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SENATE BILL NO. 233

Offered January 8, 2020

Prefiled January 2, 2020

A *BILL to amend and reenact §§ 38.2-1845.2, as it is currently effective, 38.2-1845.8, as it is currently effective, 38.2-1845.9, as it is currently effective, 38.2-1888, as it shall become effective, and 55.1-1014, as it shall become effective, of the Code of Virginia, relating to biennial insurance licensing and registration.*

Patron—Chafin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1845.2, as it is currently effective, 38.2-1845.8, as it is currently effective, 38.2-1845.9, as it is currently effective, 38.2-1888, as it shall become effective, and 55.1-1014, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1845.2. (Effective until January 1, 2021) License required of resident public adjusters.

A. No person shall engage in the business of public adjusting, on or after January 1, 2013, without first applying for and obtaining a license from the Commission, except as provided in § 38.2-1845.3. Every license issued pursuant to this article shall be for a term expiring two years from the date of issuance and may be renewed for ensuing two-year periods subject to renewal pursuant to 38.2-1845.8.

B. Each individual applicant for a public adjuster license who is at least 18 years of age, who has satisfied the Commission that he (i) is of good character; (ii) has a reputation for honesty; (iii) has not committed any act that is a ground for refusal to issue, denial, suspension, or revocation of a public adjuster license as set forth in § 38.2-1845.10; and (iv) has complied successfully with the other requirements of this article is entitled to and shall receive a license under this chapter in the form and manner prescribed by the Commission. The Commission may require, for resident licensing, proof of residency as described in subsection B of § 38.2-1800.1.

C. Each individual applicant for a public adjuster license shall apply to the Commission in the form and manner prescribed by the Commission and shall provide satisfactory evidence of having met the following requirements:

1. Each applicant shall pass, within 183 calendar days prior to the date of application for such license, the public adjuster examination as required by the Commission pursuant to and in accordance with the requirements set forth in § 38.2-1845.4.

2. Each applicant for a public adjuster license shall submit a nonrefundable application processing fee prescribed by the Commission at the time of initial application for such license.

3. Prior to issuance of a license, each applicant shall attest that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the amount of \$50,000 with corporate sureties licensed by the Commission, on a form prescribed by the Commission. The bond shall be conditioned that the public adjuster will conduct business under the license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at least 60 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed public adjuster fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the public adjuster license shall terminate, and the licensee shall be required to satisfy any and all precensing requirements in order to apply for a new public adjuster license. The Commission may ask for a copy of the bond or other evidence of financial responsibility at any time.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the Clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the Clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.).

E. Any individual who acts as a public adjuster and who is also an officer, director, principal, or employee of a business entity acting as a public adjuster in the Commonwealth shall be required to hold an appropriate individual license as a public adjuster in the Commonwealth.

F. A business entity acting as a public adjuster is required to obtain a public adjuster license.

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59 Application shall be made in a form and manner acceptable to the Commission. Before approving the
60 application, the Commission shall find that:

61 1. The business entity has paid the fee prescribed by the Commission;

62 2. The business entity has demonstrated proof of residency pursuant to subsection B of
63 § 38.2-1800.1; and

64 3. The business entity has designated an individual employee, officer, director, manager, member, or
65 partner licensed in Virginia as a public adjuster to be responsible for the business entity's compliance
66 with the laws, rules, and regulations of the Commonwealth applicable to public adjusters.

67 G. Prior to issuance of a license, each entity shall attest that the entity has, and thereafter shall keep
68 in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the
69 amount of \$50,000 with corporate sureties licensed by the Commission, on a form prescribed by the
70 Commission. The bond shall be conditioned that the public adjuster will conduct business under the
71 license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at
72 least 60 calendar days' prior written notice of the termination is filed with the Commission. If, prior to
73 the expiration date of the bond, the licensed public adjuster fails to file with the Commission a
74 certification or attestation that a new bond satisfying the requirements of this section has been put into
75 effect, the public adjuster license shall terminate, and the entity shall be required to satisfy any and all
76 prelicensing requirements in order to apply for a new public adjuster license. The Commission may ask
77 for a copy of the bond or other evidence of financial responsibility at any time.

78 H. The Commission may require any documents reasonably necessary to verify the information
79 contained in an application.

80 **§ 38.2-1845.8. (Effective until January 1, 2021) Renewal application and fee.**

81 A. Each licensed public adjuster shall remit ~~biennially~~ a renewal application in a form and manner
82 acceptable to the Commission, along with the nonrefundable renewal application processing fee
83 prescribed by the Commission for the renewal of the license. Any public adjuster license for which the
84 required renewal application and nonrefundable renewal application processing fee has been received by
85 the Commission shall, *be renewed* unless the license has been terminated, suspended, or revoked ~~be~~
86 ~~renewed for a two-year period~~. Any public adjuster license for which the required renewal application
87 and nonrefundable renewal application processing fee has not been received by the Commission in the
88 manner prescribed by the Commission shall automatically be terminated.

