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HOUSE BILL NO. 393

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 29, 2016)

(Patron Prior to Substitute—Delegate Ware)

A *BILL to amend and reenact §§ 38.2-1820, 38.2-1825, 38.2-1826, 38.2-1838, 38.2-1841, 38.2-1845.2, 38.2-1857.2, 38.2-1865.1, and 38.2-1865.5 of the Code of Virginia, relating to insurance agencies; designated licensed producers.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1820, 38.2-1825, 38.2-1826, 38.2-1838, 38.2-1841, 38.2-1845.2, 38.2-1857.2, 38.2-1865.1, and 38.2-1865.5 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1820. Issuance of license.

A. Each applicant who is at least ~~eighteen~~ 18 years of age and who has satisfied the Commission that he is of good character, has a good reputation for honesty, and has complied with the other requirements of this article is entitled to and shall receive a license in the form the Commission prescribes.

B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application, or such other application acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fees set forth in § 38.2-1819; and

2. The business entity has designated ~~a~~ *an employee, officer, or director to serve as the* licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of ~~this the~~ Commonwealth. *However, with respect to a business entity applying for a limited lines license pursuant to Article 8 (§ 38.2-1875 et seq.) or 8.1 (§ 38.2-1881 et seq.), the licensed producer designated by the vendor or lessor is not required to be an employee, officer, or director of the vendor or lessor.*

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

§ 38.2-1825. Duration and termination of licenses and appointments.

A. A license issued to:

1. An individual agent shall authorize him to act as an agent until the license is otherwise terminated, suspended or revoked.

2. A business entity shall authorize such business entity to act as an agent until the 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 all licenses issued to such partnership. The Bureau shall automatically terminate all insurance licenses within ~~ninety~~ 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.

B. The license issued to a resident variable contract agent pursuant to this chapter shall terminate immediately upon the termination of the licensee's life and annuities insurance agent license, and may not be applied for again until the person has been issued a new life and annuities insurance agent license.

C. The license issued to a resident surplus lines broker pursuant to this title shall terminate immediately upon the termination of the licensee's property and casualty insurance agent license, and may not be applied for again until the person has been issued a new property and casualty insurance agent license.

D. Immediately upon termination of a settlement agent's last appointment under his title insurance agent license, the Bureau shall notify the Virginia State Bar to terminate the settlement agent's registration and the person shall not be permitted to act as a settlement agent under his title insurance agent's license until a new appointment has taken effect.

E. An appointment issued to an agent by an insurer, unless terminated, suspended or revoked, shall authorize the appointee to act as an agent for that insurer and to be compensated therefor notwithstanding the provisions of §§ 38.2-1812 and 38.2-1823.

F. A business entity licensed as a producer shall designate within 30 calendar days a new licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth pursuant to subdivision B 2 of § 38.2-1820 following the removal, for any reason,

60 of the previous designated licensed producer.

61 **§ 38.2-1826. Requirement to report to Commission.**

62 A. Each licensed agent shall report within ~~thirty~~ 30 calendar days to the Commission, and to every
63 insurer for which he is appointed any change in his residence or name.

64 B. Each licensed agent convicted of a felony shall report within ~~thirty~~ 30 calendar days to the
65 Commission the facts and circumstances regarding the criminal conviction.

66 C. Each licensed agent shall report to the Commission within ~~thirty~~ 30 calendar days of the final
67 disposition of the matter any administrative action taken against him in another jurisdiction or by
68 another governmental agency in ~~this the~~ Commonwealth. Such report shall include a copy of the order,
69 consent to order or other relevant legal documents.

70 D. The license authority of any licensed resident agent shall terminate immediately when such agent
71 has moved his residence from ~~this the~~ Commonwealth, whether or not the Commission has been notified
72 of such move.

73 E. Each business entity acting as an insurance producer shall report within 30 calendar days to the
74 Commission the removal, for any reason, of the designated licensed producer responsible for the
75 business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth
76 pursuant to subdivision B 2 of § 38.2-1820, along with the name of the new designated licensed
77 producer.

