12101489D

HOUSE BILL NO. 872

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 38.2-1824 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 38.2 an article numbered 3, consisting of sections numbered 38.2-812 through 38.2-815, and by adding in Chapter 18 of Title 38.2 an article numbered 4.1, consisting of sections numbered 38.2-1845.1 through 38.2-1845.23, relating to property and casualty insurance; regulation and licensing of public adjusters.

Patron—Rust

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1824 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 38.2 an article numbered 3, consisting of sections numbered 38.2-812 through 38.2-815, and by adding in Chapter 18 of Title 38.2 an article numbered 4.1, consisting of sections numbered 38.2-1845.1 through 38.2-1845.23, as follows:

Article 3.

Unlicensed Public Adjusters.

§ 38.2-812. Definition.

For the purposes of this article, "public adjuster" shall have the meaning as set forth in § 38.2-1845.1.

§ 38.2-813. What constitutes appointment of agent for service of process.

The Clerk of the Commission shall be deemed to be appointed by any unlicensed public adjuster as its agent for the service of process pursuant to § 13.1-758 if any of the following acts are effected by mail or otherwise in the Commonwealth by such unlicensed public adjuster: (i) the investigation, negotiation, adjustment, or provision of advice to insureds in relation to first party claims arising under insurance contracts that insure real or personal property located in the Commonwealth; (ii) the solicitation of public adjusting for such contracts; (iii) the collection of fees, commissions, salaries, or other considerations for such contracts; or (iv) the transaction of any other insurance business in connection with such contracts.

§ 38.2-814. How process or notice served.

Service of process or notice upon any unlicensed public adjuster in any suit, action, or proceeding arising out of or in connection with the acts enumerated in § 38.2-813 in the Commonwealth shall be made in the manner prescribed in § 13.1-758.

§ 38.2-815. Other legal service not limited.

Nothing in this article shall limit the right to serve any process or notice upon any unlicensed public adjuster in any other manner permitted by law.

§ 38.2-1824. Kinds of agents' licenses and appointments issued.

A. 1. The Commission shall issue the following kinds of agents' licenses and appointments under this chapter: Life and annuities insurance agent; health agent; property and casualty insurance agent; personal lines agent; limited lines credit insurance agent; limited lines life and health insurance agent; limited lines property and casualty insurance agent; motor vehicle rental contract insurance agent; restricted nonresident life and annuities insurance agent; restricted nonresident health agent; restricted nonresident property and casualty insurance agent; restricted nonresident personal lines agent; *public adjuster;* surplus lines broker; title insurance agent; variable contract agent; and viatical settlement broker. For the purposes of nonresident reciprocal licensing as provided in § 38.2-1836, the Commission may issue a license for any other limited line of insurance that the Commission may deem it necessary to recognize.

2. The Commission shall permit insurers, within each insurer's authority, to make the following kinds of appointments: life and health insurance, property and casualty insurance, and title insurance. The appointed agent's authority is limited to that provided by his license and may not be expanded by his appointment or by his contractual agreement with an insurer.

B. The licenses of all individuals and business entities who on August 31, 2002, hold limited licenses to write accident and sickness insurance, or automobile insurance, or casualty insurance, or fidelity and surety bonds, or fire insurance, or life insurance and annuities, shall have such licenses automatically converted to the nearest equivalent license type provided in subsection A, and shall henceforth be subject to all prelicensing and continuing education requirements applicable to such new license type.

C. All individuals and business entities who on July 1, 1999, held limited licenses to write bail

INTRODUCED

HB872

9/10/22 19:47

(appearance) bonds may remain licensed under such limited licenses until September 1, 2003, but no such license which has lapsed or been revoked shall be reinstated, and no new or additional licenses of such type shall be issued. All such limited licenses shall terminate effective September 1, 2003.

D. All individuals and business entities who on August 31, 2002, hold any of the restricted licenses discontinued effective September 1, 2002, shall have any such licenses converted to the appropriate limited lines license or licenses effective September 1, 2002.

Article 4.1.

Licensing of Public Adjusters.

§ 38.2-1845.1. Definitions.