89 B. The nonrefundable renewal processing fee for each public adjuster license shall be paid in a
90 manner and in an amount prescribed by the Commission. All fees shall be collected by the Commission
91 and paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance
92 as provided in subsection B of § 38.2-400.

93 C. No nonresident public adjuster license shall be renewed unless the applicant meets the
94 requirements for initial licensure as set forth in § 38.2-1845.5.

95 **§ 38.2-1845.9. (Effective until January 1, 2021) Continuing education; approval of credits;**
96 **failure to satisfy requirements; termination of license.**

97 A. An individual who holds a public adjuster license and who is not exempt under subsection B shall
98 satisfactorily complete a minimum of 24 hours of approved continuing education courses, including three
99 hours of ethics, reported ~~on a biennial basis~~ in conjunction with his license renewal.

100 B. This section shall not apply to licensees holding nonresident public adjuster licenses who have
101 met the continuing education requirements of their home state and whose home state gives credit to
102 residents of the Commonwealth on the same basis.

103 C. 1. The Commission or its administrator shall approve all continuing education instructors,
104 continuing education courses, and programs of instruction. The Commission shall establish and monitor
105 standards for the education of public adjusters, approve courses, including evaluating credit hours for all
106 courses or programs offered, and set minimum requirements for course instructors. The Commission
107 shall have the authority to disapprove or withdraw approval of course sponsors, courses, or course
108 instructors when the established standards are not satisfied or where such standards have been violated.

109 2. The number of credits for each self-study course, correspondence course, or program of classroom
110 instruction shall be determined in a manner prescribed by the Commission. However, for an approved
111 classroom course, a credit hour shall be equivalent to a classroom hour providing at least 50 minutes of
112 continuous instruction or participation. No credits shall be granted for approved classroom courses unless
113 notice to the Commission or its administrator is accompanied by proof of attendance by the course
114 provider. No credits shall be granted for any correspondence or self-study course that does not include a
115 test of the subject matter, which shall be successfully completed by each public adjuster requesting
116 credit. The Commission shall have the right to review and approve or disapprove the proposed test as
117 part of the course approval process.

118 3. An instructor of an approved continuing education course shall be eligible to receive the same
119 number of credits as a person enrolled in the course for the purpose of meeting the requirements.
120 However, public adjusters and instructors may apply credits for attending or teaching the same course

only once during any continuing education reporting period.

D. Each public adjuster holding a license subject to the continuing education requirements of this article shall complete all continuing education courses, pay a nonrefundable fee, and shall submit to the Commission or its administrator proof of compliance with continuing education requirements in the form and manner required by the Commission.

E. Any public adjuster subject to this article who fails to submit complete documentation, showing proof of compliance with continuing education requirements, as well as all specified forms and nonrefundable fees, to the Commission or its administrator shall be deemed to be in noncompliance with the requirements of this article.

F. 1. The license of the public adjuster shall not be renewed if the public adjuster has failed to satisfy the continuing education requirements of this section.

2. A public adjuster shall have 30 calendar days to appeal to the Commission or its administrator the decision to administratively terminate the license for failure to complete continuing education requirements as required by this section. A public adjuster wishing to contest the Commission's action in terminating a license shall adhere to the Commission's Rules of Practice and Procedure (5 VAC 5-20-10 et seq.) and the Rules of Supreme Court of Virginia. Failure by the public adjuster to initiate such contest within 30 calendar days following the date of license termination shall be deemed a waiver by the public adjuster of the right to contest such license termination.

G. A resident public adjuster whose license has been terminated under the terms of this section shall be permitted to make application for a new license if all of the requirements of § 38.2-1845.2 are met.

H. Each public adjuster shall pay a nonrefundable continuing education processing fee in an amount prescribed by the Commission.

§ 38.2-1888. (Effective January 1, 2021) Licensing and registration.

A. The Commission may issue a limited lines travel insurance agent license to an individual or business entity that has filed with the Commission an application for a limited lines travel insurance agent license in a form and manner prescribed by the Commission. The limited lines travel insurance agent shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.

B. No person may act as a limited lines travel insurance agent or travel retailer unless properly licensed or registered, respectively.

C. The grounds for the suspension or revocation of the license of and the penalties applicable to resident insurance agents shall be applicable to limited lines travel insurance agents and travel retailers.

