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HOUSE BILL NO. 89

Offered January 13, 2010
Prefiled January 4, 2010

A BILL to amend and reenact §§ 38.2-602, 38.2-1343, 38.2-1902, 38.2-2001, 38.2-2113, and 38.2-2114 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 29.1, consisting of sections numbered 38.2-2914 through 38.2-2925, relating to the establishment of the Virginia Wind Underwriting Association; wind insurance pool.

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-602, 38.2-1343, 38.2-1902, 38.2-2001, 38.2-2113, and 38.2-2114 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 29.1, consisting of sections numbered 38.2-2914 through 38.2-2925, as follows:

§ 38.2-602. Definitions.

As used in this chapter:

"Adverse underwriting decision" means:

1. Any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

a. A declination of insurance coverage;

b. A termination of insurance coverage;

c. Failure of an agent to apply for insurance coverage with a specific insurance institution that an agent represents and that is requested by an applicant;

d. In the case of a property or casualty insurance coverage:

(1) Placement by an insurance institution or agent of a risk with a residual market mechanism or an unlicensed insurer; or

(2) The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished; or

e. In the case of a life or accident and sickness insurance coverage, an offer to insure at higher than standard rates, or with limitations, exceptions or benefits other than those applied for.

2. Notwithstanding subdivision 1 of this definition, the following actions shall not be considered adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall provide the applicant or policyholder with the specific reason or reasons for their occurrence:

a. The termination of an individual policy form on a class or statewide basis;

b. A declination of insurance coverage solely because such coverage is not available on a class or statewide basis;

c. The rescission of a policy.

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

"Agent" shall have the meaning as set forth in § 38.2-1800 and shall include surplus lines brokers.

"Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

"Clear and conspicuous notice" means a notice that is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

"Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used in connection with an insurance transaction.

"Consumer reporting agency" means any person who:

1. Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

2. Obtains information primarily from sources other than insurance institutions; and

3. Furnishes consumer reports to other persons.

"Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a

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commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

"Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

"Financial information" means personal information other than medical record information or records of payment for the provision of health care to an individual.

"Financial institution" means any institution the business of which is engaging in financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843 (k)).

"Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843 (k)).

"Individual" means any natural person who:

1. In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

2. In the case of life or accident and sickness insurance, is a past, present, or proposed principal insured or certificate holder;

3. Is a past, present or proposed policyowner;

4. Is a past or present applicant;

5. Is a past or present claimant;

6. Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter;

7. For the purposes of §§ 38.2-612.1 and 38.2-613, is a beneficiary of a life insurance policy;

8. For the purposes of §§ 38.2-612.1 and 38.2-613, is a mortgagor of a mortgage covered under a mortgage guaranty insurance policy; or

9. For the purposes of §§ 38.2-612.1 and 38.2-613, is an owner of property used as security for an indebtedness for which single interest insurance is required by a lender.

Notwithstanding any provision of this definition to the contrary, for purposes of § 38.2-612.1, "individual" shall not include any natural person who is covered under an employee benefit plan, group or blanket insurance contract, or group annuity contract when the insurance institution or agent that provides such plan or contract: (i) furnishes the notice required under § 38.2-604.1 to the employee benefit plan sponsor, group or blanket insurance contract holder, or group annuity contract holder; and (ii) does not disclose the financial information of the person to a nonaffiliated third party other than as permitted under § 38.2-613.

"Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution or insurance-support organization, other than:

1. An agent;

2. The individual who is the subject of the information; or

3. A natural person acting in a personal capacity rather than in a business or professional capacity.

"Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's type of organization, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health, legal, dental, and optometric service plans. "Insurance institution" shall not include agents or insurance-support organizations.

"Insurance-support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction or (ii) the collection of personal information from insurance institutions, agents or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following persons shall not be considered "insurance-support organizations" for purposes of this chapter: agents, governmental institutions, insurance institutions, medical-care institutions and medical professionals.

"Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails:

1. The determination of an individual's eligibility for an insurance coverage, benefit or payment; or

2. The servicing of an insurance application, policy, contract, or certificate.

"Investigative consumer report" means a consumer report or a portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

"Joint marketing agreement" means a formal written contract pursuant to which an insurance

institution jointly offers, endorses, or sponsors a financial product or service with another financial institution.

"Life insurance" includes annuities.

"Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home-health agencies, medical clinics, rehabilitation agencies, and public-health agencies or health-maintenance organizations.

"Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, chiropractor, optometrist, physical or occupational therapist, social worker, clinical dietitian, clinical psychologist, licensed professional counselor, licensed marriage and family therapist, pharmacist, or speech therapist.

"Medical-record information" means personal information that:

1. Relates to an individual's physical or mental condition, medical history, or medical treatment; and

2. Is obtained from a medical professional or medical-care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

"Nonaffiliated third party" means any person who is not an affiliate of an insurance institution but does not mean (i) an agent who is selling or servicing a product on behalf of the insurance institution or (ii) a person who is employed jointly by the insurance institution and the company that is not an affiliate.

"Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and medical-record information, but does not include (i) privileged information or (ii) any information that is publicly available.

"Policyholder" means any person who:

1. In the case of individual property or casualty insurance, is a present named insured;

2. In the case of individual life or accident and sickness insurance, is a present policyowner; or

3. In the case of group insurance that is individually underwritten, is a present group certificate holder.

"Policyholder information" means personal information about a policyholder, whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, agent, or insurance-support organization.

"Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

1. Pretends to be someone he or she is not;

2. Pretends to represent a person he or she is not in fact representing;

3. Misrepresents the true purpose of the interview; or

4. Refuses to identify himself or herself upon request.

"Privileged information" means any individually identifiable information that (i) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual, and (ii) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual.

"Residual market mechanism" means an association, organization, or other entity defined, described, or provided for in the Virginia Automobile Insurance Plan as set forth in § 38.2-2015, ~~or~~ ~~in~~ the Virginia Property Insurance Association as set forth in Chapter 27 (§ 38.2-2700 et seq.), *or the Virginia Wind Underwriting Association as set forth in Chapter 29.1 (§ 38.2-2914 et seq.)* of this title.

"Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy other than by the policyholder's request, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

"Unlicensed insurer" means an insurance institution that has not been granted a license by the Commission to transact the business of insurance in Virginia.

§ 38.2-1343. Minimum standards.

A. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

B. Notwithstanding the provisions of subsection A of this section, the provisions of subsections A, C, D and E of this section shall not apply if:

1. The controlling producer (i) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount

of premiums written in connection with such insurance and (ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

2. The controlled insurer, except for insurance business written through a residual market facility such as the Virginia Automobile Insurance Plan, as set forth in § 38.2-2015, ~~or~~ the Virginia Property Insurance Association, as set forth in Chapter 27 (§ 38.2-2700 et seq.), *or the Virginia Wind Underwriting Association as set forth in Chapter 29.1 (§ 38.2-2914 et seq.),* accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

C. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between them specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

1. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

2. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

3. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract;

4. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this Commonwealth shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

5. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

6. The contract shall not be assigned in whole or in part by the controlling producer;

7. The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

8. The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees shall be specified. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision 7 of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

9. If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subdivision 1 of subsection E of this section;

10. The contract shall place a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

11. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

D. Every controlled insurer shall have an Audit Committee of the Board of Directors composed of independent directors. The Audit Committee shall annually meet with management, the insurer's

independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the Commission to review the adequacy of the insurer's loss reserves.

E. The controlled insurer shall obtain annually prior to March 1 of each year the following data and reports:

1. In addition to any other required loss reserve certification, an opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year's end (including incurred but not reported) on business placed by the producer; and

2. The controlled insurer shall annually report to the Commission the amount of commissions paid to the producer during the preceding calendar year, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

The data and reports required by this subsection shall be retained by the insurer for a period of not less than five years and shall be filed with the Commission upon request.

§ 38.2-1902. Scope of chapter.

