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**HOUSE BILL NO. 199**

Offered January 9, 2002

Prefiled January 4, 2002

*A BILL to amend and reenact § 38.2-1812 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to change of insurance agent of record.*

Patron—Callahan

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-1812 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted as follows:**

§ 38.2-1812. (Effective until September 1, 2002) 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 surplus lines broker, for the class of insurance involved. 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. An agent of a combination 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 agent is duly licensed and, if appropriate, appointed on the day such commissions are paid to and received by him. 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. 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. 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.

C. *Notwithstanding any contrary provision of law, each insurer shall accept and honor each request by a policyholder for a change of insurance agent of record within thirty working days after receipt of the request unless the policyholder withdraws the request in writing, provided that the change of insurance agent of record shall not be effective unless the proposed new insurance agent of record is a duly appointed agent of the insurer. The new insurance agent of record shall be paid all commissions payable on the policy effective not later than the next anniversary date of the policy following the effective date of change, excluding any (i) vested life insurance commissions and (ii) commissions or other compensation payable under an insurer's retirement or deferred compensation plan with the insurance agent. A request for a change of insurance agent of record shall be in writing and shall include (a) the policyholder's name and address; (b) the insurer's name and address; (c) the policy number; (d) the name and address of the new insurance agent of record; (e) the date of the request; (f) the signature of the policyholder; and (g) the signature of acceptance by the new insurance agent. This subsection shall not require an insurer to appoint an insurance agent of record, alter an insurer's existing contract with an insurance agent that provides for direct compensation in lieu of commission, or require the payment of full commissions to a new insurance agent where the original writing insurance agent or current insurance agent continues to have responsibility for processing and matters relating to the policyholder.*

§ 38.2-1812. (Effective September 1, 2002) 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

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59 license as a surplus lines broker, for the class of insurance involved.

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

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

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

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

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

81 *G. Notwithstanding any contrary provision of law, each insurer shall accept and honor each request*  
82 *by a policyholder for a change of insurance agent of record within thirty working days after receipt of*  
83 *the request unless the policyholder withdraws the request in writing, provided that the change of*  
84 *insurance agent of record shall not be effective unless the proposed new insurance agent of record is a*  
85 *duly appointed agent of the insurer. The new insurance agent of record shall be paid all commissions*  
86 *payable on the policy effective not later than the next anniversary date of the policy following the*  
87 *effective date of change, excluding any (i) vested life insurance commissions and (ii) commissions or*  
88 *other compensation payable under an insurer's retirement or deferred compensation plan with the*  
89 *insurance agent. A request for a change of insurance agent of record shall be in writing and shall*  
90 *include (a) the policyholder's name and address; (b) the insurer's name and address; (c) the policy*  
91 *number; (d) the name and address of the new insurance agent of record; (e) the date of the request; (f)*  
92 *the signature of the policyholder; and (g) the signature of acceptance by the new insurance agent. This*  
93 *subsection shall not require an insurer to appoint an insurance agent of record, alter an insurer's*  
94 *existing contract with an insurance agent that provides for direct compensation in lieu of commission,*  
95 *or require the payment of full commissions to a new insurance agent where the original writing*  
96 *insurance agent or current insurance agent continues to have responsibility for processing and matters*  
97 *relating to the policyholder.*