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HOUSE BILL NO. 831

Offered January 9, 2008

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A BILL to amend and reenact §§ 6.1-2.27:1 and 38.2-1834.1 of the Code of Virginia, relating to the confidentiality of information obtained by the State Corporation Commission.

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-2.27:1 and 38.2-1834.1 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-2.27:1. Confidentiality of information obtained by the Commission.

A. Any documents, materials, or other information in the control or possession of the Commission that are furnished by a title insurance company or title insurance agent or an employee thereof acting on behalf of the title insurance company or title insurance agent, or obtained by the Commission in an investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

B. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A.

C. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

1. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to subsection A, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, hereafter referred to as the Association, its affiliates or subsidiaries; and with *local*, state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the Association, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subsection C.

E. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1 to a database or other clearinghouse service maintained by the Association, its affiliates, or subsidiaries.

§ 38.2-1834.1. Notification to Commission of termination; notice to agent; immunities; confidentiality; penalties.

A. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with an agent or other licensee under this chapter shall notify the Commission within thirty calendar days following the effective date of the termination, using a format prescribed by the Commission, if the reason for termination is one of the reasons set forth in § 38.2-1831 or the insurer has knowledge the agent was found by a court, government body, or legally authorized self-regulatory organization authorized by law to have engaged in any of the activities in §§ 38.2-1831, 38.2-1843, 38.2-1356 or § 38.2-1363. The propriety of any such termination for cause shall be certified in writing by an officer or authorized representative of the insurer or agent terminating the relationship. Upon the written request of the Commission, the insurer shall provide additional information, documents, records or other data pertaining to the termination or

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59 activity of the agent or other licensee.

60 B. The insurer or the authorized representative of the insurer shall promptly notify the Commission
61 in a format acceptable to the Commission if, upon further review or investigation, the insurer discovers
62 additional information that would have been reportable to the Commission in accordance with subsection
63 A had the insurer then known of its existence.

64 C. 1. Within fifteen calendar days after making the notification required by subsections A and B, the
65 insurer shall mail a copy of the notification to the agent at his last known address pursuant to the
66 insurer's records. If the agent is terminated for cause for any of the reasons listed in § 38.2-1831, the
67 insurer shall provide a copy of the notification to the agent at his last known address by certified mail,
68 return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

69 2. Within thirty calendar days after the agent has received the original or additional notification, the
70 agent may file written comments concerning the substance of the notification with the Commission in
71 the form and manner required by the Commission. The agent shall, by the same means, simultaneously
72 send a copy of the comments to the reporting insurer, and the comments shall become a part of the
73 Commission's file and accompany every copy of a report distributed or disclosed for any reason about
74 the agent as permitted under subsection D.

75 D. 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a
76 producer, the Commission, authorized representatives of the Commission, the NAIC, its affiliates or
77 subsidiaries, or state, federal, and international law-enforcement authorities shall not be subject to civil
78 liability, and a civil cause of action of any nature shall not arise against these entities or their respective
79 agents or employees, as a result of any statement or information required by or provided pursuant to this
80 section or any information relating to any statement that may be requested in writing by the
81 Commission, from an insurer or agent, or a statement by a terminating insurer or agent to an insurer or
82 agent limited solely and exclusively to whether a termination for cause under subsection A was reported
83 to the Commission, provided that the propriety of any termination for cause under subsection A is
84 certified in writing, pursuant to subsection A of this section, by an officer or authorized representative of
85 the insurer or agent terminating the relationship.

86 2. In any action brought against a person that may have immunity under subdivision 1 for making
87 any statement required by this section or providing any information relating to any statement that may
88 be requested by the Commission, the party bringing the action shall plead specifically in any allegation
89 that subdivision 1 does not apply because the person making the statement or providing the information
90 did so with actual malice.

91 3. Subdivision 1 or 2 shall not abrogate or modify any existing statutory or common law privileges
92 or immunities.

93 E. 1. Any documents, materials or other information in the control or possession of the Commission
94 that is furnished by an insurer, agent or an employee thereof acting on behalf of the insurer or agent, or
95 obtained by the Commission in an investigation pursuant to this chapter shall be confidential by law and
96 privileged, shall not be subject to inspection or review by the general public, shall not be subject to
97 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
98 However, the Commission is authorized to use the documents, materials or other information in the
99 furtherance of any regulatory or legal action brought as a part of the Commission's duties.

100 2. Neither the Commission nor any person who received documents, materials or other information
101 while acting under the authority of the Commission shall be permitted or required to testify in any
102 private civil action concerning any confidential documents, materials, or information subject to
103 subdivision 1.

104 3. In order to assist in the performance of the Commission's duties under this chapter, the
105 Commission:

106 a. May share documents, material or other information, including the confidential and privileged
107 documents, materials or information subject to subdivision 1, with other state, federal, and international
108 regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with *local*, state, federal, and
109 international law enforcement authorities, provided that the recipient agrees to maintain the
110 confidentiality and privileged status of the document, material or other information.

111 b. May receive documents, materials or information, including otherwise confidential and privileged
112 documents, materials or information, from the NAIC, its affiliates or subsidiaries and from regulatory
113 and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as
114 confidential or privileged any document, material or information received with notice or the
115 understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of
116 the document, material or information.

117 4. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or
118 information shall occur as a result of disclosure to the Commission under this section or as a result of
119 sharing as authorized in subdivision 3.

120 5. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions

121 including for cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et
122 seq.) of Title 12.1 to a database or other clearinghouse service maintained by the NAIC, its affiliates or
123 subsidiaries of the NAIC.
124 F. An insurer, the authorized representative of the insurer, or agent that fails to report as required
125 under the provisions of this section or that is found to have reported with actual malice by a court of
126 competent jurisdiction may, after notice and an opportunity to be heard, have its license or certificate of
127 authority suspended or revoked and may be fined in accordance with Chapter 2 (§ 38.2-200 et seq.) of
128 this title.