

1 HOUSE BILL NO. 89

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Commerce and Labor

4 on _____)

5 (Patron Prior to Substitute--Delegate Kilgore)

6 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.

7 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter
8 numbered 29.1, consisting of sections numbered 38.2-2914 through 38.2-2921, relating to the
9 establishment of the Virginia Wind Catastrophe Fund; wind insurance pool.

10 Be it enacted by the General Assembly of Virginia:

11 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
12 Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title
13 38.2 a chapter numbered 29.1, consisting of sections numbered 38.2-2914 through 38.2-2921, as
14 follows:

15 § 38.2-602. Definitions.

16 As used in this chapter:

17 "Adverse underwriting decision" means:

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

20 a. A declination of insurance coverage;

21 b. A termination of insurance coverage;

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

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

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

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

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

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

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

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

37 c. The rescission of a policy.

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

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

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

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

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

50 "Consumer reporting agency" means any person who:

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

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

54 3. Furnishes consumer reports to other persons.

55 "Control," including the terms "controlled by" or "under common control with," means the,
56 possession, direct or indirect, of the power to direct or cause the direction of the management and;
57 policies of a person, whether through the ownership of voting securities, by contract other than a
58 commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result
59 of an official position with or corporate office held by the person.

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

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

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

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

70 "Individual" means any natural person who:

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

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

75 3. Is a past, present or proposed policyowner;

76 4. Is a past or present applicant;

77 5. Is a past or present claimant;

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

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

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

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

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

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

- 94 1. An agent;
95 2. The individual who is the subject of the information; or
96 3. A natural person acting in a personal capacity rather than in a business or professional
97 capacity.

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

103 "Insurance-support organization" means any person who regularly engages, in whole or in part,
104 in the practice of assembling or collecting information about natural persons for the primary purpose of
105 providing the information to an insurance institution or agent for insurance transactions, including (i) the
106 furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for
107 use in connection with an insurance transaction or (ii) the collection of personal information from

108 insurance institutions, agents or other insurance-support organizations for the purpose of detecting or
109 preventing fraud, material misrepresentation or material nondisclosure in connection with insurance
110 underwriting or insurance claim activity. However, the following persons shall not be considered
111 "insurance-support organizations" for purposes of this chapter: agents, governmental institutions,
112 insurance institutions, medical-care institutions and medical professionals.

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

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

116 or

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

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

122 "Joint marketing agreement" means a formal written contract pursuant to which an insurance
123 institution jointly offers, endorses, or sponsors a financial product or service with another financial
124 institution.

125 "Life insurance" includes annuities.

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

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

134 "Medical-record information" means personal information that:

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

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

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

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

148 "Policyholder" means any person who:

- 149 1. In the case of individual property or casualty insurance, is a present named insured;
150 2. In the case of individual life or accident and sickness insurance, is a present policyowner; or
151 3. In the case of group insurance that is individually underwritten, is a present group certificate
152 holder.

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

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

- 158 1. Pretends to be someone he or she is not;
159 2. Pretends to represent a person he or she is not in fact representing;
160 3. Misrepresents the true purpose of the interview; or
161 4. Refuses to identify himself or herself upon request.

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

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

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

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

175 § 38.2-1343. Minimum standards.

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

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

182 1. The controlling producer (i) places insurance only with the controlled insurer, or only with the
183 controlled insurer and a member or members of the controlled insurer's holding company system, or the
184 controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount
185 of premiums written in connection with such insurance and (ii) accepts insurance placements only from
186 nonaffiliated subproducers and not directly from insureds; and

187 2. The controlled insurer, except for insurance business written through a residual market facility
188 such as the Virginia Automobile Insurance Plan, as set forth in § 38.2-2015, ~~or the Virginia Property~~

189 Insurance Association, as set forth in Chapter 27 (§ 38.2-2700 et seq.), or the Virginia Wind Catastrophe
190 Fund, as set forth in Chapter 29.1 (§ 38.2-2914 et seq.), accepts insurance business only from a
191 controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of
192 the controlled insurer.