A. Except as provided in subsection B of this section, this chapter applies to the classes of insurance defined in §§ 38.2-110 through 38.2-122, 38.2-124 through 38.2-128 and 38.2-130 through 38.2-133.

B. This chapter does not apply to:

1. Insurance written through the Virginia Workers' Compensation Plan pursuant to Chapter 20 (§ 38.2-2000 et seq.) of this title;

2. Insurance on a specific risk as provided in § 38.2-1920;

3. Reinsurance, other than joint reinsurance, to the extent stated in § 38.2-1915;

4. Life insurance as defined in § 38.2-102;

5. Annuities as defined in §§ 38.2-106 and 38.2-107;

6. Accident and sickness insurance as defined in § 38.2-109;

7. Title insurance as defined in § 38.2-123;

8. Insurance of vessels or craft used primarily in a trade or business, their cargoes, marine builders' risks and marine protection and indemnity;

9. Insurance against loss of or damage to hulls of aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

10. Automobile bodily injury and property damage liability insurance issued to: (i) any motor carrier of property who is required to file such insurance with the Department of Motor Vehicles pursuant to § 46.2-2053 or any amendment to that section; or (ii) any motor carrier of property required by 49 U.S.C.A. § 315, or any rule or regulation prescribed by the Interstate Commerce Commission pursuant to 49 U.S.C.A. § 315, to file such insurance with the Interstate Commerce Commission;

11. Insurance written through the Virginia Automobile Insurance Plan. However, § 38.2-1905 shall apply to insurance written through the Plan;

12. Insurance provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) ~~of this title~~;

13. *Insurance provided pursuant to Chapter 29.1 (§ 38.2-2914 et seq.); or*

14. Home protection contracts as defined by § 38.2-2600 and their rates until such time as the Commission determines there is sufficient competition in the industry as provided by § 38.2-2608.

C. This chapter shall not apply to any class of insurance written (i) by any mutual assessment property and casualty insurance company organized and operating under the laws of this Commonwealth and doing business only in this Commonwealth or (ii) by any mutual insurance company or association organized under the laws of this Commonwealth, conducting business only in this Commonwealth, and issuing only policies providing for perpetual insurance.

§ 38.2-2001. Insurance to which chapter applies.

This chapter applies only to (i) insurance written through the Virginia Workers' Compensation Insurance Plan, (ii) the coverages provided in the Virginia Automobile Insurance Plan, (iii) the coverages provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title, (iv) home protection contracts as defined by § 38.2-2600, ~~and~~ (v) *the coverages provided pursuant to Chapter 29.1 (§ 38.2-2914 et seq.), and (vi)* policies and endorsements of credit involuntary unemployment insurance, as defined in § 38.2-122.1, and policies and endorsements of credit property insurance, as defined in § 38.2-122.2, delivered or issued for delivery in this Commonwealth, and certificates of credit involuntary unemployment insurance and certificates of credit property insurance delivered or issued for delivery in this Commonwealth where the group policy is delivered in another state.

§ 38.2-2113. Mailing or electronic delivery of notice of cancellation or refusal to renew.

A. No written notice of cancellation or refusal to renew a policy written to insure owner-occupied dwellings shall be effective when mailed, or delivered electronically if the notice is of a refusal to renew such a policy, by an insurer unless:

1. a. It is sent by registered or certified mail,

b. At the time of mailing the insurer obtains a written receipt from the United States Postal Service showing the name and address of the insured stated in the policy,

c. At the time of mailing the insurer (i) obtains a written receipt from the United States Postal Service showing the date of mailing and the number of items mailed and (ii) retains a mailing list showing the name and address of the insured stated in the policy, or the last known address, to whom the notices were mailed, together with a signed statement by the insurer that the written receipt from the United States Postal Service corresponds to the mailing list retained by the insurer, or

d. If delivered electronically, the insurer retains evidence of electronic transmittal or receipt of the notification for at least one year from the date of the transmittal; and

2. The insurer retains a copy of the notice of cancellation or refusal to renew.

~~3. [Repealed.]~~

B. This section shall not apply to policies written through the Virginia Property Insurance Association or any other residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.) ~~of this title~~ *or through the Virginia Wind Underwriting Association established pursuant to Chapter 29.1 (§ 38.2-2914 et seq.)*.

