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SENATE BILL NO. 358

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 6.2-1616, 11-2, 38.2-3521.1, 54.1-2100, and 54.1-2103 of the Code of Virginia and to repeal §§ 54.1-2101 and 54.1-2107 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; definition of a real estate broker.

 Patron—VanValkenburg

 Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1616, 11-2, 38.2-3521.1, 54.1-2100, and 54.1-2103 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-1616. Other prohibitions applicable to mortgage brokers.

A. As used in this section:

"Real estate broker" has the same meaning provided in § 54.1-2100.

"Real estate salesperson" has the same meaning provided in ~~§ 54.1-2101~~ § 54.1-2100.

B. No mortgage broker required to be licensed under this chapter shall:

1. Except for documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer, or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, or officer of the lender;

4. Receive compensation from a borrower other than that specified in a written agreement signed by the borrower; or

5. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is hereby created, to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics, including but not limited to the product type, rates, charges, and repayment terms of the loan.

C. If a mortgage broker negotiates, places, or finds a mortgage loan and acts as a real estate broker or real estate salesperson in connection with the sale of the real estate that secures such loan, the mortgage broker shall conspicuously provide to the borrower the following written disclosure at the time the mortgage broker services are first offered to the borrower:

YOU ARE HEREBY NOTIFIED THAT YOU ARE NOT REQUIRED TO ENTER INTO ANY ARRANGEMENT FOR REAL ESTATE BROKER OR REAL ESTATE SALESPERSON SERVICES WITH A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON TO WHOM WE HAVE REFERRED YOU.

YOU ARE HEREBY NOTIFIED THAT [NAME OF MORTGAGE BROKER] WILL BE RECEIVING COMPENSATION FOR PROVIDING BOTH MORTGAGE BROKER SERVICES AND REAL ESTATE BROKER OR REAL ESTATE SALESPERSON SERVICES IN CONNECTION WITH THE SALE OF THE REAL ESTATE THAT SECURES THIS MORTGAGE LOAN.

YOU ARE HEREBY NOTIFIED THAT WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU.

D. The requirements of this section are in addition to the requirements of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.) and regulations adopted thereunder.

§ 11-2. When written evidence required to maintain action.

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases:

1. To charge any person upon or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, to the intent or purpose that such other may obtain thereby, credit, money, or goods;

2. To charge any person upon a promise made after attaining the age of majority, to pay a debt contracted during infancy, or upon a ratification after attaining the age of majority, of a promise or simple contract made during infancy;

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59 3. To charge a personal representative upon a promise to answer any debt or damages out of his own
60 estate;

61 4. To charge any person upon a promise to answer for the debt, default, or misdoings of another;

62 5. Upon any agreement made upon consideration of marriage;

63 6. Upon any contract for the sale of real estate, or for the lease thereof for more than a year;

64 7. Upon any agreement or contract for services to be performed in the sale of real estate by a party
65 defined in § 54.1-2100 or § 54.1-2101;

66 8. Upon any agreement that is not to be performed within a year; or

67 9. Upon any agreement or promise to lend money or extend credit in an aggregate amount of
68 \$25,000 or more.

69 The consideration need not be set forth or expressed in the writing, and it may be proved (where a
70 consideration is necessary) by other evidence.

71 **§ 38.2-3521.1. Group accident and sickness insurance definitions.**

72 Except as provided in § 38.2-3522.1, no policy of group accident and sickness insurance shall be
73 delivered in this Commonwealth unless it conforms to one of the following descriptions:

74 A. A policy issued to an employer, or to the trustees of a fund established by an employer, which
75 employer or trustees shall be deemed the policyholder, to insure employees of the employer for the
76 benefit of persons other than the employer, subject to the following requirements:

77 1. The employees eligible for insurance under the policy shall be all of the employees of the
78 employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall
79 include the employees of one or more subsidiary corporations, and the employees, individual proprietors,
80 and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the
81 employer and of such affiliated corporations, proprietorships or partnerships is under common control.
82 The policy may provide that the term "employees" shall include retired employees, former employees
83 and directors of a corporate employer. A policy issued to insure the employees of a public body may
84 provide that the term "employees" shall include elected or appointed officials.