As used in this article:

"Catastrophic disaster" means an event where the President of the United States or the Governor of the Commonwealth has declared a state of emergency.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which a public adjuster maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident public adjuster.

"License" means a document issued by the Commission authorizing an individual or business entity to act as a public adjuster. The license itself does not create any authority, actual, apparent, or inherent, in the licensee to represent, commit, or bind an insurer.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of public adjusting concerning any of the substantive benefits, terms, or conditions of the contract.

"Proof of compliance" means all documents, forms, and fees specified by the Commission for filing proof of completion of Commission-approved continuing education courses for the appropriate number of hours and for the appropriate content.

"Public adjuster" means an individual or business entity who receives, either directly or indirectly, a salary, fee, commission, or other compensation for engaging in public adjusting.

"Public adjusting" means investigating, negotiating, adjusting, or providing advice to an insured in relation to first party claims arising under insurance contracts that insure the real or personal property of an insured for the purpose of effecting the settlement of a claim on behalf of the insured. Public adjusting includes advertising or representing oneself as a public adjuster; however, public adjusting does not include acting in any manner in relation to liability claims for personal injury or property damage, other third-party claims, or uninsured or underinsured bodily injury liability claims.

"Received by the Commission" means delivered into the possession of the Commission or its administrator at the business address of the Commission's administrator.

§ 38.2-1845.2. License required of resident public adjusters.

A. No person shall engage in the business of public adjusting, on or after January 1, 2013, without first applying for and obtaining a license from the Commission, except as provided in § 38.2-1845.3. Every license issued pursuant to this article shall be for a term expiring two years from the date of issuance and may be renewed for ensuing two-year periods.

B. Each individual applicant for a public adjuster license who is at least 18 years of age, who has satisfied the Commission that he (i) is of good character; (ii) has a reputation for honesty; (iii) has not committed any act that is a ground for refusal to issue, denial, suspension, or revocation of a public adjuster license as set forth in § 38.2-1845.10; and (iv) has complied successfully with the other requirements of this article is entitled to and shall receive a license under this chapter in the form and manner prescribed by the Commission. The Commission may require, for resident licensing, proof of residency as described in subsection B of § 38.2-1800.1.

C. Each individual applicant for a public adjuster license shall apply to the Commission in the form and manner prescribed by the Commission and shall provide satisfactory evidence of having met the following requirements:

1. Each applicant shall pass, within 183 calendar days prior to the date of application for such license, the public adjuster examination as required by the Commission pursuant to and in accordance with the requirements set forth in § 38.2-1845.4.

2. Each applicant for a public adjuster license shall submit a nonrefundable application processing fee prescribed by the Commission at the time of initial application for such license.

3. Prior to issuance of a license, each applicant shall attest that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the amount of $50,000 with corporate sureties licensed by the Commission, on a form prescribed by the Commission. The bond shall be conditioned that the public adjuster will conduct business under the license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at least 60 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed public adjuster fails to file with the Commission a

certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the public adjuster license shall terminate, and the licensee shall be required to satisfy any and all prelicensing requirements in order to apply for a new public adjuster license. The Commission may ask for a copy of the bond or other evidence of financial responsibility at any time.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the Clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the Clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.).

E. Any individual who acts as a public adjuster and who is also an officer, director, principal, or employee of a business entity acting as a public adjuster in the Commonwealth shall be required to hold an appropriate individual license as a public adjuster in the Commonwealth.

F. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made in a form and manner acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fee prescribed by the Commission;

2. The business entity has demonstrated proof of residency pursuant to subsection B of § 38.2-1800.1; and

3. The business entity has designated an individual licensed in Virginia as a public adjuster to be responsible for the business entity's compliance with the laws, rules, and regulations of the Commonwealth applicable to public adjusters.

G. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1845.3. Exemptions from article.

This article shall not apply to (i) an adjuster for or an agent or employee of an insurer or group of insurers under common control or ownership that, as a representative of the insurer or group, adjusts losses or damages under policies issued by the insurer or group; (ii) an adjuster who acts as an independent contractor for one or more insurers; (iii) any attorney licensed in the Commonwealth; (iv) a person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts; (v) employees of a motor vehicle repair facility that prepare repair estimates; or (vi) any person who settles subrogation claims between insurers.