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

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

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

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

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

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

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

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

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

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

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

240 11. The controlling producer may negotiate but shall not bind reinsurance on behalf of the
241 controlled insurer on business the controlling producer places with the controlled insurer, except that the
242 controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative

243 agreements if the contract with the controlled insurer contains underwriting guidelines including, for
244 both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in
245 effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

246 D. Every controlled insurer shall have an Audit Committee of the Board of Directors composed
247 of independent directors. The Audit Committee shall annually meet with management, the insurer's
248 independent certified public accountants, and an independent casualty actuary or other independent loss
249 reserve specialist acceptable to the Commission to review the adequacy of the insurer's loss reserves.

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

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

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

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

262 § 38.2-1902. Scope of chapter.

263 A. Except as provided in subsection B of this section, this chapter applies to the classes of
264 insurance defined in §§ 38.2-110 through 38.2-122, 38.2-124 through 38.2-128 and 38.2-130 through
265 38.2-133.

266 B. This chapter does not apply to:

267 1. Insurance written through the Virginia Workers' Compensation Plan pursuant to Chapter 20 (§
268 38.2-2000 et seq.) of this title;

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

270 3. Reinsurance, other than joint reinsurance, to the extent stated in § 38.2-1915;
271 4. Life insurance as defined in § 38.2-102;
272 5. Annuities as defined in §§ 38.2-106 and 38.2-107;
273 6. Accident and sickness insurance as defined in § 38.2-109;
274 7. Title insurance as defined in § 38.2-123;
275 8. Insurance of vessels or craft used primarily in a trade or business, their cargoes, marine
276 builders' risks and marine protection and indemnity;
277 9. Insurance against loss of or damage to hulls of aircraft, including their accessories and
278 equipment, or against liability, other than workers' compensation and employers' liability, arising out of
279 the ownership, maintenance or use of aircraft;
280 10. Automobile bodily injury and property damage liability insurance issued to: (i) any motor
281 carrier of property who is required to file such insurance with the Department of Motor Vehicles
282 pursuant to § 46.2-2053 or any amendment to that section; or (ii) any motor carrier of property required
283 by 49 U.S.C.A. § 315, or any rule or regulation prescribed by the Interstate Commerce Commission
284 pursuant to 49 U.S.C.A. § 315, to file such insurance with the Interstate Commerce Commission;
285 11. Insurance written through the Virginia Automobile Insurance Plan. However, § 38.2-1905
286 shall apply to insurance written through the Plan;
287 12. Insurance provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) ~~of this title~~;
288 13. Insurance provided pursuant to Chapter 29.1 (§ 38.2-2914 et seq.); or
289 14. Home protection contracts as defined by § 38.2-2600 and their rates until such time as the
290 Commission determines there is sufficient competition in the industry as provided by § 38.2-2608.
291 C. This chapter shall not apply to any class of insurance written (i) by any mutual assessment
292 property and casualty insurance company organized and operating under the laws of this
293 Commonwealth and doing business only in this Commonwealth or (ii) by any mutual insurance
294 company or association organized under the laws of this Commonwealth, conducting business only in
295 this Commonwealth, and issuing only policies providing for perpetual insurance.
296 § 38.2-2001. Insurance to which chapter applies.

297 This chapter applies only to (i) insurance written through the Virginia Workers' Compensation
298 Insurance Plan, (ii) the coverages provided in the Virginia Automobile Insurance Plan, (iii) the
299 coverages provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) ~~of this title~~, (iv) home protection
300 contracts as defined by § 38.2-2600, ~~and (v) the coverages provided pursuant to Chapter 29.1 (§ 38.2-~~
301 ~~2914 et seq.)~~, and (vi) policies and endorsements of credit involuntary unemployment insurance, as
302 defined in § 38.2-122.1, and policies and endorsements of credit property insurance, as defined in §
303 38.2-122.2, delivered or issued for delivery in this Commonwealth, and certificates of credit involuntary
304 unemployment insurance and certificates of credit property insurance delivered or issued for delivery in
305 this Commonwealth where the group policy is delivered in another state.

