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HOUSE BILL NO. 339

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 38.2-316, 38.2-1024, 38.2-1028, 38.2-1029, 38.2-1400, and 38.2-1902 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1027.1, relating to interstate reciprocal licensing of insurers.

Patron—Marshall, R.G.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-316, 38.2-1024, 38.2-1028, 38.2-1029, 38.2-1400, and 38.2-1902 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1027.1 as follows:

§ 38.2-316. Policy forms to be filed with Commission; notice of approval or disapproval; exceptions.

A. No policy of life insurance, industrial life insurance, variable life insurance, modified guaranteed life insurance, group life insurance, accident and sickness insurance, or group accident and sickness insurance; no annuity, modified guaranteed annuity, pure endowment, variable annuity, group annuity, group modified guaranteed annuity, or group variable annuity contract; no health services plan, legal services plan, dental or optometric services plan, or health maintenance organization contract; no dental plan organization dental benefit contract; and no fraternal benefit certificate nor any certificate or evidence of coverage issued in connection with such policy, contract, or plan issued or issued for delivery in Virginia shall be delivered or issued for delivery in this Commonwealth unless a copy of the form has been filed with the Commission. In addition to the above requirement, no policy of accident and sickness insurance shall be delivered or issued for delivery in this Commonwealth unless the rate manual showing rates, rules, and classification of risks applicable thereto has been filed with the Commission.

B. Except as provided in this section, no application form shall be used with the policy or contract and no rider or endorsement shall be attached to or printed or stamped upon the policy or contract unless the form of such application, rider or endorsement has been filed with the Commission. No individual certificate and no enrollment form shall be used in connection with any group life insurance policy, group accident and sickness insurance policy, group annuity contract, or group variable annuity contract unless the form for the certificate and enrollment form have been filed with the Commission.

C. 1. None of the policies, contracts, and certificates specified in subsection A of this section shall be delivered or issued for delivery in this Commonwealth and no applications, enrollment forms, riders, and endorsements shall be used in connection with the policies, contracts, and certificates unless the forms thereof have been approved in writing by the Commission as conforming to the requirements of this title and not inconsistent with law.

2. In addition to the above requirement, no premium rate change applicable to individual accident and sickness insurance policies, subscriber contracts of health services plans, dental or optometric services plans, or fraternal benefit contracts providing individual accident and sickness coverage as authorized in § 38.2-4116 shall be used unless the premium rate change has been approved in writing by the Commission. No premium rate change applicable to individual or group Medicare supplement policies shall be used unless the premium rate change has been approved in writing by the Commission.

D. The Commission may disapprove or withdraw approval of the form of any policy, contract or certificate specified in subsection A of this section, or of any application, enrollment form, rider or endorsement, if the form:

1. Does not comply with the laws of this Commonwealth;

2. Has any title, heading, backing or other indication of the contents of any or all of its provisions that is likely to mislead the policyholder, contract holder or certificate holder; or

3. Contains any provisions that encourage misrepresentation or are misleading, deceptive or contrary to the public policy of this Commonwealth.

E. Within 30 days after the filing of any form requiring approval, the Commission shall notify the organization filing the form of its approval or disapproval of the form which has been filed, and, in the event of disapproval, its reason therefor. The Commission, at its discretion, may extend for up to an additional 30 days the period within which it shall approve or disapprove the form. Any form received but neither approved nor disapproved by the Commission shall be deemed approved at the expiration of the 30 days if the period is not extended, or at the expiration of the extended period, if any; however,

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59 no organization shall use a form deemed approved under the provisions of this section until the
60 organization has filed with the Commission a written notice of its intent to use the form together with a
61 copy of the form and the original transmittal letter thereof. The notice shall be filed in the offices of the
62 Commission at least 10 days prior to the organization's use of the form.

63 F. If the Commission proposes to withdraw approval previously given or deemed given to the form
64 of any policy, contract or certificate, or of any application, rider or endorsement, it shall notify the
65 insurer in writing at least 15 days prior to the proposed effective date of withdrawal giving its reasons
66 for withdrawal.

67 G. Any insurer or fraternal benefit society aggrieved by the disapproval or withdrawal of approval of
68 any form may proceed as indicated in § 38.2-1926.

69 H. This section shall not apply to any:

70 1. Any special rider or endorsement on any policy, except an accident and sickness insurance policy
71 that relates only to the manner of distribution of benefits or to the reservation of rights and benefits
72 under such policy, and that is used at the request of the individual policyholder, contract holder or
73 certificate holder; or

74 2. A policy of insurance issued or issued for delivery by a foreign insurer to the extent provided in
75 subsection E of § 38.2-1027.1.

