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HOUSE BILL NO. 295

Offered January 11, 1996

A BILL to amend and reenact §§ 38.2-1831, 38.2-1843, 38.2-1855, and 38.2-1863 of the Code of Virginia, relating to insurance; suspension or revocation of agent's license.

Patron—Cranwell

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1831, 38.2-1843, 38.2-1855, and 38.2-1863 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1831. Refusal, revocation, or suspension of license.

The Commission may refuse to issue an agent's license to any person and, in addition to or in lieu of a penalty imposed under § 38.2-218, may suspend or revoke the license of any licensee whenever it finds that the applicant or licensee:

1. Has misappropriated any insurance premium;
2. Has failed to apply any premium as directed by the holder or prospective holder of the contract of insurance;
3. Has violated any provisions of any law of this Commonwealth applicable to insurance and insurance agents;
4. Has been guilty of rebating;
5. 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;
6. Has been guilty of misrepresenting the provisions of the contract he is selling, or the contracts of other insurers;
7. Has been guilty of fraudulent or dishonest practices;
8. If not exempted from the requirement of § 38.2-1829, has not been "actively engaged" in the insurance business during the preceding year as required by that section;
9. Has been convicted of a felony; ~~or~~
10. Is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which a license is applied for or held; *or*

11. Has failed or refused to obey any order of the Commission entered against such applicant or licensee.

§ 38.2-1843. Refusal or revocation of license.

The Commission may refuse to issue an insurance consultant'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 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 shared fees with persons not licensed as a consultant or exempted under this statute;
4. Has misrepresented the provisions of any insurance contract;
5. 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;
6. 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;
7. Has committed fraudulent or dishonest practices;
8. Is not trustworthy or is not competent to transact the insurance business for which a license is applied for or held; ~~or~~
9. Has been convicted of a felony; *or*

10. Has failed or refused to obey any order of the Commission entered against such applicant or licensee.

§ 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.

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

- 63 1. Has violated any provisions of any law of this Commonwealth applicable to insurance or
64 reinsurance;
65 2. Has misappropriated any funds held in a fiduciary capacity;
66 3. Has misrepresented the provisions of any insurance or reinsurance contract;
67 4. Has engaged in fraudulent or dishonest practices;
68 5. Is not trustworthy or is not competent to transact business for which a license is applied for or
69 held; or
70 6. Has been convicted of a felony; or
71 7. *Has failed or refused to obey any order of the Commission entered against such applicant or*
72 *licensed reinsurance intermediary.*

73 C. If the Commission is of the opinion that any applicant for licensing pursuant to this article is not
74 of good character or does not have a good reputation for honesty, it may refuse to issue the license,
75 subject to the right of the applicant to demand a hearing on the application. The Commission shall not
76 revoke or suspend an existing license until the licensee is given an opportunity to be heard before the
77 Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an
78 existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and
79 place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to
80 the issuance of the license, or the reason for its proposed revocation or suspension as the case may be.
81 The notice may be given to the applicant or licensee by registered or certified mail, sent to the last
82 known address of record pursuant to § 38.2-1857, or the last known business address if the address of
83 record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may
84 summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may
85 introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor
86 any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding
87 two years, the Commission prescribes in its order.

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

90 E. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 15
91 (§ 38.2-1500 et seq.) of this title or the rehabilitation and liquidation statutes of a reciprocal state, and
92 the receiver appointed under that order determines that the reinsurance intermediary or any other person
93 has not materially complied with the provisions of this article, or any rule, regulation or order
94 promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may
95 maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the
96 insurer.

97 § 38.2-1863. Penalties and liabilities; refusal or revocation of license.

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

103 B. The Commission may refuse to issue a managing general agent's license and, in addition to or in
104 lieu of a penalty under § 38.2-218, may suspend or revoke the license of any licensee under its
105 jurisdiction whenever it finds such applicant or licensee:

- 106 1. Has violated any provisions of any law of this Commonwealth applicable to insurance;
107 2. Has misappropriated any funds held in a fiduciary capacity;
108 3. Has misrepresented the provisions of any insurance contract;
109 4. Has been guilty of twisting the contracts of other insurers where "twisting" means misrepresenting
110 a policy for the purpose of inducing a policyholder to terminate an existing policy to take a new policy;
111 5. Has been guilty of rebating. For the purposes of this section, "rebating" shall include reducing the
112 fee or compensation provided for in § 38.2-1837 for the purpose of inducing a client or potential client
113 to purchase a policy;
114 6. Has engaged in fraudulent or dishonest practices;
115 7. Is not trustworthy or is not competent to transact the insurance business for which a license is
116 applied for or held; or
117 8. Has been convicted of a felony; or
118 9. *Has failed or refused to obey any order of the Commission entered against such applicant or*
119 *licensee.*

120 C. If the Commission is of the opinion that any applicant for a managing general agent's license is
121 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.