306 § 38.2-2113. Mailing or electronic delivery of notice of cancellation or refusal to renew.

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

310 1. a. It is sent by registered or certified mail;

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

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

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

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

321 3. ~~[Repeated.]~~

322 B. This section shall not apply to policies written through the Virginia Property Insurance
323 Association or any other residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.)

324 of this title or through the Virginia Wind Catastrophe Fund established pursuant to Chapter 29.1 (§ 38.2-
325 2914 et seq.).

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

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

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

342 § 38.2-2114. Grounds and procedure for termination of policy; contents of notice; review by
343 Commissioner; exceptions; immunity from liability.

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

347 1. Failure to pay the premium when due;

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

350 3. Discovery of fraud or material misrepresentation;

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

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

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

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

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

365 1. State the date that the insurer proposes to terminate the policy or contract, which shall be at
366 least 30 days after mailing or delivering to the named insured the notice of cancellation or refusal to
367 renew. However, when the policy is being terminated for the reason set forth in subdivision 1 of
368 subsection A of this section, the date that the insurer proposes to terminate the policy may be less than
369 30 days but at least 10 days from the date of mailing or delivery;

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

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

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

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

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

393 E. Nothing in this section shall apply:

394 1. To any policy written to insure owner-occupied dwellings that has been in effect for less than
395 90 days when the notice of termination is mailed or delivered to the insured, unless it is a renewal
396 policy;

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

402 3. If the named insured or his duly constituted attorney-in-fact has notified the insurer or its
403 agent orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the

404 policy to be canceled, or that he does not wish the policy to be renewed, or if, prior to the date of
405 expiration, he fails to accept the offer of the insurer to renew the policy;

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

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

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

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

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

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

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

430 1. Age;

431 2. Sex;

432 3. Residence;

433 4. Race;

434 5. Color;

435 6. Creed;

436 7. National origin;

437 8. Ancestry;

438 9. Marital status;

439 10. Lawful occupation, including the military service; however, nothing in this subsection shall

440 require any insurer to renew a policy for an insured where the insured's occupation has changed so as to

441 increase materially the risk;

442 11. Credit information contained in a "consumer report," as defined in the federal Fair Credit

443 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing

444 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit

445 information shall be based on a consumer report procured within 120 days from the effective date of the

446 nonrenewal;

447 12. Any claim resulting primarily from natural causes;

448 13. One or more claims that were incurred more than 60 months immediately prior to the

449 expiration of the current policy period; or

450 14. Any inquiry from an insured about his insurance coverage or policy provisions. For purposes

451 of this subdivision, "inquiry" means a written or oral communication by an insured seeking information

452 regarding coverage or policy provisions that does not notify the insurer of a loss, incident or accident,

453 and that does not provide information indicating an increase in the hazard insured against. An insurer

454 shall not report any inquiry as a claim to a loss history database maintained by a consumer reporting

455 agency or insurance support organization.

456 Nothing in this section prohibits any insurer from setting rates in accordance with relevant

457 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,

VIRGINIA WIND CATASTROPHE FUND.

§ 38.2-2914, Definitions.

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

"Actuarially indicated" means, with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to repay moneys borrowed under § 38.2-2918, and determined according to principles of actuarial science to reflect each insurer's relative exposure to losses from covered events.

"Council" means the Virginia Wind Catastrophe Fund Advisory Council established pursuant to § 38.2-2920.

"Covered event" means:

1. All storms, regardless of quantity, that occur in a calendar year, that are declared to be hurricanes by the National Hurricane Center, which storms cause insured losses in the Commonwealth; and

2. All earthquakes, regardless of quantity, that occur in a calendar year, that are declared to be earthquakes by the United States Geological Survey, which earthquakes cause insured losses in the Commonwealth.

"Covered loss" means loss under a covered policy resulting from a covered event.

