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SENATE BILL NO. 438

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact § 38.2-1822, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to the licensing of business entities as insurance agents.

Patron—Williams

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1822, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 38.2-1822. (Effective until September 1, 2002) License required of agents; individual acting for partnership, limited liability company, or corporate 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 soliciting, 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. 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 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 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 shall be recorded pursuant to law, ~~and the authority of the corporation to act as an insurance agent or agency shall be specifically set forth in its charter.~~ The Commission may require proof of the foregoing before issuing a license to the partnership, limited liability company, or corporation.

D. For a nonresident partnership, a nonresident limited liability company, or a nonresident corporation, a certification by the insurance department of the nonresident's state of domicile satisfying the requirements of subsection A of § 38.2-1836 shall be deemed to satisfy the foregoing requirements.

E. In addition to the requirements of §§ 59.1-69 and 59.1-70, any person, partnership, limited liability company, or corporation 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 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.

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.

§ 38.2-1822. (Effective September 1, 2002) 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 contracts of insurance or annuity on behalf of an insurer licensed in this Commonwealth or receiving or sharing,

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59 directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation,
60 or negotiation of any such contract, or both. No person shall submit business to any joint underwriting
61 association or any plan established under this title for the equitable distribution of risks among insurers
62 unless the person holds a valid license to transact the class of insurance involved.

63 B. No individual shall act as an agent on behalf of a business entity in the transaction of insurance
64 unless he is licensed as an agent and appointed, if appointment is required by statute.

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

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

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

83 F. When the business of insurance is no longer conducted under an assumed or fictitious name,
84 notification to the Bureau of Insurance is required within thirty calendar days from the date of cessation
85 of use of such assumed or fictitious name.

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