85 2. The premium for the policy shall be paid either from the employer's funds or from funds
86 contributed by the insured employees, or from both. Except as provided in subdivision 3, a policy on
87 which no part of the premium is to be derived from funds contributed by the insured employees must
88 insure all eligible employees, except those who reject such coverage in writing.

89 3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual
90 insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

91 B. A policy that is:

92 1. Not subject to Chapter 37.1 (§ 38.2-3727 et seq.): and

93 2. Issued to a creditor or its parent holding company or to a trustee or trustees or agent designated
94 by two or more creditors, which creditor, holding company, affiliate, trustee, trustees or agent shall be
95 deemed the policyholder, to insure debtors of the creditor or creditors with respect to their indebtedness,
96 subject to the following requirements:

97 a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or
98 creditors, or all of any class or classes thereof. The policy may provide that the term "debtors" shall
99 include:

100 (1) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is
101 arranged through a credit transaction;

102 (2) The debtors of one or more subsidiary corporations; and

103 (3) The debtors of one or more affiliated corporations, proprietorships or partnerships if the business
104 of the policyholder and of such affiliated corporations, proprietorships or partnerships is under common
105 control.

106 b. The premium for the policy shall be paid either from the creditor's funds, or from charges
107 collected from the insured debtors, or from both. Except as provided in subdivision 3, a policy on which
108 no part of the premium is to be derived from funds contributed by insured debtors specifically for their
109 insurance must insure all eligible debtors.

110 3. An insurer may exclude any debtors as to whom evidence of individual insurability is not
111 satisfactory to the insurer.

112 4. The total amount of insurance payable with respect to an indebtedness shall not exceed the greater
113 of the scheduled or actual amount of unpaid indebtedness to the creditor. The insurer may exclude any
114 payments that are delinquent on the date the debtor becomes disabled as defined in the policy.

115 5. The insurance may be payable to the creditor or any successor to the right, title, and interest of
116 the creditor. Such payment or payments shall reduce or extinguish the unpaid indebtedness of the debtor
117 to the extent of each such payment and any excess of the insurance shall be payable to the insured or
118 the estate of the insured.

119 6. Notwithstanding the preceding provisions of this section, insurance on agricultural credit
120 transaction commitments may be written up to the amount of the loan commitment. Insurance on

educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan.

C. A policy issued to a labor union, or similar employee organization, which labor union or organization shall be deemed to be the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof.

2. The premium for the policy shall be paid from either funds of the union or organization, or from funds contributed by the insured members specifically for their insurance, or from both. Except as provided in subdivision 3, a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject such coverage in writing.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

D. A policy issued (i) to or for a multiple employer welfare arrangement, a rural electric cooperative, or a rural electric telephone cooperative as these terms are defined in 29 U.S.C. § 1002, or (ii) to a trust, or to the trustees of a fund, established or adopted by or for two or more employers, or by one or more labor unions of similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust or trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations, subject to the following requirements:

1. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term "employee" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

2. The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons, or by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employers or unions or similar employee organizations. Except as provided in subdivision 3, a policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

E. A policy issued to an association or to a trust or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations which association or trust shall be deemed the policyholder.

1. The association or associations shall:

a. Have at the outset a minimum of 100 persons;

b. Have been organized and maintained in good faith for purposes other than that of obtaining insurance;

c. Have been in active existence for at least five years;

d. Have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees;

e. Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

f. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);

g. Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

h. Meets such additional requirements as may be imposed under the laws of this Commonwealth.

2. The policy shall be subject to the following requirements:

a. The policy may insure members of such association or associations, employees thereof or

employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members.

3. Except as provided in subdivision 4, a policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing.

4. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

5. For a policy issued in the large group market and notwithstanding the provisions of § 38.2-3449, an insurer may (i) establish base rates formed on an actuarially sound, modified community rating methodology that considers the pooling of all participant claims and (ii) utilize each employer member's specific risk profile to determine contribution rates for each individual employer member's share of the premium by actuarially adjusting above or below established base rates.

