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HOUSE BILL NO. 260

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact § 38.2-218 of the Code of Virginia, relating to insurance; restitution required by the State Corporation Commission.

Patron—McClellan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-218 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-218. Penalties and restitution payments.

A. Any person who knowingly or willfully violates any provision of this title or any regulation issued pursuant to this title shall be punished for each violation by a penalty of not more than \$5,000.

B. Any person who violates without knowledge or intent any provision of this title or any rule, regulation, or order issued pursuant to this title may be punished for each violation by a penalty of not more than \$1,000. For the purpose of this subsection, a series of similar violations resulting from the same act shall be limited to a penalty in the aggregate of not more than \$10,000.

C. Any violation resulting solely from a malfunction of mechanical or electronic equipment shall not be subject to a penalty.

D. 1. The Commission may require a person to make restitution in the amount of the direct actual financial loss:

a. For charging a rate in excess of that provided by statute or by the rates filed with the Commission by the insurer;

b. For charging a premium that is determined by the Commission to be unfairly discriminatory, such restitution being limited to a period of one year from the date of determination; ~~and~~

c. For failing to pay amounts explicitly required by the terms of the insurance contract where no aspect of the claim is disputed by the insurer; *and*

d. *For improperly withholding, misappropriating, or converting any money or property received in the course of doing business.*

2. The Commission shall have no jurisdiction to adjudicate controversies growing out of this subsection regarding restitution among insurers, insureds, agents, claimants and beneficiaries.

E. The provisions provided under this section may be imposed in addition to or without imposing any other penalties or actions provided by law.

INTRODUCED

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