

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 706

An Act to amend and reenact §§ 13.1-400.3, 38.2-514, 38.2-514.1, 38.2-514.2, 38.2-613.1, 38.2-1211, 38.2-1220, 38.2-1341, 38.2-1346, 38.2-1800 through 38.2-1802, 38.2-1804, 38.2-1805, 38.2-1806, 38.2-1809, 38.2-1810, 38.2-1812, 38.2-1812.2 through 38.2-1815, 38.2-1817 through 38.2-1820, 38.2-1822, 38.2-1824 through 38.2-1828, 38.2-1830 through 38.2-1834, 38.2-1836 through 38.2-1845, 38.2-1866, 38.2-1867, 38.2-1868.1 through 38.2-1872, 38.2-1874, 38.2-2609, 38.2-3734, 38.2-3919, 38.2-4008, 38.2-4601.1, 38.2-4806, 38.2-4807, 38.2-4809, 38.2-4815, 38.2-5703, 58.1-2508 as it is currently effective and as it shall become effective, and 65.2-803.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 13 of Title 38.2 articles numbered 8, consisting of sections numbered 38.2-1347 through 38.2-1357, and 9, consisting of sections numbered 38.2-1358 through 38.2-1364, sections numbered 38.2-1815.1, 38.2-1821.1, 38.2-1834.1, 38.2-1836.1, and in Chapter 18 of Title 38.2 articles numbered 5.1, consisting of sections numbered 38.2-1857.1 through 38.2-1857.9, and 6.1, consisting of sections numbered 38.2-1865.1 through 38.2-1865.5; and to repeal §§ 38.2-1803, 38.2-1816, and 38.2-1829, Articles 5 (§§ 38.2-1846 through 38.2-1857) and 6 (§§ 38.2-1858 through 38.2-1865) of Chapter 18 of Title 38.2, and §§ 38.2-4800 through 38.2-4805, 38.2-5105, and 38.2-5702 of the Code of Virginia, relating to licensing, appointment, and permitted activities of insurance agents, insurance consultants, surplus lines brokers, viatical settlement brokers, reinsurance intermediaries, managing general agents, automobile clubs, reciprocal insurers, and burial societies.

[S 913]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-400.3, 38.2-514, 38.2-514.1, 38.2-514.2, 38.2-613.1, 38.2-1211, 38.2-1220, 38.2-1341, 38.2-1346, 38.2-1800 through 38.2-1802, 38.2-1804, 38.2-1805, 38.2-1806, 38.2-1809, 38.2-1810, 38.2-1812, 38.2-1812.2 through 38.2-1815, 38.2-1817 through 38.2-1820, 38.2-1822, 38.2-1824 through 38.2-1828, 38.2-1830 through 38.2-1834, 38.2-1836 through 38.2-1845, 38.2-1866, 38.2-1867, 38.2-1868.1 through 38.2-1872, 38.2-1874, 38.2-2609, 38.2-3734, 38.2-3919, 38.2-4008, 38.2-4601.1, 38.2-4806, 38.2-4807, 38.2-4809, 38.2-4815, 38.2-5703, 58.1-2508 as it is currently effective and as it shall become effective, and 65.2-803.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 13 of Title 38.2 articles numbered 8, consisting of sections numbered 38.2-1347 through 38.2-1357, and 9, consisting of sections numbered 38.2-1358 through 38.2-1364, sections numbered 38.2-1815.1, 38.2-1821.1, 38.2-1834.1, 38.2-1836.1, and in Chapter 18 of Title 38.2 articles numbered 5.1, consisting of sections numbered 38.2-1857.1 through 38.2-1857.9, and 6.1, consisting of sections numbered 38.2-1865.1 through 38.2-1865.5, as follows:

§ 13.1-400.3. Applications for licenses; fees; expiration and renewal; surety bond.

A. Each applicant for a license shall furnish such evidence as the Commission may require that it is able to perform its contracts and that it is managed by persons of good character and reputation. Application for a license to do business as an automobile club shall be made in writing in the form prescribed by the Commission and shall be accompanied by a nonrefundable application fee of \$500. Upon the filing of an application and the payment of the application fee, the Commission shall make an investigation of the applicant. The Commission shall issue a license, expiring on June 30 immediately following the date of issuance, if it finds that (i) the application is in proper form and the required fee has been paid; (ii) the corporation is a corporation in this Commonwealth or a foreign corporation that has a certificate of authority to transact business in this Commonwealth; and (iii) the applicant has ~~filed~~ *obtained and agreed to maintain* a surety bond in the amount of \$30,000 conditioned to secure the performance of its contracts. The application fee required by this subsection shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

B. Subject to the above requirements and the provisions of § 13.1-400.5, a licensed automobile club may renew its license effective July 1 of each year, upon the prior payment of a nonrefundable annual license fee of \$200, unless the license has been surrendered, suspended or revoked. Automobile club licenses renewed effective January 1, 1998, shall continue in effect until July 1, 1999, unless the license is in the interim surrendered, suspended or revoked. The renewal fee required by this subsection shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

§ 38.2-514. Failure to make disclosure.

A. No person shall *sell*, solicit, or ~~effect~~ *negotiate* the sale of an annuity, a life insurance policy or an accident and sickness insurance policy without furnishing the disclosure information required by any rules and regulations of the Commission.

B. ~~Any lending institution, bank holding company, savings institution holding company or subsidiary or affiliate of either the lending institution or holding company, including any officer or employee thereof, licensed as an insurance agency or insurance agent in this Commonwealth shall, prior to the sale of any policy of life insurance in which there is or will be an accumulation of cash value during the term of the policy, make a written disclosure to the purchaser of the policy's "interest adjusted net cost index" in compliance with regulations or forms approved by the Commission.~~

C. No person shall provide to an insured, claimant, subscriber or enrollee under an accident and sickness insurance policy, subscription contract, or health maintenance organization contract, an explanation of benefits which does not clearly and accurately disclose the method of benefit calculation and the actual amount which has been or will be paid to the provider of services.

§ 38.2-514.1. Disclosure required.

A. Any agent *selling*, soliciting, or negotiating; ~~procuring, or effecting~~ a contract of insurance in conjunction with any automobile club service agreement or in conjunction with any accidental death and dismemberment policy shall provide to the applicant, at the time of application, a written disclosure which shall contain:

1. The name or type of each policy or contract of insurance and automobile club service agreement for which application has been made;
2. The premium quotation associated with each policy or contract of insurance and the cost of any dues, assessments or periodic payments of money associated with each automobile club service agreement for which application has been made; and
3. A statement that the applicant has elected to purchase such policies, contracts, or automobile club service agreements.

B. The disclosure required by this section shall be signed and dated by the agent and the applicant. A copy of the signed disclosure shall be given to the applicant at the time of application. If the application is made by telephonic or electronic request, a copy of the disclosure shall be signed and dated by the agent and shall be mailed to the applicant within ten *calendar* days of the application.

C. The provisions of this section shall apply only to the original issuance of policies or contracts of insurance and automobile club service agreements covering personal, family, or household needs rather than business or professional needs. As used in this section, an automobile club service agreement is an agreement issued by an automobile club as defined in § 13.1-400.1.

D. Notwithstanding subsections A, B and C, this section shall not apply to the sale of group insurance.

§ 38.2-514.2. Disclosures required of motor vehicle rental contract insurance agents and enrollers.

No insurance may be *sold*, solicited, or negotiated; ~~procured, or effected~~ by a motor vehicle rental contract insurance agent or enroller unless a conspicuous written disclosure is provided to the prospective renter that (i) summarizes clearly and correctly the material terms of coverage offered, including the identity of the insurer or insurers, (ii) advises that the coverage offered may duplicate coverage already provided by the renter's personal motor vehicle insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage, and (iii) states that the purchase of the coverages offered is not required in order to rent a motor vehicle.

§ 38.2-613.1. Disclosure of agent's moratorium required.

If a duly appointed agent of an insurer proposes to place a policy of motor vehicle insurance as defined in § 38.2-2212 with another insurer or proposes to submit an application to the Virginia Automobile Insurance Plan solely because of a moratorium on such agent's *selling*, soliciting, or negotiating; ~~procuring, or effecting~~ new motor vehicle insurance that would otherwise be acceptable to such insurer and such placement or submission would result in the applicant's being charged a higher rate, the agent shall disclose to the applicant the existence of the moratorium prior to such placement or submission.

§ 38.2-1211. License required of agent.

No person shall act in this Commonwealth as an agent of a reciprocal in the *selling*, solicitation or ~~procurement~~ *negotiation* of applications for insurance, subscriber's agreements and powers of attorney, or in the collection of premiums in connection with the reciprocal insurer, without first procuring a license from the Commission pursuant to the requirements in Chapter 18 of this title. An agent shall be appointed by each reciprocal the agent represents.

§ 38.2-1220. Attorney to file bond.

A. Concurrent with the filing of the declaration provided for in § 38.2-1219, the attorney of a domestic reciprocal shall ~~file with~~ *certify to* the Commission, *and thereafter for each year in which the reciprocal is licensed under this chapter shall keep in force*, a bond payable to this Commonwealth *that complies with the requirements of this chapter*. ~~The bond shall be executed by the attorney and by a fidelity insurer licensed in this Commonwealth and shall be subject to the approval of the Commission.~~

B. The bond shall be in an amount established at the discretion of the Commission, which shall be at least \$50,000. The bond shall be on the condition that the attorney will faithfully account for all moneys and other property of the reciprocal coming into the attorney's control and that the attorney will not withdraw or appropriate for his own use from the funds of the reciprocal any moneys or property to which he is not entitled under the power of attorney.

C. The bond shall provide that it is not subject to cancellation unless thirty days' written notice of intent to cancel is given to both the attorney and the Commission.

D. *The bond shall be executed by the attorney and by a fidelity insurer licensed in this Commonwealth and shall be subject to the approval of the Commission.*

CHAPTER 13.

REPORTS, RESERVES AND EXAMINATIONS, INSURANCE HOLDING COMPANIES, REINSURANCE INTERMEDIARIES, AND MANAGING GENERAL AGENTS.

§ 38.2-1341. Definitions.

As used in this article:

"Accredited state" means a state in which the insurance department or regulatory agency responsible for administering the insurance laws of said state has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners' (NAIC) Financial Regulation Standards and Accreditation Program.

"Control" or "controlled" has the meaning ascribed in § 38.2-1322.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

"Controlling producer" means a producer who, directly or indirectly, controls an insurer.

"Foreign insurer" means any foreign or alien insurer licensed to transact the business of insurance in this Commonwealth pursuant to § 38.2-1024.

"Licensed insurer," "insurer" or "property and casualty insurer" means any person, firm, association or corporation duly licensed under this title to write policies or agreements providing any form of insurance as defined in §§ 38.2-110 through 38.2-134. The following, inter alia, are not licensed insurers for the purposes of this article:

1. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and § 38.2-5101 of this title;

2. All residual market pools and joint underwriting authorities or associations; and

3. Any insurer licensed as a captive insurer under Chapter 11 (§ 38.2-1100 et seq.) and any foreign insurer which is either (i) an association captive or (ii) a pure captive. An "association captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards and liabilities of the members of an insurance association comprised of any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote, all of the outstanding voting securities of the association insurer. A "pure captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Producer" means:

1. Any insurance agent *subject to licensure pursuant to the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title, or any* managing general agent or reinsurance intermediary subject to licensure pursuant to the provisions of ~~Chapter 18 (§ 38.2-1800 et seq.) this chapter;~~ or

2. Any person subject to substantially similar licensure provisions of another state when, for any compensation, commission or other thing of value, such agent, intermediary or person acts on behalf of an insured other than the agent, intermediary or person, or aids in any manner, in *selling, soliciting, or negotiating, procuring or effecting* the making of any contract of insurance in which the insured, owner and beneficiary are other than the agent, intermediary or person.

§ 38.2-1346. Licensure.

A. No person shall act in this Commonwealth as a producer, and no resident of this Commonwealth shall act as a producer, unless such person or resident is licensed as an insurance agent *pursuant to the provisions of Chapter 18 (§ 38.2-1800 et seq.) of this title, or as a* reinsurance intermediary or managing general agent pursuant to the provisions of ~~Chapter 18 (§ 38.2-1800 et seq.) of this title~~ *chapter.*

B. As used in this section, the terms "resident" and "insurance agent" have the meanings prescribed in § 38.2-1800, and the terms "managing general agent," and "reinsurance intermediary" have the meanings set forth in §§ ~~38.2-1846 38.2-1347 and 38.2-1858 38.2-1358.~~

Article 8.

Licensing of Reinsurance Intermediaries.

§ 38.2-1347. Definitions.

As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or

other legal entity that is entitled to hold property in its own name and which is not a sole proprietorship.

"Controlling" shall have the same meaning as set forth in § 38.2-1322.

"Insurer" means any person duly licensed in this Commonwealth pursuant to Chapters 10 (§ 38.2-1000 et seq.), 11 (§ 38.2-1100 et seq.), 12 (§ 38.2-1200 et seq.), 25 (§ 38.2-2500 et seq.), 26 (§ 38.2-2600 et seq.), 38 (§ 38.2-3800 et seq.) through 46 (§ 38.2-4600 et seq.), or 51 (§ 38.2-5100 et seq.) of this title.

"Licensed reinsurance intermediary" means an agent, broker or reinsurance intermediary licensed to act as a reinsurance intermediary pursuant to the applicable provision of this article.

"Qualified United States financial institution" means an institution that:

1. Is organized or (in the case of a United States office of a foreign banking organization) licensed under the laws of the United States or any state thereof;
2. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and
3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in this article.

"Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, who, without the power to bind the ceding insurer, solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer or otherwise negotiates with a ceding insurer concerning reinsurance cessions or retrocessions.

"Reinsurance intermediary manager" means any person who (i) has authority to bind reinsurance risks or (ii) manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance intermediary manager or other similar term. Notwithstanding the foregoing, the following persons shall not be considered a reinsurance intermediary manager for the purposes of this article, provided such person is acting in the capacity of employee or agent, as described herein, and properly discharging the duties of such employment or agency:

1. An employee of the reinsurer;
2. A United States manager of the United States branch of an alien reinsurer;
3. An underwriting manager who, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;
4. The manager of a group, association, pool or organization of insurers that engages in joint underwriting or joint reinsurance and that is subject to examination by the supervising insurance official of the state, as defined in § 38.2-100, in which the manager's principal business office is located; or
5. A licensed managing general agent who binds facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements and subdivision 10 of § 38.2-1360.

"Reinsurer" means any insurer licensed in this Commonwealth with the authority to cede or accept from any insurer reinsurance pursuant to § 38.2-136.

§ 38.2-1348. License requirements.

A. No insurer shall permit a person to act, and no person shall act, as a reinsurance intermediary broker in this Commonwealth if the reinsurance intermediary broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

1. In this Commonwealth, unless such reinsurance intermediary broker is a licensed reinsurance intermediary in this Commonwealth; or
2. In another state, unless such reinsurance intermediary broker is a licensed reinsurance intermediary in this Commonwealth or in another state having a law substantially similar to this law.

B. No insurer shall permit a person to act, and no person shall act, as a reinsurance intermediary manager:

1. For a reinsurer domiciled in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth;
2. In this Commonwealth, if the reinsurance intermediary manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth; or
3. In another state for an insurer not domiciled in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth or in another state having a law substantially similar to this law.

C. The Commission may require a reinsurance intermediary manager to:

1. Be bonded in a manner acceptable to the Commission for the protection of the reinsurer and to provide a certification or attestation that such bond is in effect as a prerequisite to license issuance or renewal; and

2. Maintain an errors and omissions policy that is acceptable to the Commission and to provide a certification or attestation that such policy is in effect as a prerequisite to license issuance or renewal.

D. The Commission may issue a reinsurance intermediary license to any individual or business entity who has complied with the requirements of this article. Any such license issued to a business entity will authorize all the members of such business entity and any designated officers, directors or employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto.

E. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title. An applicant for a reinsurance intermediary license also shall furnish the clerk of the Commission with the name and address of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such reinsurance intermediary may be served. Such licensee shall promptly notify the clerk of the Commission in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commission.

F. The Commission may refuse to issue a reinsurance intermediary license, subject to the right of the applicant to demand a hearing on the application, if the Commission believes the applicant, any person named on the application, or any member, principal, officer or director of the applicant, is not trustworthy; that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary; or that any of the foregoing has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license.

G. Residents of Virginia who are members of the Virginia State Bar when acting in their professional capacity as such shall be exempt from the requirements of this section.

H. Any person seeking to be licensed as a reinsurance intermediary in this Commonwealth shall apply for such license in a form acceptable to the Commission, and shall pay to the Commission a nonrefundable application fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Every licensed reinsurance intermediary shall pay to the Commission a nonrefundable biennial renewal fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Between May 1 and June 1 of the renewal year, each licensed reinsurance intermediary shall submit to the Commission a renewal application and fee in the manner and form prescribed by the Commission. All fees shall be collected by the Commission and paid into the state treasury and placed to the credit of the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400. Each license and renewed license shall expire on June 30 of the appropriate year.

I. Any person seeking to be licensed as a reinsurance intermediary in this Commonwealth shall observe and abide by the laws of this Commonwealth and submit with its license application the following:

1. A statement identifying its principal place of business, organizational structure, and other such information as the Commission may require to verify that the reinsurance intermediary is qualified under the definition of this article;

2. A copy of its plan of operations;

3. A copy of its current financial statement, which shall be certified by an independent public accountant and in a form acceptable to the Commission; and

4. Such information or reports as may be required to verify its continuing qualification as a reinsurance intermediary.

§ 38.2-1349. Required contract provisions; reinsurance intermediary brokers.

Transactions between a reinsurance intermediary broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

1. The insurer may terminate the reinsurance intermediary broker's authority at any time;

2. The reinsurance intermediary broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the reinsurance intermediary broker, and remit all funds due to the insurer within thirty calendar days of receipt;

3. All funds collected for the insurer's account will be held by the reinsurance intermediary broker in

a fiduciary capacity in a bank that is a qualified United States financial institution as defined in § 38.2-1347;

4. The reinsurance intermediary broker will comply with § 38.2-1350;

5. The reinsurance intermediary broker will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

6. The reinsurance intermediary broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

§ 38.2-1350. Books and records; reinsurance intermediary brokers.

A. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary broker, the reinsurance intermediary broker will keep a complete record for each transaction showing:

1. The type of contract, limits, underwriting restrictions, classes or risks and territory;

2. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

3. Reporting and settlement requirements of balances;

4. Rate used to compute the reinsurance premium;

5. Names and addresses of assuming reinsurers;

6. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker;

7. Related correspondence and memoranda;

8. Proof of placement;

9. Details regarding retrocessions handled by the reinsurance intermediary broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

10. Financial records, including but not limited to, premium and loss accounts; and

11. When the reinsurance intermediary broker procures a reinsurance contract on behalf of a licensed ceding insurer:

a. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

b. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

B. The insurer will have reasonable access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary broker related to its business in a form usable by the Commission.

§ 38.2-1351. Duties of insurers utilizing the services of a reinsurance intermediary broker.

A. An insurer shall not engage the services of any individual or business entity to act as a reinsurance intermediary broker on its behalf unless such person is licensed as required by § 38.2-1348.

B. An insurer may not employ an individual who is employed by a reinsurance intermediary broker with which it transacts business, unless such reinsurance intermediary broker is under common control with the insurer and subject to Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

C. The insurer shall annually obtain a copy of the current financial statement of each reinsurance intermediary broker with which it transacts business. Such statement shall be certified by an independent public accountant and in a form acceptable to the Commission.

§ 38.2-1352. Required contract provisions; reinsurance intermediary managers.

Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty calendar days before such reinsurer assumes or cedes business through such reinsurance intermediary manager, a true copy of the approved contract shall be filed with the Commission for approval. The contract shall, at a minimum, provide that:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary manager will render timely accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account will be held by the reinsurance intermediary manager in a fiduciary capacity in a bank that is a qualified United States financial institution as defined in § 38.2-1347. The reinsurance intermediary manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the

reinsurance intermediary manager, the reinsurance intermediary manager will keep a complete record for each transaction showing:

- a. The type of contract, limits, underwriting restrictions, classes or risks and territory;
- b. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
- c. Reporting and settlement requirements of balances;
- d. Rate used to compute the reinsurance premium;
- e. Names and addresses of assuming reinsurers;
- f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance manager;
- g. Related correspondence and memoranda;
- h. Proof of placement;
- i. Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by subsection D of § 38.2-1354, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- j. Financial records, including but not limited to, premium and loss accounts; and
- k. When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

5. The reinsurer will have reasonable access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary manager.

7. The reinsurance intermediary manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

8. Sets forth the rates, terms and purposes of commissions, charges and other fees that the reinsurance intermediary manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:

a. All claims will be reported to the reinsurer in a timely manner;

b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(1) Has the potential to exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the reinsurer, or any other amount deemed appropriate by the Commission, whichever is less;

(2) Involves a coverage dispute;

(3) May exceed the reinsurance intermediary manager's claims settlement authority;

(4) Is open for more than six months; or

(5) Is closed by payment of an amount exceeding one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the reinsurer, or any other amount deemed appropriate by the Commission, whichever is less;

c. All claim files will be the joint property of the reinsurer and reinsurance intermediary manager. However, upon entry of order of liquidation or the appointment of a receiver for the liquidation of the reinsurer, such files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary manager shall have reasonable access to and the right to copy the files on a timely basis;

d. Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. Where electronic claims files are in existence, the contract must address the timely transmission of the data.

11. If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the Commission for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection C of § 38.2-1354.

12. The reinsurance intermediary manager will annually provide the reinsurer with a current financial statement prepared by an independent certified accountant in a form acceptable to the Commission.

13. The reinsurer shall, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager.

14. The reinsurance intermediary manager will disclose to the reinsurer any relationship it has with any insurer prior to negotiating any business with such insurer pursuant to this contract.

15. Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

§ 38.2-1353. Prohibited acts.

No insurer shall authorize its reinsurance intermediary manager to, and no reinsurance intermediary manager shall:

1. Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract between the reinsurance intermediary manager and the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Permit any agent or reinsurance intermediary to represent the reinsurer without assuring that the agent or reinsurance intermediary is lawfully licensed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's surplus to policyholders as of December 31 of the last completed calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer unless such reinsurance manager is under common control with the reinsurer subject to Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

7. Appoint a sub-reinsurance intermediary manager.

§ 38.2-1354. Duties of reinsurers utilizing the services of a reinsurance intermediary manager.

A. A reinsurer shall not engage the services of any individual or business entity to act as a reinsurance intermediary manager on its behalf unless such individual or business entity is licensed as required by § 38.2-1348.

B. The reinsurer shall annually obtain a copy of the current financial statement of each reinsurance intermediary manager that such reinsurer has engaged. Such statements shall be prepared by an independent certified accountant in a form acceptable to the Commission.

C. If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. This opinion shall be in addition to any other required loss reserve certification.

D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary manager.

E. Within thirty calendar days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of such termination in a form acceptable to the Commission.

F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary manager. This subsection shall not apply to relationships governed by Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

G. An insurer shall not delegate to any person, other than one of its officers, the authority to enter into or bind any reinsurance agreement by which the insurer agrees to cede or retrocede any risk to a reinsurer, except that an insurer may delegate the specific authority to bind facultative reinsurance contracts by placing individual risks pursuant to the provisions of subdivision 1 of § 38.2-1353 or subdivision 10 of § 38.2-1360.

1. The officer shall be a regular salaried employee of such insurer and shall not be affiliated with the reinsurance intermediary.

2. The insurer is not prohibited by the provisions of this subsection from delegating the authority to enter into or bind an agreement to assume a risk to a licensed reinsurance intermediary manager pursuant to the provisions of this article, provided the authority to cede and assume a given risk is not simultaneously vested in the same intermediary.

§ 38.2-1355. Examination authority.

A. A reinsurance intermediary shall be subject to examination by the Commission. The Commission shall have reasonable access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commission.

B. A reinsurance intermediary manager may be examined, pursuant to Article 4 (§ 38.2-1317 et seq.) of this chapter, as if it were the reinsurer. In addition, the reinsurance intermediary shall be subject to

examination pursuant to § 38.2-1809 if it or any of its officers, directors, agents, or employees is licensed as a producer under Chapter 18 (§ 38.2-1800 et seq.) of this title.

§ 38.2-1356. Penalties and liabilities; grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

A. If the Commission finds, after providing an opportunity to be heard that any person has violated any provisions of this article, the Commission may in addition to any other remedies authorized by this title, order the reinsurance intermediary to make restitution to the insurer, reinsurer, rehabilitator or liquidator or receiver of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

B. The Commission may, in addition to or in lieu of a penalty under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew a reinsurance intermediary's license for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;

2. Violating any insurance or reinsurance laws or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;

5. Intentionally misrepresenting the terms of an actual or proposed insurance or reinsurance contract;

6. Having been convicted of a felony;

7. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

8. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;

9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, or territory;

10. Forging another's name to an application for insurance or reinsurance, or to any document related to an insurance or reinsurance transaction;

11. Knowingly accepting insurance business from an individual who is not licensed;

12. Failing to comply with an administrative or court order imposing a child support obligation; or

13. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

C. If the Commission believes that any applicant for licensing pursuant to this article is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten calendar days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1357, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with the provisions of this article, or any rule, regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

§ 38.2-1357. Requirement to report to Commission.

A. Each licensed reinsurance intermediary shall report any change in business or residence address or name within thirty calendar days to the Commission and to any contracted insurer.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity

licensed as a reinsurance intermediary in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for a reinsurance intermediary license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the reinsurance intermediary intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed reinsurance intermediary convicted of a felony shall report within thirty calendar days to the Commission the facts and circumstances regarding the criminal conviction.

Article 9.

Licensing of Managing General Agents.

§ 38.2-1358. Definitions.

As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity that is entitled to hold property in its own name and which is not a sole proprietorship.

"Insurer" means any person, duly licensed in the Commonwealth pursuant to Chapters 10 (§ 38.2-1000 et seq.), 11 (§ 38.2-1100 et seq.), 12 (§ 38.2-1200 et seq.), 25 (§ 38.2-2500 et seq.), 26 (§ 38.2-2600 et seq.), 38 (§ 38.2-3800 et seq.) through 46 (§ 38.2-4600 et seq.), or 51 (§ 38.2-5100 et seq.) of this title.

"Managing general agent" means any person who manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office; and who acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or exceeding five percent of the surplus to policyholders of the insurer as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the Commission or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of this article:

1. An employee of the insurer;
2. A United States manager of the United States branch of an alien insurer;
3. An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written; or
4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

"Qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;
2. Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Underwrite" means the authority to accept or reject risk on behalf of the insurer.

§ 38.2-1359. Licensure.

A. No domestic insurer shall permit a person to act, and no person shall act, in the capacity of a managing general agent for an insurer domiciled in this Commonwealth unless such person is licensed in this Commonwealth to act as a managing general agent.

B. No foreign or alien insurer shall permit a person to act, and no person shall act, in the capacity of a managing general agent representing such an insurer unless such person is licensed (i) in this Commonwealth to act as a managing general agent or (ii) in another state under laws that are substantially similar to the provisions of this article.

C. The Commission may license as a managing general agent any individual or business entity that has complied with the requirements of this article and any regulations concerning licensure that may be promulgated by the Commission. The Commission may refuse to issue a license, subject to the right of the applicant to demand a hearing on the application, if the Commission believes the applicant, any person named on the application, or any member, principal, officer or director of the applicant is not trustworthy to act as a managing general agent, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for issuance of such license.

D. Any person seeking a license pursuant to subsection A or clause (i) of subsection B of this section shall apply for such license in a form acceptable to the Commission, and shall pay to the Commission a nonrefundable application fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Every licensed managing general agent shall pay to the Commission a nonrefundable biennial renewal fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Between May 1 and June 1 of the renewal year, each licensed managing general agent shall submit to the Commission a renewal application form and fee in the manner and form prescribed by the Commission. All fees shall be collected by the Commission, paid into the state treasury, and placed to the credit of the fund for maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400. Each license and renewed license shall expire on June 30 of the appropriate year.

E. The Commission may require that the managing general agent be bonded in a manner acceptable to the Commission for the protection of the insurer, and shall require, as a prerequisite to licensure or license renewal, a certification or attestation from the applicant that such bond is in effect.

F. The Commission may require a managing general agent to maintain an errors and omissions policy that is acceptable to the Commission, and shall require, as a prerequisite to licensure or license renewal, a certification or attestation from the applicant that such policy is in effect.

G. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

H. A person seeking licensure shall provide evidence, in a form acceptable to the Commission, of its appointments or contracts as a managing general agent. The Commission may refuse to renew the license of a person that has not been appointed by, or otherwise authorized to act for, an insurer as a managing general agent.

§ 38.2-1360. Required contract provisions.

No insurer shall retain or act through a managing general agent unless there is in force a written contract between said insurer and its managing general agent that sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and that contains the following minimum provisions:

1. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

2. The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

3. All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank that is a qualified United States financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The managing general agent shall maintain a separate bank account for each insurer it represents.

4. Separate records of business written by the managing general agent will be maintained. The insurer shall have reasonable access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the Commission shall have access to all books, bank accounts and records of the managing general agent in a form usable by the Commission. Such records shall be retained in order to accomplish the purpose of subdivision 9 of this section but in no case for a period of less than five years.

5. The contract may not be assigned in whole or part by the managing general agent.

6. Appropriate underwriting guidelines including:

- a. The maximum annual premium volume;
- b. The basis of the rates to be charged;
- c. The types of risks that may be written;
- d. Maximum limits of liability;
- e. Applicable exclusions;
- f. Territorial limitations;
- g. Policy cancellation provisions; and
- h. The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations.

7. If the contract permits the managing general agent to settle claims on behalf of the insurer:

- a. All claims must be reported to the insurer in a timely manner.

b. A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(1) Has the potential to exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less;

(2) Involves a coverage dispute;

(3) May exceed the managing general agent's claims settlement authority;

(4) Is open for more than six months; or

(5) Is closed by payment of an amount exceeding one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the company, or any other amount deemed appropriate by the Commission, whichever is less.

c. All claim files will be the joint property of the insurer and the managing general agent. However, upon entry of an order of liquidation or the appointment of a receiver for the liquidation of an insurer, such files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

8. Where electronic claims files are in existence, the contract must address the timely transmission of the data.

9. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until the profits have been verified pursuant to subsection B of § 38.2-1361 (i) one year after they are earned for property insurance business and health insurance business and (ii) five years after they are earned on casualty insurance business.

10. The managing general agent shall not:

a. Bind reinsurance contracts or similar risk sharing arrangements, except that a managing general agent who acts on behalf of a ceding insurer may bind facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements provided that the contract between the insurer and the managing general agent contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

b. Commit the insurer to participate in insurance or reinsurance syndicates;

c. Appoint any agent unless (i) the agent is lawfully licensed to transact the type of insurance for which he is appointed and (ii) the insurer has notified the Commission of the managing general agent's authorization to appoint agents on its behalf;

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which amount shall not exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year;

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

f. Permit any agent appointed by the managing general agent to serve on the insurer's board of directors;

g. Jointly employ an individual who is employed with the insurer; or

h. Utilize or engage a submanaging general agent.

§ 38.2-1361. Duties of insurers utilizing managing general agents.

A. The insurer shall annually obtain a copy of the current financial statement, which shall be certified by an independent public accountant and in a form acceptable to the Commission, of each managing general agent with which it transacts business.

B. If the managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

C. The insurer shall conduct, at least semiannually, an on-site review of the underwriting and claims processing operations of the managing general agent.

D. Binding authority for participation in insurance syndicates or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

E. At least annually and more frequently if requested by the Commission, the insurer shall report to the Commission, in a form acceptable to the Commission, concerning its transactions with a managing general agent. The report shall identify the managing general agent through which the insurer has transacted business, and for each managing general agent shall report the nature of the contract, the

types of authority granted, the types of business written, the amount of premium written, and any other information the Commission may request.

F. An insurer shall review its books and records each quarter to determine if any agent as defined by § 38.2-1800 has become a managing general agent as defined in § 38.2-1358. If the insurer determines that an agent has become a managing general agent pursuant to the above, the insurer shall promptly notify the agent and the Commission of such determination, and the insurer and agent must fully comply with the provisions of this article within thirty calendar days.

G. An insurer shall not appoint to its board of directors an officer, director, employee, agent or controlling shareholder of its managing general agent. This subsection shall not apply to relationships governed by Article 5 (§ 38.2-1322 et seq.) of this chapter or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

H. The insurer shall not delegate to any person, other than one of its officers, the authority to enter into or bind any reinsurance agreement by which the insurer agrees to cede any risk to a reinsurer, except that an insurer may delegate the specific authority to bind facultative reinsurance contracts by placing individual risks pursuant to the provisions of subdivision 1 of § 38.2-1353 or subdivision 10 of § 38.2-1360. The officer shall be a regular salaried employee of the insurer and shall not be affiliated with the managing general agent. The insurer is not prohibited by the provisions of this subsection from delegating to its managing general agent the authority to enter into or bind an agreement to assume a risk provided the managing general agent is licensed to act as a reinsurance intermediary manager under the provisions of Article 8 (§ 38.2-1347 et seq.) of this chapter and the authority to both cede and assume a given risk is not simultaneously vested in the same intermediary.

§ 38.2-1362. Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined pursuant to Article 4 (§ 38.2-1317 et seq.) of this chapter as if it were the insurer. In addition, the managing general agent shall be subject to examination pursuant to § 38.2-1809 if it or any of its officers, directors, agents, or employees is licensed as a producer under Chapter 18 (§ 38.2-1800 et seq.) of this title.

§ 38.2-1363. Penalties and liabilities; grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

A. If the Commission finds, after providing an opportunity to be heard, that any person under its jurisdiction has violated any provision of this article, the Commission may, in addition to any other remedies authorized by this title, order the managing general agent to reimburse the insurer, the rehabilitator or liquidator, or the receiver of the insurer for any losses incurred by the insurer caused by a violation of this article committed by the managing general agent.

B. The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any person's license as a managing general agent for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;
2. Violating any insurance laws or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;
3. Obtaining or attempting to obtain a license through misrepresentation or fraud;
4. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;
5. Engaging in the practice of rebating;
6. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate an existing policy and purchase a new policy through misrepresentation;
7. Intentionally misrepresenting the terms of an actual or proposed insurance contract;
8. Having been convicted of a felony;
9. Having admitted or been found to have committed any insurance unfair trade practice or fraud;
10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;
11. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, or territory;
12. Forging another's name to an application for insurance or reinsurance, or to any document related to an insurance transaction;
13. Knowingly accepting insurance business from an individual who is not licensed;
14. Failing to comply with an administrative or court order imposing a child support obligation; or
15. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

C. If the Commission believes that any applicant for a managing general agent's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license,

subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten calendar days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1364, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with the provisions of this article, or any rule, regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

§ 38.2-1364. Requirement to report to Commission.

A. Each licensed managing general agent shall report within thirty calendar days to the Commission and to any contracted insurer any change in business or residence address or name.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as a managing general agent in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for a managing general agent license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the managing general agent intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed managing general agent convicted of a felony shall report within thirty calendar days to the Commission the facts and circumstances regarding the criminal conviction.

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent," ~~or~~ "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual, ~~partnership, limited liability company, or corporation~~ business entity that sells, solicits, or negotiates, ~~procures or effects~~ contracts of insurance or annuity in this Commonwealth.

"Appointed agent," ~~or~~ "appointed insurance agent," "appointed producer," or "appointed insurance producer," when used without qualification, means an individual, ~~partnership, limited liability company, or corporation~~ business entity licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ in on its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Automobile club agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ automobile club contracts on behalf of automobile clubs licensed under Chapter 3.1 (§ 13.1-400.1 et seq.) of Title 13.1.

"Burial insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect burial insurance on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this title.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Cooperative nonprofit life benefit insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect life insurance, accident and sickness insurance or annuities on behalf of insurers licensed under Chapter 38 (§ 38.2-3800 et seq.) of this title.

"Credit life and health insurance agent" means an agent licensed in this Commonwealth exclusively to solicit, negotiate, procure, or effect credit life insurance and credit accident and sickness insurance on behalf of insurers licensed in this Commonwealth, but only to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title.

"Credit property and involuntary unemployment insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect insurance as defined in § 38.2-122.1 or

~~§ 38.2-122.2.~~

"Dental services ~~agent~~ authority" means ~~an agent licensed~~ the authority in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Filed" means received by the Commission.

"Health agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-108 and 38.2-109, and including contracts issued by insurers, health services plans, health maintenance organizations, dental services plans, and optometric services plans licensed in this Commonwealth.

"Home protection insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in this Commonwealth.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which an insurance producer maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Legal services insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in this Commonwealth.

"Legal services ~~agent~~ plan authority" means ~~an agent licensed~~ the authority in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ legal services plan contracts on behalf of legal services plans licensed under Chapter 44 (§ 38.2-4400 et seq.) of this title.

"License" means a document issued by the Commission authorizing an individual or business entity to act as an insurance producer for the lines of authority specified in the document. Except as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to represent, commit, or bind an insurer.

"Licensed agent," ~~or~~ "licensed insurance agent," "licensed producer," or "licensed insurance producer," when used without qualification, means an individual, ~~partnership, limited liability company,~~ or ~~corporation~~ business entity licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure or effect~~ contracts of insurance or annuity of the classes authorized within the scope of such license.

"Life and ~~health annuities~~ insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ life insurance, and annuity contracts, and ~~accident and sickness insurance~~ as defined in §§ 38.2-102, 38.2-103, 38.2-104, 38.2-105.1, 38.2-106, 38.2-108 and 38.2-109 38.2-107.1, respectively, and variable contracts as defined in §§ 38.2-105 and 38.2-107, if so qualified, on behalf of insurers licensed in this Commonwealth. ~~Except as otherwise provided, limitations or restrictions as to methods of compensation imposed by this title on agents shall not apply to life and health insurance agents.~~

"Limited burial insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate burial insurance society membership where the certificates of membership will not exceed \$5,000 on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this title; or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that association for burial association group life insurance certificates in amounts of \$5,000 or less.

"Limited lines credit insurance agent" means an agent licensed in this Commonwealth whose authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in this Commonwealth, one or more of the following coverages to individuals through a master, corporate, group or individual policy: (i) credit life insurance and credit accident and sickness insurance, but only to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title; (ii) credit involuntary unemployment insurance as defined in § 38.2-122.1; (iii) credit property insurance, as defined in § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v) mortgage redemption insurance; (vi) mortgage guaranty insurance; and (vii) any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the Commission specifically determines may be sold, solicited, or negotiated by those holding a limited lines credit insurance agent license. Each insurer that sells, solicits or negotiates any of the coverages set forth in this definition shall provide to each individual whose duties will include selling, soliciting or negotiating such coverages a program of instruction that may, at the discretion of the Commission, be submitted for approval by the Commission or reviewed by the Commission subsequent to its implementation.

"Limited lines life and health agent" means an individual or business entity authorized by the Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other type of authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836: dental services authority; legal services plan authority; limited burial insurance authority; mutual assessment life and health insurance authority; optometric services authority; and travel accident insurance authority. Limited lines life and health insurance shall not include life insurance, health insurance, property insurance, casualty insurance, and title insurance.

"Limited lines property and casualty agent" means an individual or business entity authorized by the Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other type of authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836: automobile club authority; home protection insurance authority; legal services insurance authority; mutual assessment property and casualty insurance authority; ocean marine insurance authority; pet accident, sickness and hospitalization insurance authority; and travel baggage insurance authority. Limited lines property and casualty insurance shall not include life insurance, health insurance, property insurance, casualty insurance, and title insurance.

"Mortgage accident and sickness insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect mortgage accident and sickness insurance on behalf of insurers licensed in this Commonwealth.

"Mortgage guaranty insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect mortgage guaranty insurance on behalf of insurers licensed in this Commonwealth.

