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SENATE BILL NO. 100

Senate Amendments in [] — February 2, 1994

A *BILL to amend and reenact §§ 38.2-1300, 38.2-1301, 38.2-1306, 38.2-1306.1, 38.2-1320.1, 38.2-1331, 38.2-1846, 38.2-1855, 38.2-1858, 38.2-1863 and 38.2-4123 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-1301.1, relating to insurance; financial regulation.*

Patron—Colgan

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1300, 38.2-1301, 38.2-1306, 38.2-1306.1, 38.2-1320.1, 38.2-1331, 38.2-1846, 38.2-1855, 38.2-1858, 38.2-1863 and 38.2-4123 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-1301.1 as follows:

§ 38.2-1300. Annual statements.

A. Each insurer licensed to transact the business of insurance in this Commonwealth shall file with the Commission annually, on or before March 1, an annual statement showing its financial condition on December 31 of the previous year. The annual statement shall be considered filed on the date the statement was sent by mail as shown by the postmark. The annual statement shall contain a detailed report of the insurer's assets and liabilities, the investment of its assets, its income and disbursements during the previous year, and all other information which the Commission considers necessary to secure a full and accurate knowledge of the affairs and condition of the insurer. The annual statement of every domestic or foreign insurer shall be signed by at least two of its principal officers subject to § 38.2-1304. No publication of the annual statement shall be required.

B. The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the Commission requires otherwise. The annual statement shall be verified by the alien insurer's United States manager, assistant manager, or by any of its duly authorized officers.

C. The Commission may prescribe the form of the annual statement and supplemental schedules and exhibits to include additional copies in machine-readable format, and may vary the form for different types of insurers. However, as far as practicable, the form for annual statements, supplementary schedules, and exhibits shall be the same as other such forms in general use in the United States ~~and, unless~~ . *Unless* otherwise prescribed by the Commission, such annual statements *shall be prepared using an annual statement convention blank developed by the National Association of Insurance Commissioners (NAIC). The annual statement,* and supplementary schedules and exhibits required by this section, shall be prepared in accordance with the appropriate annual statement instructions and the accounting practices and procedures manuals adopted by the ~~National Association of Insurance Commissioners (NAIC), or any other successor publications.~~

D. Each domestic, foreign and alien insurer that is authorized to transact insurance in this Commonwealth shall annually on or before March 1 of each year, file with the NAIC a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commission for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Commission and shall include the signed jurat page and any actuarial certification required by the Commission. Any amendments and addenda to the annual statement filing subsequently filed with the Commission shall also be filed with the NAIC. However, an insurer may apply to the Commission for an exemption from this subsection.

E. Foreign insurers that are domiciled in a state, which has a law substantially similar to subsection D of this section, shall be deemed to be in compliance with subsection D of this section.

§ 38.2-1301. Additional reports.

A. In addition to the annual statement, the Commission may require a licensed insurer to file additional reports, exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the insurer. The Commission shall establish deadlines for filing these additional reports, exhibits or statements and may require verification by any officers of the insurer designated by the Commission.

B. The Commission may require a domestic, foreign or alien insurer that is authorized to transact insurance in this Commonwealth to file with the National Association of Insurance Commissioners (NAIC) a copy of the insurer's financial statement required to be filed pursuant to § 38.2-1301, on a quarterly basis. Unless otherwise prescribed by the Commission, all such financial statements, whether filed with the Commission or the NAIC, shall be prepared in accordance with applicable provisions of

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60 the annual statement instructions and the accounting practices and procedures manuals adopted by the
61 NAIC, or any successor publications. *The Commission may prescribe that additional copies of financial*
62 *statements and other reports be filed in machine-readable format.*

63 § 38.2-1301.1. *Material transaction disclosures.*

64 A. *Every insurer domiciled in this Commonwealth shall file a report with the Commission disclosing*
65 *material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of*
66 *ceded reinsurance agreements unless such acquisitions and dispositions of assets or material*
67 *nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the*
68 *Commission for review, approval or information purposes pursuant to other provisions of Title 38.2 or*
69 *the rules and regulations of the Commission.*

70 1. *The report required by this subsection is due within fifteen days after the end of the calendar*
71 *month in which any of the foregoing transactions occur.*

72 2. *One complete copy of the report, including any exhibits or other attachments filed as part thereof,*
73 *shall be filed with the National Association of Insurance Commissioners unless the insurer has applied*
74 *for and has been granted an exemption from this requirement by the Commission.*

75 B. *All reports obtained by or disclosed to the Commission pursuant to this section, shall be given*
76 *confidential treatment, shall not be subject to subpoena, and shall not be made public by the*
77 *Commission, the National Association of Insurance Commissioners, or any other person, except to*
78 *insurance departments of other states, without the prior written consent of the insurer to which it*
79 *pertains unless the Commission, after giving the insurer which would be affected thereby, notice and an*
80 *opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be*
81 *served by the publication thereof, in which event the Commission may publish all or any part thereof in*
82 *such manner as it may deem appropriate.*

