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HOUSE BILL NO. 199

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2002)

(Patron Prior to Substitute—Delegate Callahan)

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

Be it enacted by the General Assembly of Virginia:

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

§ 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 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 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 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.

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, 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.

G. *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, which change shall be effective on the date of the next renewal of the policy, 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. Prior to the effective date of the change, the insurer shall provide written notice of the change to the current insurance agent of record. The new insurance agent of record shall be paid all commissions payable on the policy effective not later than the next renewal date of the policy following the policyholder's requested change, excluding any 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. For the purposes of this subsection, "insurance agent" and "insurance agent of record" shall mean only a limited lines property and casualty agent, a property and casualty insurance agent, a personal lines agent, a restricted nonresident property and casualty agent, or a restricted nonresident personal lines agent, as such terms are defined in § 38.2-1800.*

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