C. 1. If the terms of the policy require the notice of cancellation or refusal to renew to be given to any lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner required by subsection A of this section. If the notices sent to the insured and the lienholder are part of the same form, the insurer may retain a single copy of the notice. The registered, certified or regular mail postal receipt and copy of the notices required by this section shall be retained by the insurer for at least one year from the date of termination.

2. Notwithstanding the provisions of subdivision C 1, if the terms of the policy require the notice of cancellation or refusal to renew to be given to any lienholder, the insurer and lienholder may agree by separate agreement that such notices may be transmitted electronically provided that the insurer and lienholder agree upon the specifics for transmittal and acknowledgement of notification. Evidence of transmittal or receipt of the notification required by this subsection shall be retained by the insurer for at least one year from the date of termination.

D. Copy, as used in this section, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

§ 38.2-2114. Grounds and procedure for termination of policy; contents of notice; review by Commissioner; exceptions; immunity from liability.

A. Notwithstanding the provisions of § 38.2-2105, no policy or contract written to insure owner-occupied dwellings shall be canceled by an insurer unless written notice is mailed or delivered to the named insured at the address stated in the policy, and cancellation is for one of the following reasons:

1. Failure to pay the premium when due;

2. Conviction of a crime arising out of acts increasing the probability that a peril insured against will occur;

3. Discovery of fraud or material misrepresentation;

4. Willful or reckless acts or omissions increasing the probability that a peril insured against will occur as determined from a physical inspection of the insured premises;

5. Physical changes in the property which result in the property becoming uninsurable as determined from a physical inspection of the insured premises; or

6. Foreclosure efforts by the secured party against the subject property covered by the policy that have resulted in the sale of the property by a trustee under a deed of trust as duly recorded in the land title records of the jurisdiction in which the property is located.

B. No policy or contract written to insure owner-occupied dwellings shall be terminated by an insurer by refusal to renew except at the expiration of the stated policy period or term and unless the insurer or its agent acting on behalf of the insurer mails or delivers to the named insured, at the address stated in the policy, or delivers electronically to the address provided by the named insured, written notice of the insurer's refusal to renew the policy or contract.

C. A written notice of cancellation of or refusal to renew a policy or contract written to insure owner-occupied dwellings shall:

1. State the date that the insurer proposes to terminate the policy or contract, which shall be at least 30 days after mailing or delivering to the named insured the notice of cancellation or refusal to renew. However, when the policy is being terminated for the reason set forth in subdivision 1 of subsection A of this section, the date that the insurer proposes to terminate the policy may be less than 30 days but at least 10 days from the date of mailing or delivery;

2. State the specific reason for terminating the policy or contract and provide for the notification

required by the provisions of §§ 38.2-608 and 38.2-609 and subsection B of § 38.2-610. However, those notification requirements shall not apply when the policy is being canceled or not renewed for the reason set forth in subdivision 1 of subsection A of this section;

3. Advise the insured that within 10 days of receipt of the notice of termination he may request in writing that the Commissioner review the action of the insurer in terminating the policy or contract;

4. Advise the insured of his possible eligibility for fire insurance coverage through the Virginia Property Insurance Association; and

5. Be in a type size authorized by § 38.2-311.

D. Within 10 days of receipt of the notice of termination any insured or his attorney shall be entitled to request in writing to the Commissioner that he review the action of the insurer in terminating a policy or contract written to insure owner-occupied dwellings. Upon receipt of the request, the Commissioner shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section and of § 38.2-2113, if sent by mail, or delivered electronically if a notice of refusal to renew. The policy shall remain in full force and effect during the pendency of the review by the Commissioner except where the cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall terminate as of the date stated in the notice. Where the Commissioner finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section or of § 38.2-2113, if sent by mail or delivered electronically if a notice of refusal to renew, he shall immediately notify the insurer, the insured, and any other person to whom notice of cancellation or refusal to renew was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer.