F. A policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees, or agent shall be deemed the policyholder, to insure members of such credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials, subject to the following requirements:

1. The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes thereof.

2. The premium for the policy shall be paid by the policyholder from the credit union's funds and, except as provided in subdivision 3, must insure all eligible members.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

G. Notwithstanding the provisions of subsection J, a policy issued to an association of real estate salespersons, as defined in ~~§ 54.1-2101~~ § 54.1-2100, which association shall be deemed the policyholder, to insure members of such association, subject to the following requirements:

1. All of the members of such association shall be eligible for coverage. Members shall include (i) an employer member with at least one employee that is domiciled in the Commonwealth or (ii) a self-employed individual who (a) has an ownership right in a "trade or business," regardless of whether the trade or business is incorporated or unincorporated, (b) earns wages or self-employment income from the trade or business, and (c) works at least 20 hours a week or 80 hours a month providing personal services to the trade or business or earns income from the trade or business that at least equals the self-employed individual's cost of the health coverage.

2. The association shall (i) have at the outset a minimum of 25,000 members, (ii) have been organized and maintained in good faith for purposes other than that of obtaining insurance, (iii) have been in active existence for at least five years, and (iv) have a constitution and bylaws that provide that (a) the association hold regular meetings not less than annually to further purposes of the members, (b) the association collects dues or solicits contributions from members, and (c) the members have voting privileges and representation on the governing board and committees.

3. In no case shall membership in the association be conditioned on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee.

4. The health insurance coverage offered through the association shall be available to all members regardless of any health status-related factor relating to such members or individuals eligible for coverage through a member.

5. The association shall not make health insurance coverage offered through the association available other than in connection with a member of the association.

6. The premium for the policy shall be paid from funds contributed by the association or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association or employer members.

7. The policy issued to such an association shall (i) be considered a large group market plan subject to all coverage mandates applicable to a large group market plan offered in the Commonwealth and the large group market insurance regulations under the federal Public Health Service Act, P.L. 78-410, as amended; (ii) be subject to the group health plan coverage requirements under the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended; (iii) be prohibited from denying coverage under the policy on the basis of a preexisting condition as set forth in § 38.2-3444; (iv) be guaranteed issue and guaranteed renewable; (v) notwithstanding the provisions of subsection A of § 38.2-3451 providing that a large group market plan is not required to provide coverage for essential health benefits in a manner that exceeds the requirements of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended, as of January 1, 2019, be subject to the requirements to provide essential health benefits and cost-sharing requirements as set forth in § 38.2-3451; and (vi) offer

a minimum level of coverage designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

8. The insurer issuing such a policy shall (i) treat all of the members and employees of employer members who are enrolled in coverage under the policy as a single risk pool; (ii) set premiums on the basis of all of the collective group experience of the members and employees of employer members who are enrolled in coverage under the policy; (iii) be permitted to vary premiums by age, but such rate shall not vary by more than four to one for adults; (iv) be prohibited from varying premiums on the basis of gender; (v) be prohibited from varying premiums on the basis of the health status of an individual employee of an employer member or a self-employed individual member; and (vi) not establish discriminatory rules based on the health status of an employer member, an individual employee of an employer member, or a self-employed individual for eligibility or contribution.

9. A policy that meets the requirements of subdivisions 7 and 8 shall be considered to be compliant with the large group market insurance regulations under the federal Public Health Service Act, P.L. 78-410, as amended, and, as such, the Commonwealth, through the regulation of such policy by the Commission, shall be considered to be substantially enforcing the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended, with regard to such policy. The Commission shall regulate the policy in a manner that is consistent with this subdivision. In any case in which a federal agency renders a decision that is contrary to the provisions of this subdivision, notwithstanding any other provision of law, the Attorney General may resolve any difference between federal law and the laws of the Commonwealth.

H. A policy issued to a health maintenance organization as provided in subsection B of § 38.2-4314.

I. A policy of blanket insurance issued in accordance with § 38.2-3521.2.

J. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

§ 54.1-2100. Definitions.

As used in this chapter:

"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited institution of higher education, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

"Real estate broker" means any individual or business entity, including a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55.1-2100, or time-shares in a time-share program even though they may be deemed to be securities; (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others; or (iii) *sells or offers to sell, buys or offers to buy, or negotiates or otherwise deals in real estate contracts, including assignable contracts, on two or more occasions in any 12-month period.*

"Real estate salesperson" means any individual or business entity who is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker to perform the duties of a real estate broker for compensation or valuable consideration.