§ 38.2-1845.4. Examinations.

A. Examinations for licenses shall be conducted at least monthly at the times and places prescribed by the Commission. Each applicant shall be required to pass the examination prescribed by the Commission as a condition for licensure unless otherwise exempted.

B. If the applicant fails to take the examination within 90 calendar days from the date his registration for the examination is accepted, the examination fee shall be forfeited, and the registration shall be considered withdrawn.

C. If the applicant fails to obtain the appropriate license from the Commission within 183 calendar days from the date he passes the examination, the examination grade shall be considered invalid, and the examination fee and application processing fee shall be forfeited. Such applicant shall be required to reapply for the examination and to satisfy all appropriate prelicensing requirements.

D. An individual who applies for a resident public adjuster's license in the Commonwealth who was previously licensed as a public adjuster in the individual's home state shall not be required to complete any prelicensing examination. This exemption is only available if the individual is currently licensed in the applicant's home state or if the application is received within 90 calendar days of the cancellation of the applicant's previous license in the applicant's home state and if the applicant's home state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing in that state.

§ 38.2-1845.5. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity that is not a resident as defined in subsection B of § 38.2-1800.1 but that is a resident of another state, territory, or province of Canada shall receive a nonresident public adjuster license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident public adjuster and is in good standing in his

home state;

2. The applicant has submitted the proper application for licensure or a copy of the application for licensure submitted to his home state and has paid the fees required by § 38.2-1845.2;

3. The applicant's home state issues nonresident public adjuster licenses to residents of the Commonwealth on the same basis or will permit a resident of the Commonwealth to act as a public adjuster in such state without requiring a license; and

4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the Clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of the Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the public adjuster's licensing status through the Producer Database records maintained by the NAIC, its affiliates, or subsidiaries.

E. The business entity has designated an individual licensed in Virginia as a public adjuster to be responsible for the business entity's compliance with the laws, rules, and regulations of the Commonwealth applicable to public adjusters.

F. The Commission may require any documents reasonably necessary to verify the information contained in an application.

G. A licensed nonresident public adjuster who changes his home state shall file a change of address within 30 calendar days of the change of legal residence.

H. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

§ 38.2-1845.6. Individual moving into the Commonwealth from another state or Canadian province.

A. An individual holding a nonresident Virginia public adjuster license who has moved into the Commonwealth from another state or a province of Canada shall submit the application and pay the license processing fee required by and in accordance with the requirements set forth in § 38.2-1845.2. A public adjuster with an active nonresident Virginia public adjuster license may continue to operate under his nonresident license for up to 90 calendar days while applying for a resident Virginia public adjuster's license. If a nonresident public adjuster fails to obtain such resident license by the end of the 90-calendar-day period, the equivalent nonresident license shall terminate.

B. An individual licensed as a public adjuster in another state or province of Canada, but not holding a nonresident Virginia public adjuster license, who moves to the Commonwealth shall submit the application to become a resident public adjuster and shall pay the license processing fee set forth in § 38.2-1845.2 within 90 calendar days of establishing residency in the Commonwealth as provided by subsection B of § 38.2-1800.1. No prelicensing examination shall be required of that individual to obtain a public adjuster license. After establishing legal residence in the Commonwealth and prior to obtaining a license as a resident public adjuster, the individual shall be prohibited from conducting the business of public adjusting in the Commonwealth. An individual who fails to submit the application and license processing fee within 90 calendar days of establishing legal residence in the Commonwealth shall be required to satisfy all resident public adjuster prelicensing requirements required this article.

§ 38.2-1845.7. Refusal to issue; hearing; new application.

A. If the Commission is of the opinion that any applicant for public adjuster license 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. If the Commission refuses to issue a new license, it shall give the applicant 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. The notice may be given to the applicant by registered or certified mail, sent to the last known address of record, 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, and the applicant may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing 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 as the Commission prescribes in its order.

