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HOUSE BILL NO. 363

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact § 38.2-1800 of the Code of Virginia, to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 34.1, consisting of sections numbered 59.1-441.1 through 59.1-441.6, and to repeal § 38.2-4415 of the Code of Virginia, relating to legal services contracts.

 Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1800 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 34.1, consisting of sections numbered 59.1-441.1 through 59.1-441.6, as follows:

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Appointed agent," "appointed insurance agent," "appointed producer," or "appointed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in this Commonwealth to sell, solicit, or negotiate on its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Automobile club authority" means the authority in this Commonwealth to sell, solicit, or negotiate automobile club contracts on behalf of automobile clubs licensed under Chapter 3.1 (§ 13.1-400.1 et seq.) of Title 13.1.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Dental services authority" means the authority in this Commonwealth to sell, solicit, or negotiate dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Filed" means received by the Commission.

"Health agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-108 and 38.2-109, and including contracts issued by insurers, health services plans, health maintenance organizations, dental services plans, and optometric services plans licensed in this Commonwealth.

"Home protection insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in this Commonwealth.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which an insurance producer maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Legal services insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in this Commonwealth.

"Legal services plan authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services plan contracts on behalf of legal services plans licensed under Chapter 44 (§ 38.2-4400 et seq.) of this title.

"License" means a document issued by the Commission authorizing an individual or business entity to act as an insurance producer for the lines of authority specified in the document. Except as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to represent, commit, or bind an insurer.

"Licensed agent," "licensed insurance agent," "licensed producer," or "licensed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope

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59 of such license.

60 "Life and annuities insurance agent" means an agent licensed in this Commonwealth to sell, solicit,
61 or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104,
62 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, on behalf of insurers licensed in this Commonwealth.

63 "Limited burial insurance authority" means the authority in this Commonwealth to sell, solicit, or
64 negotiate burial insurance society membership where the certificates of membership will not exceed
65 \$7,500 on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this
66 title; or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that
67 association for burial association group life insurance certificates in amounts of \$7,500 or less.

68 "Limited lines credit insurance agent" means an agent licensed in this Commonwealth whose
69 authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in this
70 Commonwealth, one or more of the following coverages to individuals through a master, corporate,
71 group or individual policy: (i) credit life insurance and credit accident and sickness insurance, but only
72 to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title; (ii) credit involuntary
73 unemployment insurance as defined in § 38.2-122.1; (iii) credit property insurance, as defined in
74 § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v) mortgage redemption insurance; (vi)
75 mortgage guaranty insurance; and (vii) any other form of insurance offered in connection with an
76 extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the
77 Commission specifically determines may be sold, solicited, or negotiated by those holding a limited lines
78 credit insurance agent license. Each insurer that sells, solicits or negotiates any of the coverages set forth
79 in this definition shall provide to each individual whose duties will include selling, soliciting or
80 negotiating such coverages a program of instruction that may, at the discretion of the Commission, be
81 submitted for approval by the Commission or reviewed by the Commission subsequent to its
82 implementation.

83 "Limited lines life and health agent" means an individual or business entity authorized by the
84 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
85 type of authority that the Commission may deem it necessary to recognize for the purposes of
86 complying with § 38.2-1836: dental services authority; ~~legal services plan authority~~; limited burial
87 insurance authority; mutual assessment life and health insurance authority; optometric services authority;
88 and travel accident insurance authority. Limited lines life and health insurance shall not include life
89 insurance, health insurance, property insurance, casualty insurance, and title insurance.

90 "Limited lines property and casualty agent" means an individual or business entity authorized by the
91 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
92 type of authority that the Commission may deem it necessary to recognize for the purposes of
93 complying with § 38.2-1836: automobile club authority; home protection insurance authority; legal
94 services insurance authority; mutual assessment property and casualty insurance authority; ocean marine
95 insurance authority; pet accident, sickness and hospitalization insurance authority; and travel baggage
96 insurance authority. Limited lines property and casualty insurance shall not include life insurance, health
97 insurance, property insurance, casualty insurance, and title insurance.

98 "Mortgage accident and sickness insurance authority" means the authority in this Commonwealth to
99 sell, solicit, or negotiate mortgage accident and sickness insurance on behalf of insurers licensed in this
100 Commonwealth.

101 "Mortgage guaranty insurance authority" means the authority in this Commonwealth to sell, solicit, or
102 negotiate mortgage guaranty insurance on behalf of insurers licensed in this Commonwealth.

