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SENATE BILL NO. 225

Offered January 18, 1996

A BILL to amend the Code of Virginia by adding in Article 2 of Chapter 12 of Title 38.2 sections numbered 38.2-1230 and 38.2-1231, relating to domestic insurance reciprocals.

Patrons—Holland and Chichester

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 12 of Title 38.2 sections numbered 38.2-1230 and 38.2-1231 as follows:

§ 38.2-1230. Material transactions.

A. Prior written approval of the Commission shall be required for a material transaction between a domestic reciprocal, an affiliate of the reciprocal, or the subscribers of the reciprocal and a related party when the transaction involves more than three percent of the reciprocal's admitted assets as reported in its most recent statutory statement filed with the Commission. All other material transactions between such parties shall be disclosed in a report to the Commission filed within fifteen days after the end of the month in which the transaction occurs. In addition, all transactions shall meet the following standards:

1. The terms shall be fair and equitable;
2. Charges or fees for services performed shall be reasonable; and
3. Expenses incurred and payments received shall be allocated to the reciprocal on an equitable basis in conformity with statutory insurance accounting practices consistently applied.

B. As used in this section:

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

"Control," including the terms "controlling," "controlled by," and "under common control with," means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person (i) through the ownership of voting securities, (ii) by contract other than a commercial contract for goods or nonmanagement services, or (iii) otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively ten percent or more of the voting securities of any other person. "Control," including the terms "controlling," "controlled by" and "under common control with," shall not include the relationship between a domestic reciprocal and its attorney. This presumption may be rebutted after a disclaimer fully disclosing all material relationships and bases for disclaiming affiliation has been filed with the Commission, unless and until the Commission disallows the disclaimer. After giving all interested persons notice and opportunity to be heard and making specific findings to support its determination, the Commission may determine that control exists, notwithstanding the absence of a presumption to that effect.

"Material transaction" means a transaction, other than a claim payment, involving more than 0.5 percent of the reciprocal's admitted assets as of December 31 of the immediately preceding year. Any series of transactions occurring within a twelve-month period that are sufficiently similar in nature as to be reasonably construed as a single transaction and that in the aggregate exceed any minimum limits shall be deemed a material transaction.

"Related party" means the attorney of the reciprocal, an affiliate of the reciprocal's attorney, or an insurer or other reciprocal managed by the reciprocal's attorney or by an affiliate of the attorney.

§ 38.2-1231. Attorney's financial statement.

A. The subscriber's advisory committee of a domestic reciprocal shall annually obtain from its attorney an audited financial report of the attorney's financial position and the results of its operations as related to its management of the reciprocal. A copy of the report shall be filed with the Commission.

B. Unless the Commission provides otherwise in writing, the report required by this section shall be due on or before June 1 of each year and shall be prepared for the previous calendar year by the independent certified public accountant who audits and reports the financial position of the reciprocal as of the end of the most recent calendar year.

C. The report filed pursuant to this section shall not be open to public inspection and shall receive confidential treatment by the Commission.

INTRODUCED

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