B. The license of a business entity may be denied if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers, or managers acting on behalf of the business entity or if it can be demonstrated to the

satisfaction of the Commission that responsibility for such violation by the individual can reasonably be imputed to one or more of the partners, officers, or managers acting on behalf of the business entity, and neither was the violation reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

§ 38.2-1845.8. Renewal application and fee.

A. Each licensed public adjuster shall remit biennially a renewal application in a form and manner acceptable to the Commission, along with the nonrefundable renewal application processing fee prescribed by the Commission for the renewal of the license. Any public adjuster license for which the required renewal application and nonrefundable renewal application processing fee has been received by the Commission shall, unless the license has been terminated, suspended, or revoked be renewed for a two-year period. Any public adjuster license for which the required renewal application and nonrefundable renewal application processing fee has not been received by the Commission in the manner prescribed by the Commission shall automatically be terminated.

B. The nonrefundable renewal processing fee for each public adjuster license shall be paid in a manner and in an amount prescribed by the Commission. All fees shall be collected by the Commission and paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

§ 38.2-1845.9. Continuing education; approval of credits; failure to satisfy requirements; termination of license.

A. An individual who holds a public adjuster license and who is not exempt under subsection B shall satisfactorily complete a minimum of 24 hours of continuing education courses, including three hours of ethics, reported on a biennial basis in conjunction with his license renewal.

B. This section shall not apply to licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of the Commonwealth on the same basis.

C. 1. The Commission or its administrator shall approve all continuing education instructors, continuing education courses, and programs of instruction. The Commission shall establish and monitor standards for the education of public adjusters, approve courses including evaluating credit hours for all courses or programs offered, and set minimum requirements for course instructors. The Commission shall have the authority to disapprove or withdraw approval of course sponsors, courses, or course instructors when the established standards are not satisfied or where such standards have been violated.

2. The number of credits for each self-study course, correspondence course, or program of classroom instruction shall be determined in a manner prescribed by the Commission. However, for an approved classroom course, a credit hour shall be equivalent to a classroom hour providing at least 50 minutes of continuous instruction or participation. No credits shall be granted for approved classroom courses unless notice to the Commission or its administrator is accompanied by proof of attendance by the course provider. No credits shall be granted for any correspondence or self-study course that does not include a test of the subject matter, which shall be successfully completed by each public adjuster requesting credit. The Commission shall have the right to review and approve or disapprove the proposed test as part of the course approval process.

3. An instructor of an approved continuing education course shall be eligible to receive the same number of credits as a person enrolled in the course for the purpose of meeting the requirements. However, public adjusters and instructors may apply credits for attending or teaching the same course only once during any continuing education reporting period.

D. Each public adjuster holding a license subject to the continuing education requirements of this article shall complete all continuing education courses, pay a nonrefundable fee, and shall submit to the Commission or its administrator proof of compliance with continuing education requirements in the form and manner required by the Commission.

E. Any public adjuster subject to this article who fails to submit complete documentation, showing proof of compliance with continuing education requirements, as well as all specified forms and nonrefundable fees, to the Commission or its administrator shall be deemed to be in noncompliance with the requirements of this article.

F. 1. The license of the public adjuster shall not be renewed if the public adjuster has failed to satisfy the continuing education requirements of this section.

2. A public adjuster shall have 30 calendar days to appeal to the Commission or its administrator the decision to administratively terminate the license for failure to complete continuing education

requirements as required by this section. A public adjuster wishing to contest the Commission's action in terminating a license shall adhere to the Commission's Rules of Practice and Procedure (5 VAC 5-20-10 et seq.) and the Rules of Supreme Court of Virginia. Failure by the public adjuster to initiate such contest within 30 calendar days following the date of license termination shall be deemed a waiver by the public adjuster of the right to contest such license termination.

G. A resident public adjuster whose license has been terminated under the terms of this section shall be permitted to make application for a new license if all of the requirements of § 38.2-1845.2 are met.

H. Each public adjuster shall pay a nonrefundable continuing education processing fee in an amount prescribed by the Commission.

§ 38.2-1845.10. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension of license.