D. A travel retailer may offer and disseminate travel insurance under the license of a limited lines travel insurance agent only if the following conditions are met:

1. Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

a. Provide the identity and contact information of the insurer and the limited lines travel insurance agent;

b. Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

c. Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage;

2. The limited lines travel insurance agent or travel retailer provides to purchasers of travel insurance:

a. A description of the material terms or the actual material terms of the insurance coverage;

b. A description of the process for filing a claim;

c. A description of the review or cancellation process for the travel insurance policy; and

d. The identity and contact information of the insurer and limited lines travel insurance agent;

3. At the time of licensure, the limited lines travel insurance agent shall establish and maintain a register on a form prescribed by the Commission of each travel retailer that offers travel insurance on the limited lines travel insurance agent's behalf. The register shall be maintained and updated by the limited lines travel insurance agent and shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's Federal Tax Identification Number. The limited lines travel insurance agent shall submit such register to the Commission upon reasonable request. The limited lines travel insurance agent shall also certify that the travel retailer registered complies with 18 U.S.C. § 1033;

4. The limited lines travel insurance agent has designated a DLP;

5. The DLP, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance agent's insurance operations complies with a background check or fingerprinting requirements applicable to insurance agents;

6. The limited lines travel insurance agent has paid all applicable insurance agent licensing fees as set forth in this title; *and*

7. The limited lines travel insurance agent requires each employee or authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the Commission. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers; *and*

8. ~~On or before May 1, 2021, and biennially thereafter, each travel retailer licensed as a limited lines travel insurance agent shall submit to the Commission a renewal application, along with a nonrefundable renewal application processing fee prescribed by the Commission, for the renewal of the license. Any limited lines travel insurance agent license for which the renewal application and nonrefundable renewal application processing fee have been received by the Commission and all other applicable licensing and renewal provisions in this chapter have been met shall, unless the license has been terminated, suspended, or revoked, be renewed for a two-year period. Any limited lines travel insurance agent license for which the renewal application and nonrefundable renewal application processing fee have not been received by the Commission shall automatically be terminated.~~

E. A travel retailer's employee or authorized representative who is not licensed as an insurance agent may not:

1. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

2. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

3. Hold himself or itself out as a licensed insurer, licensed agent, or insurance expert.

F. Notwithstanding any other provision of law, a travel retailer whose insurance-related activities, and those of its employees or authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction and license of a limited lines travel insurance agent meeting the conditions stated in this article is authorized to conduct such activities and receive related compensation, upon registration by the limited lines travel insurance agent as described in subdivision D 3. No travel retailer employee or authorized representative may be compensated based primarily on the number of customers who purchase travel insurance coverage; however, nothing in this article shall prohibit payment of compensation to a travel retailer or its employees or authorized representatives for activities under the limited lines travel insurance agent's license that are incidental to the travel retailer's or its employee's or authorized representative's overall compensation.

G. As the insurer designee, the limited lines travel insurance agent and the insurer (i) are responsible for the acts of a travel retailer who is not a limited lines travel insurance agent and (ii) shall use reasonable means to ensure compliance by the travel retailer with this article.

H. No person is authorized to sell, solicit, and negotiate travel insurance unless licensed and appointed as a limited lines travel insurance agent.

§ 55.1-1014. (Effective January 1, 2021) Settlement agent registration requirements and compliance with unauthorized practice of law guidelines; civil penalty.

A. Every settlement agent subject to the provisions of this chapter shall be registered as such with the appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses, and telephone numbers and (ii) such other information as may be required. Each such registration (a) shall be accompanied by a nonrefundable fee prescribed by the appropriate licensing authority and (b) shall be renewed at least biennially thereafter, *except that (1) the registration of a person described in subdivision A 2 of § 55.1-1003 shall be renewed on or before May 1, 2021, and biennially thereafter and (2) the registration of a person described in subdivision A 3 of § 55.1-1003 shall be renewed at the same time as renewal of his title insurance agent license pursuant to § 38.2-1825.1.* When the registration of a settlement agent is renewed, the appropriate licensing authority shall notify the registrant of the provisions of § 17.1-223.

B. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title and Title 38.2 against any person who is under investigation by the Commission for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, or revoked or has lapsed by operation of law.

C. The Virginia State Bar, in consultation with the Commission and the Real Estate Board, shall adopt regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing, and settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing, or settlement services, upon request.

D. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution

244 noncompliance with the guidelines established pursuant to subsection C and shall (i) investigate such
245 complaints to the extent they concern the unauthorized practice of law or any other matter within its
246 jurisdiction and (ii) refer all other matters or allegations to the appropriate licensing authority. The
247 willful failure of any settlement agent to comply with the guidelines shall be considered a violation of
248 this chapter, and such agent shall be subject to a civil penalty not exceeding \$5,000 for each such
249 failure as the Virginia State Bar may determine.