"Mortgage redemption insurance agent authority" means an employee of a lending institution, whether or not the institution accepts deposits from the public, licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect mortgage redemption insurance and mortgage accident and sickness insurance on behalf of insurers licensed in this Commonwealth. As used in this chapter, "mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing term life insurance policy written in connection with a mortgage transaction for a period of time coinciding with the term of the mortgage. The initial sum shall not exceed the amount of the indebtedness outstanding at the time the insurance becomes effective, rounded up to the next \$1,000.

"Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a motor vehicle rental company that is in the business of providing primarily private motor vehicles to the public under a rental agreement for a period of less than six months, and receives no direct or indirect commission from the insurer, the renter or the vehicle rental company.

"Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor vehicle rental company that is in the business of providing primarily private passenger motor vehicles to the public under a rental agreement for a period of less than six months and (ii) is licensed whose license in the this Commonwealth as an agent is restricted to solicit, negotiate, procure, or effect selling, soliciting, or negotiating only the following insurance coverages, and solely in connection with and incidental to the rental contract:

- 1. Personal accident insurance which provides benefits in the event of accidental death or injury occurring during the rental period;*
- 2. Liability coverage sold to the renter in excess of the rental company's obligations under §§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;*
- 3. Personal effects insurance which provides coverages for the loss of or damage to the personal effects of the renter and other vehicle occupants while such personal effects are in or upon the rental vehicle during the rental period;*
- 4. Roadside assistance and emergency sickness protection programs; and*
- 5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company offers in connection with and incidental to the rental of vehicles.*

The term "motor vehicle rental contract insurance agent" does not include motor vehicle rental contract enrollers.

"Mutual assessment life and health insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect mutual assessment life and accident and sickness insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.) of this title, but only to the extent permitted under § 38.2-3919.

"Mutual assessment property and casualty insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect mutual assessment property and casualty insurance on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.) of this title, but only to the extent permitted under § 38.2-2525.

"NAIC" means the National Association of Insurance Commissioners.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Ocean marine insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect those classes of insurance classified in § 38.2-126, except those kinds classes specifically classified as inland marine insurance, on behalf of insurers licensed in this Commonwealth.

"Optometric services agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, procure, or effect optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Personal lines agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124, 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal, family, or household needs rather than for business or professional needs.

"Pet accident, sickness and hospitalization insurance agent authority" means an agent licensed the authority in this Commonwealth to sell, solicit, or negotiate, ~~procure or effect~~ pet accident, sickness and hospitalization insurance on behalf of insurers licensed in this Commonwealth.

"Property and casualty insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ both personal and commercial lines of insurance as defined in §§ 38.2-110 through 38.2-122.2, and §§ 38.2-124 through 38.2-134 on behalf of insurers licensed in this Commonwealth.

"Resident" means (i) an individual ~~domiciled and~~ residing in Virginia; (ii) an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable; (iii) a partnership duly formed and recorded in Virginia; ~~(iii)~~ (iv) a corporation incorporated and existing under the laws of Virginia; ~~or (iv)~~ (v) a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign business entity that is not licensed as a resident agent in any other jurisdiction, and that demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

"Restricted nonresident health agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a health agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident life and annuities agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a life and annuities agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident personal lines agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a personal lines agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident property and casualty agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a property and casualty agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Settlement agent" means a person licensed as a title insurance agent and registered with the Virginia State Bar pursuant to Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

"Single interest insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect single interest insurance on behalf of insurers licensed in this Commonwealth.

"Solicit, negotiate, procure, or effect" means and includes the selling or attempted selling, placing or attempted placing of insurance or coverage, whether directly or indirectly, in this Commonwealth, and for which action the agent receives, or would receive, direct or indirect compensation in the form of commissions, fees, or other inducements or benefits attempting to sell insurance or asking or urging a person to apply for a particular class of insurance from one or more insurers.

"Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of this chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et seq.) of this title.

"Terminate" means the cancellation of the relationship between an insurance producer and the insurer, or the termination of an insurance producer's authority to transact insurance.

"Title insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate, ~~procure, or effect~~ title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of this title.

"Travel accident insurance agent authority" means an individual at transportation terminal buildings, or a ticket-selling agent of a railroad, steamship company, air carrier, or public bus carrier, who is licensed the authority in this Commonwealth solely to act as an agent in the sale of sell, solicit, or negotiate travel accident insurance to individuals on behalf of insurers licensed in this Commonwealth.

"Travel baggage insurance ~~agent authority~~" means the ~~ticket-selling agent of a railroad or steamship company, air carrier, or public bus carrier who is licensed~~ authority in this Commonwealth solely to act as an agent in the sale of, sell, solicit, or negotiate travel baggage insurance to individuals on behalf of insurers licensed in this Commonwealth.

"Variable contract agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate, procure, or effect variable life insurance and variable annuity contracts on behalf of insurers licensed in this Commonwealth.

"Viatical settlement broker" means a person licensed pursuant to Article 6.1 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby authorized to engage in the activities set forth in Chapter 57 (§ 38.2-5700 et seq.) of this title.

"Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

"Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

§ 38.2-1800.1. Proof of residency.

A. For purposes of this chapter, an individual shall be deemed to be a resident of this Commonwealth provided such individual (i) maintains his principal place of residence within this Commonwealth, or satisfies the requirements set forth in subsection B of § 38.2-1836; (ii) declares himself to be a Virginia resident on his federal tax return; and (iii) declares himself to be a Virginia resident for purposes of paying Virginia income tax and personal property taxes; and provided that such individual is able to document the above to the satisfaction of the Commission. The Commission may also consider other documentation furnished by the individual, such as including, but not limited to, a valid current Virginia driver's license or voter registration card, as additional proof of residency. An individual applying for or holding a license issued pursuant to this chapter who is unable to document his residency as set forth above shall be deemed not to be a resident of Virginia for purposes of this chapter, except that an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable, may be considered a resident for purposes of issuance of a license pursuant to this chapter.

B. For purposes of this chapter, a business entity shall be deemed to be a resident of this Commonwealth provided such business entity:

1. If a domestic corporation, has filed its articles of incorporation with the clerk of the Commission, and has been issued a charter by the Commission;

2. If a domestic limited liability company, has filed its articles of organization with the clerk of the Commission, and has been issued a certificate of organization by the Commission;

3. If a domestic limited partnership, has applied for and received a certificate of limited partnership from the clerk of the Commission;

4. If a domestic partnership, has filed its partnership agreement with the clerk of the appropriate court; or

5. If a foreign business entity that is not licensed as a resident agent in any other jurisdiction, demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

§ 38.2-1801. Person soliciting insurance deemed agent of insurer; prohibition against misrepresenting agency relationship.

A. A licensed agent shall be held to be the agent of the insurer that issued the insurance sold, solicited, or negotiated by or applied for through such agent in any controversy between the insured or his beneficiary and the insurer. No licensed agent or any other person shall claim to be a representative of, authorized agent of, agent of, or other term implying an appointed relationship with a particular insurer unless such agent has become an appointed agent of that insurer. For the purpose of notice of claim or suit, the agent or producer of record shall be deemed to be the agent of the insurer. In the case of policies of life insurance, accident and sickness insurance, annuities and variable annuities, such notice shall be given to the insurer at its home office as shown in the policy of insurance.

B. A premium payment made by an insured to an agent, whether appointed by an insurer or not, or to a surplus lines broker, where the insurer or its appointed agent acknowledged specific insurance for a specific policy period by the issuance of a policy, written binder, or other contract of temporary insurance, whether new or renewal, shall be considered payment to the insurer, and such insurer shall be liable to the insured for (i) any covered losses under the insurance and (ii) the return to the insured of any unearned premium amount due the insured except as provided in subsection D of § 38.2-1806.

C. Except as provided in subsection D of § 38.2-1806, where premiums for the issuance of a policy or endorsement have been financed by an insurance premium finance company and payment and evidence of financing for such policy or endorsement have been received by the insurer or its appointed agent, the insurer shall be liable for the return to the insurance premium finance company of any

unearned premium due the insurance premium finance company.

§ 38.2-1802. Acting as agent for unlicensed insurer prohibited; penalties.

A. No person other than a licensed surplus lines broker shall *sell, solicit, or negotiate, procure, or effect* contracts of insurance in this Commonwealth on behalf of any insurer which is not licensed to transact the business of insurance in this Commonwealth. Nothing in this section shall prohibit any person from obtaining insurance upon his own life or property from an unlicensed insurer.

B. Any person violating the provisions of this section shall be guilty upon conviction of a Class 1 misdemeanor and punished for each offense. In addition, any person violating this section shall be (i) liable on any claim against any unlicensed insurer that arises out of a contract or policy *sold, solicited, or negotiated, procured, or effected* by the person or which the person assisted in *selling, soliciting, or negotiating, procuring, or effecting*, or (ii) punished as provided in §§ 38.2-218 and 38.2-1831, or (iii) subject to both (i) and (ii).

C. Nothing in this section shall apply to the ~~solicitation, negotiation, procuring~~ *selling, soliciting, or effecting negotiating* of contracts of insurance on:

1. Vessels or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance policies as distinguished from inland marine insurance policies, provided that a property and casualty or ~~ocean marine insurance limited lines property and casualty~~ agent licensed in this Commonwealth *sells, solicits, or negotiates, procures, or effects* these classes of insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth; or

2. The rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to their ownership, maintenance or operation.

D. *A property and casualty or limited lines property and casualty agent licensed in this Commonwealth who, pursuant to the provisions of subdivision C 1, sells, solicits, or negotiates ocean marine insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth shall provide a notice to the insured stating that the insurance policy is to be placed with an insurer not licensed to transact the business of insurance in the Commonwealth and stating that (i) in the event of the insolvency of the insurer, there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer, and (ii) the insured may not be protected under the insurance laws of this Commonwealth. The notice required by this subsection shall be in a form prescribed by the Commission and shall be signed and dated by the agent and the insured. The signatures required by this subsection may be in electronic form. The agent shall keep a copy of the notice for at least three years after the effective date of the policy to which the notice pertains. A copy of the notice shall be given to the insured prior to placement of the insurance.*

§ 38.2-1804. Blank forms.

No agent shall sign or allow an applicant or insured to sign any incomplete or blank form pertaining to insurance in this Commonwealth.

§ 38.2-1805. Acceptance by insurance agents of premiums in arrears; how advance premiums recorded.

A. No agent of a ~~combination of~~ home service insurer shall accept, and no insurer or licensed agent shall knowingly permit an agent to accept, payment of premiums in arrears on any policy of life insurance or accident and sickness insurance on which the premiums are collected at least monthly that has lapsed and that the insured seeks to reinstate, unless the payment (i) at least equals the total of all premiums in arrears and (ii) entitles the policyholder to make immediate application for reinstatement of the policy. *As used in this chapter, "home service insurer" means an insurer selling industrial or ordinary life insurance or accident and sickness insurance on a debit, where the premiums are payable at least monthly directly by the owner of the policy or a person representing the owner to a representative of the insurer.*

B. Every advance premium paid to an agent on a life insurance policy or accident and sickness insurance policy on which the premiums are collected at least monthly shall be recorded in the receipt book of the insured and in the record book of the agent in exactly the same manner as current premiums are recorded. However, the failure to do so shall not invalidate the policy.

§ 38.2-1806. Interest with respect to credit extended or money lent for premiums on certain policies.

A. Any ~~property and casualty insurance agent, mutual assessment property and casualty insurance agent, or ocean marine insurance~~ agent licensed in this Commonwealth *to sell, solicit or negotiate property and casualty insurance, mutual assessment property and casualty insurance, or ocean marine insurance* may charge interest on credit extended by the agent to the holder of any fire, casualty, surety or marine insurance policy, written or being serviced by or through such agent, for the premium due on such policy. The rate of interest shall not exceed ~~1 1/2~~ *one and one-half* percent per month of the unpaid balance. However, the extension of credit or the making of the loan shall not be in conflict with the contract between the agent and the insurer that issues the policy.

B. A licensed insurance agent extending credit as authorized in this section shall not be required to comply with the provisions of Chapter 47 (§ 38.2-4700 et seq.) of this title with respect to the licensing

of premium finance companies.

C. Notwithstanding the provisions of §§ 38.2-2114 and 38.2-2212, if any insured fails to discharge any of his obligations to a licensed insurance agent when due in connection with the payment of any premium for a policy of insurance, that agent may request in writing that the insurer cancel such policy for nonpayment of premium. Within ten ~~work~~ *business* days of the receipt of such written request, which shall also state the amount owed the agent by the policyholder, the insurer shall deliver or mail a written notice of cancellation to the named insured at the address shown in the policy and to any mortgagee or lienholder. This notice shall state the date on which the cancellation shall become effective. That date shall be established by giving at least the number of days notice prior to cancellation that are required by statute or the terms of the policy. Except for statutory requirements and contractual obligations, there shall be no liability on the part of the insurer for improper cancellation under this section if the insurer (i) in good faith relies upon the request of the agent and (ii) gives notice of cancellation in compliance with the provisions of this section.

D. The insurance agent shall have a lien on any return premium for the policy to the extent of the amount owed by the policyholder. Within thirty *calendar* days of the mailing of the notice of cancellation, the insurer shall forward that amount to the agent and shall forward the remainder, if any, of the return premium to the policyholder.

§ 38.2-1809. Power of Commission to investigate affairs of persons engaged in insurance business; penalties for refusal to permit investigation.

A. The Commission shall have power to examine and investigate the business affairs of any person engaged or alleged to be engaged in the business of insurance in this Commonwealth, including all agents, to determine whether the person has engaged or is engaging in any violation of this title. The Commission shall have the right to examine all records relating to the writing or alleged writing of insurance by any such person in this Commonwealth to determine whether the person is now or has been violating any of the provisions of this title. Any ~~licensed agent, licensed insurance consultant licensee under this title, or any person purporting to be a licensed agent or a licensed insurance consultant licensee under this title, or any person whose actions have led any person to believe that he is a licensed agent or insurance consultant licensee under this title,~~ who refuses to permit the Commission or any of its employees or agents, including employees of the Bureau of Insurance, to make an examination or who fails or refuses to comply with the provisions of this section may, after notice and an opportunity to be heard, be subject to any of the penalties relating to ~~agents or insurance consultants licensed by the Commission licensees under this title,~~ as provided in this title, including the *denial*, suspension or revocation of his license.

B. Except as otherwise provided in this title, every ~~licensed agent and insurance consultant licensee~~ shall retain all of ~~the agent's or consultant's~~ *his* records relative to insurance transactions for the three previous calendar years except that records of premium quotations which are not accepted by the insured or prospective insured need not be kept. These records shall be made available promptly upon request for examination by the Commission or its employees without notice during normal business hours.

§ 38.2-1810. Report of acts deemed larceny under § 18.2-111; privileged communications; attorney for the Commonwealth to be informed.

A. Whenever any insurer licensed to transact the business of insurance in this Commonwealth knows or has reasonable cause to believe that any ~~insurance agent or surplus lines broker licensee under this title~~ has committed any act of larceny as prescribed in § 18.2-111 with respect to any money, bill, note, check, order, draft or other property either belonging to the insurer or received by the ~~agent or surplus lines broker licensee~~ on behalf of the insurer, it shall be the duty of the insurer within sixty *calendar* days after acquiring the knowledge to file with the Commission a complete statement of the relevant facts and circumstances. Each statement shall be a privileged communication, and when made and filed shall not subject the insurer, or any individual representative of it that is making or filing the statement, to any liability whatsoever.

B. Whenever any insurer licensed to transact the business of title insurance in this Commonwealth knows or has reasonable cause to believe that any title insurance agent appointed by such insurer has committed any act of larceny as prescribed in § 18.2-111 with respect to any money, bill, note, check, order, draft or other property either belonging to the insured or prospective insured or received by the agent on behalf of the insured or prospective insured related to that agent's provision of escrow, closing or settlement services as defined in § 6.1-2.20, it shall be the duty of the insurer within sixty *calendar* days after acquiring such knowledge to file with the Commission a complete statement of the relevant facts and circumstances. Each statement shall be a privileged communication, and when made and filed shall not subject the insurer, or any individual representative of it that is making or filing the statement, to any liability whatsoever.

C. The Commission shall inform the attorney for the Commonwealth of the appropriate county or city of each statement filed pursuant to subsection A or B of this section.

§ 38.2-1812. Payment and sharing of commissions.

A. No insurer shall pay directly or indirectly any commission or other valuable consideration to any person for services as an agent or a surplus lines broker within this Commonwealth unless the person is

then a duly appointed agent of such insurer and, at the time of the transaction out of which arose the right to such commission or other valuable consideration, held a valid license as an agent, or valid license as a surplus lines broker, for the class of insurance involved.

B. No person other than a duly licensed and appointed agent or a surplus lines broker may accept any such commission or other valuable consideration unless such person, at the time of the transaction out of which arose the right to such commission or other valuable consideration, held a valid license as an agent or surplus lines broker for the class of insurance involved.

C. An agent of a ~~combination~~ *home service* insurer who is assigned a debit may receive, and the insurer may pay, commissions on business written on the debit prior to the agent's becoming licensed and appointed, provided that the *insurance was sold by a duly licensed and appointed agent, and further provided that the agent receiving the commission* is duly licensed and, if appropriate, appointed on the day such commissions are paid to and received by him.

D. This provision shall not prevent the payment or receipt of renewal or other deferred commissions or compensation to or by any person if the person was ~~so~~ duly licensed and appointed, where the appointment was necessary, at the time of the transactions out of which arose the right to such renewals or deferred commissions or compensation.

E. This provision shall not prevent the payment of commissions to a trade name which has been filed with the Bureau of Insurance pursuant to subsection E of § 38.2-1822.

~~B. F.~~ *Except as provided in subdivision B 8 of § 38.2-1821.1*, no agent or surplus lines broker shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also then licensed under this chapter ~~or Chapter 48 of this title~~, for the class of insurance involved in the transactions. No agent or surplus lines broker not then licensed and qualified for the same class of insurance shall receive any commission or other compensation. This provision shall not affect payment of the regular salaries due employees of the licensee.

§ 38.2-1812.2. Administrative charges in excess of premium prohibited; exceptions.

A. Notwithstanding the provisions of § 38.2-310 and Article 4 (§ 38.2-1837 et seq.) of this chapter, no agent shall charge, or demand or receive from, an applicant for insurance or a policyholder any consideration in return for rendering services associated with a contract of insurance, when the consideration is in addition to the premium for such contract, unless:

1. The applicant or policyholder consents in writing before any services are rendered. Consent shall be provided on a form that includes the applicant's or policyholder's signature, the duration of services and amount of fees to be charged, the services for which the fees are charged, and a statement that the agent is entitled to receive a commission from the insurer for *selling, soliciting, or negotiating, procuring or effecting* the insurance; and

2. A schedule of fees and documentation for services rendered is maintained in the agent's office and is made available to applicants or policyholders upon request.

B. This section shall not apply to charges for services described in subsection C of § 38.2-4608 when provided by title insurance agents.

C. This section shall apply to new and renewal policies issued or renewed on or after July 1, 1999.

§ 38.2-1813. Reporting and accounting for premiums.

A. All premiums, return premiums, or other funds received in any manner by an agent or a surplus lines broker shall be held in a fiduciary capacity and shall be accounted for by such agent or *surplus lines* broker. The agent or surplus lines broker shall, in the ordinary course of business, pay the funds to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

B. With the exception of premium funds made payable to insurers or insureds for remittance and funds referred to in subsection D of this section, on and after January 1, 1993, all funds referred to in subsection A of this section shall be maintained in a fiduciary account separate from all other business and personal funds. Funds deposited into the separate fiduciary account may not be commingled or combined with other funds except for the purpose of advancing premiums, establishing reserves for the payment of return premiums, or establishing funds to maintain a minimum balance or to guarantee the adequacy of the account. The agent or surplus lines broker shall maintain an accurate record and itemization of the funds deposited into this account. The commission portion of any premiums deposited to this separate account may be withdrawn at the discretion of the agent or surplus lines broker.

C. For the purposes of this section, the separate fiduciary account of a licensed ~~corporation~~ *business entity* shall be considered the fiduciary account of an individual agent or surplus lines broker acting on behalf of the ~~corporation~~ *licensed business entity*.

