

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[S 593]

Approved

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 a hearing, nor any licensee whose license is revoked, shall again apply for a license until the expiration

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57 of a period of five years from the date of the Commission's order, or such other period of time as the
58 Commission prescribes in its order.

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

61 E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15
62 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and
63 the receiver appointed under that order determines that the reinsurance intermediary or any other person
64 has not materially complied with the provisions of this article, or any rule, regulation or order
65 promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may
66 maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the
67 insurer.

68 § 38.2-1363. Penalties and liabilities; grounds for placing on probation, refusal to issue or renew,
69 revocation, or suspension of license.

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

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

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

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

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

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

85 5. Engaging in the practice of rebating;

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

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

89 8. Having been convicted of a felony;

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

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

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

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

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

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

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

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

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

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