan of operation approved under former § 38.1-764 shall remain in effect until modified in accordance with subdivision 3 of this subsection.

3. If the Association fails to submit suitable amendments to the plan, the Commission shall, after notice and hearing, adopt and promulgate any reasonable rules that are necessary or advisable to effect this chapter. Those rules shall continue in force until modified by the Commission or superseded by a plan or amendments submitted by the Association and approved by the Commission.

B. All member insurers shall comply with the plan of operation.

C. The plan of operation shall:

1. Establish the procedures for exercising the powers and duties of the Association under § 38.2‑1606.

2. Establish procedures for handling assets of the Association.

3. Establish the amount and method of reimbursing members of the board of directors under § 38.2-1605.

4. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of those claims shall be periodically submitted to the Association or similar organizations in another state by the receiver or liquidator.

5. Establish regular places and times for meetings of the board of directors.

6. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the board of directors.

7. Provide that any member insurer aggrieved by any final action or decision of the Association may appeal to the Commission within thirty days after the action or decision.

8. Establish the procedures for submitting to the Commission the names of elected members of the board of directors.

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

D. The plan of operation may provide that any or all powers and duties of the Association, except those under subdivision 3 of subsection A of § 38.2-1606 and subdivision 2 of subsection B of § 38.2-1606, shall be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this Association, or its equivalent, in two or more states. The corporation, association or organization shall be compensated for providing those and any other permissible services. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Commission. The delegation may be made only to a corporation, association, or organization that extends protection which is substantially no less favorable or effective than that provided by this chapter.

(1970, c. 766, § 38.1-764; 1986, c. 562.)

**§ 38.2-1608. Duties and powers of Commission; judicial review**

A. The Commission shall:

1. Notify the Association of the existence of an insolvent insurer within three days after it receives notice of the determination of the insolvency. The Association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that such complaint is filed with a court of competent jurisdiction.

2. Upon request of the board of directors, provide the Association with a statement of the net direct written premiums of each member insurer.

B. The Commission may:

1. Suspend or revoke, after notice and hearing, the license to transact the business of insurance in this Commonwealth of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commission may levy a fine on any member insurer that fails to pay an assessment when due. The fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than $100 per month.

2. Revoke the designation of any servicing facility if it finds that claims are being handled unsatisfactorily.

(1970, c. 766, § 38.1-765; 1971, Ex.Sess., c. 1; 1986, c. 562, 1987, c. 529.)

**§ 38.2-1609. Insured's rights and liabilities; settlements binding on receiver or liquidator; priority of claims; statements to be filed with receiver or liquidator**

A.1. Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Each insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same extent as the person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except the causes of action the insolvent insurer would have had if those sums had been paid by the insolvent insurer and except as provided in subdivision 2 of this subsection. In the case of an insolvent insurer operating on an assessment plan, payments of claims by the Association shall not reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments previously made. However, the receiver, liquidator or statutory successor shall under no circumstances levy an additional assessment against the insured, regardless of the terms of the policy.

2. The Association shall have the right to recover from the following persons the amount of any "covered claim" paid on behalf of such persons pursuant to this chapter:

a. Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds fifty million dollars and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter; and

b. Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter.

B. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another state. The court having jurisdiction shall grant those claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the Association or a similar organization incurred in handling claims shall be accorded the same priority as a liquidator's expenses.

C. The Association shall preserve its rights to the insolvent insurer by periodically filing with the receiver or liquidator statements of the covered claims paid by the Association and estimates of anticipated claims on the Association.

(1970, c. 766, § 38.1-766; 1986, c. 562; 1987, c. 529.)

**§ 38.2-1610. Exhaustion of remedies under policy; claims recoverable from more than one association**

A. Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer under which the claim is also covered, shall be required to first seek recovery under the policy covered by the insurer which is not insolvent. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.

A1. Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to exhaust first his right under such program. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such program.

B. Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the state where the insured resides. However, if it is a first party claim for damage to property with a permanent location, the insured shall seek recovery first from the association of the state where the property is located. For a workers' compensation claim recovery shall first be sought from the association of the state where the claimant resides. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

(1970, c. 766, § 38.1-767; 1986, c. 562; 1987, c. 529.)

**§ 38.2-1611. Aids in detection and prevention of insurer insolvencies**

To aid in the detection and prevention of insurer insolvencies:

1. The Association's board of directors has the duty, upon a majority vote, (i) to make recommendations to the Commission for the detection and prevention of insurer insolvencies, and (ii) to respond to requests by the Commission to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to the policyholders or the public.

2 through 5. Repealed.

6. At the request of the Commission and at the conclusion of any insurer's insolvency in which the Association was obligated to pay covered claims, the board of directors may prepare a report on the history and causes of the insolvency based on the information available to the Association. The report shall be submitted to the Commission.

(1970, c. 766, § 38.1-768; 1986, c. 562; 1987, c. 529.)