D. This section shall not require any agent who is a duly appointed agent of an insurer and who has a written contractual relationship with such insurer which includes provisions regarding remittance of funds to maintain a separate fiduciary account for the funds. Such funds shall be held separately from any personal or nonbusiness funds and shall be reasonably ascertainable from the books of accounts and records of the agent.

Qualifications of Property and Casualty Insurance Agents, *Personal Lines Agents, Title Insurance Agents, Life and Health Insurance Annuities Agents, and Health Agents.*

§ 38.2-1814. License required of resident property and casualty insurance agent and resident personal lines agent.

A. No individual who is a resident of this Commonwealth shall obtain a license as a property and casualty insurance agent *or as a personal lines agent* from the Commission unless he has passed a ~~written~~ *an examination in a form and manner* prescribed by the Commission.

~~B. However, any~~ *An individual may obtain a license as an automobile club agent, credit property and involuntary unemployment insurance agent, mortgage guaranty insurance agent, a limited lines credit insurance agent, a limited lines property and casualty agent, a motor vehicle rental contract insurance agent, ocean marine insurance agent, pet accident, sickness and hospitalization insurance agent or travel baggage insurance agent or any other type of license of restricted authority that the Commission may deem it necessary to recognize for the purpose of complying with § 38.2-1836 without taking a written such examination. Mutual assessment property and casualty insurance agents shall be licensed without examination only within the limitations of § 38.2-2525.*

§ 38.2-1814.1. License required of resident title insurance agent.

A. No individual who is a resident of this Commonwealth shall obtain a license as a title insurance agent from the Commission unless he has passed a ~~written~~ *an examination in a form and manner* prescribed by the Commission.

~~B. [Repealed.]~~

~~C.~~ *B. Officers or employees who are not agents of a title insurance company shall be exempt from the provisions of this section.*

~~D.~~ *C. Agents who, as of January 1, 1987, are were authorized agents of title insurance companies licensed to transact title insurance in this Commonwealth shall be exempt from the examination requirements of subsection A of this section.*

§ 38.2-1815. License required of resident life and annuities agent.

A. No individual who is a resident of this Commonwealth shall obtain a license as a life and ~~health insurance annuities~~ agent from the Commission unless he has passed a ~~written~~ *an examination in a form and manner* prescribed by the Commission. ~~However, any~~

~~B. An individual may obtain a license as a travel accident limited lines credit insurance agent, a limited lines life and health agent, a motor vehicle rental contract insurance agent, a mortgage redemption insurance agent, a credit life and health insurance agent, a dental services agent, an optometric services agent, or a legal services agent, any other type of license of restricted authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836 without taking a written such examination. Agents of an association referred to in § 38.2-3318.1 who will be limited to soliciting members of that association for burial association group life insurance certificates in amounts of \$5,000 or less may also obtain a license without taking a written examination. Agents of burial societies as defined in Chapter 40 (§ 38.2-4000 et seq.) of this title who will be limited to soliciting members for such societies, and where the certificates of membership will not exceed \$5,000 on any individual, may also obtain a license without taking written examination. Mutual assessment life and health insurance agents shall be licensed without examination only within the limitations of § 38.2-3919.~~

~~C. No individual shall obtain a license as a variable contract agent unless he currently holds a life and annuities license or a restricted nonresident life and annuities license, and has passed the National Association of Securities Dealers examination or examinations prescribed by the Commission or such other examination prescribed by the Commission.~~

§ 38.2-1815.1. License required of resident health agent.

A. No individual who is a resident of this Commonwealth shall obtain a license as a health agent from the Commission unless he has passed an examination in a form and manner prescribed by the Commission.

~~B. An individual may obtain a license as a limited lines credit insurance agent, a limited lines life and health agent, a motor vehicle rental contract insurance agent, or any other type of license of restricted authority that the Commission may deem it necessary to recognize for the purposes of complying with § 38.2-1836 without taking such examination.~~

§ 38.2-1817. Examination for license; fee required; when fee forfeited.

A. ~~1.~~ *Examinations for licenses shall be conducted at least monthly at the times and places the Commission prescribes. Each applicant shall pass a written the examination prescribed by the Commission unless otherwise exempted.*

~~2.~~ *B. If an a resident individual applicant fails three times to pass the examination, the applicant must take or retake the study course required in § 38.2-1816 shall be required to wait thirty calendar days before the applicant may retake the examination.*

~~B.~~ *C. An applicant individual who has been awarded the designation of Chartered Property and Casualty Underwriter shall be exempt from the education and examination requirements of this article for a property and casualty insurance license or a personal lines license. An applicant individual who*

has been awarded the designation of Chartered Life Underwriter shall be exempt from the education and examination requirements for a life and *annuities license or a health insurance license*. However, no ~~applicant individual~~ shall be exempt from the requirement to submit the application and pay the fee required by § 38.2-1819.

C. ~~No individual shall obtain a license for variable life insurance and variable annuity contracts unless he currently holds a life and health insurance agent's license and has passed the National Association of Security Dealers examination or other examination prescribed by the Commission.~~

D. Each applicant for an examination shall make a ~~written~~ application in the form and containing the information the Commission prescribes.

E. Each applicant shall, at the time of applying to take the examination, pay such fee as may be prescribed by the Commission and in a manner prescribed by the Commission. The prescribed examination fee shall not be less than \$20 nor more than \$100. The examination fee shall be nonrefundable.

F. ~~[Repealed.]~~

G. ~~F.~~ If the applicant fails to take the examination within ~~three months~~ *ninety calendar days* from the date his registration for the examination is accepted, the examination fee shall be forfeited and the registration shall be considered withdrawn.

H. ~~G.~~ If the applicant fails to ~~apply to obtain the appropriate license from the Commission for a license~~ within ~~six months~~ *183 calendar days* from the date he passes the examination, the examination grade shall be considered invalid and the examination fee and application processing fee shall be forfeited. Such applicant shall be required to reapply for the examination and to satisfy any appropriate preclicensing requirements.

H. An individual who applies for a resident insurance agent's license in this Commonwealth who was previously licensed for the same lines of authority in the individual's home state shall not be required to complete any preclicensing examination. This exemption is only available if the individual is currently licensed in the applicant's home state, or if the application is received within ninety calendar days of the cancellation of the applicant's previous license in the applicant's home state, and if the applicant's home state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

§ 38.2-1818. Individual moving from another state or Canadian province.

A. ~~An applicant individual holding a nonresident Virginia agent license who has moved into this Commonwealth from another state or a province of Canada shall meet any applicable education and examination requirements as set forth in §§ 38.2-1816 and 38.2-1817, and shall submit the application and pay the license processing fee required by § 38.2-1819 and in accordance with the requirements set forth in § 38.2-1836. Agents with active nonresident Virginia agent licenses may continue to operate under their nonresident licenses for up to sixty ninety calendar days while satisfying the requirements for and applying for resident Virginia agent's licenses. Appointments made under such nonresident licenses shall remain in effect during the sixty-day ninety-calendar-day period, unless terminated for other reasons. Appointments held by an agent under a nonresident Virginia agent license shall automatically be converted to resident agent appointments if the agent obtains an equivalent resident Virginia agent license during the sixty-day ninety-calendar-day period. If an agent fails to obtain such resident license by the end of the sixty-day ninety-calendar-day period, the equivalent nonresident license and all associated appointments under that license shall terminate at the end of the sixty-day ninety-calendar-day period.~~

B. An individual licensed as an insurance producer in another state or province of Canada, but not holding a nonresident Virginia agent license, who moves to this Commonwealth shall submit the application to become a resident licensee and shall pay the license processing fee required by § 38.2-1819 and in accordance with the requirements of § 38.2-1836 within ninety calendar days of establishing legal residence in this Commonwealth. No preclicensing examination shall be required of that individual to obtain any line of authority previously held in the prior state except where the Commission determines otherwise by regulation. After establishing legal residence in this Commonwealth and prior to obtaining a license as a resident agent, the individual shall be prohibited from selling, soliciting, or negotiating insurance in this Commonwealth. An individual who fails to submit the application and license processing fee within ninety calendar days of establishing legal residence in this Commonwealth shall be required to satisfy all resident agent preclicensing requirements in order to be issued a license.

Article 3.

Licensing and Appointment of Agents.

§ 38.2-1819. Application for license; fee required.

A. Each applicant for a license shall make a ~~written~~ application to the Commission, in the form and containing the information the Commission prescribes. Each applicant shall, at the time of applying for a license, pay a nonrefundable application processing fee in an amount and in a manner prescribed by the

Commission. The prescribed application processing fee shall not be less than fifteen dollars nor more than thirty dollars. The fee shall be collected by the Commission and paid directly into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

~~B. Each applicant~~ *No resident license requiring an examination shall submit his written application no be issued by the Commission later than one year 183 calendar days from the date he the applicant satisfies the prelicensing education or experience examination requirements set forth in § 38.2-1816 38.2-1817. Applications submitted beyond the one-year period shall be rejected and applicants Applicants failing to satisfy this requirement shall be required to satisfy all prelicensing requirements, including the examination, again before applying.*

C. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

§ 38.2-1820. Issuance of license.

A. Each applicant who is at least eighteen years of age and who has satisfied the Commission that he is of good character, has a good reputation for honesty, and has complied with the other requirements of this article is entitled to and shall receive a license in the form the Commission prescribes.

B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application, or such other application acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fees set forth in § 38.2-1819;

2. The business entity has filed the appropriate documents, as follows:

a. A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;

b. A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;

c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;

d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and

e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1836.

3. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

C. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1821.1. Exceptions to licensing.

A. Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. As used in this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

B. A license as an insurance producer shall not be required of the following:

1. An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any direct or indirect commission on policies written or sold to insure risks residing, located or to be performed in this Commonwealth and:

a. The officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

b. The officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

c. The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

2. A person who (i) secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; (ii) secures and furnishes information for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans; or (iii) performs administrative services related to mass marketed property and casualty insurance. As used in this section,

"administrative services" does not include the selling, soliciting, or negotiating of insurance where no direct or indirect commission is paid to the person for the service;

3. An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

4. Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

5. A person whose activities in this Commonwealth are limited to advertising without the intent to solicit insurance in this Commonwealth through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the Commonwealth, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this Commonwealth;

6. A person who is not a resident of this Commonwealth who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

7. A salaried, full-time employee who counsels or advises his employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell, solicit or negotiate insurance or receive direct or indirect commission; or

8. Any person who refers a customer who seeks to purchase any insurance product to a licensed agent and receives compensation for the referral of a customer, provided that:

- a. The referral does not include a discussion of specific insurance policy terms and conditions;
- b. The compensation is in the form of a one-time nominal fee of a fixed dollar amount for each referral; and
- c. The compensation does not depend on whether the referral results in the purchase of insurance by the customer.

Article 3.

Licensing of Agents.

§ 38.2-1822. License required of individual and business entity agents; individual acting for business entity licensee.

A. No person shall act, and no insurer or licensed agent shall knowingly permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission. As used in this section, "act as an agent" means *selling, soliciting, or negotiating, procuring, or effecting* contracts of insurance or annuity on behalf of an insurer licensed in this Commonwealth or receiving or sharing, directly or indirectly, any commission or other valuable consideration arising ~~therefrom~~ *from the sale, solicitation, or negotiation of any such contract, or both*. No person shall submit business to any joint underwriting association or any plan established under this title for the equitable distribution of risks among insurers unless the person holds a valid license to transact the class of insurance involved.

B. No individual shall act as an agent on behalf of ~~either a partnership, limited liability company, or a corporation~~ *business entity* in the transaction of insurance unless he is licensed as an agent and appointed, if appointment is required by statute.

C. No ~~partnership, limited liability company, or corporation~~ *business entity* may act as an agent in this Commonwealth unless licensed and appointed, if appointment is required by statute. The existence of the ~~partnership, limited liability company, or corporation~~ *business entity* shall be recorded pursuant to law; ~~and. The authority of a limited liability company to act as an insurance agent shall specifically be set forth in its articles of organization, the authority of the a corporation to act as an insurance agent or agency shall be specifically be set forth in its charter articles of incorporation, and the authority of a limited partnership to act as an insurance agent shall specifically be set forth in its certificate of limited partnership.~~ The Commission may require proof of the foregoing before issuing a license to the ~~partnership, limited liability company, or corporation~~ *business entity*.

D. For a nonresident ~~partnership, a nonresident limited liability company, or a nonresident corporation~~ *business entity*, a certification by the insurance department of the ~~nonresident's business entity's home state of domicile~~ satisfying the requirements of subsection A of § 38.2-1836 shall be deemed to satisfy the foregoing requirements; *however, the Commission may also require a corporation to obtain a certificate of authority, or a limited liability company to obtain a certificate of registration, or a limited partnership to obtain a certificate of limited partnership from the clerk of the Commission before issuing a license to such business entity.*

E. In addition to the requirements of §§ 59.1-69 and 59.1-70, any ~~person, partnership, limited liability company, individual or corporation~~ *business entity* conducting the business of insurance in this Commonwealth under an assumed or fictitious name shall notify the Bureau of Insurance, ~~in writing,~~ either at the time the application for a license to do business is filed or *within thirty calendar days from the date* the assumed or fictitious name is adopted, setting forth the name under which such business is to be conducted.

F. When the business of insurance is no longer conducted under an assumed or fictitious name, ~~written~~ notification to the Bureau of Insurance is required as ~~soon as practicable~~ *within thirty calendar days from the date of cessation of use of such assumed or fictitious name.*

G. Notwithstanding any other provision in this chapter, no license shall be required of a person whose employment responsibilities include enrolling individuals under a group insurance policy, provided that such person receives no commission or other valuable consideration for such enrollments, and that such compensation is in no manner contingent upon the number of individuals enrolled or the amount of premium generated by such enrollments. As used in this subsection "enrolling individuals" means the process of informing individuals of the availability of coverages, calculating the insurance charge, assisting with completion of the enrollment application, preparing and delivering the certificate of insurance, answering questions regarding the coverages, and assisting the individual in making an informed decision whether or not enrollment under the group insurance plan is to be elected.

§ 38.2-1824. Kinds of agents' licenses and appointments issued.

A. 1. The Commission shall issue the following kinds of agents' licenses and appointments *under this chapter*: Life and ~~health annuities~~ insurance; ~~agent; health agent;~~ property and casualty insurance; automobile club, cooperative nonprofit life benefit insurance; burial insurance; credit life and health insurance; credit property and involuntary unemployment insurance; dental services insurance; legal services insurance; mortgage accident and sickness insurance; mortgage guaranty insurance; mortgage redemption insurance; ~~agent; personal lines agent; limited lines credit insurance agent; limited lines life and health insurance agent; limited lines property and casualty insurance agent;~~ motor vehicle rental contract insurance; ~~mutual assessment property and casualty insurance; mutual assessment life and health insurance; ocean marine insurance; optometric services insurance; pet accident, sickness and hospitalization insurance; agent; restricted nonresident life and annuities insurance agent; restricted nonresident health agent; restricted nonresident property and casualty insurance agent; restricted nonresident personal lines agent; surplus lines broker;~~ title insurance; ~~travel accident insurance; travel baggage insurance; and agent;~~ variable contract insurance agent; and viatical settlement broker. For the purposes of nonresident reciprocal licensing as provided in § 38.2-1836, the Commission may issue a license for any other limited line of insurance that the Commission may deem it necessary to recognize.

2. The Commission shall permit insurers, within each insurer's authority, to make the following kinds of appointments: life and health insurance, property and casualty insurance, and title insurance. The appointed agent's authority is limited to that provided by his license and may not be expanded by his appointment or by his contractual agreement with an insurer.

B. The licenses of all individuals and ~~agencies~~ *business entities* who on July 1, 1987, held August 31, 2002, hold limited licenses to write accident and sickness insurance, or automobile insurance, or casualty insurance, or fidelity and surety bonds, or fire insurance, or life insurance and annuities, ~~may remain licensed under such limited licenses, but no such license which has lapsed or been revoked shall be reinstated, and no new or additional licenses for any of the categories enumerated above shall be issued shall have such licenses automatically converted to the nearest equivalent license type provided in subsection A, and shall henceforth be subject to all preclicensing and continuing education requirements applicable to such new license type.~~

C. All individuals who, on July 1, 1999, held a health insurance agent license may retain such license until June 30, 2000, at which time such license shall terminate. No such license which has lapsed or been revoked shall be reinstated, and no new health insurance agent license shall be issued on or after July 1, 1999. Agents holding a health insurance agent license who wish to continue to be authorized to solicit, negotiate, procure or effect the types of insurance authorized under such license on or after July 1, 2000, shall be required to obtain a life and health insurance agent license by June 30, 2000.

D. All individuals and ~~agencies~~ *business entities* who on July 1, 1999, held limited licenses to write bail (appearance) bonds may remain licensed under such limited licenses, but no such license which has lapsed or been revoked shall be reinstated, and no new or additional licenses of such type shall be issued.

D. All individuals and business entities who on August 31, 2002, hold any of the restricted licenses discontinued effective September 1, 2002, shall have any such licenses converted to the appropriate limited lines license or licenses effective September 1, 2002.

§ 38.2-1825. Duration and termination of licenses and appointments.

A. A license issued to:

1. An individual agent shall authorize him to act as an agent until his license is otherwise terminated, suspended or revoked.

2. A ~~partnership, limited liability company, or corporation~~ *business entity* shall authorize such ~~partnership, limited liability company, or corporation~~ *business entity* to act as an agent until such license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation ~~by~~ of law, shall automatically terminate all licenses issued to such partnership. The Bureau shall automatically terminate all insurance licenses within ninety *calendar* days of receiving notification from the clerk of the Commission that the *certificate of organization* or charter of a domestic limited liability company or corporation, *respectively*, whether by intent or by operation of law, has been terminated or that the certificate of *registration or certificate of* authority of a foreign limited liability company or corporation, *respectively*, has been revoked.

~~A4~~ B. An agent's license shall automatically terminate after a period of ~~six months~~ *183 calendar days* during which no appointment of such agent under such license was in effect ~~except for~~. *The Commission may, upon a showing of good cause shown to the Commission and upon payment of the any prescribed fee, waive or extend this requirement. As used herein, the term "good cause" shall not include negligence, clerical error, or administrative oversight by the licensee or the appointing insurer.*

C. *The license issued to a variable contracts agent pursuant to this chapter shall terminate immediately upon the termination of the licensee's life and annuities insurance agent license, and may not be applied for again until the person has been issued a new life and annuities insurance agent license.*

D. *The license issued to a surplus lines broker pursuant to this title shall terminate immediately upon the termination of the licensee's property and casualty insurance agent license, and may not be applied for again until the person has been issued a new property and casualty insurance agent license.*

E. *Immediately upon termination of a settlement agent's last appointment under his title insurance agent license, the Bureau shall notify the Virginia State Bar to terminate the settlement agent's registration and the person shall not be permitted to act as a settlement agent under his title insurance agent's license until a new appointment has taken effect.*

~~B-~~ F. An appointment issued to an agent by an insurer, unless terminated, suspended or revoked, shall authorize the appointee to act as an agent for that insurer and to be compensated therefor notwithstanding the provisions of §§ 38.2-1812 and 38.2-1823.

C. ~~Upon the suspension or revocation of a license, the agent, or any person having possession of that license, shall immediately return it to the Commission.~~

§ 38.2-1826. Requirement to report to Commission.

A. Each licensed agent shall report within thirty *calendar* days to the Commission, and to every insurer for which he is appointed any change in his residence or name. ~~Any licensed agent who has moved his residence from this Commonwealth shall have all licenses immediately terminated by the Commission.~~

B. Each licensed agent convicted of a felony shall report within thirty *calendar* days to the Commission the facts and circumstances regarding the criminal conviction.

C. *Each licensed agent shall report to the Commission within thirty calendar days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in this Commonwealth. Such report shall include a copy of the order, consent to order or other relevant legal documents.*

D. *The license authority of any licensed resident agent shall terminate immediately when such agent has moved his residence from this Commonwealth, whether or not the Commission has been notified of such move.*

§ 38.2-1827. Appointment may include one or more classes of insurance.