83 C. *No acquisitions or dispositions of assets need be reported pursuant to subsection A if the*
84 *acquisitions or dispositions are not material. For purposes of this section, a material acquisition, or the*
85 *aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the*
86 *aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring*
87 *and not in the ordinary course of business and involves more than five percent of the reporting insurer's*
88 *total admitted assets as reported in its most recent statutory statement filed with the Commission.*

89 1. *Asset acquisitions subject to this section include every purchase, lease, exchange, merger,*
90 *consolidation, succession, or other acquisition other than the construction or development of real*
91 *property by or for the reporting insurer or the acquisition of materials for such purpose.*

92 2. *Asset dispositions subject to this section include every sale, lease, exchange, merger,*
93 *consolidation, mortgage, pledge or hypothecation, assignment, whether for the benefit of creditors or*
94 *otherwise, abandonment, destruction, or other disposition.*

95 3. *The following information is required to be disclosed in any report of a material acquisition or*
96 *disposition of assets:*

97 a. *Date of the transaction;*

98 b. *Manner of acquisition or disposition;*

99 c. *Description of the assets involved;*

100 d. *Nature and amount of the consideration given or received;*

101 e. *Purpose of, or reason for, the transaction;*

102 f. *Manner by which the amount of consideration was determined;*

103 g. *Gain or loss recognized or realized as a result of the transaction; and*

104 h. *Name of all persons from whom the assets were acquired or to whom they were disposed.*

105 4. *Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis*
106 *unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or*
107 *100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and*
108 *such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed*
109 *to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than*
110 *one million dollars total direct plus assumed written premiums during a calendar year that are not*
111 *subject to a pooling arrangement and the net income of the business not subject to the pooling*
112 *arrangement represents less than five percent of the insurer's capital and surplus.*

113 D. *No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported*
114 *pursuant to this section if the nonrenewals, cancellations or revisions are not material. For purposes of*
115 *this section, a material nonrenewal, cancellation or revision is one that affects for property and casualty*
116 *business, including accident and health business when written as such, more than fifty percent of an*
117 *insurer's ceded written premium, or for life, annuity and accident and health business, more than fifty*
118 *percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the*
119 *insurer's most recently filed statutory statement; however, no filing is required if the insurer's ceded*
120 *written premium or the total reserve credit taken for business ceded represents, on an annualized basis,*
121 *less than ten percent of direct plus assumed written premium or ten percent of the statutory reserve*

requirement prior to any cession, respectively.

1. Subject to the foregoing criteria, a report is to be filed without regard to which party has initiated the nonrenewal, cancellation or revision of ceded reinsurance whenever one or more of the following conditions exist:

a. The entire cession has been cancelled, nonrenewed or revised and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation or revision represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation or revision not occurred;

b. An authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized reinsurer; or

c. Collateral requirements previously established for unauthorized reinsurers have been reduced; e.g., the requirement to collateralize incurred but not reported (IBNR) claim reserves has been waived with respect to one or more unauthorized reinsurers newly participating in an existing cession.

Subject to the materiality criteria, for purposes of the foregoing subdivisions b and c, a report shall be filed if the result of the revision affects more than ten percent of the cession.

2. The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

a. Effective date of the nonrenewal, cancellation or revision;

b. The description of the transaction with an identification of the initiator thereof;

c. Purpose of, or reason for, the transaction; and

d. If applicable, the identity of the replacement reinsurers.

3. Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

§ 38.2-1306. Reports to be open to public inspection.

The Commission shall keep on file for at least three years all reports required by law and all special reports required by it to be filed by insurers. The Commission shall keep copies of the reports annual statement convention blanks and the quarterly financial statements filed with the Commission and, pursuant to subsection D of § 38.2-1300 and subsection B of § 38.2-1301 respectively, with the National Association of Insurance Commissioners (NAIC), available for inspection by interested persons at any reasonable time.

For companies not required to file with the NAIC, the Commission shall make available for inspection copies of such comparable financial statements of financial condition as those companies may be required to file routinely with the Commission pursuant to the provisions of this title. Except as provided otherwise by statute, or by order, rule or regulation promulgated by the Commission, no special report shall be open to public inspection.

§ 38.2-1306.1. Insurance companies' analyses confidential.

A. All regulatory or financial analysis analyses, ratios and examination synopses concerning insurance companies that are submitted to the Commission by the National Association of Insurance Commissioners' Insurance Regulatory Information System (NAIC), including information generated by any NAIC databases developed for use by regulators, are confidential not open to public inspection and shall not be disclosed receive confidential treatment by the Commission.