76 I. The Commission may exempt any categories of such policies, contracts, and certificates and any
77 applicable rate manuals from (i) the filing requirements, (ii) the approval requirements of this section, or
78 (iii) both such requirements. The Commission may modify such requirements, subject to such limitations
79 and conditions which the Commission finds appropriate. In promulgating an exemption, the Commission
80 may consider the nature of the coverage, the person or persons to be insured or covered, the competence
81 of the buyer or other parties to the contract, and other criteria the Commission considers relevant.

82 J. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and
83 regulations as it may deem necessary to set standards for policy and other form submissions required by
84 this section or § 38.2-3501.

85 § 38.2-1024. License required to transact the business of insurance; application fee requirements for
86 license.

87 A. No insurer unless authorized pursuant to Chapter 48 (§ 38.2-4806 et seq.) of this title shall
88 transact the business of insurance in this Commonwealth until it has obtained a license from the
89 Commission. For a foreign or alien insurer, this license shall be in addition to the certificate of authority
90 required by § 38.2-1027. Each application for a license to transact the business of insurance in this
91 Commonwealth shall be accompanied by a nonrefundable license application fee of \$500. The fee shall
92 be collected by the Commission and paid directly into the state treasury and credited to the Bureau of
93 Insurance's maintenance fund as provided in subsection B of § 38.2-400. The license shall be signed by
94 a member or other duly authorized agent of the Commission and shall expire on the next June 30 after
95 the date on which it becomes effective, subject to renewal pursuant to § 38.2-1025.

96 B. The Commission shall not grant a license to do the business of insurance in this Commonwealth
97 to any insurer until it is satisfied that, from the evidence it requires under uniform procedures suitable to
98 and applied equally to all classes of insurers, *unless the insurer is a foreign insurer that is granted a*
99 *license pursuant to the provisions of § 38.2-1027.1*, the insurer:

100 1. Has paid all fees, taxes, and charges required by law;

101 2. Has made any deposit required by this title;

102 3. Has the minimum capital and surplus if a stock insurer, the minimum surplus if a mutual or a
103 reciprocal insurer, and the minimum trustee surplus if an alien insurer, prescribed in this title for
104 insurers transacting the same class of insurance;

105 4. Has filed a financial statement or statements and any reports, certificates or other documents the
106 Commission considers necessary to secure a full and accurate knowledge of its affairs and financial
107 condition;

108 5. Is solvent and its financial condition, method of operation, and manner of doing business are such
109 as to satisfy the Commission that it can meet its obligations to all policyholders; and

110 6. Has otherwise complied with all the requirements of law.

111 § 38.2-1027.1. Interstate reciprocal licensing.

112 A. *Notwithstanding any licensing requirements imposed on insurers under this title, including*
113 *§§ 38.2-1028 through 38.2-1031, the Commission shall issue a license to a foreign insurer authorizing it*
114 *to transact the business of insurance within the Commonwealth if:*

115 1. *The foreign insurer presents proof in a form acceptable to the Commission that the foreign insurer*
116 *is currently licensed as a domestic insurer and is in good standing in its home state;*

117 2. *The foreign insurer has submitted the proper request for licensure and has paid the fees required*
118 *by § 38.2-1024;*

119 3. *The foreign insurer has submitted or transmitted to the Commission the application for licensure*
120 *that the foreign insurer submitted to its home state; and*

121 4. The foreign insurer's home state issues licenses to insurers incorporated or organized under the
122 laws of the Commonwealth on the same basis.

123 B. The Commission shall not condition its issuance of a license to a foreign insurer pursuant to this
124 section on whether the laws of its home state are substantially similar to the licensure requirements
125 imposed on domestic insurers under this title.

126 C. A license issued by the Commission to a foreign insurer pursuant to the provisions of this section
127 shall authorize the foreign insurer to write only the classes of insurance that it is authorized to write in
128 its home state, as provided in the certificate of the supervising insurance official of the foreign insurer's
129 home state filed with the Commission as required pursuant to § 38.2-1033.

130 D. The Commissioner is authorized to enter into agreements with the supervising insurance official
131 of other states for reciprocal licensure of insurers in accordance with the provisions of this section.

132 E. A foreign insurer licensed pursuant to subsection A shall not be required to file with the
133 Commission, or to receive approval from the Commission for, policy forms and rates used in connection
134 with a class of insurance that the insurer is authorized to write in its home state, provided that (i) the
135 supervising insurance official of the foreign insurer's home state certifies to the Commission that the
136 insurer has received all necessary approvals required under the laws of that state to use such policy
137 forms and rates in connection with the writing of such insurance in that state or (ii) the policy form
138 relates to a Product, as defined in § 38.2-6200, that has been approved by the Interstate Insurance
139 Product Regulation Commission established pursuant to the Interstate Insurance Product Regulation
140 Compact to which the Commonwealth is a member as set forth in Chapter 62 (§ 38.2-6200 et seq.).