78 **§ 38.2-1838. License required of consultants.**

79 A. No person, unless he holds an appropriate license shall:

80 1. Represent to members of the public that he provides planning or consulting services beyond those
81 within the normal scope of activities of a licensed insurance agent; or

82 2. Except as provided in § 38.2-1812.2, charge or receive, directly or indirectly, a fee or other
83 compensation for insurance advice, other than commissions received in such person's capacity as a
84 licensed insurance agent or surplus lines broker resulting from selling, soliciting, or negotiating
85 insurance or health care services as allowed by his license.

86 B. Each individual applying for an insurance consultant's license shall apply to the Commission in a
87 form acceptable to the Commission, and shall provide satisfactory evidence of having met the following
88 requirements:

89 1. To be licensed as a property and casualty insurance consultant the applicant must pass, within 183
90 calendar days prior to the date of application for such license, the property and casualty examination as
91 required in § 38.2-1817, except that an applicant who, at the time of such application holds an active
92 property and casualty insurance agent license, shall be exempt from the examination requirements;

93 2. To be licensed as a life and health insurance consultant, the applicant must pass, within 183
94 calendar days prior to the date of application for such license, both the life and annuities and the health
95 examinations as required in § 38.2-1817, except that an applicant who, at the time of such application
96 holds both an active life and annuities license and an active health agent license, shall be exempt from
97 the examination requirements; and

98 3. Except where prohibited by state or federal law, by submitting an application for license, the
99 applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of
100 process on the applicant in any action or proceeding arising in ~~this the~~ Commonwealth out of or in
101 connection with the exercise of the license. Such appointment of the clerk of the Commission as agent
102 for service of process shall be irrevocable during the period within which a cause of action against the
103 applicant may arise out of transactions with respect to subjects of insurance in ~~this the~~ Commonwealth.
104 Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8
105 (§ 38.2-800 et seq.) of this title.

106 C. Any individual who acts as an insurance consultant as an officer, director, principal or employee
107 of a business entity shall be required to hold an appropriate individual license as an insurance
108 consultant.

109 D. A business entity acting as an insurance consultant is required to obtain an insurance consultant
110 license. Application shall be made in a form and manner acceptable to the Commission. Before
111 approving the application, the Commission shall find that:

112 1. The business entity has paid the fee set forth in this section; and

113 2. The business entity has designated ~~a~~ an employee, officer, or director to serve as the licensed
114 producer responsible for the business entity's compliance with the insurance laws, rules and regulations
115 of ~~this the~~ Commonwealth.

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

118 F. Each applicant for an insurance consultant's license shall submit a nonrefundable application
119 processing fee of ~~fifty dollars~~ \$50 at the time of initial application for such license.

120 **§ 38.2-1841. Termination, suspension or revocation of license.**

121 A. A license issued to an individual insurance consultant shall authorize him to act as an insurance

consultant 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 an insurance consultant 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 insurance consultant's license issued to such partnership. The Bureau shall automatically terminate all insurance consultant licenses within ~~ninety~~ 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. The termination of a consultant's license as an insurance agent pursuant to subsection A of § 38.2-1825 shall not result in the termination of the consultant's license provided the annual renewal application and nonrefundable renewal application processing fee prescribed in § 38.2-1840 continues to be paid, the consultant license continues to be renewed as required by § 38.2-1840, and the license is not otherwise revoked, suspended or terminated.

D. The license authority of any business entity licensed as a consultant shall terminate immediately if the designated licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth pursuant to subdivision D 2 of § 38.2-1838 is removed for any reason and a new responsible producer has not been designated and the Commission notified within 30 calendar days of such removal and of the new designated responsible producer.

§ 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 *employee, officer, or director* 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.

§ 38.2-1857.2. Applications for surplus lines brokers' licenses.

A. Every original applicant for a surplus lines broker's license shall apply for such license in a form and manner prescribed by the Commission, and containing any information the Commission requires.

