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HOUSE BILL NO. 304

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 4, 2016)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 38.2-2619 and 38.2-2622 of the Code of Virginia, relating to home service contract providers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2619 and 38.2-2622 of the Code of Virginia are amended and reenacted as follows:
§ 38.2-2619. Requirements for doing business.

A. A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of home service contracts and compliance with this article.

B. Home service contracts shall not be issued, sold, or offered for sale in this Commonwealth unless the provider has:

1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and

2. Provided a copy of the home service contract to the home service contract holder within a reasonable period of time from the date of purchase.

C. Each provider of home service contracts sold in this Commonwealth shall first obtain a license by filing with the Commission their name, full corporate address, telephone number, and contact person and designate a person in this Commonwealth for service of process. Each provider shall pay to the Commission a *nonrefundable application fee in the amount of \$1,000 upon initial licensure and every two years thereafter \$500.* ~~Said~~ The filing need only be updated by written notification to the Commission if material changes occur in the information on file. All fees paid into the State Treasury pursuant to this subsection shall be ~~deposited in accordance with~~ credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400. A license issued any time prior to July 1, 2017, shall expire on June 30, 2017, unless renewed as set forth in this section. Beginning with the July 1, 2017, renewal and each year thereafter, a licensed home service contract provider shall remit a renewal application form and nonrefundable renewal fee in the amount of \$500 in the manner and form prescribed by the Commission. A home service contract provider's license expiring on June 30 may be renewed on July 1 for a one-year period ending on June 30 of the following year if the required renewal application and nonrefundable renewal fee have been received.

D. No license shall be issued to any home service contract provider unless the applicant:

1. If a resident partnership, limited liability company, or corporation, has recorded the existence of the partnership, limited liability company or corporation pursuant to law, or if a nonresident partnership, limited liability company or corporation, has furnished proof of its authority to transact business in Virginia;

2. Maintains a net worth in an amount not less than ~~20%~~ 20 percent of the ~~premiums~~ provider fees charged on its contracts currently in force; however, the minimum required net worth shall be not less than \$100,000, and the maximum required net worth shall be that amount required of insurers under the provisions of Article 5 (§ 38.2-1024 et seq.) of Chapter 10 of Title 38.2;

3. Places on deposit with the State Treasurer a financial security deposit of the type allowed pursuant to Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2. The deposit shall have a value of at least ~~5%~~ five percent of the gross consideration received on the sale of the home service contract for all home service contracts issued and in force in the Commonwealth, but not less than \$25,000 or more than \$250,000. The Treasurer is authorized to defray expenses associated with the deposit in accordance with § 38.2-1057; and

4. Has filed any financial statement and any reports, certificates, or other documents as the Commission deems necessary to secure a full and accurate knowledge of its affairs and financial condition.

E. *The Commission may, after notice and opportunity to be heard, refuse to issue a license to a home service contract provider if such provider does not provide documentation to support, to the Commission's satisfaction, that the provider's financial condition, method of operation, and manner of doing business enable the provider to meet its obligations to all contract holders and that the provider has otherwise complied with all the requirements of law.*

F. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with any one of the following requirements:

60 1. Insure all home service contracts under a reimbursement insurance policy issued by an insurer
61 licensed, registered, or otherwise authorized to do business in the Commonwealth, and such insurer
62 either:

63 a. At the time the reimbursement insurance policy is filed with the Commission, and continuously
64 thereafter, (i) maintains surplus as to policyholders of at least \$15 million and (ii) annually files copies
65 of the insurer's audited financial statements, its National Association of Insurance Commissioners Annual
66 Statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

67 b. At the time the reimbursement insurance policy is filed with the Commission, and continuously
68 thereafter, (i) maintains surplus as to policyholders of less than \$15 million but at least equal to \$10
69 million, (ii) demonstrates to the satisfaction of the Commission that the company maintains a ratio of
70 net written premiums, wherever written, to surplus as to policyholders of not greater than 3 to 1, and
71 (iii) annually files copies of the insurer's audited financial statements, its National Association of
72 Insurance Commissioners Annual Statement, and the actuarial certification required by and filed in the
73 insurer's state of domicile;