103 "Mortgage redemption insurance authority" means the authority in this Commonwealth to sell, solicit,
104 or negotiate mortgage redemption insurance on behalf of insurers licensed in this Commonwealth. As
105 used in this chapter, "mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing
106 term life insurance policy written in connection with a mortgage transaction for a period of time
107 coinciding with the term of the mortgage. The initial sum shall not exceed the amount of the
108 indebtedness outstanding at the time the insurance becomes effective, rounded up to the next \$1,000.

109 "Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a motor
110 vehicle rental company that is in the business of providing primarily private motor vehicles to the public
111 under a rental agreement for a period of less than six months, and receives no direct or indirect
112 commission from the insurer, the renter or the vehicle rental company.

113 "Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor
114 vehicle rental company that is in the business of providing primarily private passenger motor vehicles to
115 the public under a rental agreement for a period of less than six months and (ii) whose license in this
116 Commonwealth is restricted to selling, soliciting, or negotiating only the following insurance coverages,
117 and solely in connection with and incidental to the rental contract:

- 118 1. Personal accident insurance ~~which~~ *that* provides benefits in the event of accidental death or injury
119 occurring during the rental period;
- 120 2. Liability coverage sold to the renter in excess of the rental company's obligations under

§§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

3. Personal effects insurance ~~which~~*that* provides coverages for the loss of or damage to the personal effects of the renter and other vehicle occupants while such personal effects are in or upon the rental vehicle during the rental period;

4. Roadside assistance and emergency sickness protection programs; and

5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company offers in connection with and incidental to the rental of vehicles.

The term "motor vehicle rental contract insurance agent" does not include motor vehicle rental contract enrollers.

"Mutual assessment life and health insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment life and accident and sickness insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.) of this title, but only to the extent permitted under § 38.2-3919.

"Mutual assessment property and casualty insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment property and casualty insurance on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.) of this title, but only to the extent permitted under § 38.2-2525.

"NAIC" means the National Association of Insurance Commissioners.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Ocean marine insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate those classes of insurance classified in § 38.2-126, except those classes specifically classified as inland marine insurance, on behalf of insurers licensed in this Commonwealth.

"Optometric services authority" means the authority in this Commonwealth to sell, solicit, or negotiate optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Personal lines agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124, 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal, family, or household needs rather than for business or professional needs.

"Pet accident, sickness and hospitalization insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate pet accident, sickness and hospitalization insurance on behalf of insurers licensed in this Commonwealth.

"Property and casualty insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate both personal and commercial lines of insurance as defined in §§ 38.2-110 through 38.2-122.2, and §§ 38.2-124 through 38.2-134 on behalf of insurers licensed in this Commonwealth.

"Resident" means (i) an individual residing in Virginia; (ii) an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable; (iii) a partnership duly formed and recorded in Virginia; (iv) a corporation incorporated and existing under the laws of Virginia; (v) a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign business entity that is not licensed as a resident agent in any other jurisdiction, and that demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

"Restricted nonresident health agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a health agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident life and annuities agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a life and annuities agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident personal lines agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a personal lines agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in

182 Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which
 183 the agent is authorized in his home state.

184 "Restricted nonresident property and casualty agent" means a nonresident agent whose license
 185 authority in his home state does not include all of the authority granted under a property and casualty
 186 agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or
 187 negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance
 188 for which the agent is authorized in his home state.

189 "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on
 190 behalf of an insurer.

191 "Settlement agent" means a person licensed as a title insurance agent and registered with the Virginia
 192 State Bar pursuant to Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

193 "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
 194 class of insurance from one or more insurers.

195 "Surety bail bondsman" means a person licensed pursuant to Article 6.2 (§ 38.2-1865.6 et seq.) of
 196 this chapter who sells, solicits, or negotiates surety insurance as defined in § 38.2-121 on behalf of
 197 insurers licensed in this Commonwealth, pursuant to which the insurer becomes surety on or guarantees
 198 a bond, as defined in § 19.2-119, that has been posted to assure performance of terms and conditions
 199 specified by order of an appropriate judicial officer as a condition of bail.

200 "Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of this
 201 chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et
 202 seq.) of this title.

203 "Terminate" means the cancellation of the relationship between an insurance producer and the
 204 insurer, or the termination of an insurance producer's authority to transact insurance.

