

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-1833, 38.2-1834, and 38.2-1834.1 of the Code of Virginia, relating to insurance agents; appointments and terminations.

[H 1778]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1833, 38.2-1834, and 38.2-1834.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1833. Appointments of agents.

A. Subject to the requirement of § 38.2-1801, every licensed agent may sell policies and solicit applications for insurance for any one or more of the classes of insurance for which he is licensed on behalf of an insurer (i) also licensed in ~~this~~ *the* Commonwealth for those classes of insurance and (ii) by which the licensed agent has not yet been validly appointed, subject to the following requirements:

1. The insurer shall, within 30 calendar days of the date of execution of the first insurance application or policy submitted by a licensed but not yet appointed agent, either reject such application or policy or ~~file with the~~ *notify the* Commission a ~~notice of the~~ *notice* of the appointment in a ~~form~~ *manner* acceptable to the Commission. ~~The Commission shall provide a means whereby an~~ *An* insurer may elect to appoint an agent to represent all or some of the insurers within the insurer's holding company system or group by the submission of a single notice of appointment for each appointment type applicable.

2. The insurer shall provide to the licensed agent, within the same 30-day period, a verification that the notice of appointment ~~has been filed with~~ *was provided to* the Commission.

3. ~~Upon receipt of the notice of appointment, the Commission shall verify that the agent holds a valid license and that the notice has been properly completed and submitted. The Commission shall notify the appointing insurer if the appointment of the agent is invalid within five business days of its receipt of the appointment notice, and the insurer shall notify the agent in writing of the invalid appointment within five business days of receiving such notice from the Commission. Any agent who sells or solicits insurance on behalf of the insurer after being notified of an invalid appointment shall be in violation of this section and shall be subject to penalties as prescribed in §§ 38.2-218 and 38.2-1831.~~

4. ~~An agent whose appointment by an insurer has been terminated by the insurer shall be prohibited from selling or soliciting applications or policies on behalf of that insurer unless and until reappointed by the insurer. Any such selling or solicitation on behalf of that insurer subsequent to such appointment termination and prior to such reappointment shall constitute a violation of this section by the agent and shall subject the agent to penalties as prescribed in §§ 38.2-218 and 38.2-1831.~~

B. Each agent's appointment record shall be public information and shall be available for public inspection during normal business hours of the Commission. ~~The Commission may charge a reasonable fee to cover the costs incurred in providing this information.~~

C. Each insurer shall pay a nonrefundable appointment processing fee, in an amount prescribed by the Commission, for each appointment notification submitted by the insurer to the Commission.

D. The prescribed appointment fee shall not be less than \$7 nor more than \$25.

E. Such fees shall be billed to the insurer by the Commission on a quarterly basis and shall be due and payable on August 10 for the quarter ending June 30, on November 10 for the quarter ending September 30, on February 10 for the quarter ending December 31, and on May 10 for the quarter ending March 31. In the event that a due date falls on a weekend or holiday, payment shall be due on the first business day following such due date.

F. Such quarterly billing shall include all appointment notifications submitted by the insurer during the immediately preceding quarter, regardless of the current status of any such appointments.

G. All appointment processing fees collected by the Commission, as well as penalties collected pursuant to subsection H, shall be paid directly into the state treasury and ~~placed~~ *credited* to the credit of the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

H. Upon the failure of the insurer to pay amounts due under this section by the date due, the Commission:

1. ~~Shall impose a penalty of \$50 per day for each day between the date due and the date full payment is received by the Commission. The appointment fees described above shall not be considered paid in full unless and until the penalty described herein has been received by the Commission; and~~

2. ~~May, in addition to the penalty imposed above, administratively terminate the appointment of each agent on whose behalf the appointment processing fee, including any penalty imposed pursuant to this section, was not received by the Commission by the date due and after the insurer has been given due notice~~

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and an opportunity to submit the overdue payment.

§ 38.2-1834. Duration of appointment; annual renewal of agent's appointment.

A. A valid appointment of an agent shall authorize the agent to act for the insurer during the time for which the appointing insurer is licensed to do business in ~~this~~ the Commonwealth, unless such appointment is otherwise terminated, suspended, or revoked. No later than 10 calendar days after notice of the termination, suspension, or revocation of an appointment has been sent to the agent or agency, the agent or agency shall immediately cease selling or soliciting on behalf of such insurer.

B. ~~Prior to August 10 of each year, or the first business day thereafter if August 10 falls on a weekend or holiday, every~~ Except as provided in § 38.2-1834.1, upon the termination of the appointment of an agent by an insurer, the insurer shall notify the agent of such termination within five calendar days and promptly notify the Commission in a manner acceptable to the Commission.

C. An appointment of an agent holding a restricted or limited license shall authorize such agent to sell, solicit, or negotiate only those classes of insurance specifically included in such agent's license authority.

