

CHAPTER 268
FORMERLY
HOUSE BILL NO. 378

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO FUNDING AGREEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 512. Insuring combinations without additional capital funds.

Without additional capital or additional surplus, an authorized insurer is also authorized:

- (1) If a life insurer, to grant annuities or issue funding agreements;
- (2) If a health insurer, to insure against congenital defects, as defined in § 906(a)(12) of this title;
- (3) If a casualty insurer, to transact also health insurance. Except, that this provision shall not apply to a domestic insurer authorized to transact casualty insurance pursuant to § 511(a)(1) of this title.

§ 536. “Funding agreement” defined.

A “funding agreement” is an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies (of the holder of the funding agreement).

Section 2. Amend Chapter 7, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 702. General premium tax; underwriting profits tax.

(a) Each authorized insurer and each formerly authorized insurer shall file with the Commissioner, on or before March 1 each year a report in form as prescribed by the Commissioner showing, except with respect to wet marine and transportation insurance, gross direct premium income, including policy, membership and other fees, assessments and all other considerations for insurance received by it during the next preceding calendar year on account of insurance contracts, other than as to workers' compensation and employer's liability, covering property, subjects or risks located, resident or to be performed in this State (with proper proportionate allocation of premiums as to such persons, property, subjects or risks in this State insured under policies covering persons, property, subjects or risks located or resident in more than 1 state), after deducting from such total direct premium income (1) the amount of returned premiums on cancelled policies (but not including the return of cash surrender values of life insurance policies) and (2) the unabsorbed portion of any deposit premium and the amount returned to policyholders as dividends and similar returns, whether paid in cash or credited or applied in reduction of premiums. The report shall be verified by the oath or affirmation of the president or secretary or other responsible officer of the insurer, duly administered by a person authorized to administer oaths. Considerations received for annuity contracts or funding agreements shall not be included in gross direct premium income or be subject to taxes imposed by this section or by § 707 of this title. Any premiums received for employer-owned life insurance policies, as defined in § 2704(e) of this title, and trust-owned life insurance policies, as defined in § 2704(c)(5) of this title, shall be itemized separately in the report, except that separate itemization for a trust-owned life insurance policy shall not be required if the insurer elects to pay tax on premiums received for such policy under paragraph (c)(1) of this section.

§ 703. Privilege tax on certain domestic insurers.

(b)(1) For purposes of subsection (a) of this section, the privilege tax with respect to each year shall be an amount determined in accordance with the following table, less any credits provided in subsection (c) of this section:

If annual gross receipts are:	The annual privilege tax shall be:
Under \$1,000,000	Exempt
\$1,000,000 to \$5,000,000	\$10,000
\$5,000,001 to \$10,000,000	\$25,000
\$10,000,001 to \$20,000,000	\$45,000
\$20,000,001 to \$30,000,000	\$65,000
\$30,000,001 to \$40,000,000	\$85,000

over \$40,000,000

\$95,000

(2) For purposes of the foregoing table and subsection (e) of this section, the "annual gross receipts" of a domestic insurance company shall consist of its net premium income and its investment income. As the terms are used herein:

a. The term "net premium income" shall mean an amount determined by taking the domestic insurer's gross direct premium income and all other considerations for insurance received by the domestic insurer on account of insurance contracts, but excluding considerations received for annuity contracts and funding agreements, and subtracting therefrom the amount of any returned premiums on cancelled policies (but not including the return of cash surrender values of life insurance policies) and the unabsorbed portion of any deposit premium and the amount returned to policyholders as dividends and similar returns, whether paid in cash or credited or applied in reduction of premiums; and

b. The term "investment income" shall mean the amount shown on the line for investment income on the annual statement filed in accordance with § 526(a) of this title.

Section 3. Amend Chapter 27, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2701. Scope of chapter.

This chapter applies to all insurance contracts and annuity contracts other than:

- (1) Reinsurance;
- (2) Policies or contracts not issued for delivery in this State nor delivered in this State; ~~and~~
- (3) Wet marine and transportation insurance; and
- (4) Funding agreements.

Section 4. Amend Chapter 59, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5918. Priority of certain claims.

(e) The priority of distribution of claims from the insurer's general assets shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class shall receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution shall be:

(1) Class I. — The costs and expenses of administration expressly approved by the receiver, including but not limited to the following:

a. The receiver's actual and necessary costs of taking possession of the insurer, preserving or recovering the assets of the insurer, and otherwise complying with this chapter;

b. Reasonable compensation for all services rendered at the request of and on behalf of the receiver, or that receiver's appointed deputy receiver or receivers, in the liquidation by the receivership's employees and its retained attorneys, accountants, actuaries, claims adjusters, expert witnesses and other consultants; and

c. All expenses incurred by the Department in supervising the receivership proceedings of the insurer;

(2) Class II. — The reasonable and necessary administrative expenses of the Delaware Insurance Guaranty Association or the Delaware Life and Health Insurance Guaranty Association or as the case may be, and any similar organization in another state. If the receiver determines that the assets of the estate will be sufficient to pay all Class I claims in full, Class II claims shall be paid currently, provided that the receiver shall secure from each of the associations receiving disbursements pursuant to this section an agreement to return to the receiver such disbursement, together with investment income actually earned on such disbursement, as may be required to pay Class I claims.

(3) Class III. — Claims by policyholders, beneficiaries and insureds, including the federal or any state or local government if such government is a named policyholder, beneficiary or insured under the policy,

arising from and within the coverage of and not in excess of the applicable limits of insurance policies, ~~and~~ insurance contracts and funding agreements issued by the company; liability claims, including liability claims of the federal or any state or local government, against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies, ~~and~~ insurance contracts and funding agreements issued by the company, including claims for reasonable attorneys' fees incurred by the policyholder to defend against the liability claim if such attorneys' fees are covered under the policy, but only to the extent covered; policyholder's claims for refunds of unearned premium; and claims of the Delaware Insurance Guaranty Association or the Delaware Life and Health Insurance Guaranty Association, as the case may be, and any similar organization in another state for coverage of policy benefits as required by statute; provided, however, that this paragraph shall not apply to the following claims:

- a. Claims arising under reinsurance contracts, including any claims for reinsurance premium due;
- b. Claims of insurers, insurance pools or underwriting associations for contribution, indemnity or subrogation, equitable or otherwise.

Interest shall not be allowed or paid on Class III claims, except that the value assigned to Class III claims arising from valid preliquidation judgments, other than judgments by default or collusion, may include prejudgment and postjudgment interest up to the date of liquidation if such interest is required by law or contract.

Approved June 22, 2016