

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 212

An Act to amend and reenact § 38.2-4806 of the Code of Virginia, relating to surplus lines insurance; requirement that broker conduct diligent effort to procure insurance.

[H 298]

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4806 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-4806. Notice to insured that insurance is not placed with a licensed insurer required.

A. For all policies of insurance procured under this chapter, the surplus lines broker procuring such policies shall execute an affidavit in form and content as prescribed by the Commission ~~stating that the surplus lines broker was unable, after diligent effort, to procure in a form and at a premium acceptable to the insured the amount of such insurance from an insurer licensed in this Commonwealth to transact insurance business of the class within which such insurance is included. The affidavit shall also affirm~~ *affirming* that the insured was given the notice required and prescribed under subsection B of this section ~~and. The affidavit shall be filed with the Commission within thirty 30 calendar days after the end of the calendar quarter in which any such insurance has been procured. The affidavit shall accompany the reports required by subsection D C of this section and subsection A of § 38.2-4807 and shall be considered a sworn statement as to the validity and accuracy of such reports.~~

"Class" of insurance shall mean those classes enumerated in §§ 38.2-109 through 38.2-122 and §§ 38.2-124 through 38.2-134. ~~For business that is referred from a licensed property and casualty insurance agent, a surplus lines broker shall be deemed to have made "diligent effort," as required in the preceding paragraph whenever the risk or portion of risk placed with a nonlicensed insurer has been rejected or declined by three insurers licensed to transact such class of insurance. For business that is originated by a surplus lines broker, "diligent effort" means a good faith search for insurance among admitted insurers resulting in declinations of coverage by three unaffiliated admitted insurers licensed and authorized to write in this Commonwealth the insurance coverage sought.~~

A company is authorized to write the insurance coverage sought when it is licensed for that class of insurance in this Commonwealth and has complied with the applicable provisions of Chapters 3 (§ 38.2-300 et seq.), 19 (§ 38.2-1900 et seq.), 20 (§ 38.2-2000 et seq.), and 26 (§ 38.2-2600 et seq.) of this title concerning rules, rates and policy forms providing the insurance coverage sought, unless such insurance has been exempted from filing by Commission order.

B. A notice in a form prescribed by the Commission shall be given to the insured under the provisions of a policy procured pursuant to this chapter by the surplus lines broker procuring the policy or by any duly licensed property and casualty insurance agent placing surplus lines business with the surplus lines broker. The notice shall contain, but not be limited to, statements that the policy is being procured from or has been placed with an insurer approved by the Commission for issuance of surplus lines insurance in this Commonwealth, but not licensed or regulated by the Commission and that there is no protection under the Virginia Property and Casualty Insurance Guaranty Association, established under Chapter 16 (§ 38.2-1600 et seq.) of this title, against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer. The notice shall also set forth the name, license number and mailing address of the broker. The notice shall be given prior to placement of the insurance. In the event coverage must be placed and become effective within ~~twenty-four~~ 24 hours after referral of the business to the surplus lines broker, the notice may be given promptly following such a placement. In addition, a copy of the notice shall be affixed to the policy.

C. The requirement of a diligent search among companies licensed and authorized to write the class of insurance sought may be waived by a commercial insured. For purposes of this section, a "commercial insured" is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least \$75,000 or (iii) who has at least twenty-five full-time employees. Such waiver shall be in writing on a form prescribed by the Commission and shall be signed by the commercial insured. One copy of the signed waiver shall be retained by the surplus lines broker for the time period specified in § 38.2-4807 and one copy shall be attached to the affidavit forwarded to the Commission as prescribed in subsection A of this section.

~~D.~~ Within ~~thirty~~ 30 calendar days after the end of each calendar quarter, each licensed surplus lines broker shall file a report with the Commission summarizing the business transacted during that quarter. Such report shall be on a form prescribed by the Commission and shall include for each surplus lines policy written the direct gross premium, the policy number, the name of the insured, the policy period and the name of the insurer from which coverage has been procured and any other information required

by the Commission.