The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke, or refuse to issue or renew any person'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 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 as a public adjuster;

5. Having been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or a breach of trust;

6. Having admitted or been found to have committed any insurance unfair trade practice, as set forth in Chapter 5 (§ 38.2-500 et seq.), or fraud;

7. Using fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness in the conduct of business in the Commonwealth or elsewhere, or demonstrating financial irresponsibility in the handling of policyholder, agency, or insurance company funds;

8. Having public adjuster license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

9. Intentionally misrepresenting the terms of an insurance contract;

10. Knowingly accepting public adjusting business from an individual who unlawfully solicited business and who is not licensed but who is required to be licensed under this article;

11. Paying or sharing a commission, fee, or other valuable consideration to a person who is required to be licensed under this article and is not so licensed;

12. Forging another's name to any document related to an insurance transaction;

13. Improperly using notes or any other reference material to complete an examination for a public adjuster license;

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

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

16. Failing to report to the Commission as required by § 38.2-1845.17.

§ 38.2-1845.11. Termination, suspension, or revocation of license.

A. A license issued to an individual public adjuster shall authorize him to act as a public adjuster until his license is otherwise terminated, suspended, or revoked.

B. A license issued to a business entity shall authorize such business entity to act as a public adjuster until such license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation of law, shall automatically terminate the public adjuster license issued to such partnership. The Bureau shall automatically terminate all public adjuster licenses within 90 calendar days of receiving notification from the Clerk of the Commission that the certificate of organization or charter of a domestic limited liability company or corporation respectively, whether by intent or by operation of law, has been terminated or that the certificate of registration or certificate of authority of a foreign limited liability company or corporation, respectively, has been revoked.

C. Except as provided in subsection B of § 38.2-1845.5, the license authority of any licensed resident public adjuster shall terminate immediately when such public adjuster has moved his residence from the Commonwealth, whether or not the Commission has been notified of such move.

D. The license authority of any business entity licensed as a public adjuster shall terminate immediately if the sole licensed responsible public adjuster designated pursuant to subdivision F 3 of § 38.2-1845.2 for the business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth is removed for any reason and a new responsible public adjuster has not been designated and the Commission notified within 30 calendar days of such removal and of the newly

designated responsible public adjuster.

E. 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 proposes to revoke or suspend an existing license, it shall give the 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 licensee by registered or certified mail, sent to the last known address of record 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 licensee, and the licensee may introduce evidence in the licensee's behalf. No 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 as the Commission prescribes in its order.

F. The license of a business entity may be suspended or revoked if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the business entity was known to be a violation by one or more of the partners, officers, or managers acting on behalf of the business entity or if it can be demonstrated to the satisfaction of the Commission that responsibility for such violation by the individual can reasonably be imputed to one or more of the partners, officers, or managers acting on behalf of the business entity, and neither was the violation reported to the Commission nor corrective action taken.

G. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

H. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

§ 38.2-1845.12. Standards of conduct for public adjusters.

A. A public adjuster shall be fair and honest in any and all respects in any communications with an insured and with an insurer or its representatives.

B. No person shall accept a commission, fee, or other compensation for investigating or settling claims if that person is required to be licensed under this article and is not licensed.

C. A public adjuster shall have no financial interest in any aspect of an insured's claim other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster.

D. A public adjuster shall not refer or direct an insured needing repairs or other services in connection with a loss to any person with whom the public adjuster has a financial interest nor to any person who will or is reasonably anticipated to provide the public adjuster with any direct or indirect compensation for the referral of any resulting business.

E. A public adjuster shall not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person regarding the settlement of the insured's claim.

F. The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified.

G. Any choice of counsel to represent the insured shall be made solely by the insured.

H. A public adjuster may not settle a claim unless the terms and conditions of the settlement are approved by the insured in writing.

I. A public adjuster shall not acquire any interest in salvage property except with the express written permission of the insured after settlement with the insurer.

J. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this article.

K. No public adjuster may represent or act as a company adjuster or independent adjuster on the same claim.

L. No public adjuster shall enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

M. A public adjuster shall not solicit or attempt to solicit a client within 96 hours of a loss event.

N. Public adjusters may not solicit a client for employment from 8:00 p.m. to 8:00 a.m. daily.

O. A public adjuster shall notify, in writing, the insured or claimant in advance of the name and location of any proposed contractor, architect, engineer, or similar professional before any bid or proposal by any of these persons may be used by the public adjuster in estimating the loss. The insured or claimant may exercise veto power of any of these persons, in which case that person shall not be used in estimating costs.