B. Financial analyses and test ratios generated by the Commission, pursuant to the NAIC's Insurance Regulatory Information System (IRIS) or Financial Analysis and Solvency Tracking (FAST) System, any successor program, or any similar program developed by the Commission, are not public records, and shall receive confidential treatment.

C. Notwithstanding other provisions to the contrary, nothing contained in this chapter shall prevent or be construed as prohibiting the Commission from disclosing otherwise confidential information, administrative or judicial orders, or the content of any analysis or any matter related thereto, to the insurance regulatory officials of any state or country, or to law-enforcement officials of this or any other state or agency of the federal government at any time provided that those officials are required under their law to maintain its confidentiality.

§ 38.2-1320.1. Submission of examination report.

No later than sixty ninety days following completion of any examination, the Commission shall furnish two copies of the report to the person examined and shall notify the person that it may, within

thirty days, make a written submission with respect to any facts, conclusions or recommendations contained in the examination report.

1. If the report contains any recommendation for corrective action by or on behalf of the person examined, the person shall make a written submission explaining what procedures have been implemented or are anticipated with respect to each recommendation of corrective action.

2. Any person seeking to take issue with any matter contained in the examination report shall do so by including in its written submission a request for a hearing before the Commission.

§ 38.2-1331. Commission approval required for certain transactions.

A. Prior written approval of the Commission shall be required for:

1. Any material transaction between a domestic insurer and any of its affiliates involving (i) more than either three percent of the insurer's admitted assets or twenty-five percent of the insurer's surplus, whichever is less, as of the immediately preceding December 31 and/or (ii) any reinsurance treaty or risk-sharing arrangement, or modifications thereto, in which the reinsurance premium or anticipated change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus to policyholders reported on the immediately preceding December 31; and/or

2. Any investment in affiliated companies if on the date of investment, the sum of the insurer's investments in affiliated companies exceeds or will exceed one or more of the following: fifty percent of the surplus to policyholders reported on the immediately preceding December 31, ten percent of admitted assets reported on the immediately preceding December 31, or fifty percent of the surplus to policyholders at the time application is made to the Commission for approval of the transaction.

For the purpose of this section, an insurer's investment in affiliated companies is the sum of (i) the assets held by the insurer that represent securities issued by or [, if not in security form, equity or debt] interests in companies of the affiliate system; (ii) loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or such extensions of credit; (iii) the assets of the insurer that are pledged on behalf of companies in the holding company system; and (iv) the aggregate guarantees for loans or extensions of credit made to affiliates which result in an actual contingent exposure of the insurer's assets to liability. *To the extent not already provided in this paragraph, the sum shall include for all affiliated companies other than domestic and foreign insurance company subsidiaries and health maintenance organization subsidiaries (i) total net moneys or other considerations expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.*

For the purposes of this section, a "transaction between a domestic insurer and any of its affiliates" includes any transaction between a domestic insurer and a nonaffiliate if such transaction involves (i) any loan or extension of credit where the insurer makes such loan or extension of credit with the agreement or understanding that the proceeds of such transaction, in whole or substantial part, are to be used to make any loan or extension of credit to, to purchase assets of, or to make investments in any affiliate of the insurer or (ii) a reinsurance agreement or risk-sharing arrangement, or modifications thereto, which requires as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

Failure of the Commission to act within sixty days after notification by the insurer shall constitute approval of the transaction.

B. Nothing contained in this section shall authorize or permit any transaction that would be otherwise contrary to law.

C. The Commission, in reviewing any material transaction under this section, shall consider whether the material transaction complies with the standards set forth in § 38.2-1330 and whether it may adversely affect the interest of policyholders. The Commission shall set forth the specific reasons for the disapproval of any material transactions.

D. The approval of any material transaction under this section shall be deemed an amendment under subsection E of § 38.2-1329 to an insurer's registration statement without further filing.

E. This section shall not apply to a material transaction that is a dividend or distribution.

§ 38.2-1846. Definitions.

As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Controlling" shall have the same meaning as set forth in § 38.2-1322 of this title.

"Insurer" means any person duly licensed in this Commonwealth pursuant to Chapters 10, 11, 12, 25, 26, 38 through 46, and 51 of this title.

"Licensed reinsurance intermediary" means an agent, broker or reinsurance intermediary licensed to act as a reinsurance intermediary pursuant to the applicable provision of this article.

"Qualified United States financial institution" means an institution that:

1. Is organized or (in the case of a U.S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

2. Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in this article.

"Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, who, without the power to bind the ceding insurer, solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer or otherwise negotiates with a ceding insurer concerning reinsurance cessions or retrocessions.