"Covered policy" means any insurance policy covering residential property in the Commonwealth, including any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including the Virginia

485 Property Insurance Association, or any other similar entity created pursuant to law. "Covered policy"
486 does not include any reinsurance agreement or any policy that excludes coverage for covered losses.

487 "Fund" means the Virginia Wind Catastrophe Fund created pursuant to § 38.2-2915.

488 "Losses" means direct incurred losses under covered policies in a calendar year, including losses
489 attributable to additional living expense coverage not to exceed 40 percent of the insured value of a
490 residential structure or its contents and excluding loss adjustment expenses and fair rental value losses
491 and business interruption losses.

492 "Retention" means the minimum amount of losses below which an insurer is not entitled to
493 reimbursement from the fund. An insurer's retention shall be calculated as follows:

494 1. The State Treasurer shall calculate and report to each insurer the retention multiples for each
495 year. For the initial contract year following creation of the fund, the retention multiple shall be equal to
496 \$2 billion divided by the total estimated reimbursement premium for the contract year; for subsequent
497 years, the retention multiple shall be equal to \$2 billion adjusted to reflect the percentage growth in
498 insured values for covered policies since creation of the fund, divided by the total estimated
499 reimbursement premium for the contract year.

500 2. The retention multiple determined under subdivision 1 of this definition shall be adjusted to
501 reflect the coverage level elected by the insurer. For insurers electing the 90 percent coverage level, the
502 adjusted retention multiple is 100 percent of the amount determined under subdivision 1 of this
503 definition. For insurers electing the 75 percent coverage level, the retention multiple is 120 percent of
504 the amount determined under subdivision 1 of this definition. For insurers electing the 45 percent
505 coverage level, the adjusted retention multiple is 200 percent of the amount determined under
506 subdivision 1 of this definition.

507 3. An insurer shall determine its provisional retention by multiplying its provisional
508 reimbursement premium by the applicable adjusted retention multiple, and shall determine its actual
509 retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple;

510 4. To the extent that the Virginia Wind Catastrophe Fund collects federal backstop or reinsurance
511 moneys designed to provide protection above the financial capacity of the fund as provided by this
512 chapter, the insurer elected coverage levels shall automatically become 100 percent.

513 § 38.2-2915. Creation of Virginia Wind Catastrophe Fund.

514 Upon the enactment of federal law providing for the creation of a National Catastrophe
515 Reinsurance Fund that provides a financial backstop to state catastrophe funds designed to provide
516 national reinsurance to state catastrophe funds, there shall be created the Virginia Wind Catastrophe
517 Fund to be administered by the State Treasurer. Moneys in the fund may not be expended, loaned, or
518 appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into
519 pursuant to § 38.2-2916; payment of debts incurred pursuant to § 38.2-2918; costs of the mitigation
520 program under § 38.2-2919; costs of procuring reinsurance; and costs of administration of the fund. The
521 State Treasurer shall invest the moneys in the fund. Except as otherwise provided in this chapter,
522 earnings from all investments shall be retained in the fund. The State Treasurer may employ or contract
523 with such staff and professionals as the State Treasurer deems necessary for the administration of the
524 fund.

525 § 38.2-2916. Contracts with insurers.

526 A. The State Treasurer shall enter into an annual, calendar year contract with each insurer
527 writing covered policies in the Commonwealth to provide to the insurer the reimbursement described in
528 subsection B, in exchange for the reimbursement premium paid to the fund pursuant to § 38.2-2917;
529 Insurers writing covered policies shall enter into the contract as a condition of doing business in the
530 Commonwealth.

531 B. The contract shall contain a promise by the State Treasurer to reimburse the insurer for 45
532 percent, 75 percent, or 90 percent of its losses from each covered loss in excess of the insurer's retention,
533 plus 10 percent of the reimbursed losses to cover loss adjustment expenses, subject to the provisions of
534 subdivision 4 of the definition of retention in § 38.2-2914.