E. Nothing in this section shall apply:

1. To any policy written to insure owner-occupied dwellings that has been in effect for less than 90 days when the notice of termination is mailed or delivered to the insured, unless it is a renewal policy;

2. If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has otherwise manifested its willingness to renew in writing to the insured. The written manifestation shall include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage and information regarding the estimated renewal premium;

3. If the named insured or his duly constituted attorney-in-fact has notified the insurer or its agent orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the policy to be canceled, or that he does not wish the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer to renew the policy;

4. To any contract or policy written through the Virginia Property Insurance Association or any residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title; ~~or~~

5. If an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy. The affiliated insurer shall manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at least equal to those contained in the expiring policy unless the named insured has requested a change in coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be deemed to be a renewal policy*; or*

6. To any contract or policy written through the Virginia Wind Underwriting Association established pursuant to Chapter 29.1 (§ 38.2-2914 et seq.).

F. Each insurer shall maintain, for at least one year, records of cancellation and refusal to renew and copies of every notice or statement referred to in subsection E of this section that it sends to any of its insureds.

G. There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner or his subordinates; any insurer, its authorized representative, its agents, or its employees; or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in complying with this section or for providing information pertaining to the cancellation or refusal to renew.

H. Nothing in this section requires an insurer to renew a policy written to insure owner-occupied dwellings, if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization.

I. No insurer or agent shall refuse to renew a policy written to insure an owner-occupied dwelling, solely because of any one or more of the following factors:

1. Age;

2. Sex;

3. Residence;

4. Race;
5. Color;
6. Creed;
7. National origin;
8. Ancestry;
9. Marital status;
10. Lawful occupation, including the military service; however, nothing in this subsection shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to increase materially the risk;
11. Credit information contained in a "consumer report," as defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit information shall be based on a consumer report procured within 120 days from the effective date of the nonrenewal;
12. Any claim resulting primarily from natural causes;
13. One or more claims that were incurred more than 60 months immediately prior to the expiration of the current policy period; or
14. Any inquiry from an insured about his insurance coverage or policy provisions. For purposes of this subdivision, "inquiry" means a written or oral communication by an insured seeking information regarding coverage or policy provisions that does not notify the insurer of a loss, incident or accident, and that does not provide information indicating an increase in the hazard insured against. An insurer shall not report any inquiry as a claim to a loss history database maintained by a consumer reporting agency or insurance support organization.

Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

J. No insurer shall cancel or refuse to renew a policy written to insure an owner-occupied dwelling because an insured under the policy is a foster parent and foster children reside at the insured dwelling.

CHAPTER 29.1.

WIND INSURANCE POOL.

§ 38.2-2914. Definitions.

As used in this section, unless the context requires otherwise:

"Association" means the Virginia Wind Underwriting Association established pursuant to the provisions of this chapter.

"Coastal area" means all areas in Accomack and Northampton Counties and the Cities of Chesapeake, Hampton, Norfolk, and Virginia Beach.

"Essential property insurance" means insurance against direct loss to property from the risk of windstorm in the manner as defined and limited in the wind insurance policy and forms approved by the Commission. Essential property insurance shall not include coverage for any loss other than the actual cash value at the time of loss of the structure and contents. The extent of risk covered, the insuring language, and the exclusions are all subject to approval by the Commission. Policies, rules, and rates shall be filed with the Commission in the manner provided for insurance companies.

"Insurable property" means immovable property at fixed locations in coastal areas of the Commonwealth, or tangible personal property located therein, which property is determined by the Association to be in an insurable condition as determined by reasonable underwriting standards, but not to include farm or manufacturing property, or motor vehicles. Any structure not constructed in substantial compliance with the applicable building code in effect at the time of its construction is not an insurable property.