"Reinsurance intermediary manager" means any person who has (i) authority to bind reinsurance risks or (ii) manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance intermediary manager or other similar term. Notwithstanding the foregoing, the following persons shall not be considered a reinsurance intermediary manager, for the purposes of this article, provided such person is acting in the capacity of employee or agent, as described herein, and properly discharging the duties of such employment or agency:

1. An employee of the reinsurer;

2. A U.S. manager of the United States branch of an alien reinsurer;

3. An underwriting manager which, pursuant to contract, manages all *or part of* the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;

4. The manager of a group, association, pool or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the supervising insurance official of the state, as defined in § 38.2-100, in which the manager's principal business office is located; or

5. A licensed managing general agent which binds facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements and subdivision 10 of § 38.2-1860.

"Reinsurer" means any insurer licensed in this Commonwealth with the authority to cede or accept from any insurer reinsurance pursuant to § 38.2-136.

§ 38.2-1855. Penalties and liabilities; refusal or revocation of license.

A. If the Commission finds, after providing an opportunity to be heard that any person has violated any provisions of this article, the Commission may in addition to any other remedies authorized by this title, order the reinsurance intermediary to make restitution to the insurer, reinsurer, rehabilitator or liquidator or receiver of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

B. The Commission may refuse to issue a reinsurance intermediary's license and, in addition to or in lieu of a penalty under § 38.2-218 of this title, may suspend or revoke the license of any licensed reinsurance intermediary whenever it finds such applicant or licensed reinsurance intermediary:

1. Has violated any provisions of any law of this Commonwealth applicable to insurance or reinsurance;

2. Has misappropriated any funds held in a fiduciary capacity;

3. Has misrepresented the provisions of any insurance or reinsurance contract;

4. Has engaged in fraudulent or dishonest practices;

5. Is not trustworthy or is not competent to transact business for which a license is applied for or held; or

6. Has been convicted of a felony.

C. If the Commission is of the opinion that any applicant for licensing pursuant to this article 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. 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 refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten 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 applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1857, 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 or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two years, the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with the provisions of this article, or any rule, regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

§ 38.2-1858. Definitions.

As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Insurer" means any person, duly licensed in the Commonwealth pursuant to Chapters 10, 11, 12, 25, 26, and 38 through 46, and 51 of this title.

"Managing general agent" means any person who (1) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office; and (2) acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or exceeding five percent of the surplus to policyholders of the insurer as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the Commission or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of this article:

1. An employee of the insurer;

2. A U.S. manager of the United States branch of an alien insurer;

3. An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;

4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

"Qualified United States financial institutions" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

2. Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Underwrite" means the authority to accept or reject risk on behalf of the insurer.

§ 38.2-1863. Penalties and liabilities; refusal or revocation of license.

A. If the Commission finds, after providing an opportunity to be heard, that any person under its jurisdiction has violated any provision of this article, the Commission may, in addition to any other remedies authorized by this title, order the managing general agent to reimburse the insurer, the rehabilitator or liquidator, or the receiver of the insurer for any losses incurred by the insurer caused by a violation of this article committed by the managing general agent.

B. The Commission may refuse to issue a managing general agent's license and, in addition to or in lieu of a penalty under § 38.2-218, may suspend or revoke the license of any licensee under its

jurisdiction whenever it finds such applicant or licensee:

1. Has violated any provisions of any law of this Commonwealth applicable to insurance;

2. Has misappropriated any funds held in a fiduciary capacity;

3. Has misrepresented the provisions of any insurance contract;

4. Has been guilty of twisting the contracts of other insurers where "twisting" means misrepresenting a policy for the purpose of inducing a policyholder to terminate an existing policy to take a new policy;

5. Has been guilty of rebating. For the purposes of this section, "rebating" shall include reducing the fee or compensation provided for in § 38.2-1837 for the purpose of inducing a client or potential client to purchase a policy;

6. Has engaged in fraudulent or dishonest practices;

7. Is not trustworthy or is not competent to transact the insurance business for which a license is applied for or held; or

8. Has been convicted of a felony.

C. If the Commission is of the opinion that any applicant for a managing general agent's 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. 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 refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten 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 applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1864, 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 or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two years, the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with the provisions of this article, or any rule, regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

§ 38.2-4123. Exemptions.

Except as herein provided, societies shall be governed by this chapter and §§ 38.2-100 through 38.2-134, Chapters 2 through 9, §§ 38.2-1301.1, 38.2-1304, 38.2-1307 through 38.2-1315, and 38.2-1322 through 38.2-1340, Chapters 14, 15 and 18, §§ 38.2-3100 through 38.2-3125, 38.2-3127.1 and 38.2-3300 through 38.2-3317, Chapter 34, §§ 38.2-3500 through 38.2-3520, and Chapter 36 and shall be exempt from all other provisions of this title unless expressly designated therein, or unless they are specifically made applicable by this chapter.