535 C. The insurer shall elect one of the payment percentages specified in this section and may, upon
536 renewal of a reimbursement contract;

537 1. Elect a lower payment percentage if no debt incurred under § 38.2-2918 after a covered event
538 is outstanding; or

539 2. Elect a higher payment percentage if it pays to the fund an actuarially appropriate equalization
540 charge as determined by the State Treasurer.

541 D. All members of an insurer group shall elect the same payment percentage. The Virginia
542 Property Insurance Association or any other similar plan or other residual market entity shall elect the 90
543 percent payment percentage.

544 E. The contract shall provide that:

545 1. Reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer
546 from other sources; however, recoveries from such other sources, taken together with reimbursements
547 under the contract, may not exceed 100 percent of the insurer's losses from covered events. If those
548 recoveries and reimbursements exceed 100 percent of the insurer's losses from covered events, and if
549 there is no agreement between the insurer and the reinsurer to the contrary, any amount in excess of 100
550 percent of the insurer's losses shall be returned to the fund;

551 2. The obligation of the State Treasurer with respect to all contracts covering a particular year
552 shall not exceed the current balance of the fund, together with the maximum amount that the State
553 Treasurer is able to borrow under § 38.2-2918. The contract shall require the State Treasurer to annually
554 notify insurers of the fund's anticipated borrowing capacity for the next year, the current balance of the
555 fund, and the insurer's estimated share of total reimbursement to be paid to the fund. For all regulatory
556 and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the
557 total fund premium multiplied by the sum of current fund balance and borrowing capacity as reported
558 under this subsection. In May and October of each year, the State Treasurer shall publish in the Virginia
559 Register of Regulations a statement of the fund's anticipated borrowing capacity and the current balance
560 of the fund;

561 3. The insurer shall report the insurer's losses from covered events for the year to the State
562 Treasurer on December 31 of each year, and quarterly thereafter. The contract shall require the State
563 Treasurer to determine and pay, as soon as practicable after receiving these reports, the initial amount of

564 reimbursement due and adjustments to this amount based on later loss information. The adjustments to
565 reimbursement amounts shall require the State Treasurer to pay, or the insurer to return, amounts
566 reflecting the most recent calculation of losses. If the State Treasurer determines that the current balance
567 of the fund together with the amount that the State Treasurer borrows under § 38.2-2918 are insufficient
568 to pay reimbursement to all insurers at the level promised in the contract, the State Treasurer shall:

569 a. Pay to each insurer the amount of reimbursement it is owed, up to an amount equal to the
570 projected payout determined under subsection B; and

571 b. Thereafter, establish the prorated reimbursement level at the highest level for which any
572 remaining fund balance or loan proceeds are sufficient;

573 4. If an insurer demonstrates to the State Treasurer that it is likely to qualify for reimbursement
574 under the contract, and demonstrates to the State Treasurer that the immediate receipt of moneys is
575 likely to prevent the insurer from becoming insolvent, the State Treasurer shall lend to the insurer, at
576 market interest rates, the amounts necessary to maintain the solvency of the insurer, up to 50 percent of
577 the State Treasurer's estimate of the reimbursement due the insurer. The insurer's reimbursement shall
578 be reduced by an amount equal to the amount of the loan and interest thereon; and

579 5. In the event of the insolvency of an insurer, the fund shall pay directly to the Virginia Property
580 and Casualty Insurance Guaranty Association, hereafter the "Guaranty Association," the net amount of
581 reimbursement moneys owed to the insurer. As used in this subdivision, the "net amount of
582 reimbursement moneys" means that amount that remains after reimbursement for preliminary or
583 duplicate payments owed to private reinsurers or other reinsurance payments inuring to private
584 reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered
585 events to those reinsurers. Private reinsurers shall be reimbursed or otherwise paid prior to payment to
586 the Guaranty Association, notwithstanding any law to the contrary. The Guaranty Association shall pay
587 all claims up to the maximum amount permitted by law. Thereafter, any remaining moneys shall be paid
588 pro rata to claims not fully satisfied.