"Net direct premiums written" means gross direct premiums written in the Commonwealth on all policies of fire and extended coverage insurance, including the fire and extended coverage components of homeowners policies and commercial multiple peril package policies, excluding reinsurance assumed and ceded written on property other than farm or manufacturing in the Commonwealth, (i) all return premiums on the policy, (ii) dividends paid or credited to policyholders, and (iii) the unused or unabsorbed portions of premium deposits.

"Plan of operation" means the plan of operation of the Association approved or promulgated by the Commission pursuant to the provisions of this chapter.

§ 38.2-2915. Virginia Wind Underwriting Association created; governing body.

A. There is created the Virginia Wind Underwriting Association, an unincorporated association whose responsibilities, liability, and regulations are governed and defined by this chapter, consisting of all private insurers authorized to write property insurance or other insurance that contains a property insurance component in the Commonwealth, but excluding insurers exempted from rate regulation by subsection C of § 38.2-1902. Each insurer that is required to be a member of the joint underwriting association shall remain a member as a condition of its license to write property insurance and other

insurance that contains a property insurance component in this Commonwealth.

B. The Association shall be governed by a board of 15 directors. Four directors shall be appointed by the Commissioner, two of whom shall be property and casualty insurance agents and two of whom shall be from the general public. The remaining 11 directors shall be elected annually by a cumulative vote of the Association's members, whose votes shall be weighted in accordance with each member's premiums written during the preceding calendar year. The first board shall be elected at a meeting of the members or their authorized representatives, which shall be held within 30 days after approval of the plan of operation as provided in § 38.2-2916.

§ 38.2-2916. Plan of operation.

A. By September 1, 2010, the Association shall submit to the Commission for its review a proposed plan of operation consistent with this chapter.

B. The Association shall operate pursuant to a plan of operation that shall provide for the efficient, economical, fair, and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the coastal areas of the Commonwealth so as to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in such areas. The plan shall include the establishment of necessary facilities, management of the association, a plan for the assessment of members to defray losses and expenses, reasonable underwriting standards, commissions to be paid to agents or brokers, procedures for the acceptance and cession of reinsurance, procedures for determining the amounts of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and any other provisions considered necessary by the Commission to carry out the purposes of this chapter.

C. The plan of operation shall be subject to approval by the Commission after consultation with affected individuals and organizations, and shall take effect 10 days after its approval. If the Commission disapproves all or any part of the proposed plan of operation, the Association shall within 30 days submit for review an appropriately revised plan of operation. If the Association fails to submit a revised plan, or if the revised plan is unacceptable, the Commission shall promulgate whatever plan of operation it deems necessary to carry out the purposes of this chapter.

D. The Association may, on its own initiative or at the request of the Commission, amend the plan of operation. Any amendment to the plan of operation shall be subject to the Commission's approval.

§ 38.2-2917. Powers of Association.

The Association shall, pursuant to this chapter and the plan of operation, have the power to (i) cause to be issued policies of essential property insurance on qualified property to applicants; (ii) assume reinsurance on qualified property from members; and (iii) cede reinsurance.

§ 38.2-2918. Limits of liability.

Insurance effected pursuant to this chapter shall have limits of liability provided in the plan of operation. The Commission shall approve the limits. Excess insurance is not permitted until the maximum available under the plan has been purchased. Thereafter, excess insurance may be purchased and must be included for the purpose of meeting any coinsurance requirement.

§ 38.2-2919. Application for coverage; issuance of policy.

A. Any person having an insurable interest in insurable property is entitled to apply to the Association for coverage and for an inspection of the property. The application must be made on behalf of the applicant by a licensed broker or agent authorized by him. Applications must be submitted on forms prescribed by the Association and approved by the director or his designee. The application shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for fire insurance on the property. The term "insurable interest" as used in this section includes any lawful and substantial economic interest in the safety or preservation of property from loss, destruction, or pecuniary damage.

B. If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association upon receipt of the premium, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance for a term of at least one year.

§ 38.2-2920. Duties of members of Association; limitation on liability.

