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SENATE BILL NO. 593

Offered January 11, 2006

A BILL to amend and reenact §§ 38.2-1356 and 38.2-1363 of the Code of Virginia, relating to the regulation of insurers; licenses of reinsurance intermediaries and managing general agents.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1356 and 38.2-1363 of the Code of Virginia are amended and reenacted as follows:

§ 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; or

14. If the reinsurance intermediary is a business entity, having its corporate existence terminated, its certificate of organization, trust, limited liability company, or limited partnership canceled, or its certificate of authority or registration to transact business in the Commonwealth revoked or canceled, as the case may be.

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 10 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

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SB593

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

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

64 E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15
65 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and
66 the receiver appointed under that order determines that the reinsurance intermediary or any other person
67 has not materially complied with the provisions of this article, or any rule, regulation or order
68 promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may
69 maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the
70 insurer.

71 § 38.2-1363. Penalties and liabilities; grounds for placing on probation, refusal to issue or renew,
72 revocation, or suspension of license.

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

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

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

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

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

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

88 5. Engaging in the practice of rebating;

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

91 7. Intentionally misrepresenting the terms of an actual or proposed insurance contract;

92 8. Having been convicted of a felony;

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

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

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

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

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

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

103 15. Failing to pay state income tax or comply with any administrative or court order directing
104 payment of state income tax; or

105 16. *If the managing general agent is a business entity, having its corporate existence terminated, its*
106 *certificate of organization, trust, limited liability company, or limited partnership canceled, or its*
107 *certificate of authority or registration to transact business in the Commonwealth revoked or canceled, as*
108 *the case may be.*

109 C. If the Commission believes that any applicant for a managing general agent's license is not of
110 good character or does not have a good reputation for honesty, it may refuse to issue the license, subject
111 to the right of the applicant to demand a hearing on the application. The Commission shall not revoke
112 or suspend an existing license until the licensee is given an opportunity to be heard before the
113 Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an
114 existing license, it shall give the applicant or licensee at least 10 calendar days' notice in writing of the
115 time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the
116 objections to the issuance of the license, or the reason for its proposed revocation or suspension as the
117 case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to
118 the last known address of record pursuant to § 38.2-1364, or the last known business address if the
119 address of record is incorrect, or in any other lawful manner the Commission prescribes. The
120 Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant

121 or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after
122 a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the
123 expiration of a period of five years from the date of the Commission's order, or such other period of
124 time as the Commission prescribes in its order.

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

127 E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15
128 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and
129 the receiver appointed under that order determines that the managing general agent or any other person
130 has not materially complied with the provisions of this article, or any rule, regulation or order
131 promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may
132 maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the
133 insurer.