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

**<Section effective for the taxable year commencing on or after January 1, 2013. See, also, section effective until the taxable year commencing on or before January 1, 2013.>**

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](http://web2.westlaw.com/find/default.wl?referencepositiontype=T&docname=VASTS38.2-1606&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1000040&tf=-1&findtype=L&fn=_top&mt=WestlawGC&vr=2.0&referenceposition=SP%3b12f40000b0d36&pbc=B9AA603E&tc=-1&ordoc=9160457) 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](http://web2.westlaw.com/find/default.wl?tc=-1&docname=VASTS58.1-2500&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1000040&tf=-1&findtype=L&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457). 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 10 successive calendar years commencing January 1, 1998, in amounts each equal to 10 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 10 calendar years following the year the contribution was paid in amounts each equal to 10 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. 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, the Commission shall notify the Department of Taxation and 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 and (ii) subsequently refunded pursuant to subdivision A 3 of [§ 38.2-1606](http://web2.westlaw.com/find/default.wl?tc=-1&docname=VASTS38.2-1606&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1000040&tf=-1&findtype=L&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457) or subdivision B 6 of [§ 38.2-1606](http://web2.westlaw.com/find/default.wl?tc=-1&docname=VASTS38.2-1606&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1000040&tf=-1&findtype=L&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457) shall be paid to the Department of Taxation 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.

Acts 1987, c. 565; Acts 1987, c. 655; [Acts 1991, c. 371](http://web2.westlaw.com/find/default.wl?tc=-1&docname=UUID(IF8966603DC-F642A3997DC-FBE40A00D15)&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1077005&tf=-1&findtype=l&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457); [Acts 1997, c. 160](http://web2.westlaw.com/find/default.wl?tc=-1&docname=UUID(IC3F2DEEA3B-174BF3A1EB8-44B0378120D)&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1077005&tf=-1&findtype=l&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457). Amended by [Acts 2011, c. 850, eff. Jan. 1, 2013](http://web2.westlaw.com/find/default.wl?tc=-1&docname=UUID(I122D2D0068-FD11E0B3BCF-EA25FA1708C)&rp=%2ffind%2fdefault.wl&sv=Split&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d&rs=WLW11.10&db=1077005&tf=-1&findtype=l&fn=_top&mt=WestlawGC&vr=2.0&pbc=B9AA603E&ordoc=9160457), [Acts 2014, c. 154](https://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW14.10&docname=UUID(I15C98AE0AB-7511E38DDA8-866D62CEF81)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=9160457&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=FADB1624&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**<Section effective until the taxable year commencing on or before January 1, 2013. See, also, section effective for the taxable year commencing on or after January 1, 2013.>**

**§ 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.

(1987, cc. 565, 655; 1991, c. 371; 1997, c. 160, eff. 7-1-97.)

**§ 38.2-1612. Examination and regulation of Association by Commission; annual financial report**

The Association shall be subject to examination and regulation by the Commission. The board of directors shall submit, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the Commission.

(1970, c. 766, § 38.1-769; 1986, c. 562; 1996, c. 245, eff. 7-1-96.)

**§ 38.2-1613. Exemption from payment of fees and taxes**

The Association shall be exempt from payment of all fees and all taxes levied by this Commonwealth or any of its subdivisions except taxes levied on real or personal property.

(1970, c. 766, § 38.1-770; 1986, c. 562.)

**§ 38.2-1614. Repealed by Acts 1993, c.679**

**§ 38.2-1615. No liability for action taken in good faith**

There shall be no liability on the part of and no cause of action shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Commission or its representatives for any action taken or statement made by them in good faith in the performance of their powers and duties under this chapter. The Association's board of directors shall not incur any civil liability for any statements made in good faith under this provision.

(1970. c. 766, § 38.1-772; 1986, c. 562.)

**§ 38.2-1616. Stay of proceedings against insolvent insurer; setting aside judgment, etc.; access to records**

A. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this Commonwealth shall be stayed for up to six months and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the Commonwealth, whichever is later, to permit proper defense by the Association of all pending causes of action. For any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator that made the judgment, order, decision, verdict or finding and shall be permitted to defend against the claim on the merits.

B. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall permit access by the board or its authorized representatives to such of the insolvent insurer's records which are necessary for the board in carrying out its functions under this chapter with regard to covered claims. In addition, the liquidator, receiver or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.

(1970, c. 766, § 38.1-773; 1986, c. 562; 1987, c. 529.)

**§ 38.2-1617. Termination of operation of Association; expiration of chapter**

A. The Commission shall by order terminate the operation of the Association for any class of insurance covered by this chapter with respect to which it has found, after hearing, that there is in effect a statutory or voluntary plan which:

1. Is a permanent plan that is adequately funded or for which adequate funding is provided; and

2. Extends or will extend to the policyholders and residents of this Commonwealth protection and benefits with respect to insolvent insurers not substantially less favorable and effective to those policyholders and residents than the protection and benefits provided with respect to the classes of insurance under this chapter.