Except as otherwise provided in this title, an appointment of a licensed agent authorizes that person, ~~if qualified, to sell, solicit, or negotiate; procure, or effect~~ any one or more of the classes of insurance (i) for which the agent is licensed in this Commonwealth and (ii) for which the appointing insurer is also licensed in this Commonwealth. *However, an agent holding a license that includes both life and health and property and casualty authorities shall be required to obtain both a life and health and a property and casualty appointment if the agent intends to sell, solicit, or negotiate both types of insurance, and an insurer shall be required to appoint any such agent for both life and health and property and casualty if the insurer intends to authorize the agent to sell, solicit, or negotiate both types of insurance on its behalf.*

§ 38.2-1828. Selling accident and sickness insurance.

Any individual *or business entity* who desires to ~~sell, solicit, or negotiate; procure, or effect~~ accident and sickness insurance as defined in § 38.2-109 shall obtain a ~~life and health insurance~~ agent's license. However, this requirement does not apply to individuals *or business entities* eligible for limited licenses pursuant to § ~~38.2-1815~~ 38.2-1815.1, or those agents selling, *soliciting or negotiating* medical, hospital, surgical, funeral or weekly indemnity benefits as a part of a policy of motor vehicle or aircraft insurance.

§ 38.2-1830. Temporary licenses and appointments; when issued.

A. *Temporary individual licenses and appointments providing for life and health insurance agents authority or property and casualty insurance agents authority shall be issued by the Commission in the*

following circumstances:

1. Upon the death of an agent, to his personal representative, surviving spouse, employee, child or next of kin;

2. Upon the inability of an agent to act because of sickness, injury or mental incapacity, to his spouse, child, next of kin, employee or legal representative;

3. Upon the sale of the agent's business, to any person employed in the business. In the event no person is available and suitable for licensing and appointment, the Commission may license and appoint any other suitable person; or

4. To an applicant who is to be an appointed agent of a ~~combination~~ *home service* insurer, and who will be assigned a debit and will actually collect the premiums on insurance contracts during the period of such temporary license. A "combination insurer" means an insurer selling industrial or ordinary life insurance or accident and sickness insurance on a debit, where the premiums are payable at least monthly directly by the owner of the policy or a person representing the owner to a representative of the insurer.

B. Before any temporary license is issued, the applicant shall file with the Commission a ~~written~~ *an* application in the form and containing the information the Commission prescribes.

C. No ~~written~~ examination shall be required of the applicant; however, no license shall be issued until the Commission is satisfied that the applicant is trustworthy and competent to be licensed.

D. Only one temporary *life and health* license of each type shall and one temporary *property and casualty* license may be issued to any individual during his lifetime, and ~~that each such temporary~~ license shall be valid for ~~ninety~~ *a period of 180 calendar days*.

E. Appointments made by insurers of agents holding temporary licenses shall expire upon the expiration of the temporary license, unless the agent has obtained prior to expiration of the temporary license, a permanent license of the same type, in which event the appointment shall remain in effect subject to the provisions of § 38.2-1825.

F. An individual holding a temporary license shall not be prevented from securing a license by meeting the applicable requirements for the license, nor shall a temporary license be required before an individual may obtain a license.

G. The Commission, in its sole discretion and for good cause shown, may renew licenses granted under this section.

§ 38.2-1831. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

The Commission may ~~refuse to issue an agent's, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any person's license to any person and, in addition to or in lieu of a penalty imposed under § 38.2-218, may suspend or revoke the license of any licensee whenever it finds that the applicant or licensee for any one or more of the following causes:~~

1. ~~Has misappropriated any insurance premium~~ *Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;*

2. ~~Has failed to apply any premium as directed by the holder or prospective holder of the contract of insurance~~ *Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;*

3. ~~Has violated any provisions of any law of this Commonwealth applicable to insurance and insurance agents~~ *Obtaining or attempting to obtain a license through misrepresentation or fraud;*

4. ~~Has been guilty of Engaging in the practice of rebating;~~

5. ~~Has been guilty of Engaging in twisting the contracts of other insurers or any form thereof, where "twisting" means misrepresenting a policy for the purpose of inducing a policyholder an insured to terminate an existing policy to take and purchase a new policy through misrepresentation;~~

6. ~~Has been guilty of misrepresenting the provisions of the contract he is selling, or the contracts of other insurers~~ *Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;*

7. ~~Has been guilty of fraudulent or dishonest practices~~ *Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;*

8. ~~If not exempted from the requirement of § 38.2-1829, has not been "actively engaged" in the insurance business during the preceding year as required by that section~~ *Having admitted or been found to have committed any insurance unfair trade practice or fraud;*

9. ~~Has Having been convicted of a felony;~~

10. ~~Is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which a license is applied for or held~~ *Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds; or*

11. ~~Has failed or refused to obey any order of the Commission entered against such applicant or~~

~~licensee~~. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

12. Forging another's name to an application for insurance or to any document related to an insurance transaction;

13. Improperly using notes or any other reference material to complete an examination for an insurance license;

14. Knowingly accepting insurance business from an individual who is not licensed;

15. Failing to comply with an administrative or court order imposing a child support obligation; or

16. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

§ 38.2-1832. Refusal to issue and revocation of license; hearing; new application.

A. If the Commission believes that any applicant for a license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. Except as provided in § 38.2-1042, the Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten *calendar* days' notice in writing of the time and place of the hearing if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension, as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1826, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

B. The license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

§ 38.2-1833. Appointments of agents.

A. Subject to the requirement of § 38.2-1801, every licensed agent may *sell policies and* solicit applications for insurance for any one or more of the classes of insurance for which he is licensed on behalf of an insurer (i) also licensed in this Commonwealth for those classes of insurance and (ii) by which the licensed agent has not yet been validly appointed, subject to the following requirements:

1. The insurer shall, within thirty *calendar* days of the date of execution of the first insurance application or policy submitted by a licensed but not yet appointed agent, either reject such application or policy or file with the Commission a ~~written~~ notice of appointment ~~on~~ in a form acceptable to the Commission. *The Commission shall provide a means whereby an insurer may elect to appoint an agent to represent all or some of the insurers within the insurer's holding company system or group by the submission of a single notice of appointment for each appointment type applicable.*

2. The insurer shall ~~mail~~ provide to the licensed agent, within the same thirty-day period, a ~~copy~~ of verification that the notice of appointment ~~form~~ has been filed with the Commission.

3. Upon receipt of the notice of appointment ~~form~~, the Commission shall verify that the agent holds a valid license and that the ~~form~~ notice has been properly completed and submitted. If the Commission determines that the appointment is invalid, it shall notify the appointing insurer within five *business* days of its receipt of the appointment ~~form~~ notice. If the appointment is valid, the Commission shall issue an acknowledgement of appointment to the agent within five *business* days of its receipt of the appointment ~~form~~ notice, and shall simultaneously notify the appointing insurer of the issuance of such acknowledgement of appointment.

4. If the licensed agent does not receive from the Commission an acknowledgement of his appointment within forty-five *calendar* days from the date of execution of the first insurance application or policy submitted to the insurer, then the agent shall immediately discontinue any *selling or* soliciting of insurance on behalf of that insurer until such acknowledgement is received. Any such further *selling or* solicitation after forty-five *calendar* days but prior to receipt of such acknowledgement shall constitute a violation of this section and shall be subject to penalties as prescribed in §§ 38.2-218 and

38.2-1831.

5. *An agent whose appointment by an insurer has been terminated by the insurer shall be prohibited from selling or soliciting applications or policies on behalf of that insurer unless and until reappointed by the insurer. Any such selling or solicitation on behalf of that insurer subsequent to such appointment termination and prior to such reappointment shall constitute a violation of this section by the agent and shall subject the agent to penalties as prescribed in §§ 38.2-218 and 38.2-1831.*

B. Each ~~licensed~~ agent's appointment record shall be public information and shall be available for public inspection during normal business hours of the Commission. The Commission may charge a reasonable fee to cover the costs incurred in providing this information.

C. Each insurer shall pay ~~an~~ a nonrefundable appointment processing fee, in an amount prescribed by the Commission, for each ~~agent appointed~~ appointment notification submitted by the insurer to the Commission.

D. The prescribed appointment fee shall not be less than seven dollars nor more than ~~fifteen~~ twenty-five dollars.

E. Such fees shall be billed to the insurer by the Commission on a quarterly basis and shall be due and payable ~~immediately upon receipt by the insurer~~ on August 10 for the quarter ending June 30, on November 10 for the quarter ending September 30, on February 10 for the quarter ending December 31, and on May 10 for the quarter ending March 31. In the event that a due date falls on a weekend or holiday, payment shall be due on the first business day following such due date.

F. Such quarterly billing shall include all ~~agents appointed~~ appointment notifications submitted by the insurer during the immediately preceding quarter, regardless of the current status of any such ~~appointees~~ appointments.

G. All appointment processing fees collected by the Commission shall be paid directly into the state treasury and placed to the credit of the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

H. *Upon the failure of the insurer to pay amounts due under this section by the date due, the Commission:*

1. *Shall impose a penalty of fifty dollars per day for each day between the date due and the date full payment is received by the Commission; and*

2. *May, in addition to the penalty imposed above, administratively terminate the appointment of each agent for whom the appointment processing fee was not received by the date due.*

§ 38.2-1834. Duration of appointment; annual renewal of agent's appointment.

A. A valid appointment of an agent shall authorize the agent to act for the insurer during the time for which the appointing insurer is licensed to do business in this Commonwealth, unless such appointment is otherwise terminated, suspended, or revoked. ~~Upon~~ No later than ten calendar days after notice of the termination, suspension or revocation of ~~such an~~ appointment has been sent to the agent or agency, the agent, or any other person having possession of the appointment, agency shall immediately ~~return it to the Commission~~ cease selling or soliciting on behalf of such insurer.

B. Prior to August ~~4~~ 10 of each year, or the first business day thereafter if August 10 falls on a weekend or holiday, every insurer shall remit in a manner prescribed by the Commission a renewal appointment fee, for each appointment for which notice of appointment termination was not received by the Commission on or before the preceding June 30, in an amount prescribed by the Commission, which shall be collected by the Commission and paid directly into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

C. *Upon the failure of the insurer to pay amounts due under this section by the date due, the Commission:*

1. *Shall impose a penalty of fifty dollars per day for each calendar day between the date due and the date full payment is received by the Commission; and*

2. *May, in addition to the penalty imposed above, administratively terminate the appointment of each agent from whom the appointment renewal fee was not received by the date due.*

~~C. D.~~ Except as provided in § 38.2-1834.1, upon the termination of the appointment of an agent by an insurer, the insurer shall notify the agent of such termination within five calendar days and the Commission, except as provided in subsection B of this section, within thirty calendar days in a manner acceptable to the Commission, whereupon termination of the agent's appointment to represent the insurer shall be recorded by the Commission.

~~D. E.~~ Any license in effect on January 1, 1986, shall be deemed to be an appointment for the unexpired term of that license. Certificates of qualifications issued prior to January 1, 1986, shall be deemed to be the license required by this chapter.

~~E. [Repealed.]~~

F. An appointment of an agent holding a restricted or limited license shall authorize such agent to sell, solicit, or negotiate; ~~procure or effect~~ only those classes of insurance specifically included in such agent's license authority.

§ 38.2-1834.1. Notification to Commission of termination; notice to agent; immunities; confidentiality; penalties.

A. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with an agent or other licensee under this chapter shall notify the Commission within thirty calendar days following the effective date of the termination, using a format prescribed by the Commission, if the reason for termination is one of the reasons set forth in § 38.2-1831 or the insurer has knowledge the agent was found by a court, government body, or legally authorized self-regulatory organization authorized by law to have engaged in any of the activities in §§ 38.2-1831, 38.2-1843, 38.2-1846.7 or § 38.2-1858.2. The propriety of any such termination for cause shall be certified in writing by an officer or authorized representative of the insurer or agent terminating the relationship. Upon the written request of the Commission, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the agent or other licensee.

B. The insurer or the authorized representative of the insurer shall promptly notify the Commission in a format acceptable to the Commission if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commission in accordance with subsection A had the insurer then known of its existence.

C. 1. Within fifteen calendar days after making the notification required by subsections A and B, the insurer shall mail a copy of the notification to the agent at his last known address pursuant to the insurer's records. If the agent is terminated for cause for any of the reasons listed in § 38.2-1831, the insurer shall provide a copy of the notification to the agent at his last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

2. Within thirty calendar days after the agent has received the original or additional notification, the agent may file written comments concerning the substance of the notification with the Commission in the form and manner required by the Commission. The agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Commission's file and accompany every copy of a report distributed or disclosed for any reason about the agent as permitted under subsection D.

D. 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Commission, authorized representatives of the Commission, the NAIC, its affiliates or subsidiaries, or state, federal, and international law-enforcement authorities shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Commission, from an insurer or agent, or a statement by a terminating insurer or agent to an insurer or agent limited solely and exclusively to whether a termination for cause under subsection A was reported to the Commission, provided that the propriety of any termination for cause under subsection A is certified in writing, pursuant to subsection A of this section, by an officer or authorized representative of the insurer or agent terminating the relationship.

2. In any action brought against a person that may have immunity under subdivision 1 for making any statement required by this section or providing any information relating to any statement that may be requested by the Commission, the party bringing the action shall plead specifically in any allegation that subdivision 1 does not apply because the person making the statement or providing the information did so with actual malice.

3. Subdivision 1 or 2 shall not abrogate or modify any existing statutory or common law privileges or immunities.

E. 1. Any documents, materials or other information in the control or possession of the Commission that is furnished by an insurer, agent or an employee thereof acting on behalf of the insurer or agent, or obtained by the Commission in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commission is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

2. Neither the Commission nor any person who received documents, materials or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision 1.

3. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

a. May share documents, material or other information, including the confidential and privileged documents, materials or information subject to subdivision 1, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information.

b. May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC, its affiliates or subsidiaries and from regulatory

and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

4. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subdivision 3.

5. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1 to a database or other clearinghouse service maintained by the NAIC, its affiliates or subsidiaries of the NAIC.

F. An insurer, the authorized representative of the insurer, or agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and an opportunity to be heard, have its license or certificate of authority suspended or revoked and may be fined in accordance with Chapter 2 (§ 38.2-200 et seq.) of this title.

§ 38.2-1836. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. ~~A person~~ An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state or territory of the United States or a province of Canada, ~~may obtain a license as set forth in Article 2 (§ 38.2-1814 et seq.) of this chapter if the applicant first files with the Commission a certification from the insurance department of the applicant's state or province of domicile setting forth that the applicant is licensed or otherwise authorized in that state or province to solicit, negotiate, procure or effect the classes of insurance for which the license is being sought in this Commonwealth. An applicant for a nonresident license shall be exempt from the education and examination requirements set forth in §§ 38.2-1816 and 38.2-1817, provided all requirements set forth in this section and § 38.2-1819 are met shall receive a nonresident agent license if:~~

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed as a resident and in good standing in his home state;

2. The applicant has submitted the proper request for licensure and has paid the fees required by § 38.2-1819;

3. The applicant has submitted or transmitted to the Commission the application for licensure that the person submitted to his home state, or in lieu of the same, a completed Uniform Application;

4. The person's home state issues nonresident agent licenses to residents of this Commonwealth on the same basis; and

5. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any ~~person~~ individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of ~~these persons such individuals~~.

C. No agent's license shall be issued to any nonresident of this Commonwealth unless the nonresident executes a power of attorney appointing the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. The appointment of an agent for service of process shall be irrevocable during the period within which a cause of action against the nonresident may arise out of nonresident transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

~~D.~~ The Commission may enter into a reciprocal agreement with an appropriate official of any other state, territory or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state, territory or province. No applicant for a nonresident agent license shall be permitted to obtain such a license unless such agent's home state of domicile will grant a similar license to a resident of ~~the~~ this Commonwealth.

D. The Commission may verify the agent's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident agent who moves from one state or province to another state shall file a change of address and provide a certification from the new home state within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Notwithstanding any other provision of this chapter, a person licensed as a limited lines credit insurance or other type of limited lines agent in his home state shall receive a nonresident limited lines agent license, pursuant to subsection A of this section, granting the same scope of authority as is granted under the license issued by the agent's home state. A person holding an unrestricted license

from his home state in which the authority of the license is less than the total authority prescribed in the associated major lines pursuant §§ 38.2-1814 through 38.2-1815.1 shall be issued a restricted nonresident license providing authority equivalent to that held by the agent in his home state.

E. G. Any licenses and appointments issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state or province of domicile is terminated, suspended, or revoked.

§ 38.2-1836.1. Authority of Commission to delegate certain functions.

In order to assist in the performance of its duties, the Commission may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including licensing examination administration, the collection of fees related to producer licensing and appointments, and such other functions as the Commission may deem appropriate.

§ 38.2-1837. Definitions.

As used in this article:

"Insurance consultant" means any individual, ~~partnership, limited liability company or corporation~~ business entity who acts as an independent contractor in relation to his client and for a fee or compensation, other than from an insurer or agent or surplus lines broker, advises or offers or purports to advise, as to life and health or property and casualty insurance, any person actively or prospectively insured. "Insurance consultant" shall not include:

1. Any licensed attorney acting in his professional capacity;
2. ~~[Repealed.]~~
3. 2. A trust officer of a bank acting in the normal course of his employment;
4. 3. Any actuary or certified public accountant who consults during the normal course of his business; and
5. 4. Any person employed as a risk manager and who consults for his employer only.

"Life and health insurance consultant" means an insurance consultant whose services are limited to insurance as defined in §§ 38.2-102 through 38.2-109 or health services as provided for in Chapters 42 (§ 38.2-4200 et seq.) and 43 (§ 38.2-4300 et seq.) of this title.

"Property and casualty insurance consultant" means an insurance consultant whose services are limited to insurance as defined in §§ 38.2-110 through 38.2-122 and 38.2-124 through 38.2-134.

§ 38.2-1838. License required of consultants.

A. ~~Any~~ No person, ~~not licensed unless he holds an appropriate license as a life and health or property and casualty insurance consultant who, in the Commonwealth, holds himself out to be an insurance advisor, consultant, planner or counselor or any person who uses any other designation or title likely to mislead the public, that he has particular insurance qualifications other than those for which he may otherwise be licensed or qualified shall be punished as provided in § 38.2-218 in addition to any other penalties specifically provided for in this chapter. As used in this section, "hold himself out to be an insurance advisor, consultant, planner or counselor"~~ shall mean:

1. ~~Representing that one's business is Represent to members of the public that he provides planning or consulting services beyond those within the normal scope of activities of a licensed insurance consulting agent; or~~

2. ~~Receiving Except as provided in § 38.2-1812.2, charge or receive, directly or indirectly, special and specific a fee or other compensation for insurance advice, other than commissions received by a in such person's capacity as a licensed insurance agent or surplus lines broker resulting from selling, soliciting, or negotiating; procuring, or effecting insurance or health care services as allowed by his license.~~

B. Each ~~applicant~~ individual applying for an insurance consultant's license shall apply to the Commission in a form acceptable to the Commission, and shall provide satisfactory evidence of having met the following requirements:

1. To be licensed as a property and casualty insurance consultant the applicant must ~~(i) successfully complete a forty-five-hour property and casualty study course as required in § 38.2-1816 and (ii) pass, within six months 183 calendar days prior to the date of application for such license, the property and casualty examination as required in § 38.2-1817, except that an applicant who, at the time of such application holds an active property and casualty insurance agent license, shall be exempt from the study course and examination requirements;~~

2. To be licensed as a life and health insurance consultant, the applicant must ~~(i) successfully complete a forty-five-hour life and health study course as required in § 38.2-1816 and (ii) pass, within six months 183 calendar days prior to the date of application for such license, both the life and annuities and the health examination examinations as required in § 38.2-1817, except that an applicant who, at the time of such application holds both an active life and annuities license and an active health insurance agent license, shall be exempt from the study course and examination requirements; and~~

3. ~~Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in~~

connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

B1. ~~Repealed.~~

C. Any individual who acts as an insurance consultant ~~for as an officer, director, principal or employee of a partnership, limited liability company or corporation~~ business entity shall be licensed required to hold an appropriate individual license as an insurance consultant.