141 F. This section shall not be construed to exempt a foreign insurer licensed pursuant to subsection A
142 from the requirements of § 38.2-1027.

143 § 38.2-1028. Additional licensing requirements for stock insurers.

144 No stock insurer shall be licensed to transact the business of insurance in this Commonwealth unless
145 it has fully paid in paid-in capital stock of at least ~~one~~ \$1 million ~~dollars~~ and surplus of at least ~~three~~
146 \$3 million ~~dollars~~. The requirements of this section shall not apply to a foreign insurer licensed
147 pursuant to § 38.2-1027.1.

148 § 38.2-1029. Additional licensing requirements for mutual insurers.

149 No mutual insurer shall be licensed to transact the business of insurance in this Commonwealth
150 unless it has a surplus of at least ~~\$1,600,000-~~ \$1.6 million. The requirements of this section shall not
151 apply to a foreign insurer licensed pursuant to § 38.2-1027.1.

152 § 38.2-1400. Scope and purpose of chapter.

153 This chapter applies to and regulates the investments of all domestic insurers as defined in this
154 chapter. Upon petition to, and approval by, the Commission, any one or more provisions of this chapter
155 shall not apply to a domestic insurer in receivership in this Commonwealth pursuant to Chapter 15
156 (§ 38.2-1500 et seq.) ~~of this title~~. A foreign or alien insurer may invest its funds and assets in any
157 investments that are permitted by the laws of its state or country of domicile and are of the same
158 general character and quality as those authorized under this chapter. A foreign or alien insurer whose
159 domiciliary jurisdiction does not regulate the investments of its insurers shall be subject to the
160 provisions of this chapter; *however, the provisions of this chapter shall not apply to a foreign insurer*
161 *licensed pursuant to § 38.2-1027.1.*

162 § 38.2-1902. Scope of chapter.

163 A. Except as provided in subsection B ~~of this section~~, this chapter applies to the classes of insurance
164 defined in §§ 38.2-110 through 38.2-122, 38.2-124 through 38.2-128 and 38.2-130 through 38.2-133.

165 B. This chapter does not apply to:

166 1. Insurance written through the Virginia Workers' Compensation Plan pursuant to Chapter 20
167 (§ 38.2-2000 et seq.) ~~of this title~~;

168 2. Insurance on a specific risk as provided in § 38.2-1920;

169 3. Reinsurance, other than joint reinsurance, to the extent stated in § 38.2-1915;

170 4. Life insurance as defined in § 38.2-102;

171 5. Annuities as defined in §§ 38.2-106 and 38.2-107;

172 6. Accident and sickness insurance as defined in § 38.2-109;

173 7. Title insurance as defined in § 38.2-123;

174 8. Insurance of vessels or craft used primarily in a trade or business, their cargoes, marine builders'
175 risks and marine protection and indemnity;

176 9. Insurance against loss of or damage to hulls of aircraft, including their accessories and equipment,
177 or against liability, other than workers' compensation and employers' liability, arising out of the
178 ownership, maintenance or use of aircraft;

179 10. Automobile bodily injury and property damage liability insurance issued to: (i) any motor carrier
180 of property who is required to file such insurance with the Department of Motor Vehicles pursuant to
181 § 46.2-2053 or any amendment to that section; or (ii) any motor carrier of property required by 49

182 U.S.C.A. § 315, or any rule or regulation prescribed by the Interstate Commerce Commission pursuant
183 to 49 U.S.C.A. § 315, to file such insurance with the Interstate Commerce Commission;

184 11. Insurance written through the Virginia Automobile Insurance Plan. However, § 38.2-1905 shall
185 apply to insurance written through the Plan;

186 12. Insurance provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) ~~of this title~~;

187 13. Home protection contracts as defined by § 38.2-2600 and their rates until such time as the
188 Commission determines there is sufficient competition in the industry as provided by § 38.2-2608.

189 C. This chapter shall not apply to any class of insurance written (i) by any mutual assessment
190 property and casualty insurance company organized and operating under the laws of this Commonwealth
191 and doing business only in this Commonwealth ~~or~~; (ii) by any mutual insurance company or association
192 organized under the laws of this Commonwealth, conducting business only in this Commonwealth, and
193 issuing only policies providing for perpetual insurance; *or (iii) by a foreign insurer to the extent*
194 *provided in subsection E of § 38.2-1027.1.*

195 **2. That the provisions of this act shall become effective on January 1, 2011.**