589 F. The State Treasurer shall adopt the initial contract form no later than September 1 of the year
590 immediately following creation of the fund and shall adopt the initial premium formula no later than

591 October 1 of the year immediately following creation of the fund. Initial reimbursement contracts under
592 this chapter shall be entered into no earlier than November 1, and no later than December 15, of the
593 same year.

594 § 38.2-2917. Reimbursement premiums.

595 A. Each reimbursement contract shall require the insurer to annually pay to the fund an
596 actuarially indicated premium for the reimbursement promised.

597 B. The State Treasurer shall select an independent consultant to develop a formula for
598 determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each
599 zip code or other limited geographical area, the amount to be paid by an insurer for each \$1,000 of
600 insured value under covered policies in that zip code or other area. In establishing premiums, the State
601 Treasurer shall consider the coverage level elected under subsection B of § 38.2-2916 and any factors
602 that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type
603 of construction, type of coverage provided, relative concentration of risks, a factor providing for more
604 rapid cash buildup in the fund until the fund capacity for a single covered season is fully funded, and
605 other factors determined by the State Treasurer to be appropriate. The State Treasurer may, at any time,
606 revise the formula pursuant to the procedure provided in this section.

607 C. No later than September 1 of each year, each insurer shall notify the State Treasurer of its
608 insured values under covered policies by zip code, as of June 30 of that year. On the basis of these
609 reports, the State Treasurer shall calculate the premium due from the insurer, based on the formula
610 adopted under subsection B. The insurer shall pay the required annual premium pursuant to a periodic
611 payment plan specified in the contract. The State Treasurer shall provide for payment of reimbursement
612 premium in periodic installments and for the adjustment of provisional premium installments collected
613 prior to submission of the exposure report to reflect data in the exposure report.

614 D. All premiums paid to the fund under reimbursement contracts shall be treated as premiums for
615 approved reinsurance for all accounting and regulatory purposes.

616 E. In order to provide startup moneys for the administration of the fund, each insurer subject to
617 this section shall pay to the fund an advance premium payment of \$1,000 no later than January 1 of the

618 year immediately following creation of the fund. The Commissioner shall collect the advance premium
619 payment required by this subsection on behalf of the State Treasurer. The insurer shall receive a credit
620 against future premiums for the advance payment.

621 § 38.2-2918. Borrowing funds.

622 A. Upon the occurrence of a covered event and a determination that the moneys in the fund are
623 or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the
624 State Treasurer, upon authorization of the Governor, shall enter into agreements for treasury loans for
625 the benefit of the fund.

626 B. Any such agreements shall provide that the obligation of the State Treasurer or of the
627 Commonwealth to fund or to pay the amounts therein provided for shall not constitute a debt of the
628 Commonwealth within the meaning of Article X of the Constitution of Virginia, as amended, or any
629 other constitutional or statutory provision.

630 C. If the State Treasurer determines that the amount of revenue produced under § 38.2-2917 is
631 insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the State
632 Treasurer shall direct the Commissioner to levy an emergency assessment on direct premiums for all
633 property and casualty lines of business in the Commonwealth, except for policies written under the
634 National Flood Insurance Program, medical malpractice, workers' compensation, and accident and
635 health insurance. The assessment shall be specified as a percentage of future premium collections and is
636 subject to annual adjustments by the State Treasurer to reflect changes in premiums subject to
637 assessments collected under this subsection in order to meet the fund's obligations. The same percentage
638 shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-
639 month period beginning on the effective date of the assessment. A premium is not subject to an annual
640 assessment under this subsection in excess of six percent of premium with respect to obligations arising
641 out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual
642 assessment under this subsection in excess of 10 percent of premium. An annual assessment under this
643 subsection shall continue until the debt incurred with respect to which the assessment was imposed is
644 paid. With respect to each insurer collecting premiums that are subject to the assessment, the insurer

645 shall collect the assessment at the same time as it collects the premium payment for each policy and
646 shall remit the assessment collected to the fund as provided in the order issued by the Commissioner.
647 The Commissioner shall verify the accurate and timely collection and remittance of emergency
648 assessments and shall maintain reports and report his findings to the State Treasurer. Each insurer
649 collecting assessments shall provide the information with respect to premiums and collections as may be
650 required by the Commissioner to enable him to monitor and verify compliance with this subsection.