D. A business entity acting as an insurance consultant is required to obtain an insurance consultant license. Application shall be made in a form and manner acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section;
2. The business entity has filed the appropriate documents, as follows:
 - a. A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;
 - b. A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;
 - c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;
 - d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and
 - e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1845; and
3. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

E. The Commission may require any documents reasonably necessary to verify the information contained in an application.

F. Each applicant for an insurance consultant's license shall submit a nonrefundable application processing fee of fifty dollars at the time of initial application for such license.

§ 38.2-1839. Contract required; placement of insurance for public bodies.

A. ~~Any~~ A licensed insurance consultant shall enter into a written contract with his client prior to any act as a consultant in this Commonwealth. The contract shall include, without limitation, the amount and basis of any consulting fee and the duration of employment. If the insurance consultant may also receive commissions for selling, soliciting, or negotiating, ~~procuring, or effecting~~ insurance as a part of his services in addition to a consulting fee, unless otherwise prohibited, such information shall be disclosed in the contract.

B. No insurance consultant may provide or offer to provide, directly or indirectly, insurance products to a public body while concurrently and on its behalf (i) evaluating proposals from other insurance agents and (ii) recommending the placement of insurance.

§ 38.2-1840. Annual renewal application and fee.

A. Before June 1 of each year, each insurance consultant shall remit a renewal application in a form and manner acceptable to the Commission, along with the nonrefundable renewal application processing fee prescribed herein for the renewal of the license, unless the license has been terminated, suspended or revoked on or before June 30 of that year. Any consultant license for which the required renewal application and nonrefundable renewal application processing fee has been received by the Commission on or before June 1 shall be renewed for a one-year period beginning on July 1 and ending on the following June 30. Any consultant license for which the required renewal application and nonrefundable renewal application processing fee has not been received by the Commission by June 1 shall be terminated effective on June 30.

B. The annual nonrefundable ~~application~~ renewal processing fee and the annual nonrefundable ~~renewal processing fee~~ for each insurance consultant's license shall be fifty dollars, which shall be paid in a manner prescribed by the Commission. ~~Prior to August 1 of each year thereafter, every consultant shall renew his license in the manner prescribed by the Commission.~~ All fees shall be collected by the Commission and paid into the state treasury and placed to the credit of the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

§ 38.2-1841. Termination, suspension or revocation of license.

A. A license issued to an individual insurance consultant shall authorize him to act as an insurance consultant until his license is otherwise terminated, suspended, or revoked.

B. A license issued to a ~~partnership, limited liability company or corporation~~ business entity shall authorize such ~~partnership, limited liability company, or corporation~~ business entity to act as an insurance consultant until such license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation of law, shall automatically terminate the insurance consultant's license issued to such partnership. The Bureau shall automatically terminate all

insurance consultant licenses within ninety *calendar* days of receiving notification from the clerk of the Commission that the *certificate of organization or charter* of a domestic limited liability company or corporation *respectively*, whether by intent or by operation of law, has been terminated or that the certificate of *registration or certificate of authority* of a foreign limited liability company or corporation, *respectively*, has been revoked.

C. Upon the termination, suspension or revocation of an insurance consultant's license, the insurance consultant or the person having possession of the license shall immediately return it to the Commission.

D. Before August 1 of each year, each insurance consultant shall remit the nonrefundable renewal application processing fee prescribed in § 38.2-1840 for the renewal of the license, unless the license has been terminated, suspended or revoked on or before July 31 of that year. Any consultant license for which the required renewal form and nonrefundable renewal application processing fee has been received by the Commission on or before July 31 shall be renewed for a one-year period ending on the following July 31. Any consultant license for which the required renewal form and nonrefundable renewal application processing fee has not been received by the Commission by July 31 shall not be renewed effective on that date.

E. C. The termination of an insurance agent's *a consultant's* license as an insurance agent pursuant to subsection A of § 38.2-1825 shall not result in the termination of the agent's ~~consultant~~ *consultant's* license provided the annual *renewal application and* nonrefundable renewal application processing fee prescribed in § 38.2-1840 continues to be paid ~~and~~, the consultant license continues to be renewed as ~~otherwise required by this section § 38.2-1840, and the license is not otherwise revoked, suspended or terminated.~~

§ 38.2-1842. Requirement to report to Commission.

A. Each *licensed* insurance consultant shall report within thirty *calendar* days to the Commission any change in his residence or name. ~~Any insurance consultant who has moved his residence from this Commonwealth shall have his license immediately terminated by the Commission.~~

B. *In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as an insurance consultant in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for an insurance consultant license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the insurance consultant intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.*

~~B. C.~~ Each *licensed* insurance consultant convicted of a felony shall report within thirty *calendar* days to the Commission the facts and circumstances regarding the criminal conviction.

D. Each *licensed* insurance consultant shall report to the Commission within thirty *calendar* days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in this Commonwealth. Such report shall include a copy of the order, consent to order or other relevant legal documents.

E. The license authority of any *licensed* resident insurance consultant shall terminate immediately when such insurance consultant has moved his residence from this Commonwealth, whether or not the Commission has been notified of such move.

§ 38.2-1843. Grounds for placing on probation, refusal to issue or renew, revocation or suspension of license.

The Commission may ~~refuse to issue an insurance consultant's license and~~, in addition to or in lieu of a penalty imposed under § 38.2-218, ~~place on probation, suspend or, revoke the or refuse to issue or renew any person's license of any licensee whenever it finds such applicant or licensee for any one or more of the following causes:~~

1. ~~Has violated any provisions of any law of this Commonwealth applicable to insurance~~ *Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;*

2. ~~Has misappropriated any funds held in a fiduciary capacity~~ *Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;*

3. ~~Has shared fees with persons not licensed as a consultant or exempted under this statute~~ *Obtaining or attempting to obtain a license through misrepresentation or fraud;*

4. ~~Has misrepresented the provisions of any insurance contract~~ *Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance consulting business;*

5. ~~Has been guilty of Engaging in twisting the contracts of other insurers or any form thereof, where "twisting" means misrepresenting a policy for the purpose of inducing a policyholder an insured to terminate an existing policy to take and purchase a new policy through misrepresentation;~~

6. ~~Has been guilty of Engaging in the practice of rebating. For the purposes of this section, "rebating" shall include reducing the fee or compensation provided for in § 38.2-1837 for the purpose of inducing a client or potential client to purchase a policy;~~

7. ~~Has committed fraudulent or dishonest practices~~ *Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;*

8. ~~Is not trustworthy or is not competent to transact the insurance business for which a license is applied for or held~~ *Having admitted or been found to have committed any insurance unfair trade practice or fraud, including reducing the fee or compensation provided for in § 38.2-1837 for the purpose of inducing a client or potential client to purchase a policy;*

9. ~~Has~~ *Having been convicted of a felony; or*

10. ~~Has failed or refused to obey any order of the Commission entered against such applicant or licensee~~ *Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;*

11. *Having an insurance producer or consultant license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;*

12. *Forging another's name to an application for insurance or to any document related to an insurance transaction;*

13. *Improperly using notes or any other reference material to complete an examination for an insurance license;*

14. *Knowingly accepting insurance business from an individual who is not licensed;*

15. *Failing to comply with an administrative or court order imposing a child support obligation; or*

16. *Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.*

§ 38.2-1844. Refusal to issue and revocation of license; hearing; new application.

A. If the Commission is of the opinion that any applicant for an insurance consultant's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten *calendar* days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1842, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, ~~not exceeding two~~ *expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.*

B. *The license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken.*

C. *In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.*

D. *The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.*

§ 38.2-1845. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. ~~A person~~ *An individual or business entity* who is not a resident as defined in § 38.2-1800, but who is a resident of another state, territory, or a province of Canada, ~~may obtain a license as set forth in this article provided that the applicant first files with the Commission a certification from the insurance department of the applicant's state or province of domicile setting forth that the applicant is licensed or otherwise authorized in that state or province as an~~ *shall receive a nonresident insurance consultant license if:*

1. *The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident insurance consultant and is in good standing in his home state;*

2. *The applicant has submitted the proper application for licensure or a copy of the application for licensure submitted to his home state, and has paid the fees required by § 38.2-1838;*

3. *The applicant's home state issues nonresident insurance consultant licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a*

consultant in such state without requiring a license; and

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the insurance consultant's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident insurance consultant who moves from one state or province to another state or province shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

No applicant for a nonresident consultant license shall be permitted to obtain such a license unless such agent's state of domicile will grant a similar license to a resident of this Commonwealth.

Article 5.1.

Licensing of Surplus Lines Brokers.

§ 38.2-1857.1. Property and casualty insurance agents may be licensed as surplus lines brokers for certain insurance from unlicensed insurers.

The Commission may issue a surplus lines broker's license to any individual or business entity actively licensed as a property and casualty insurance agent for the procuring of insurance of the classes enumerated in §§ 38.2-109 through 38.2-122 and §§ 38.2-124 through 38.2-134 from insurers not licensed to transact insurance business in this Commonwealth. However, nothing in this chapter or in Chapter 48 (§ 38.2-4800 et seq.) of this title shall apply to the sale, solicitation or negotiation of the contracts of insurance cited in subsection C of § 38.2-1802.

§ 38.2-1857.2. Applications for surplus lines brokers' licenses.

A. Every original applicant for a surplus lines broker's license shall apply for such license in a form and manner prescribed by the Commission, and containing any information the Commission requires.

B. Prior to issuance of a license, the applicant shall file with the Commission a certification or attestation that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of this Commonwealth in the amount of \$25,000 with corporate sureties licensed by the Commission. The bond shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least thirty calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed surplus lines broker fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the surplus lines broker license shall terminate and the licensee shall be required to apply for a new surplus lines broker license.

C. Notwithstanding any other provisions of this title, a person licensed as a surplus lines broker in his home state or province shall receive a nonresident surplus lines broker license subject to meeting the requirements set forth in § 38.2-1857.9.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

E. A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section;

2. The business entity has filed the appropriate documents, as follows:

a. A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;

b. A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;

c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;

d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and

e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1845; and

3. The business entity has designated a licensed Virginia Property and Casualty insurance agent to be responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

F. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1857.3. Fees for surplus lines brokers' licenses.

The nonrefundable application processing fee shall be fifty dollars. On or before June 1 of each year, the licensee shall make application for license renewal and shall at that time pay a nonrefundable renewal application processing fee of fifty dollars. All renewals shall take effect on July 1. Any license not renewed by June 30 of each year shall terminate effective July 1 of that year. All fees shall be collected by the Commission and paid into the state treasury to the credit of the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

§ 38.2-1857.4. Term of licenses; renewal.

A. Every license issued pursuant to this chapter shall be for a term expiring on June 30 next following the date of its issuance and may be renewed for the ensuing license year, upon the filing of an application in the form prescribed by the Commission and payment of the nonrefundable renewal application processing fee prescribed in § 38.2-1857.3.

B. Any licensed resident surplus lines broker who has moved his residence from this Commonwealth shall have all licenses immediately terminated by the Commission.

§ 38.2-1857.5. Requirement to report to Commission.

A. Each licensed surplus lines broker shall report within thirty calendar days to the Commission any change in his residence or name.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as a surplus lines broker in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for a surplus lines broker license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the surplus lines broker intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed surplus lines broker convicted of a felony shall report within thirty calendar days to the Commission the facts and circumstances regarding the criminal conviction.

D. Each licensed surplus lines broker shall report to the Commission within thirty calendar days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in this Commonwealth. Such report shall include a copy of the order, consent to order or other relevant legal documents.

E. The license authority of any licensed resident surplus lines broker shall terminate immediately when such surplus lines broker has moved his residence from this Commonwealth, whether or not the Commission has been notified of such move.

F. The license authority of any business entity licensed as a surplus lines broker shall terminate immediately if the sole licensed responsible producer designated pursuant to subdivision E 3 of § 38.2-1857.2 for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth is removed for any reason, and a new responsible producer has not been appointed and the Commission notified within thirty calendar days of such removal and of the newly designated responsible producer.

§ 38.2-1857.6. Accepting and placing surplus lines business.

No surplus lines broker shall accept surplus lines business from any person other than an applicant for insurance or a duly licensed property or casualty insurance agent, nor shall such surplus lines broker compensate any person other than a duly licensed property or casualty insurance agent for such business. No person other than an applicant for insurance or a duly licensed property or casualty insurance agent shall place surplus lines business with a surplus lines broker licensed under this chapter nor shall any person other than a duly licensed property or casualty insurance agent accept compensation for such business.

§ 38.2-1857.7. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any surplus lines broker's license for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license

application or any other document filed with the Commission;

- 2. Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;*
- 3. Obtaining or attempting to obtain a license through misrepresentation or fraud;*
- 4. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;*
- 5. Engaging in the practice of rebating;*
- 6. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate an existing policy and purchase a new policy through misrepresentation;*
- 7. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;*
- 8. Having been convicted of a felony;*
- 9. Having admitted or been found to have committed any insurance unfair trade practice or fraud;*
- 10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;*
- 11. Having an insurance producer, surplus lines broker, or consultant license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;*
- 12. Forging another's name to an application for insurance or to any document related to an insurance transaction;*
- 13. Improperly using notes or any other reference material to complete an examination for an insurance license;*
- 14. Knowingly accepting insurance business from an individual who is not licensed;*
- 15. Failing to comply with an administrative or court order imposing a child support obligation; or*
- 16. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.*

§ 38.2-1857.8. Refusal to issue and revocation of license; hearing; new application.

A. If the Commission is of the opinion that any applicant for a surplus lines broker's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten calendar days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1857.5, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

B. The license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

§ 38.2-1857.9. Licensing nonresidents; clerk of the Commission to be appointed agent for service of process; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state, territory, or province of Canada, shall receive a nonresident surplus lines broker license if:

- 1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident surplus lines broker and is in good standing in his home state;*
- 2. The applicant has submitted the proper application for licensure, or in lieu thereof has submitted*

a copy of the application for a Surplus Lines Broker license submitted to the home state, and has paid the fees required by § 38.2-1857.3;

3. The applicant's home state issues nonresident surplus lines broker licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a surplus lines broker in such state without requiring a license; and

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the surplus lines broker's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident surplus lines broker who moves from one state or province to another state or province shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

Article 6.1.

Licensing of Viatical Settlement Brokers.

§ 38.2-1865.1. License required for viatical settlement brokers; Commission's authority; conditions.

A. No person shall act as a viatical settlement broker, or solicit a viatical settlement contract while acting as a viatical settlement broker, on or after January 1, 1998, without first obtaining a license from the Commission.

B. Application for a viatical settlement broker's license shall be made to the Commission in the manner, in the form, and accompanied by the nonrefundable license processing fee prescribed by the Commission.

C. A business entity acting as a viatical settlement broker is required to obtain a viatical settlement broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section;

2. The business entity has filed the appropriate documents, as follows:

a. A domestic corporation shall have filed its articles of incorporation with the clerk of the Commission, and shall have been issued a charter by the Commission;

b. A domestic limited liability company shall have filed its articles of organization with the clerk of the Commission, and shall have been issued a certificate of organization by the Commission;

c. A domestic limited partnership shall have applied for and received a certificate of limited partnership from the clerk of the Commission;

d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court; and

e. A foreign partnership, limited partnership, limited liability company or corporation shall have complied with the requirements of § 38.2-1865.4; and

3. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this Commonwealth.

D. The Commission may require any documents reasonably necessary to verify the information contained in an application.

E. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

F. The license processing fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

G. Before June 1 of each year, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal application prescribed by the Commission for the renewal of the license effective July 1

of that year.

H. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following June 30 if the required renewal application and renewal fee have been received by the Commission on or before June 1, and the license has not been terminated, suspended or revoked on or before June 30.

I. The renewal fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund — State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

J. Each applicant for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.

K. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

L. A viatical settlement broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

§ 38.2-1865.2. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any person's license for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission;

2. Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or of another state's insurance regulatory authority;

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;

5. Engaging in the practice of rebating;

6. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate an existing policy and purchase a new policy through misrepresentation;

7. Intentionally misrepresenting the terms of an actual or proposed insurance or viatical settlement contract or application therefor;

8. Having been convicted of a felony;

9. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;

11. Having an insurance producer, viatical settlement broker, or consultant license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

12. Forging another's name to an application for insurance or to any document related to an insurance or viatical settlement transaction;

13. Improperly using notes or any other reference material to complete an examination for an insurance license;

14. Knowingly accepting insurance business from an individual who is not licensed;

15. Placing or attempting to place a viatical settlement with a viatical settlement provider not licensed in this Commonwealth;

16. Failing to comply with an administrative or court order imposing a child support obligation; or

17. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

§ 38.2-1865.3. Refusal to issue and revocation of license; hearing; new application.

A. If the Commission is of the opinion that any applicant for a viatical settlement broker's license is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten calendar days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1865.5, the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after

a hearing, nor any licensee whose license is revoked, shall again apply for a license until the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

B. The license of a business entity may be suspended, revoked or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers or managers acting on behalf of the business entity, and the violation was neither reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

§ 38.2-1865.4. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a resident of another state or a province of Canada, shall receive a viatical settlement broker license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident viatical settlement broker and is in good standing in his home state or province;

2. The applicant has submitted the proper application for licensure and has paid the fees required by § 38.2-1865.1;

3. The applicant's home state or province issues nonresident viatical settlement broker licenses to residents of this Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a viatical settlement broker in such state or province without requiring a license; and

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of this Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the viatical settlement broker's licensing status through the Producer Database maintained by the NAIC, its affiliates or subsidiaries.

E. A nonresident viatical settlement broker who moves from one state or province to another state shall file a change of address and provide a certification from the new home state or province within thirty calendar days of the change of legal residence. No fee or license application is required.

F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state or province is terminated, suspended, or revoked.

§ 38.2-1865.5. Requirement to report to Commission.

A. Each licensed viatical settlement broker shall report, in writing, any change in business or residence address or name within thirty calendar days to the Commission.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as a viatical settlement broker in this Commonwealth and operating under an assumed or fictitious name shall notify the Commission, at the earlier of the time the application for a viatical settlement broker license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the viatical settlement broker intends to operate in Virginia. The Commission shall also be notified within thirty calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed viatical settlement broker convicted of a felony shall report within thirty calendar days to the Commission the facts and circumstances regarding the criminal conviction.

D. Each licensed viatical settlement broker shall report to the Commission within thirty calendar days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in this Commonwealth. Such report shall include a copy of the order, consent to order or other relevant legal documents.

E. The license authority of any licensed resident viatical settlement broker shall terminate immediately when such viatical settlement broker has moved his residence from this Commonwealth, whether or not the Commission has been notified of such move.

§ 38.2-1866. Continuing education requirements.

A. Every *individual* resident and nonresident (i) insurance consultant, (ii) life and ~~health~~ *annuities* insurance agent, (iii) *health agent*, (iv) property and casualty insurance agent (v) *personal lines agent*, and ~~(iv)~~ (vi) title insurance agent shall, on a biennial basis, furnish evidence as set forth in this article that the continuing education requirements of this article have been satisfied. As used in this article, the term "agent" shall be construed to refer to any of the *individual* licensees referred to above.

B. Any agent who holds ~~one type of a life and annuities license subject to this section or a health agent license, or both,~~ shall complete sixteen hours of *relevant* continuing education credits.

C. Any agent who holds a *personal lines license or a property and casualty license shall complete sixteen hours of relevant continuing education credits.*

D. Any agent who holds a *title agent license shall complete sixteen hours of relevant continuing education credits.*

E. Any agent who holds *licenses from more than one type of license subject to this section categories of licenses provided above shall complete twenty-four hours of relevant continuing education credits with a minimum of eight credit hours in each license type such category.*

F. Of the total required credits for each biennium, two credit hours shall be in insurance law and regulations applicable in Virginia.

G. Agents may receive no more than seventy-five percent of their required credits from courses provided by insurance companies or agencies. The Board, in its sole discretion, shall, at the time of course approval, determine whether any particular course shall be considered to be insurance company or agency sponsored, and shall require all course sponsors to provide this information clearly and conspicuously to all those enrolling in that course.

§ 38.2-1867. Insurance continuing education board; approval of credits.