B. The Commission shall, by the same order, authorize discontinuance of future payments by insurers to the Association regarding the same classes of insurance. However, the assessments and payments shall continue, as necessary, to pay (i) covered claims of insurers determined to be insolvent prior to the order and (ii) the related expenses not covered by any other plan.

C. In the event the operation of the Association is terminated for all other classes of insurance within its scope, the Association shall, as soon as possible, distribute the balance of moneys and assets remaining. Distribution shall be made after the Association has settled all prior insurer insolvencies not covered by any other plan, including their related expenses. The distribution shall be made to the insurers that are then writing in this Commonwealth policies of the classes of insurance covered by this chapter and that had made payments to the Association. Distribution shall be made using a pro rata method based upon the aggregate of the payments made by the respective insurers during the five years immediately preceding the date of the order. Upon completion of the distribution for all of the classes of insurance covered by this chapter, this chapter shall be deemed to have expired.

(1970, c. 766, § 38.1-774; 1986, c. 562.)

**Article 2 Additional Funds Paid to Association.**

**§ 38.2-1618. Purpose and applicability of article**

The purpose of this article is to provide directions and guidelines for the control and use of funds provided pursuant to § 38.2-225, obtained through secured borrowings made pursuant to subdivision B 7 of § 38.2-1606, or obtained from sources of funds not specified in Article 1 (§ 38.2-1600 et seq.) of this chapter.

(1986, c. 562; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1619. Safety fund**

The Association shall maintain a separate asset account to be known as the safety fund. The safety fund shall be used to assist the Association in meeting the objectives specified in § 38.2-1600. (1986, c. 562.)

**§ 38.2-1620. Financing the safety fund, maximum amount, distribution of excess**

A. The safety fund, at the discretion of the Commission, shall receive penalty payments levied against member insurers made pursuant to subsection B of § 38.2-225 or any other payments approved by the Commission. Such payments shall include funds borrowed under the provisions of subdivision B 7 of § 38.2-1606 in the event of a natural disaster in order to provide for the prompt payment of covered claims and expenses related thereto.

B. The Commission may approve the payment of funds to the Association provided the balance in the safety fund account does not exceed two percent of the total of all member insurers' net direct written premiums for classes of insurance covered by the accounts specified in § 38.2-1604.

C. Except as provided in subsection D of this section, investment income earned on assets held in the safety fund shall be credited to the safety fund.

D. In the event the safety fund balance exceeds three percent of the net written premium for all classes of insurance covered by the accounts specified in § 38.2-1604, at the discretion of the Commission the difference shall be paid to the state treasury to the credit of the Literary Fund or shall be subject to subsection F of § 38.2-1622.

E. In the event the fund is dissolved, remaining assets in the safety fund will be distributed to the state treasury to the credit of the Literary Fund.

(1986, c. 562; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1621. Investment of safety fund**

The assets held in the safety fund may be invested in securities set forth in § 38.2-1415.

(1986, c. 562; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1622. Use of safety fund, repayment, etc**

A. The purpose of the safety fund is to provide for the payment of covered claims in the event the assessment limit specified in subdivision A3 of § 38.2-1606 is reached.

B. In the event the assets in the safety fund are needed to pay covered claims, these assets shall be loaned to the respective account specified in § 38.2-1604. This loan shall be the general obligation of the Association.

C. Assets in the safety fund derived from borrowed moneys obtained under the provisions of subdivision B 7 of § 38.2-1606 shall be lent to an account at the rate of interest the Association is paying the lender providing such moneys. Interest on any other loan shall be compounded quarterly and be based upon the average ninety-day treasury bill rate for the most recently completed calendar quarter as published in the Federal Reserve Bulletin. This rate will be updated quarterly in order to conform with the market rates of interest.

D. Loans shall be repaid by levying assessments pursuant to subdivision A3 of § 38.2-1606 against the members for the account on whose behalf the loan was negotiated. Unless otherwise approved by the Commission, the loan shall be repaid within six months of its issuance. This assessment in conjunction with any other assessments levied, shall not exceed the limit specified in subdivision 3 of § 38.2-1606.

E. Subject to the approval of the Commission, assets in the safety fund may be loaned to any account specified in § 38.2-1604 even though the maximum assessment in subdivision 3 of § 38.2-1606 has not been levied if the directors of the Association determine that this action will minimize the cost to the Association in paying covered claims.

F. Excess assets in the safety fund set forth in subsection D of § 38.2-1620 may be used to pay the Association's covered claims without the members incurring a liability to repay the safety fund.

(1986, c. 562; 1998, c. 230, eff. 7-1-98.)

**§ 38.2-1623. Association as a fiduciary**

In handling the assets of the safety fund, the Association shall be deemed a fiduciary for the Commonwealth.

(1986, c. 562.)