

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 548

An Act to amend and reenact § 38.2-317 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1903.1, relating to rate and form regulation; exempting large commercial risks.

[S 587]

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-317 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1903.1 as follows:

§ 38.2-317. Delivery and use of certain policies and endorsements.

A. No insurance policy or endorsement of the kind to which Chapter 19 (§ 38.2-1900 et seq.) of this title applies shall be delivered or issued for delivery in this Commonwealth unless the policy form or endorsement is filed with the Commission at least thirty days prior to its effective date. The provisions of this section shall not apply to statutory fire insurance policies, standard automobile policy forms and endorsements, workers' compensation and employers' liability insurance as defined in § 38.2-119, ~~or~~ surety insurance as defined in § 38.2-121, *or insurance of large commercial risks as defined in § 38.2-1903.1.*

B. The Commission may disapprove or withdraw approval of the policy form or endorsement to which the section applies if the policy form or endorsement:

1. Is in violation of any provision of this title;
2. Contains provisions that are contrary to the public policy of this Commonwealth;
3. Contains or incorporates by reference, even where such incorporation is otherwise permissible, any inconsistent, ambiguous or misleading clauses or exceptions and conditions that deceptively affect the risk purported to be assumed in the general coverage of the policy;
4. Has any title, heading or other indication of its provisions that is misleading;
5. Contains provisions that are so unclear or deceptively worded that they encourage misrepresentation; or

6. Provides coverage of such a limited nature that it is contrary to the public interest of this Commonwealth.

C. Within thirty days after the filing of any policy form or endorsement requiring approval pursuant to this section, the Commission shall notify the insurer or rate service organization filing the policy form or endorsement of its approval or disapproval, and in the event of disapproval, its reason therefor. The Commission, at its discretion, may extend for up to an additional thirty days the period within which it shall approve or disapprove the policy form or endorsement. Any policy form or endorsement received but neither approved nor disapproved by the Commission shall be deemed approved at the expiration of the thirty days if the period is not extended, or at the expiration of the extended period, if any; however, no policy form or endorsement shall be deemed approved under the provisions of this section unless written notice of the intent to use the policy form or endorsement has been filed with the Commission.

D. If the Commission proposes to withdraw approval previously given or deemed given to the policy form or endorsement to which this section applies, it shall notify the insurer in writing at least ninety days prior to the proposed effective date of withdrawal giving its reasons for withdrawal.

E. The policy and endorsement forms referred to in subsection A of this section in use on October 1, 1976, may continue to be used, subject to disapproval by the Commission.

F. The Commission may by rule exempt any person, class of persons, or market segment from any or all of the provisions of this section. In promulgating an exemption, the Commission may consider the nature of the coverage, the person or persons to be insured or covered, the competence of the buyer or other parties to the contract, and other criteria the Commission considers relevant.

G. The policy and endorsement forms referred to in subsection A of this section shall be open to public inspection. Copies may be obtained by any person on request and upon payment of a reasonable charge for the copies.

H. Any insurer whose rate service organization files on behalf of such insurer shall notify the Commission prior to the effective date of any filing if the insurer is not going to accept the filing made on its behalf.

§ 38.2-1903.1. Exemptions of large commercial risks.

A. Notwithstanding any other provision of this title, an insurer shall not be required to file with, or to receive approval from, the Commission for policy forms and rates used in the insurance of large commercial risks.

B. The form approval and rate filing exemption set forth in subsection A shall not apply to rates and

forms for writing workers' compensation and professional liability policies issued to large commercial risks or to forms for writing commercial automobile policies issued to large commercial risks.

C. A "large commercial risk" is a person or entity that:

1. Has a risk manager to negotiate insurance coverage. A risk manager means (i) an employee of the large commercial risk or (ii) a third party consultant retained by the large commercial risk, who provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and the purchase of insurance, and who possesses at least one of the following credentials:

a. A bachelor's or higher degree in risk management issued by an accredited college or university;

b. A designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America;

c. A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

d. A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

e. A designation as a Fellow in Risk Management (FRM) issued by the Global Risk Management Institute/Risk & Insurance Management; or

f. At least five years of experience in one or more of the following areas of commercial property and casualty insurance: (i) risk financing, (ii) claims administration, (iii) loss prevention, or (iv) risk and insurance coverage analysis; and

2. Meets at least two of the following criteria:

a. Possesses a net worth in excess of \$10,000,000;

b. Generates annual revenues in excess of \$25,000,000;

c. Employs more than eighty full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 100 employees in the aggregate;

d. Pays annual aggregate nationwide insurance premiums (excluding professional liability and workers' compensation insurance premiums) in excess of \$100,000;

e. Is a not-for-profit organization or public body generating annual budgeted expenditures of at least \$10,000,000; or

f. Is a municipality with a population in excess of 30,000.

D. An insurer providing a policy to a large commercial risk must obtain annual, written certification signed by the risk manager and the chief executive officer from the large commercial risk certifying that the large commercial risk (i) employs the necessary qualified risk manager and stating the basis for the risk manager's qualifications; (ii) meets two of the other criteria set forth in subdivision C 2 of this section; (iii) is aware that the policy being purchased is not subject to initial state regulatory review or approval of rates and forms; (iv) has the necessary expertise to negotiate its own policy language and rates; and (v) agrees to the use of the exempted rates and forms by its insurer or insurers.

E. The policyholder certification shall be filed with and retained by the insurance company issuing coverage to the large commercial risk. An insurer issuing policies under this section shall provide the number of exempted policyholders annually to the Commission, along with an aggregation of the criteria establishing the exemption.