A. An insurance continuing education board, hereinafter called the Board, appointed by the Commission, shall approve all continuing education instructors, continuing education courses and programs of instruction. The Board shall establish and monitor standards for the education of insurance agents, approve courses including evaluating credit hours for all courses or programs offered, and set minimum requirements for course instructors. The Board shall have the authority to disapprove or withdraw approval of course sponsors, courses or course instructors when the established standards are not satisfied, *or where such standards have been violated.*

1. B. The number of credits for each self-study course, correspondence course, or program of classroom instruction shall be determined in a manner prescribed by the Board. However, for an approved classroom course, a credit hour shall be equivalent to a classroom hour providing at least fifty minutes of continuous instruction or participation. No credits shall be granted for approved classroom courses unless notice to the Board is accompanied by proof of attendance by the course provider. No credits shall be granted for any correspondence or self-study course that does not include a ~~written~~ test of the subject matter which shall be successfully completed by each agent requesting credit. The Board shall have the right to review and approve or disapprove the proposed test as part of the course approval process.

2. C. An instructor of an approved continuing education course shall be eligible to receive the same number of credits as a person enrolled in the course for the purpose of meeting the requirements. However, agents and instructors may apply credits for attending or teaching the same course only once during any biennium.

3. D. Excess credit hours accumulated during any biennium may be carried forward to the next biennium only.

~~B.~~ E. Members of the Board shall be appointed as follows:

1. One representative from the Independent Insurance Agents of Virginia;
2. One representative from the Professional Insurance Agents of Virginia and the District of Columbia;
3. Two representatives from the Virginia Association of Life Underwriters;
4. One representative of a licensed property and casualty insurance company writing business in this Commonwealth that operates through an exclusive agency force;
5. One representative of a licensed life and health insurance company writing business in the Commonwealth that operates through an exclusive agency force;
6. One representative of a licensed property and casualty insurance company domiciled and writing business in this Commonwealth;
7. One representative of a licensed life and health insurance company domiciled and writing business in this Commonwealth;
8. One representative of a licensed life and health insurance company writing business in this Commonwealth;
9. One representative of a licensed property and casualty insurance company writing business in this Commonwealth;
10. One representative from the Virginia Land Title Association; and
11. One representative from the adult education or higher education field.

~~C.~~ F. On and after July 1, 1996, no person shall be appointed to serve as a member of the Board if,

in the opinion of the Commission, other than as an incidental part of or unrelated to such person's employment, such person prepares, submits for approval, or teaches insurance continuing education courses in Virginia or in any other jurisdiction.

~~D.~~ *G.* No meeting of the Board or any subcommittee of the Board shall be held unless timely notice of such meeting has been provided to the Commission's Bureau of Insurance. At any such meeting of the Board or any subcommittee of the Board, one or more representatives from the Bureau of Insurance shall be permitted to attend and to participate in such meeting, except that such Bureau of Insurance representative or representatives shall not have the right to vote on any matters before the Board.

~~E.~~ *H.* Actions of the Board shall be exempt from the application of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 38.2-1868.1. Proof of compliance; late filing penalty, exemption or waiver.

A. As used in this article:

"Proof of compliance" shall mean all documents, forms and fees specified by the Board for (i) filing proof of completion of Board-approved continuing education courses for the appropriate number of hours and for the appropriate content or (ii) filing proof of meeting the exemption requirements set forth in subsection B or C of § 38.2-1871.

"Received by the Board or its administrator" shall mean delivered into the possession of the Board or its administrator at the business address of the Board's administrator.

B. Each agent holding one or more licenses subject to the continuing education requirements of this article shall complete all continuing education course, exemption, or waiver requirements by no later than December 31 of each even-numbered year, and shall submit to the Board or its administrator proof of compliance with or exemption from the continuing education requirements in the form and manner required by the Board.

~~1.~~ *C.* Such proof of compliance must be received by the Board or its administrator by the close of business on February 28 of the following year, or the next working day thereafter if February 28 falls on a weekend.

~~2.~~ *D.* Agents shall be permitted to submit proof of compliance for an additional period of time, until the close of business on March 31, or the next working day thereafter if March 31 falls on a weekend, of such year subject to payment by the agent, in addition to any filing fee imposed by the Board for timely filing of proof of compliance, of a late filing penalty of \$250, payable to the Board in such manner as may be prescribed by the Board. No agent whose proof of compliance is received during the extension provided by this subdivision shall be considered in compliance with the continuing education requirements unless the filing fee and the late filing penalty described herein have been paid by the close of business on March 31, or the next working day thereafter if March 31 falls on a weekend.

~~3.~~ *E.* Failure of an agent to furnish proof of compliance by the applicable date specified in ~~subdivision B 1 or B 2~~ *subsection C or D* of this section shall result in the imposition of the penalties set forth in § 38.2-1869.

~~C.~~ *F.* Agents seeking a waiver of some or all of the course credit requirements for a biennium pursuant to § 38.2-1870 shall submit all documentation, forms and fees specified by the Board so as to be received by the Board or its administrator as set forth in § 38.2-1870.

~~D.~~ *G.* Any agent holding one or more licenses subject to this article who fails to submit complete documentation showing proof of compliance with continuing education requirements, as well as all specified forms and fees, so as to be received by the Board or its administrator by the close of business on the ~~date specified~~ *dates described in subsection B or C* of this section shall be deemed to be in noncompliance with the requirements of this article.

§ 38.2-1869. Failure to satisfy requirements; termination of license.

A. Failure of an agent to satisfy the requirements of this article by the last day of each even-numbered year beginning December 31, 1994, either by obtaining the continuing education credits required and furnishing evidence of same to the Board or its administrator as required by this article, or by furnishing to the Board acceptable evidence of exemption from the requirements of this article, or by obtaining, in a manner prescribed by the Board pursuant to this article, a waiver of the requirements for that biennium, shall result, subsequent to notification by the Board to the Commission, in the administrative termination of each license held by the agent for which the requirement was not satisfied.

~~1.~~ *B.* The Board shall, on or about a date six months prior to the end of each biennium, provide a status report to each agent who has not yet fully satisfied the requirements of this article for such biennium. Such report shall inform the agent of his current compliance status for each license held that is subject to this article, and the consequences associated with noncompliance, and shall be sent by first-class mail to such agent at his last-known residence address as shown in the Commission's records. Failure of an agent to receive such notification shall not be grounds for contesting license termination.

~~2.~~ *C.* The Board shall, ~~on or about a date~~ *no later than forty-five calendar days and no sooner than sixty calendar days* prior to the end of each biennium, provide a status report to each agent who has not yet fully satisfied the requirements of this article for such biennium. Such report shall inform the agent of his current compliance status for each license held that is subject to this article, and the consequences associated with noncompliance, and shall be sent by first-class mail to such agent at his last known

residence address as shown in the Commission's records. Failure of an agent to receive such notification shall not be grounds for contesting license termination.

3. *D.* No administrative termination pursuant to this section shall become effective until the Commission has provided at least thirty *calendar* days' written notice of such impending termination to the agent by first-class mail sent to the agent at the agent's last known residence address as shown in the Commission's records. The notice period shall commence on the date that the written notice is deposited in the United States mail. Failure of an agent to receive such notification shall not be grounds for contesting a license termination. Neither the Board, nor its administrator, nor the Commission shall have the power to grant an agent additional time for completing the continuing education credits required by ~~subsection B of § 38.2-1866~~, or additional time for submitting proof of compliance as required by § 38.2-1868.1, or additional time for seeking waivers or exemption pursuant to § 38.2-1870 or § 38.2-1871. During a period of thirty *calendar* days immediately following such notice from the Commission, the Board shall permit agents to demonstrate to the satisfaction of the Board that the agent had, in fact, submitted and the Board or its administrator had received proof of compliance on or before the filing deadlines set forth in ~~subsection B of § 38.2-1868.1~~. The Board shall not be obligated to review or respond to any other submissions during such thirty-day period except submissions indicating that the Board's records of compliance for such agent were incorrect. Subsequent to the expiration of such thirty-day period, and prior to providing to the Commission the record of those agents who complied with the requirements of this article, the Board shall provide a reasonable additional period of time for processing of appeals pursuant to § 38.2-1874. However, failure of an agent to provide written notice of appeal in the form and manner required by the Board within forty-five *calendar* days following the expiration of the thirty-day period shall be deemed a waiver by such agent of the right to appeal the determination of noncompliance.

No more than fifteen *calendar* days after the end of such appeal period, the Board or its administrator shall provide to the Commission a final updated record of those agents who complied with the requirements of this article, whereupon the Commission shall administratively terminate the licenses of those agents required to submit proof of compliance and by whom proof of compliance was not submitted in a proper or timely manner. Agents wishing to contest the Commission's action in terminating a license shall adhere to the Commission's Rules of Practice and Procedure and the Rules of the Supreme Court of Virginia.

4. *E.* Pursuant to the requirements of subsection C of § ~~38.2-1817~~ 38.2-1815, §§ 38.2-4800 and 6.1-2.21, respectively:

~~a.~~ 1. An agent holding a license for variable life insurance and variable annuities whose life and ~~health annuities~~ insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such variable life insurance and variable annuities license administratively terminated by the Commission;

~~b.~~ 2. An agent holding a license as a surplus lines broker whose property and casualty insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such surplus lines broker license administratively terminated by the Commission; and

~~c.~~ 3. An agent holding a registration as a title settlement agent whose title insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such registration as a title settlement agent administratively terminated by the Commission.

Any such license or registration so terminated may be applied for again after the agent has obtained, respectively, a new life and ~~health annuities~~ insurance agent's license, a new property and casualty insurance agent's license, or a new title insurance agent's license and appointment, if appointment is required.

~~B.~~ *F.* 1. Except as provided in subdivision 2 of this subsection, no resident agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of a period of ninety *calendar* days from the date of termination of such license. No resident agent applying for a license after termination of a previous license pursuant to this section shall be issued a license unless the agent has successfully completed, subsequent to the *end of the* biennium, ~~any study course required by § 38.2-1816~~ and the examination required by § 38.2-1817. In such an event, ~~these study course and the examination~~ requirements shall not be subject to waiver under any circumstances, including those set forth in §§ ~~38.2-1816, § 38.2-1817, 38.2-1836, and 38.2-1845~~.

2. A resident agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of the ninety-day period provided in this subsection, provided that such agent (i) pays to the Commission, in addition to any license processing fees, an administrative penalty of \$1,000, which shall be paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance and (ii) has successfully completed, subsequent to the end of the biennium, ~~any study course required by § 38.2-1816~~ and the examination required by § 38.2-1817. In such an event, the ~~study course and~~ examination requirements shall not be subject to waiver under any circumstances, including those set forth in §§ ~~38.2-1816, § 38.2-1817, 38.2-1836, and 38.2-1845~~.

3. ~~No~~ A nonresident agent whose license has been terminated under the terms of this section shall be

permitted to make application for a new license *licenses* prior to the expiration of a period of *the ninety days from the date of termination of such license*. However, a nonresident agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of the ~~ninety-day~~ *ninety-calendar-day* period provided in this subsection, provided that such agent pays to the Commission, in addition to any license processing fees, an administrative penalty of \$1,000, which shall be paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance. Nonresident agents who reside in states requiring continuing education for their ~~resident insurance producers~~, and who furnish evidence in the form and manner required by the Commission of their compliance with such continuing education requirements *good standing* in their state of residence shall not be required to complete any study course required by ~~§ 38.2-1816~~ nor the examination required by § 38.2-1817, provided that the insurance supervisory official of the nonresident agent's state of residence will grant similar exemptions to Virginia residents seeking license renewal or reissue in such state. ~~Nonresident agents who reside in states that do not require continuing education for their resident insurance producers, or that do not grant similar exemptions to Virginia residents, shall be required to satisfy all requirements of subdivision B 1 or B 2 of this section to the same extent as required of Virginia resident agents.~~

C. G. A resident or nonresident agent who voluntarily surrenders his license without prejudice during a biennium or within 120 *calendar* days after the end of a biennium, and who has not provided proof of compliance for such biennium, shall not be permitted to apply for a new license of the same type until such agent has complied with the requirements of subsection ~~B F~~ of this section. Further, if such agent chooses not to apply for a new license under the terms of subdivision ~~B F 2~~ or ~~B F 3~~ of this section, such agent shall not be permitted to obtain a new license of the same type until the expiration of the same ninety-day period applicable to agents whose licenses are terminated pursuant to subsection A of this section.

D. H. A resident agent whose license terminates because, within 180 *calendar* days prior to or within 120 *calendar* days after the end of a biennium, such agent moves his residence to another state, and who had not, prior to such relocation, provided proof of compliance for such biennium shall not be permitted to apply for a new license of the same type until such agent has complied with the requirements of subdivisions ~~B F 1~~ and ~~B F 2~~ of this section. Further, if the agent chooses not to apply for a new license under the terms of subdivision ~~B F 2~~ of this section, such agent shall not be permitted to obtain a new license of the same type until the expiration of the same ninety-day period applicable to agents whose licenses are terminated pursuant to subsection A of this section.

E. I. An insurance consultant who fails to renew his *insurance* consultant license by the date specified in § 38.2-1840, but who obtains a new insurance consultant license within twelve months following such renewal date shall be treated, for purposes of determining exemption from continuing education requirements pursuant to § 38.2-1871, as if such insurance consultant license had been renewed in a timely manner.

§ 38.2-1870. Waiver of continuing education requirements.

The requirements of this article pertaining to the number of course credits required may be waived, in whole or in part, by the Board for good cause shown. As used herein, "good cause" includes long-term illness or incapacity and such other emergency situations as may be determined by the Board as preventing the agent from satisfying the continuing education credit hours required by this article. Requests for waivers of continuing education requirements shall be made in a form and manner prescribed by the Board. Requests for waiver of all course credit requirements shall be submitted to the Board or its administrator no later than ninety *calendar* days prior to the end of the biennium for which such waiver is requested. In the event that the long-term illness, incapacity, or such other emergency situation referenced above manifests itself within 120 *calendar* days prior to the end of the biennium, requests for waivers of some but not all of the course credit requirements shall be submitted to the Board or its administrator no later than the applicable submission deadline set forth in § 38.2-1868.1. The Board shall approve or disapprove the waiver request within thirty *calendar* days of receipt thereof, and shall provide written notice of its decision to the applicant for waiver within five *calendar* days of rendering its decision. Any waiver granted pursuant to this section shall be valid only for the biennium for which waiver application was made.

§ 38.2-1871. Licensees exempt from continuing education requirements of article.

A. The following licensees are exempt from fulfilling the continuing education credit requirements set forth in this article for the biennium in which such licenses are issued:

1. Resident agents who have successfully passed the required examination for a license during a biennium pursuant to ~~§ 38.2-1817~~ will be exempt from meeting the continuing education requirements for that license for that biennium; and

2. Resident or nonresident agents who have been issued a license during the last twelve months of the biennium *in which such licenses are issued*, and who are not otherwise exempt from the continuing education requirements for that license, shall ~~have such requirements waived~~ *be exempt from fulfilling the continuing education credit requirements set forth in this article* for that license for that biennium.

B. The following licensees are exempt from fulfilling the continuing education credit requirements

set forth in this article:

1. Life and health insurance consultants who are *also* licensed *both* as life and *annuities insurance agents and as* health agents and who satisfy the continuing education requirements needed for continuation of their life and *annuities and* health agent ~~license licenses~~; and

2. Property and casualty insurance consultants who are also licensed as property and casualty agents and who satisfy the continuing education requirements needed for continuation of their property and casualty agent license.

C. The following licensees may request exemptions from continuing education requirements, but shall not be exempt unless such exemption is approved by the Board after submission of an exemption request in the form and manner required by the Board.:

1. An agent who can prove, in the form and manner required by the Board, that he has attained or will attain at least the age of sixty-five by the end of a biennium may apply for a permanent exemption with respect to one or more licenses held by such agent, subject to submission of proof of the following, in a form and manner required by the Board:

a. A resident or nonresident agent must demonstrate that the agent has held any combination of resident or nonresident Virginia licenses of equivalent type continuously *and without interruption* for at least *the twenty years immediately preceding the end of the biennium*; or

b. A resident agent who will have held a Virginia resident agent license continuously *and without interruption* for no fewer than *the immediately preceding* four years by the end of the biennium must furnish proof of having held equivalent license authority continuously *and without interruption* in other states for a period that, when combined with the number of years of resident licensure in Virginia, equals at least twenty *continuous and uninterrupted years immediately preceding the end of the biennium*; and

2. Nonresident agents ~~who reside in states requiring continuing education for their resident insurance producers, and~~ who furnish evidence in the form and manner required by the Board of their ~~compliance with such continuing education requirements~~ *current good standing* in their ~~home state of residence~~, provided that the insurance supervisory official of the nonresident agent's ~~home state of residence~~ will grant similar exemptions to Virginia residents ~~who have satisfied Virginia's continuing education requirements~~.

§ 38.2-1872. Administrative duties of Board; transfer to outside administrator.

A. The Board shall have the authority to transfer all or part of its administrative duties to an outside administrator. The performance of the administrator shall be confirmed at least annually by the Board and appropriate corrective action shall be taken for any deficiencies. Such administrator shall maintain records reflecting the continuing education status of all licensed agents reporting credits to it, subject to the requirements of this article.

B. The Board or its administrator shall, following the end of each biennium and on a date and in a form acceptable to the Commission but in no event later than fifteen *calendar* days following the end of the appeal period provided by the Board pursuant to § 38.2-1869, provide to the Commission a report of all licensees who satisfied the requirements of this article for such biennium. The Board or its administrator shall not, however, be required to include in such report those licensees exempt pursuant to subsection A of § 38.2-1871. The administrative termination of licenses, as required by ~~subdivision A~~ *3 subsection D* of § 38.2-1869 shall be carried out by operation of law.

C. The Board or its administrator shall be provided such information from the Commission's records as the Board may reasonably require in order to carry out its duties, including, but not limited to, (i) requesting and receiving from the Commission computer-generated reports, mailing labels, or other computer-generated information containing the names, license identification numbers, license types, and residence addresses of all licensees subject to the requirements of this article; and (ii) direct on-line ~~"inquiry only"~~ access to such automated system data as the Commission may deem appropriate.

§ 38.2-1874. Continuing education program; plan of operation; approval by Commission.

A. The Board shall submit to the Commission a plan of operation ~~which~~ *that* provides for the fair and nondiscriminatory administration of the continuing insurance education program established pursuant to this article. Such plan shall not become effective until approved by the Commission in writing. The Board may, at any time, propose amendments to the plan of operation, and such amendments shall not become effective until approved by the Commission. The plan of operation shall:

1. Establish guidelines for the Board to utilize in adopting procedures for exercising its powers and duties;

2. Establish guidelines for the Board to utilize in adopting procedures for handling the assets of the continuing insurance education program;

3. Establish guidelines for reimbursing members of the Board for the necessary expenses incurred in the performance of their official duties and for indemnifying members for all expenses and liabilities incurred as a result of their serving as members of the Board;

4. Establish guidelines for determining places and times for meetings of the Board;

5. Establish guidelines for adopting procedures for records to be kept of all financial transactions of the Board and administrator;

6. Establish procedures for the election of Board officers;

7. Establish guidelines pursuant to which the Board may adopt a reasonable means whereby any person aggrieved by an action of the Board or administrator with regard to a course or instructor submission, *or with regard to a recommendation by the Board or administrator for disapproval or withdrawal of approval of a course or instructor* may appeal such action to the Board, whose decision in such matters shall be final; ~~and The Board shall also establish~~ a reasonable means whereby any licensee aggrieved by an action of the Board or administrator having the potential to affect directly such licensee's license status may, after written request, be heard in person or by an authorized representative to review the grievance. Guidelines pertaining to licensees may include additional levels of appeal other than those set forth herein, but shall provide, at a minimum, that (i) if the Board or its administrator fails to grant or reject the grievance within thirty *calendar* days after it is made, the licensee filing the grievance may proceed in the same manner as if his grievance had been rejected; (ii) any licensee adversely affected by the action of the Board or its administrator on such request may, within thirty *calendar* days after written notice of the action, make a written request for informal review by the Bureau of Insurance, which shall affirm or reverse the action upon not less than ten *calendar* days' written notice to the licensee and to the Board or its administrator; and (iii) any licensee adversely affected by the action of the Bureau of Insurance on such request may, within thirty *calendar* days after written notice of the action, appeal to the Commission pursuant to the Commission's "Rules of Practice and Procedure." The Commission may affirm or reverse the action upon not less than ten *calendar* days' written notice to the licensee and to the Board or its administrator; and

8. Contain guidelines for the Board to utilize in adopting additional provisions necessary or proper for the execution of the powers and duties of the Board including but not limited to (i) program requirements and approved programs of study; (ii) qualifications and responsibilities of course instructors; (iii) management and record-keeping responsibilities; (iv) fee schedules and filing requirements; and (v) course refund policies and procedures.

