

11104847D

HOUSE BILL NO. 2480

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 1, 2011)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

A BILL to amend and reenact § 38.2-1800 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 18 of Title 38.2 an article numbered 8, consisting of sections numbered 38.2-1875 through 38.2-1880, relating to portable electronics insurance.

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 Chapter 18 of Title 38.2 an article numbered 8, consisting of sections numbered 38.2-1875 through 38.2-1880, 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 plan organization authority" means the authority in the Commonwealth to sell, solicit, or negotiate dental benefit contracts on behalf of dental plan organizations licensed under Chapter 61 (§ 38.2-6100 et seq.) of this title.

"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, optometric services plans, and dental plan organizations 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.

"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 of such license.

"Life and annuities insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104,

60 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, on behalf of insurers licensed in this Commonwealth.
61 "Limited burial insurance authority" means the authority in this Commonwealth to sell, solicit, or
62 negotiate burial insurance society membership where the certificates of membership will not exceed
63 \$10,000 on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this
64 title; or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that
65 association for burial association group life insurance certificates in amounts of \$10,000 or less.

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

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

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

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

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

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

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

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

117 1. Personal accident insurance that provides benefits in the event of accidental death or injury
118 occurring during the rental period;

119 2. Liability coverage sold to the renter in excess of the rental company's obligations under
120 §§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

121 3. Personal effects insurance 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 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.

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

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

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

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

194 "Surety bail bondsman" means a person licensed as a surety bail bondsman pursuant to Article 11
195 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1.

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

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

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

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

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

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

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

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

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

218 Article 8.

219 Portable Electronics Insurance.

220 § 38.2-1875. Definitions.

221 *As used in this article, unless the context requires a different meaning:*

222 "Covered customer" means a customer who elects coverage under a portable electronics insurance
223 policy issued to a vendor of portable electronics.

224 "Customer" means a person who purchases portable electronics or services.

225 "Portable electronics" means electronic devices that are portable in nature, accessories to such
226 devices, and services related to the use of the devices.

227 "Portable electronics insurance" means insurance providing coverage for the repair or replacement
228 of portable electronics that may cover portable electronics against any one or more of the following
229 causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable peril. "Portable
230 electronics insurance" does not include: (i) an extended service contract governed by Chapter 34
231 (§ 59.1-435 et seq.) of Title 59.1; (ii) a policy of insurance covering a seller's or a manufacturer's
232 obligations under a warranty; or (iii) a homeowner's, renter's, private passenger automobile,
233 commercial multi-peril, or similar policy.

234 "Portable electronics transaction" means (i) the sale or lease of portable electronics by a vendor to
235 a customer or (ii) the sale of a service related to the use of portable electronics by a vendor to a
236 customer.

237 "Vendor" means a person in the business of engaging in portable electronics transactions directly or
238 indirectly.

239 § 38.2-1876. Licensure of vendors.

240 A. A vendor is required to hold a limited lines property and casualty insurance agent license to sell
241 or offer coverage under a policy of portable electronics insurance.

242 B. A license issued under this article shall authorize any employee or authorized representative of a
243 licensed vendor to sell or offer portable electronics insurance coverage under a policy of portable
244 electronics insurance to a customer at each location at which the vendor engages in portable electronics

transactions.

C. The acts of a licensed vendor's employee or authorized representative offering to sell coverage under a policy of portable electronics insurance shall be deemed to be the acts of the vendor for purposes of this article.

D. Every licensed vendor shall maintain a list of all locations in the Commonwealth where the vendor offers coverage under a policy of portable electronics insurance and shall make the list available to the Commissioner for inspection upon request.

E. Notwithstanding any other provision of law, a license issued pursuant to this article shall authorize the licensed vendor's employees and authorized representatives to engage only in those activities that are expressly permitted in this article.

§ 38.2-1877. Requirements for sale of portable electronics insurance.

A. At every location where portable electronics insurance is offered to customers, the vendor shall make available to a prospective customer brochures or other written materials that:

1. Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

2. State that the purchase of coverage by a customer of portable electronics insurance is not required in order to purchase or lease portable electronics or services;

3. Summarize the material terms of the insurance coverage, including: (i) the identity of the insurer; (ii) the amount of any applicable deductible and how it is to be paid; (iii) benefits of the coverage; and (iv) key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment; and

4. Summarize the process for filing a claim, including a description of (i) any requirements to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements and (ii) proof of loss requirements.