P. A public adjuster shall ensure that if a contractor, architect, professional engineer, or other professional is used in formulating estimates, the professional shall be licensed by the Commonwealth.

Q. No person shall advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of the services of a public adjuster. As used in this subsection, the term "promise to pay or rebate" includes (i) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured's premises or (ii) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

§ 38.2-1845.13. Contract between public adjuster and insured.

A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

1. Legible full name of the public adjuster signing the contract, as specified in the records of the Commission;

2. Public adjuster's permanent home state business address and phone number;

3. Public adjuster's license number, as specified in the records of the Commission;

4. Title "Public Adjuster Contract";

5. The insured's full name and street address and the insurance company's name and policy number;

6. A description of the loss and a description of the location of the loss, if applicable;

7. A description of services to be provided to the insured by the public adjuster and all terms and conditions of the engagement;

8. Signatures of the public adjuster and the insured;

9. The date the contract was signed by the public adjuster and the date the contract was signed by the insured;

10. Attestation language stating that the public adjuster is fully bonded pursuant to state law;

11. The full salary, fee, commission, compensation, or other consideration the public adjuster is to receive for services, subject to the provisions of § 38.2-1845.14; and

12. The right to rescind the contract within three business days after the contract has been signed by the insured or, in the event of a catastrophic disaster, the right to rescind the contract within five business days after the contract has been signed by the insured. Such rescission shall be in writing and mailed or delivered to the public adjuster at the address shown in the contract. Within 15 business days following receipt of the notice to rescind, the public adjuster shall return to the insured anything of value given by the insured under the contract.

B. The public adjuster shall provide a separate disclosure document to the insured stating (i) the insured is not required to hire a public adjuster but has the right to do so; (ii) the public adjuster is not an employee or representative of the insurer; (iii) the salary, fee, commission, or other consideration is the obligation of the insured, not the insurer; (iv) property insurance policies obligate the insured to present a claim to the insurer for consideration; (v) the insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim; and (vi) the insured may contact the Commission for the licensing status of the public adjuster.

C. A public adjuster shall provide the insurer with a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

D. No public adjuster shall enter into a contract that prevents an insured from pursuing any civil remedy after the revocation or cancellation period set forth in subdivision A 12.

§ 38.2-1845.14. Fees.

A. No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or thing of value prior to the settlement of a claim.

B. Except as provided in subsection C, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than 20 percent of any insurance settlement proceeds. Any such commission, fee, or other thing of value shall include any expenses incurred by the public adjuster in the estimating and settlement of any claim.

C. In the event of a catastrophic disaster, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than 10 percent of any insurance settlement proceeds. Any such commission, fee, or other thing of value shall include any expenses incurred by the public adjuster as part of the estimating and settlement of any claim.

C. No public adjuster shall charge a fee, commission, or other valuable consideration based, in whole or in part, on an amount paid to the insured by the insurer prior to the date of the written contract between the insured and the public adjuster.

D. A public adjuster's contract may not contain a provision that allows the public adjuster's percentage fee to be collected when money is due from an insurer, but not paid, or that allows a public

adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer.

E. A public adjuster's contract may not contain a provision that requires the insured to authorize an insurer to issue a check only in the name of the public adjuster.

F. A public adjuster's contract may not contain a provision that imposes collection costs or late fees.

G. The public adjuster's contract may specify that the public adjuster shall be named as a copayee on an insurer's payment of a claim, provided that (i) if the compensation is based on a share of the insurance settlement, the exact percentage shall be specified and (ii) initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

H. If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall (i) not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim, (ii) inform the insured that the loss recovery amount represents the maximum amount recoverable under the policy, and (iii) be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster.

§ 38.2-1845.15. Record retention.

The public adjuster shall maintain sufficient records of its affairs so that the Commission may adequately ensure that the public adjuster complies with all provisions of this chapter. The public adjuster shall retain records pertaining to each claim handled for a minimum of five years after the claim is settled. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

§ 38.2-1845.16. Escrow or trust accounts.