D. Each insurer shall remit in a manner and amount prescribed by the Commission a renewal appointment fee, for each appointment ~~for which unless a notice of appointment termination was not received by the Commission on or before the preceding June 30, in an amount prescribed by the Commission, which shall be collected by the Commission and, along with any penalties collected pursuant to subsection C, and shall be paid directly into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.~~

~~E. The prescribed appointment fee shall not be less than \$7 nor more than \$25.~~

F. Upon the failure of the insurer to pay amounts due ~~under this section for appointments by the date due,~~ set by the Commission:

1. ~~Shall impose~~ The insurer may be subject to a penalty of \$50 per day for each calendar day between the date due and the date full payment is received by the Commission. The renewal appointment fees described above shall not be considered paid in full unless and until the penalty described herein has been received by the Commission pursuant to § 38.2-218; and

2. ~~May~~ The Commission may, in addition after the insurer has been given due notice and an opportunity to pay the penalty imposed above amount due, administratively terminate the appointment of each agent on whose behalf the appointment renewal fee, including any penalty imposed pursuant to this section, was not received by the Commission by the date due and after the insurer has been given due notice and an opportunity to submit the overdue payment.

~~D. Except as provided in § 38.2-1834.1, upon the termination of the appointment of an~~ G. An agent whose appointment by an insurer; the insurer shall notify the agent of has been terminated by the insurer is prohibited from selling or soliciting applications or policies on behalf of that insurer unless and until reappointed by the insurer. Any such selling or solicitation on behalf of that insurer after such appointment termination within five calendar days and the Commission, except as provided in subsection B shall constitute a violation of this section; within 30 calendar days in a manner acceptable to the Commission; whereupon termination of the agent's appointment to represent the insurer shall be recorded by the Commission and shall subject the agent to penalties as prescribed in §§ 38.2-218 and 38.2-1831.

E. Any license in effect on January 1, 1986, shall be deemed to be an appointment for the unexpired term of that license. Certificates of qualifications issued prior to January 1, 1986, shall be deemed to be the license required by this chapter.

F. An appointment of an agent holding a restricted or limited license shall authorize such agent to sell, solicit, or negotiate only those classes of insurance specifically included in such agent's license authority.

§ 38.2-1834.1. Notification to Commission of termination; notice to agent; immunities; confidentiality; penalties.

A. ~~An~~ If an insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an agent or other licensee under this chapter for a reason set forth in § 38.2-1831 or the insurer has knowledge that the agent was found by a court, government body, or legally authorized self-regulatory organization to have engaged in any of the prohibited conduct described in §§ 38.2-1356, 38.2-1363, 38.2-1831, or 38.2-1843, the insurer or authorized representative shall ~~notify~~ certify in writing to the Commission within ~~thirty~~ 30 calendar days following the effective date of the termination, using a format prescribed by the Commission, if the reason for such termination is one of the reasons set forth in § 38.2-1831 or the insurer has knowledge the agent was found by a court, government body, or legally authorized self-regulatory organization authorized by law to have engaged in any of the activities in § 38.2-1356, 38.2-1363, 38.2-1831 or 38.2-1843. The propriety of any such termination for cause shall be certified in writing by an officer or authorized representative of the insurer or agent terminating the relationship. Upon the written request of the Commission, the insurer or authorized representative shall provide additional information, documents, records, or other data pertaining to the termination or activity of the agent or other licensee.

B. The insurer or the authorized representative of the insurer shall promptly notify the Commission in a format acceptable to the Commission if, upon further review or investigation, the insurer discovers additional

information that would have been reportable to the Commission in accordance with subsection A had the insurer then known of its existence.

C. 1. Within ~~fifteen~~ 15 calendar days after making the notification required by subsections A and B, the insurer shall mail a copy of the notification to the agent at his last known address pursuant to the insurer's records. If the agent is terminated for cause for any of the reasons listed in § 38.2-1831, the insurer shall provide a copy of the notification to the agent at his last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

2. Within ~~thirty~~ 30 calendar days after the agent has received the original or additional notification, the agent may file written comments concerning the substance of the notification with the Commission in the form and manner required by the Commission. The agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Commission's file and accompany every copy of a report distributed or disclosed for any reason about the agent as permitted under subsection D.

D. 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Commission, authorized representatives of the Commission, the NAIC, its affiliates or subsidiaries, or state, federal, and international law-enforcement authorities shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Commission, from an insurer or agent, or a statement by a terminating insurer or agent to an insurer or agent limited solely and exclusively to whether a termination for cause under subsection A was reported to the Commission, provided that the propriety of any termination for cause under subsection A is certified in writing, pursuant to subsection A of this section, by an officer or authorized representative of the insurer or agent terminating the relationship.

2. In any action brought against a person that may have immunity under subdivision 1 for making any statement required by this section or providing any information relating to any statement that may be requested by the Commission, the party bringing the action shall plead specifically in any allegation that subdivision 1 does not apply because the person making the statement or providing the information did so with actual malice.

3. Subdivision 1 or 2 shall not abrogate or modify any existing statutory or common law privileges or immunities.

E. 1. Any documents, materials, or other information in the control or possession of the Commission that is furnished by an insurer, an agent, or an employee thereof acting on behalf of the insurer or agent, or obtained by the Commission in an investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

2. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision 1.

3. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

a. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to subdivision 1, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with local, state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

b. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates or subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

4. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subdivision 3.

5. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions, including for cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1 to a database or other clearinghouse service maintained by the NAIC, its affiliates, or subsidiaries of the NAIC.

F. An insurer, the authorized representative of the insurer, or agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and an opportunity to be heard, have its license or certificate of authority

181 suspended or revoked and may be fined in accordance with Chapter 2 (§ 38.2-200 et seq.) ~~of this title.~~