B. Prior to issuance of a license, the applicant shall file with the Commission a certification or attestation that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of this Commonwealth in the amount of \$25,000 with corporate sureties licensed by the Commission. The bond shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least ~~thirty~~ 30 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed surplus lines broker 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 surplus lines broker license shall terminate and the licensee shall be required to apply for a new surplus lines broker license.

C. Notwithstanding any other provisions of this title, a person licensed as a surplus lines broker in his home state, as defined in § 38.2-1800, shall receive a nonresident surplus lines broker license subject to meeting the requirements set forth in § 38.2-1857.9.

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 ~~this the~~ 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 ~~this the~~ the Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

E. A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in § 38.2-1857.3; and

2. If:

a. A resident of ~~this the~~ the Commonwealth, the business entity has designated a *an employee, officer, or director to serve as the* licensed Virginia Property and Casualty insurance agent to be responsible for the business entity's compliance with the insurance laws, rules and regulations of ~~this the~~ the Commonwealth; or

b. Not a resident of ~~this the~~ the Commonwealth, the business entity has designated a *producer an employee, officer, or director* licensed in his home state to be responsible for the business entity's compliance with the insurance laws, rules and regulations of ~~this the~~ the Commonwealth.

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

§ 38.2-1865.1. License required for viatical settlement brokers; Commission's authority; conditions.

A. No person shall act as a viatical settlement broker, or solicit a viatical settlement contract while acting as a viatical settlement broker, on or after January 1, 1998, without first obtaining a license from the Commission.

B. A resident or nonresident life and annuities insurance agent shall not be prohibited from obtaining a license, and subsequently acting as, a viatical settlement broker. Such licensed life and annuities agent applying for a license as a viatical settlement broker shall comply with all provisions of this chapter.

C. Application for a viatical settlement broker's license shall be made to the Commission in the manner, in the form, and accompanied by the nonrefundable license processing fee prescribed by the Commission.

D. A business entity acting as a viatical settlement broker is required to obtain a viatical settlement

broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; and

2. The business entity has designated *an employee, officer, or director who is* a licensed viatical settlement broker as the individual responsible for the business entity's compliance with the insurance and other laws of this title, and related rules and regulations of ~~this~~ *the* Commonwealth.

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

F. 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 ~~this~~ *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 ~~this~~ *the* Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of ~~this~~ *this* title.

G. The license processing fee required by this section shall be collected by the Commission, paid directly into the state treasury, and 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.

H. Before June 1 of each year, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal application prescribed by the Commission for the renewal of the license effective July 1 of that year.

I. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following June 30 if the required renewal application and renewal fee have been received by the Commission on or before June 1, and the license has not been terminated, suspended or revoked on or before June 30.

J. The renewal fee required by this section shall be collected by the Commission, paid directly into the state treasury, and 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.

K. Each applicant for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license pertaining to the business of viatical settlements or to the insurance or other financial services business.

L. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

M. A viatical settlement broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

§ 38.2-1865.5. Requirement to report to Commission.

A. Each licensed viatical settlement broker shall report, in writing, any change in business or residence address or name within thirty calendar days to the Commission.

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

C. Each licensed viatical settlement broker convicted of a felony shall report within ~~thirty~~ 30 calendar days to the Commission the facts and circumstances regarding the criminal conviction.

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

E. The license authority of any licensed resident viatical settlement broker shall terminate immediately when such viatical settlement broker has moved his residence from ~~this~~ *the* Commonwealth, whether or not the Commission has been notified of such move.

F. *The license authority of any business entity licensed as a viatical settlement broker shall terminate immediately if the designated licensed viatical settlement broker responsible for the business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth pursuant to subdivision D 2 of § 38.2-1865.1 is removed for any reason and a new responsible viatical settlement broker has not been designated and the Commission notified within 30 calendar days of such removal*

306 *and of the new designated responsible viatical settlement broker.*