B. Portable electronics insurance may be offered on a month-to-month or other periodic basis as an individual policy or a group or master commercial inland marine policy issued to a vendor of portable electronics under which the individual customer may elect to purchase coverage.

§ 38.2-1878. Authority of vendors of portable electronics.

A. The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter provided that:

1. The vendor obtains a limited lines property and casualty insurance agent license;

2. The vendor selling the portable electronics insurance provides a training program for all employees and authorized representatives of the vendor. The training program shall consist of instruction about the portable electronics insurance offered to customers, the disclosures required under § 38.2-1877, and the conduct prohibited by § 38.2-512. The training required by this subdivision may be delivered in person or in an electronic form. The licensed producer designated by the vendor as being responsible for its compliance with the insurance laws, rules, and regulations of the Commonwealth, as required by § 38.2-1820, shall hold a property and casualty insurance agent license and shall supervise the administration of the training program required by this subdivision;

3. No employee or authorized representative of a vendor of portable electronics is compensated based primarily on the number of customers who purchase portable electronics insurance coverage but may receive compensation for activities under the limited lines license that is incidental to their overall compensation. Such incidental compensation shall not exceed \$10 per customer who purchases portable electronics coverage; and

4. The employee or authorized representative of the vendor of portable electronics insurance does not represent or otherwise hold himself out as a licensed insurance producer.

B. The license authority of any vendor licensed as a limited lines property and casualty producer selling portable electronics insurance shall terminate immediately if the sole licensed responsible producer designated for the vendor's compliance with the insurance laws, rules, and regulations of the Commonwealth is removed for any reason, a new responsible producer has not been appointed, and the Commission notified within 30 calendar days of such removal and of the newly designated responsible producer.

C. A vendor shall report any violation of this article to the Commissioner within 30 days of discovery of the violation by the vendor.

D. Any charge to the customer for portable electronics insurance that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the customer's bill. If the charge for portable electronics insurance is included in the cost associated with the purchase or lease of portable electronics or related services, the vendor shall clearly

306 and conspicuously disclose to the customer that the charge for the portable electronics or services
307 covers the cost of the insurance.

308 E. The charges for portable electronics insurance coverage may be billed and collected by the
309 vendor of portable electronics insurance. Vendors billing and collecting premiums for portable
310 electronics insurance shall be required to comply with the provisions of § 38.2-1813. Vendors may
311 receive compensation for billing and collection services.

312 F. Notwithstanding any other provision of law, applicants for licensure pursuant to this article whose
313 home state does not issue a producer license with a similar line of authority as the license authorized
314 by this article shall be issued a limited lines property and casualty license for portable electronics
315 insurance. Any licensee whose home state does not have property and casualty limited lines for portable
316 electronics insurance or similar line of authority in its home state after July 1, 2014, or such later date
317 as may be determined by the Commission, shall obtain a full property and casualty license or its license
318 shall terminate in Virginia. For purposes of this subsection, "home state" means the District of
319 Columbia and any state or territory of the United States except Virginia, or any province of Canada, in
320 which an applicant maintains such person's principal place of residence or principal place of business.

321 § 38.2-1879. Suspension or revocation of license.

322 If a vendor of portable electronics or its employee or authorized representative violates any provision
323 of this article, the Commission may do any of the following:

324 1. After notice and hearing, impose fines and penalties in accordance with § 38.2-218; and

325 2. After notice and hearing, impose any such other penalties that the Commission deems necessary
326 and reasonable to carry out the purpose of this article, including: (i) suspending the privilege of
327 transacting portable electronics insurance pursuant to this article at specific business locations where
328 violations have occurred; (ii) suspending or revoking the ability of individual employees or authorized
329 representatives to act under the license; and (iii) imposing a penalty in accordance with § 38.2-218 on
330 the licensed producer designated by the vendor pursuant to § 38.2-1820.

331 § 38.2-1880. What laws applicable; rulemaking authority.

332 A. Except as otherwise provided in this article and except where the context otherwise requires, all
333 of the provisions of this title apply to this article.

334 B. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and
335 regulations as may be necessary or appropriate for the administration and enforcement of this article.