205 "Title insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
 206 title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf of title insurance
 207 companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of this title.

208 "Travel accident insurance authority" means the authority in this Commonwealth to sell, solicit, or
 209 negotiate travel accident insurance to individuals on behalf of insurers licensed in this Commonwealth.

210 "Travel baggage insurance authority" means the authority in this Commonwealth to sell, solicit, or
 211 negotiate travel baggage insurance to individuals on behalf of insurers licensed in this Commonwealth.

212 "Uniform Application" means the current version of the NAIC Uniform Application for resident and
 213 nonresident producer licensing.

214 "Uniform Business Entity Application" means the current version of the NAIC Uniform Business
 215 Entity Application for resident and nonresident business entities.

216 "Variable contract agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
 217 variable life insurance and variable annuity contracts on behalf of insurers licensed in this
 218 Commonwealth.

219 "Viatical settlement broker" means a person licensed pursuant to Chapter 60 (§ 38.2-6000 et seq.) of
 220 this title, in accordance with Article 6.1 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby
 221 authorized to engage in the activities set forth in Chapter 60 (§ 38.2-6000 et seq.) of this title.

222 CHAPTER 34.1.

223 LEGAL SERVICES CONTRACTS.

224 § 59.1-441.1. Definitions.

225 *In addition to the definitions in § 59.1-435, the following terms in this chapter shall have the*
 226 *following meanings, unless a different meaning clearly appears from the context:*

227 "Contract holder" means a person entering into a subscription contract with an organization;

228 "Department" means the Virginia Department of Agriculture and Consumer Services;

229 "Legal services organization" or "organization" means a person subject to regulation and licensing
 230 under Chapter 44 (§ 38.2-4400 et seq.) of Title 38.2 who operates, conducts, or administers a legal
 231 services plan;

232 "Legal services plan" or "plan" means a contractual obligation or an arrangement whereby legal
 233 services are provided in consideration of a specified payment consisting in whole or in part of prepaid
 234 or periodic charges, regardless of whether the payment is made by the subscribers individually or by a
 235 third person for them;

236 "Legal services plan seller" means a person subject to registration and regulation under this chapter
 237 who offers to a subscriber the opportunity to enter into a subscription contract. Home office salaried
 238 officers whose principal duties and responsibilities do not include the negotiation or solicitation of
 239 subscription contracts shall not be required to be licensed under this chapter;

240 "Subscriber" means any person entitled to benefits under the terms and conditions of a subscription
 241 contract; and

242 "Subscription contract" means a written contract that is issued to a subscriber by an organization
 243 and that provides legal services or benefits for legal services.

§ 59.1-441.2. Registration; fees.

A. It shall be unlawful for any legal services plan seller to offer, advertise, or execute, or cause to be executed by the subscriber, any subscription contract in the Commonwealth unless the legal services plan seller at the time of the offer, advertisement, sale, or execution of a subscription contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and affiliation with the legal services organization and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee of \$50 per each annual registration. Further, the registration shall be accompanied by a late fee of \$25 if the registration renewal is neither postmarked nor received on or before July 1.

B. Any legal services plan seller that sells a subscription contract prior to registering pursuant to this section shall pay a late filing fee of \$100 for each 30-day period the registration is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

E. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

F. All insurance agent licenses issued by the State Corporation Commission including authority to sell legal services plan subscription contracts shall continue in effect for a period of 90 days following the effective date of this chapter, during which time those holding such authority from the State Corporation Commission shall apply for registration with the Department. At the end of the 90-day period, no insurance agent license shall include the authority to sell legal services plan subscription contracts.

§ 59.1-441.3. Regulations.

The Board is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to legal services plan sellers. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 59.1-441.4. Investigations.

A. The Commissioner may, with respect to the offering of subscription contracts:

1. Make necessary public and private investigations within or without the Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath, or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-441.5. Production of records.

Every legal services plan seller shall, upon written request of the Commissioner, make available to the Commissioner its legal services plan contract records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every legal services plan seller shall maintain a true copy of each subscription contract executed between the subscriber and the legal services plan, and each contract shall be maintained for its term.

§ 59.1-441.6. Violations of chapter; penalty.

A. Any legal services plan seller who knowingly and willfully violates any provision of this chapter is guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the

305 *Virginia Consumer Protection Act (§ 59.1-196 et seq.).*

306 **2. That § 38.2-4415 of the Code of Virginia is repealed.**