"Real estate team" means two or more individuals, one or more of whom is a real estate salesperson or broker, who (i) work together as a unit within the same brokerage firm, (ii) represent themselves to the public as working together as one unit, and (iii) designate themselves by a fictitious name.

"Supervising broker" means a real estate broker who has been designated by a principal broker to supervise the provision of real estate brokerage services by associate brokers and salespersons assigned to a branch office or a real estate team.

§ 54.1-2103. Exemptions from chapter.

A. The provisions of this chapter shall not apply to:

1. Any person, partnership, association, corporation, entity, or their regular employees, who as owner or lessor perform any of the acts enumerated in ~~§§ 54.1-2100 and 54.1-2101~~ § 54.1-2100 with reference to property owned or leased by them, where the acts are performed in the regular course of or incident to the management of the property and the investment therein. For property governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the term "owner" for purposes of this subdivision shall include affiliated entities, provided that (i) the owner has a controlling interest in the affiliated entity or (ii) the affiliated entity and the owner have a common parent company;

2. Any person acting without compensation as attorney-in-fact under a power of attorney issued by a property owner solely for the purpose of authorizing the final performance required of such owner under a contract for the sale, lease, purchase, or exchange of real estate;

3. Service rendered by an attorney-at-law in the performance of his duties as such;

4. A person acting as a receiver, trustee in bankruptcy, administrator or executor, or any person

305 selling real estate under order of any court;

306 5. A trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees
307 thereof;

308 6. Any corporation managing rental housing when the officers, directors, and members in the
309 ownership corporation and the management corporation are the same and the management corporation
310 manages no other property for other persons, partnerships, associations, or corporations;

311 7. Any existing tenant of a residential dwelling unit who refers a prospective tenant to the owner of
312 the unit or to the owner's duly authorized agent or employee and for the referral receives, or is offered,
313 a referral fee from the owner, agent or employee;

314 8. Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) of this title selling real
315 estate at public auction when employed for such purpose by the owner of the real estate and provided
316 the bidding at such auction is held open for no longer than forty-eight hours. An auctioneer shall not
317 advertise that he is authorized to sell real estate. An auctioneer may advertise for sale at public auction
318 any real estate when employed to do so as herein provided, and may advertise that he is authorized to
319 auction real estate at public auction;

320 9. [Expired.]

321 10. Any person who is licensed and is in good standing as a real estate broker or salesperson in
322 another state, and who assists a prospective purchaser, tenant, optionee, or licensee located in another
323 state to purchase, lease, option, or license an interest in commercial real estate, as defined in
324 § 55.1-1100, in the Commonwealth. Such real estate licensee from another state may be compensated by
325 a real estate broker in the Commonwealth. Nothing in this subdivision shall be construed to permit any
326 person not licensed and in good standing as a real estate broker or salesperson in the Commonwealth to
327 otherwise act as a real estate broker or salesperson under this chapter.

328 B. The provisions of this chapter shall not prohibit the selling of real estate (i) by an attorney-at-law
329 in the performance of his duties as such, (ii) by a receiver, trustee in bankruptcy, administrator or
330 executor, a special commissioner or any person selling real estate under order of court, or (iii) by a
331 trustee acting under the trust agreement, deed of trust or will, or the regular salaried employees thereof.

332 C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real
333 estate broker for and on behalf of the owner of any real estate or the improvements thereon which the
334 licensed broker has contracted to manage for the owner if the actions of such salaried employee are
335 limited to (i) exhibiting residential units on such real estate to prospective tenants, if the employee is
336 employed on the premises of such real estate; (ii) providing prospective tenants with factual information
337 about the lease of residential real estate; (iii) accepting applications for lease of such real estate; and (iv)
338 accepting security deposits and rentals for such real estate. Such deposits and rentals shall be made
339 payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate
340 the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such
341 owner or broker.

342 D. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that
343 the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection
344 shall be construed to require a person to be licensed in accordance with this chapter if he would be
345 otherwise exempt from such licensure.

346 E. An attorney-at-law referring a client to a licensee shall not be entitled to receive any
347 compensation from a listing firm or offered by a common source information company to cooperating
348 brokers, unless the attorney is also licensed under this chapter as a real estate broker or salesperson.

349 **2. That §§ 54.1-2101 and 54.1-2107 of the Code of Virginia are repealed.**