B. If the Commission disapproves all or any part of the proposed plan of operation or amendment thereto, the Board shall within fifteen *calendar* days submit for review an appropriate revised plan of operation or amendment thereto. If the Board fails to do so, the Commission shall promulgate a plan of operation or an amended plan of operation. The plan of operation or amended plan of operation approved or promulgated by the Commission shall become effective and operational upon order of the Commission.

C. A regular meeting of the Board shall be held at least annually at such time, date, and place approved by the Board. Special meetings may be called at any time by the chairman. Notices of all regular and special meetings shall be sent to each person serving as a representative on the Board or a subcommittee of the Board and to the Commission. Each notice shall state the purpose of the meeting and include any proposed changes in rules or procedures. Any such meeting notices shall be given in such form as may be acceptable to the Board at least twenty *calendar* days prior to the date of the meeting.

D. The books of account, records, reports and other documents of the Board and its administrator shall be open to the Commission for examination at all reasonable hours.

E. There shall be no liability on the part of and no cause of action shall arise against any member of the Board, the Board, the Board's agents or employees, 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 article.

§ 38.2-2609. Qualifications of agents.

No person shall ~~recommend~~ *sell*, solicit, *or negotiate*; ~~or sell~~ home protection contracts in this Commonwealth unless (i) he has a valid license *granting the authority to transact property and casualty* such insurance in this Commonwealth, (ii) he has a valid license to sell real estate in this Commonwealth, issued pursuant to Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or (iii) he is the builder of the home or one of his authorized agents.

§ 38.2-3734. License requirements.

Any person who, in this Commonwealth, on behalf of an insurer licensed in this Commonwealth, *sells*, solicits, *or negotiates*; ~~procures or effects~~ individual or group policies of credit life insurance *shall first apply for and obtain a license from the Commission as either a life and annuities insurance agent or as a limited lines credit insurance agent as defined in § 38.2-1800. Any person who, in this Commonwealth, on behalf of an insurer licensed in this Commonwealth, sells, solicits, or negotiates individual or group policies of credit accident and sickness insurance, shall first apply for and obtain a license from the Commission as either a life and health insurance agent or as a limited lines credit life and health insurance agent as defined in § 38.2-1800 of this title, and shall be required to be appointed to represent such insurer in this Commonwealth as set forth in § 38.2-1833.*

§ 38.2-3919. Agents' licenses required.

A. Except as provided in subsection B, each individual who is a resident of this Commonwealth who desires to obtain a license to *sell*, solicit, *or negotiate* ~~or effect~~ any of the classes of insurance specified in § 38.2-3902 shall obtain that license only when that individual has passed a written examination

prescribed by the Commission.

B. Any individual who is licensed prior to July 1, 1990, and whose license is restricted to the classes of insurance specified in Category A of § 38.2-3902 shall be exempted from the written examination provision noted above.

C. *Business entities, as defined in § 38.2-1800, whether resident or nonresident, as well as nonresident individuals who desire to obtain a license to sell, solicit, or negotiate any of the classes of insurance specified in § 38.2-3902 shall be eligible for licensing upon satisfaction of the requirements set forth in § 38.2-1836.*

§ 38.2-4008. Fidelity bond required.

~~The Prior to licensing, each burial society, on behalf of its officers of each burial society~~ who are charged with the duty of handling its funds shall, ~~before receiving any funds, file with certify to the Commission, and thereafter for as long as the license remains in effect keep in force,~~ a surety bond with corporate security approved by the Commission. The bond shall be not less than \$10,000 nor more than \$100,000, to be fixed by the Commission. The bond shall secure to the society and its members the faithful performance of its officers' duties and a proper accounting of its funds.

§ 38.2-4601.1. Title insurance agency or agent defined.

A "title insurance agency or agent" means any individual, ~~corporation, partnership, or any other legal~~ business entity licensed in the Commonwealth, *pursuant to Chapter 18 (§ 38.2-1800 et seq.) of this title*, as a title insurance agent and appointed by a title insurance company licensed in the Commonwealth, who shall perform all of the following services (for which liability arises) relevant to the issuance of title insurance policies, subject to the underwriting directives and guidelines of the agent's title insurance company. These services shall include (i) the evaluation of the title search to determine the insurability of the title; (ii) a determination of whether or not underwriting objections have been cleared; (iii) the actual issuance of a title commitment or binder and endorsements; and (iv) the actual issuance of the policy or policies and endorsements on behalf of the title insurance company. A title insurance agent holding any funds in escrow shall promptly deposit such funds in a trust account in a financial institution licensed to do business in this Commonwealth. Such trust account shall be separate from all other accounts held by the agent.

§ 38.2-4806. Affidavits that insurance is unprocured from licensed insurers required; notice to insured.

A. For all policies of insurance procured under this chapter, the surplus lines broker procuring such policies shall execute an affidavit in form and content as prescribed by the Commission stating that the surplus lines broker was unable, after diligent effort, to procure in a form and at a premium acceptable to the insured the amount of such insurance from an insurer licensed in this Commonwealth to transact insurance business of the class within which such insurance is included. The affidavit shall also affirm that the insured was given the notice required and prescribed under subsection B of this section and shall be filed with the Commission within thirty *calendar* days after the end of the calendar quarter in which any such insurance has been procured. The affidavit shall accompany the reports required by subsection D of this section and subsection A of § 38.2-4807 and shall be considered a sworn statement as to the validity and accuracy of such reports.

"Class" of insurance shall mean those classes enumerated in §§ 38.2-109 through 38.2-122 and §§ 38.2-124 through 38.2-134. For business that is referred from a licensed property and casualty insurance agent, a surplus lines broker shall be deemed to have made "diligent effort," as required in the preceding paragraph whenever the risk or portion of risk placed with a nonlicensed insurer has been rejected or declined by three insurers licensed to transact such class of insurance. For business that is originated by a surplus lines broker, "diligent effort" means a good faith search for insurance among admitted insurers resulting in declinations of coverage by three unaffiliated admitted insurers licensed and authorized to write in this Commonwealth the insurance coverage sought.

A company is authorized to write the insurance coverage sought when it is licensed for that class of insurance in this Commonwealth and has complied with the applicable provisions of Chapters 3 (§ 38.2-300 et seq.), 19 (§ 38.2-1900 et seq.), 20 (§ 38.2-2000 et seq.), and 26 (§ 38.2-2600 et seq.) of this title concerning rules, rates and policy forms providing the insurance coverage sought, unless such insurance has been exempted from filing by Commission order.

B. A notice in a form prescribed by the Commission shall be given to the insured under the provisions of a policy procured pursuant to this chapter by the surplus lines broker procuring the policy or by any duly licensed property and casualty insurance agent placing surplus lines business with the surplus lines broker. The notice shall contain, but not be limited to, statements that the policy is being procured from or has been placed with an insurer approved by the Commission for issuance of surplus lines insurance in this Commonwealth, but not licensed or regulated by the Commission and that there is no protection under the Virginia Property and Casualty Insurance Guaranty Association, established under Chapter 16 (§ 38.2-1600 et seq.) of this title, against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer. The notice shall also set forth the name, license number and mailing address of the broker. The notice shall be given prior to placement of the insurance. In the event coverage must be placed and become effective within twenty-four hours after referral of the

business to the surplus lines broker, the notice may be given promptly following such a placement. In addition, a copy of the notice shall be affixed to the policy.

C. The requirement of a diligent search among companies licensed and authorized to write the class of insurance sought may be waived by a commercial insured. For purposes of this section, a "commercial insured" is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least \$75,000 or (iii) who has at least twenty-five full-time employees. Such waiver shall be in writing on a form prescribed by the Commission and shall be signed by the commercial insured. One copy of the signed waiver shall be retained by the surplus lines broker for the time period specified in § 38.2-4807 and one copy shall be attached to the affidavit forwarded to the Commission as prescribed in subsection A of this section.

D. Within thirty *calendar* days after the end of each calendar quarter, each ~~person~~ licensed ~~under this chapter~~ *surplus lines broker* shall file a report with the Commission summarizing the business transacted during that quarter. Such report shall be on a form prescribed by the Commission and shall include for each surplus lines policy written the direct gross premium, the policy number, the name of the insured, the policy period and the name of the insurer from which coverage has been procured and any other information required by the Commission.

§ 38.2-4807. Licensees to keep records and file annual statement of policies.

A. Every ~~person~~ licensed ~~pursuant to this chapter~~ *surplus lines broker* shall keep in his office a complete record of, and file on a form prescribed by the Commission in the office of the Commission annually on or before March 1, subject to § 38.2-1304 a statement setting forth (i) each policy of insurance procured by him under this chapter during the previous calendar year; (ii) the name and address of the insurer or insurers; (iii) the inception and expiration dates of each policy; (iv) the perils insured against; (v) the location of each risk so insured and the premium rate and the gross premium charged for each such policy of insurance; (vi) the amount of premium returned; and (vii) any other information the Commission requires.

B. The record of each policy of insurance shall be kept open at all reasonable times to examination by the Commission without notice for a period of not less than five years following termination of the policy.

§ 38.2-4809. Licensees to pay assessments and license taxes on insurers.

A. 1. Every ~~person~~ licensed *surplus lines broker* or *any person* required to be licensed ~~under this chapter~~ *as a surplus lines broker* shall be subject to the annual assessment, penalties, and other provisions of §§ 38.2-400 and 38.2-403 and shall also be subject to the annual taxes, license taxes, penalties, and other provisions of Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him during the preceding calendar year with an insurer not licensed to transact insurance business in this Commonwealth.

2. If any person overestimates and overpays the assessment or annual taxes, the Commission shall order a refund of the amount of the overpayment to the person. The overpayment shall be refunded out of the state treasury on the order of the Commission upon the Comptroller.

B. Each ~~person~~ licensed *surplus lines broker* or *any person* required to be licensed ~~under this chapter~~ *as a surplus lines broker* whose annual premium tax liability can reasonably be expected to exceed \$1,500 shall file a quarterly tax report with the Commission. Such report shall be ~~on~~ *in* a form prescribed by the Commission. This report shall be filed no later than thirty *calendar* days after the end of each calendar quarter. Notwithstanding any provision to the contrary, each such person shall pay the premium tax owed for the direct gross premiums adjusted for additional and returned premiums shown by each quarterly tax report when such report is filed with the Commission.

C. In addition to other penalties provided by law, any ~~person~~ licensed *surplus lines broker* or *any person* required to be licensed ~~under this chapter~~ *as a surplus lines broker* who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

D. If any ~~person~~ licensed *surplus lines broker* or *any person* required to be licensed ~~under this chapter~~ *as a surplus lines broker* charges and collects from the insured the taxes and assessments required by this section, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter.

§ 38.2-4815. Effect on other provisions of Title 38.2.

Except as is otherwise provided herein *and in Chapter 18 (§ 38.2-1800 et seq.) of this title*, the provisions relating to the licensing and control of surplus lines brokers shall have no effect on or in any way alter any of the other provisions of this title.

§ 38.2-5703. Requirement to report to Commission.

A. Each licensed viatical settlement provider ~~and viatical settlement broker~~ shall report, in writing, any change in business or residence address or name within thirty *calendar* days to the Commission.

B. Each licensed viatical settlement provider ~~and viatical settlement broker~~ convicted of a felony

shall report within thirty *calendar* days to the Commission the facts and circumstances regarding the criminal conviction.

§ 58.1-2508. (Effective until January 1, 2003) Taxes applicable to insurance companies.

A. The real estate and tangible personal property, situated or located in the Commonwealth, of every such company and every fraternal benefit society transacting insurance in the Commonwealth shall be listed and assessed on the land and property books of the commissioner of the revenue in the same manner as other real estate and tangible personal property are assessed, and shall be taxed at the same rates as other like property is taxed.

B. The license tax provided in this chapter, the tax on real estate and tangible personal property provided for in subsection A, the fee assessed by the Commission for the administration of the insurance laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, the fee assessed by the Commission to fund the program to reduce losses from insurance fraud pursuant to § 38.2-415, and the retaliatory amounts assessed by the Commission pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to exempt insurance companies from the tax levied in Chapter 6 (§ 58.1-600 et seq.) of this title. No additional fee or license tax shall be applicable to an agent of an insurance company other than the annual license fee on agents required pursuant to Article 3 (§ ~~38.2-1822~~ 38.2-1819 et seq.) of Chapter 18 of Title 38.2.

§ 58.1-2508. (Effective January 1, 2003) Taxes applicable to insurance companies.

A. The real estate and tangible personal property, situated or located in the Commonwealth, of every such company and every fraternal benefit society transacting insurance in the Commonwealth shall be listed and assessed on the land and property books of the commissioner of the revenue in the same manner as other real estate and tangible personal property are assessed, and shall be taxed at the same rates as other like property is taxed.

B. The license tax provided in this chapter, the tax on real estate and tangible personal property provided for in subsection A, the fee assessed by the Commission for the administration of the insurance laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, and retaliatory amounts assessed by the Commission pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever, state, county, city or town; however, nothing in this section shall be construed to exempt insurance companies from the tax levied in Chapter 6 of this title. No additional fee or license tax shall be applicable to an agent of an insurance company other than the annual license fee on agents required pursuant to Article 3 (§ ~~38.2-1822~~ 38.2-1819 et seq.) of Chapter 18 of Title 38.2.

§ 65.2-803.1. Requirements for registration as professional employer organization; annual assessment.

A. Any person desiring to engage in the business of providing professional employer services shall register with the Commission before it undertakes to provide such services.

B. Each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission within thirty *calendar* days of all new or terminated, in whole or in part, client companies. Upon registration and annually thereafter, each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission of all client companies. Such notice shall be confidential and shall not be disclosed to the public, provided that the Commission may respond to inquiries as to whether a client company has workers' compensation coverage; however, nothing herein shall be interpreted to prohibit or limit the production of documents containing such information from the professional employer organization pursuant to an otherwise lawful subpoena issued by a court of competent jurisdiction. Each such notification shall indicate, by client company, if the professional employer organization will provide voluntary market workers' compensation insurance and whether the client company will obtain separate workers' compensation insurance. The Commission may require such other information as it deems necessary for the administration of this section.

C. All agreements for professional employer services shall be in writing and shall provide a description of the respective rights and obligations of the professional employer organization and the client company. The professional employer organization shall provide a written summary of such rights and obligations to each coemployee, including information concerning filing for workers' compensation and unemployment benefits. No agreement for professional employer services shall alter or affect the terms and conditions of any collective bargaining agreement between the client company and its employees without the consent of the parties to such collective bargaining agreement.

D. A professional employer organization that is registered with the Commission and operating in compliance with the requirements of this section shall be deemed to be an employer of its coemployees and may assume responsibilities as an employer of its coemployees for the term of its agreement with a

client company. A professional employer organization may secure and provide all required voluntary market workers' compensation insurance for its coemployees under a master workers' compensation insurance policy in the name of the professional employer organization.

E. A professional employer organization shall notify in writing the client company and coemployees of its intent to terminate any agreement for professional employer services with a client company at the time of or prior to termination. Such notice shall advise the client company of its obligation to secure workers' compensation coverage. The professional employer organization shall provide a copy of such notice to the Commission and the insurer at the time notice is given to the client company. Workers' compensation insurance coverage shall continue until termination or for fifteen *calendar* days after receipt of notice of termination by both the Commission and the client company, whichever is later. This section shall not alter the notice obligations of an insurer seeking to cancel workers' compensation coverage pursuant to subsection B of § 65.2-804. If a professional employer organization has received notice that its workers' compensation insurance policy will be cancelled or nonrenewed, the professional employer organization shall notify the client companies within fifteen *calendar* days after receipt of the notice. Failure of the professional employer organization to provide such notice to the client companies subrogates the Commission, upon payment of a claim from the Uninsured Employer's Fund to any coemployee of a client company that did not receive notice, to any right to recover damages which the injured coemployee or his personal representative may have against the professional employer organization.

F. This section shall not exempt a client company from any other license requirements imposed under federal, state, or local law, and a coemployee shall be recognized as an employee of the client company for all purposes. For purposes of licensing requirements, a professional employer organization shall not be deemed to be engaged in the occupation, trade or profession of the client company solely through the provision of professional employer services to that client company.

G. Where a professional employer organization or a staffing service has obtained workers' compensation insurance to secure its obligations under this title with respect to compensation on account of injury or death by accident, the rights and remedies available to the employee or coemployee under this title shall be exclusive as to both the client company and the professional employer organization or staffing service in accordance with this title.

H. A professional employer organization that fails to comply with the provisions of this title or with the regulations of the Commission shall be subject to the requirements of Chapter 9 (§ 65.2-900 et seq.) of this title. The Commission is authorized to revoke or suspend any registration hereunder if the professional employer organization fails to comply with the provisions of this title or with the regulations of the Commission. If a registration is revoked as herein provided, the Commission may allow the professional employer organization to reregister upon application therefor if, when and after the conditions upon which revocation was based have been corrected and the professional employer organization has complied with all provisions of this title and applicable regulations. Whenever a registration is revoked or suspended the Commission may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the professional employer organization is located for an injunction to cause such professional employer organization to cease providing professional employer services. Suspension of a registration shall in all cases be for an indefinite time and the suspension may be lifted and rights under the registration fully or partially restored at such time as the Commission determines that the rights of the registrant appear to so require and the interests of the public will not be jeopardized by resumption of operation.

I. Notwithstanding any provision of this title to the contrary, each registered professional employer organization shall be assessed annually by the Commission, in addition to any other assessments provided in this title, an assessment in an amount not to exceed the sums necessary for the registration and supervision of all professional employer organizations. The assessment shall be apportioned and assessed and paid in proportion to the aggregate of the annual payroll of all coemployees shared by or assigned or allocated to the professional employer organization.

J. The Bureau of Insurance of the State Corporation Commission may request and shall receive information filed with the Commission by a professional employer organization. Such information shall be confidential and shall be used solely for informational purposes by the Bureau of Insurance and its staff.

K. No person shall *sell, solicit, or negotiate, procure or effect as those terms are defined in § 38.2-1800*, contracts of insurance for or on behalf of a professional employer organization unless such person is licensed for that class of insurance as an insurance agent, as defined in § 38.2-1800.

L. The Commission may promulgate regulations as it deems necessary for the administration of this section.

2. That §§ 38.2-1803, 38.2-1816, and 38.2-1829, Articles 5 (§§ 38.2-1846 through 38.2-1857) and 6 (§§ 38.2-1858 through 38.2-1865) of Chapter 18 of Title 38.2, and §§ 38.2-4800 through 38.2-4805, 38.2-5105, and 38.2-5702 of the Code of Virginia are repealed.

3. That the provisions of this act shall become effective on September 1, 2002, except as follows: (i) The provisions of this act amending and reenacting §§ 13.1-400.3, 38.2-1220, 38.2-1804, 38.2-1805,

38.2-1809, 38.2-1810, 38.2-1826, 38.2-1831, 38.2-1833, 38.2-1834, 38.2-1842, 38.2-1843, 38.2-1867, 38.2-1868.1, and 38.2-1870, subsection C of § 38.2-1871, and §§ 38.2-1872, 38.2-1874, 38.2-4008, 38.2-4806, 38.2-4807, 38.2-4809, and 38.2-4815 of the Code of Virginia, and amending the Code of Virginia by adding sections numbered 38.2-1834.1 and 38.2-1836.1, shall become effective on July 1, 2001; and (ii) the provisions of this act amending and reenacting § 38.2-1866 and subsections A and B of § 38.2-1871 of the Code of Virginia shall become effective on January 1, 2003.