All funds received by, accepted by, or held by a public adjuster on behalf of an insured towards the settlement of a claim shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth no later than the close of the second business day from the receipt or acceptance of such funds. Any such funds held by such public adjuster shall be disbursed within 30 calendar days of any invoice received by such public adjuster upon approval of the insured or claimant that the work has been satisfactorily completed.

§ 38.2-1845.17. Requirement to report to Commission.

A. Each licensed public adjuster shall report within 30 calendar days to the Commission any change in his residence or name.

B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity licensed as a public adjuster in the Commonwealth and operating under an assumed or fictitious name shall provide notice to the Commission, at the earlier of the time the application for a public adjuster license is filed or within 30 calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which the public adjuster intends to operate in the Commonwealth. The Commission shall also be notified within 30 calendar days from the date of cessation of the use of such assumed or fictitious name.

C. Each licensed public adjuster shall report to the Commission any conviction involving a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust in another jurisdiction or in the Commonwealth within 30 calendar days of the final disposition of the matter. This report shall include a copy of the order and other relevant legal documents.

D. Each licensed public adjuster shall report to the Commission within 30 calendar days of the final disposition of the matter of any administrative action taken against him in another jurisdiction or by another governmental agency in the Commonwealth. Such report shall include a copy of the order, consent order, or other relevant legal documents.

§ 38.2-1845.18. Information security program.

A. Each public adjuster shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of policyholder information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the public adjuster's business and the nature and scope of its activities.

B. The information security program shall be designed to:

1. Ensure the security and confidentiality of policyholder information;

2. Protect against any anticipated threats or hazards to the security or integrity of the information; and

3. Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any policyholder.

§ 38.2-1845.19. What laws applicable; rulemaking authority.

A. Except as otherwise provided in this article and except where the context otherwise requires, all of the provisions of this title apply to this article.

B. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as may be necessary or appropriate for the administration and enforcement of this article.

§ 38.2-1845.20. Immunities; confidentiality.

A. Any documents, materials, or other information in the control or possession of the Commission that is furnished by an insurer, agent, or public adjuster or by an employee thereof acting on behalf of the insurer, agent, or public adjuster or obtained by the Commission in an investigation pursuant to this article 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; the NAIC, 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.

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, 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 NAIC, its affiliates, or subsidiaries.

§ 38.2-1845.21. Authority of Commission to delegate certain functions.

In order to assist in the performance of its duties, the Commission may contract with nongovernmental entities, including the NAIC, any affiliates, or subsidiaries that the NAIC oversees, to perform any ministerial functions, including licensing examination administration, the collection of fees related to public adjuster licensing, and such other functions as the Commission may deem appropriate.

§ 38.2-1845.22. Power of Commission to investigate affairs of persons engaged in the business of public adjusting; penalties for refusal to permit investigation.

The Commission shall have power to examine and investigate the business affairs of any person engaged or alleged to be engaged in the business of public adjusting in the Commonwealth to determine whether the person has engaged or is engaging in any violation of this title. The Commission shall have the right to examine all records relating to the business of public adjusting by any such person in the Commonwealth to determine whether the person is now or has been violating any of the provisions of this title. Any licensee under this article or any person purporting to be a licensee under this article or any person whose actions have led any person to believe that he is a licensee under this article who refuses to permit the Commission or any of its employees or agents, including employees of the Bureau of Insurance, to make an examination or who fails or refuses to comply with the provisions of this section, may, after notice and an opportunity to be heard, be subject to any of the penalties relating to licensees under this article, as provided in this title, including the denial, suspension, or revocation of his license.

§ 38.2-1845.23. False information and advertising generally.

No person shall knowingly make, publish, disseminate, circulate, or place before the public, or cause or knowingly allow, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an

advertisement, announcement, or statement containing any assertion, representation, or statement relating to (i) the business of public adjusting or (ii) any person in the conduct of his business of public adjusting which is untrue, deceptive, or misleading.

2. That the provisions of this act shall become effective on January 1, 2013.

INTRODUCED