A. All members of the Association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premium of the member written in the Commonwealth during the calendar year two years before the current year bears to the aggregate net direct premiums written in the Commonwealth by all members of the Association, as certified to the Association by the Commission after review of annual statements, other reports, and other statistics that the Commission considers necessary to provide the information required and that the Commission is authorized to obtain from a member of the Association. After certification by the Commission, the Association may rely on the member company's annual statement in determining the company's participation in profits and losses for

each year.

B. Each member's participation in the Association shall be determined annually in the same manner as the initial determination. An insurer authorized to write and engage in writing insurance, the writing of which requires the insurer to be a member of the Association pursuant to § 38.2-2915, becomes a member of the Association on January first immediately following the authorization. The determination of the insurer's participation in the Association shall be made as of the date of the membership in the same manner as for all other members of the Association. Member insurers shall receive credit annually for essential property insurance voluntarily written in the coastal area and their participation in the writings of the Association shall be reduced accordingly. The board of directors shall authorize the method of determining the credit. In order to receive credit for essential property voluntarily written in the coastal area, each member company shall submit its requests by March 31 of the year for which credit is sought.

C. The assessment of a member insurer after hearing may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the Commission, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer's business would be hazardous to its policyholders, creditors, members, subscribers, stockholders, or the public. If payment of an assessment against a member insurer is deferred by order of the Commission in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this section. In its order of deferral, or in necessary subsequent orders, the Commission shall prescribe a plan by which the assessment so deferred must be repaid to the association by the impaired insurer with interest at the six-month treasury bill rate adjusted semiannually. Profits, dividends, or other funds of the Association to which the insurer is otherwise entitled shall not be distributed to the impaired insurer but shall be applied toward repayment of an assessment until the obligation has been satisfied. The Association shall distribute the repayments, including interest, to the other member insurers on the basis at which assessments were made.

§ 38.2-2921. Contested assessment or interest levy by Association; payment under protest; appeal; exposure to disciplinary procedures.

A. If a member company perceives an assessment or interest levied by the Association to be unjust or illegal, the company shall pay the assessment or interest under protest in writing within 30 days of the assessment or interest charge. Upon receiving this payment, the Association shall pay the money collected into the Association account and designate the money as having been paid under protest.

B. A member company paying an assessment or interest under protest shall appeal to the Association within 30 days after making the payment. If it is determined in that appeal that the assessment or interest was collected unjustly or illegally, the Association shall refund the assessment or interest to the payor.

§ 38.2-2922. Ceding essential property insurance to Association.

Any member of the Association may cede to the Association essential property insurance written on qualified property, to the extent and on the terms and conditions set forth in the plan of operation.

§ 38.2-2923. Supervision and regulation by Commission.

The Association shall at all times be subject to the supervision and regulation of the Commission. The Commission, or any person designated by it, shall have the power:

1. To visit and examine the operations of the Association;

2. To examine directors, officers, agents, employees, or any other person having knowledge of those operations;

3. To summon and qualify witnesses under oath and, pursuant to these powers, to have free access to all books, records, files, papers, and documents that relate to those operations; and

4. To require that the Association file annually a financial report that is approved by the board of directors and prepared in a form prescribed by the Commission. Unless the Commission provides otherwise, the report shall be filed within 120 days after the end of each fiscal year and shall be for the preceding 12 months.

§ 38.2-2924. Immunity from liability; reports not public documents.

A. There shall be no liability on the part of, and no cause of action shall arise against, any insurer, the Association, or its directors, governing committee members, officers, agents or employees, or the Commission or its authorized representatives, for any action taken by them in good faith in the performance of their powers and duties under this chapter, nor for any inspections undertaken or statements made by them (i) in any reports and communications concerning the property insured or to be insured, (ii) at the time of the hearings conducted in connection with the property insured or to be insured, or (iii) in the findings required by this chapter.

B. The reports and communications of the Association shall not be public documents.

§ 38.2-2925. Obligations not to be impaired in event of repeal of chapter.

If the General Assembly repeals this chapter, (i) the obligations incurred by the Association and

policies issued by either organization or its members shall not be impaired by the repeal and (ii) the Association shall be continued until they have fully performed their respective outstanding obligations.

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