74 2. Maintain a funded reserve account sufficient to provide for its obligations under its contracts
75 issued and outstanding in this Commonwealth. The reserves shall not be less than ~~40%~~ 40 percent of
76 gross consideration received, ~~less claims paid~~, on the sale of the home service contract for all in-force
77 contracts. *The reserves shall be calculated by taking the gross consideration received on the sale of the*
78 *home service contract for all in-force contracts, less claims paid, and multiplying the remainder by 40*
79 *percent.* This reserve account shall be certified by the company along with reasonable documentation
80 thereof. The reserve account shall be subject to examination and review by the Commission; or

81 3. Maintain with its parent company a net worth or stockholders' equity of at least \$100 million and
82 upon request, provide the Commission with a copy of the provider's parent company's most recent Form
83 10-K or similar document filed with the federal Securities and Exchange Commission within the last
84 calendar year, or if the company does not file with the federal Securities and Exchange Commission, a
85 copy of the company's audited financial statements, which shows a net worth of the provider's parent
86 company of at least \$100 million. If the provider's parent company's federal Securities and Exchange
87 Commission filing or financial statements are filed to meet the provider's financial stability requirement,
88 then the parent company shall agree to guarantee the obligations of the provider relating to home service
89 contracts sold by the provider in this Commonwealth.

90 ~~F. G.~~ Except for the requirements specified in subsections D and ~~E~~ *above F*, no other financial
91 security requirements shall be required by the Commission for home service contract providers.

92 ~~G. H.~~ Home service contracts shall require the provider to permit the home service contract holder to
93 return the home service contract within 20 days of the date the home service contract was mailed to the
94 home service contract holder or within 10 days of delivery if the home service contract is delivered to
95 the home service contract holder at the time of sale or within a longer time period permitted under the
96 home service contract. Upon return of the home service contract to the provider within the applicable
97 time period, if no claim has been made under the home service contract prior to its return to the
98 provider, the home service contract is void and the provider shall refund to the home service contract
99 holder, or credit the account of the home service contract holder, with the full purchase price of the
100 home service contract. The right to void the home service contract provided in this subsection is not
101 transferable and shall apply only to the original home service contract purchaser and only if no claim
102 has been made prior to its return to the provider. A ~~40%~~ 10 percent penalty per month shall be added to
103 a refund that is not paid or credited within 45 days after return of the home service contract to the
104 provider.

105 ~~H. I.~~ Providers shall be subject to the provisions of Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1.
106 Provider fees collected on home service contracts shall be subject to premium taxes of two and
107 one-fourth percent of such provider fees. The premium taxes paid by providers pursuant to this
108 subsection shall be in lieu of all other state and local license fees or license taxes and state income taxes
109 of the provider. Premiums for reimbursement insurance policies shall be subject to applicable premium
110 taxes.

111 ~~I. J.~~ Except for the licensing requirements in subsection C, providers and related home service
112 contract sellers, administrators, and other persons marketing, selling, or offering to sell home service
113 contracts are exempt from any licensing requirements of the Commonwealth.

114 ~~J. K.~~ The marketing, sale, offering for sale, issuance, making, proposing to make and administration
115 of home service contracts by providers and related home service contract sellers, administrators, and
116 other persons shall be exempt from all other provisions of this title.

117 **§ 38.2-2622. Financial statements.**

118 On or before March 1 of each year, each home service contract provider shall file with the
119 Commission its annual financial statement, in the form prescribed by the Commission. On or before
120 June 1 of each year, each home service contract provider shall file with the Commission audited
121 financial statements in a manner prescribed by the Commission prepared in accordance with generally

- 122** *accepted accounting principles.* The Commission may request supplemental financial information to
123 ensure a home service contract provider's financial stability.
124 Investments shall be subject to the provisions of Chapter 14 (§ 38.2-1400 et seq.) of this title.