651 § 38.2-2919. Mitigation.

652 A. The State Treasurer may procure reinsurance from licensed reinsurers for the purpose of
653 maximizing the capacity of the fund.

654 B. In each fiscal year in which there are no outstanding obligations of the fund, the General
655 Assembly shall appropriate from the investment income of the fund an amount not less than 10 percent
656 and not more than 35 percent of the investment income from the prior fiscal year for the purpose of
657 providing funding for local governments, state agencies, public and private educational institutions, and
658 nonprofit organizations to support programs, including but not limited to "first responders," intended to
659 improve catastrophe preparedness, prevent and reduce potential losses from a covered loss, provide
660 research into means to prevent and reduce such losses, educate or inform the public as to means to
661 reduce losses from covered events, assist the public in determining the appropriateness of particular
662 upgrades to structures or in the financing of those upgrades, provide funding for the enforcement of
663 catastrophe-appropriate building codes, or protect local infrastructure from potential damage from a
664 covered loss. Moneys shall first be available for appropriation pursuant to this subsection in the first
665 fiscal year following creation of the fund. Moneys in excess of the 10 percent specified in this
666 subsection shall not be available under this subsection if the State Treasurer determines that the
667 appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

668 C. The State Treasurer may allow insurers to comply with reporting requirements and reporting
669 format requirements using alternative methods of reporting if the proper administration of the fund is not
670 impaired as a result and if the alternative methods produce data that is consistent with the purposes of
671 this chapter.

672 D. In order to assure the equitable operation of the fund, the State Treasurer may impose a
673 reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or
674 untimely exposure data submitted by the insurer.

675 § 38.2-2920. Virginia Wind Catastrophe Fund Advisory Council.

676 A. There is established the Virginia Wind Catastrophe Fund Advisory Council under the
677 auspices of the Bureau of Insurance. The Council shall consist of 13 members, to be appointed by the
678 Governor. Each of these members shall be appointed for a term of three years, except that, of the
679 members first appointed, four shall serve for terms of one year, four shall serve for terms of two years,
680 and five shall serve for terms of three years. Of these members, one shall be an actuary, one shall be a
681 meteorologist, one shall be an engineer, one shall be a representative of insurers, one shall be a
682 representative of insurance producers, one shall be a representative of reinsurers, one shall be a
683 consumer representative, one shall be a representative of organized labor, one shall be a representative
684 of law enforcement, one shall be a representative of firefighters, one shall be knowledgeable about state
685 building code standards and enforcement, one shall be a representative of the Office of Commonwealth
686 Preparedness, and one shall be a member of the public at large.

687 B. A majority of the membership of the Council shall constitute a quorum for the transaction of
688 Council business. Action may be taken and motions and resolutions adopted by the Council at any
689 meeting thereof by the affirmative vote of a majority of the full membership of the Council.

690 C. The Council shall meet regularly as it may determine and shall also meet at the call of the
691 Commissioner.

692 D. The Council shall appoint a chairman from among its members and such other officers as may
693 be necessary. The Council may, within the limits of any funds appropriated or otherwise made available
694 to it for this purpose, appoint such staff or hire such experts as it may require.

695 E. Members of the Council shall serve without compensation, but the Council may, within the
696 limits of funds appropriated or otherwise made available for such purposes, reimburse its members for
697 necessary expenses incurred in the discharge of their official duties.

698 F. In addition to providing the State Treasurer with information and advice in connection with
699 his duties with respect to the fund generally, the Council shall be specifically charged with developing
700 prevention and mitigation standards to include:

701 1. The development and implementation of more stringent state-mandated building codes
702 appropriate for the risk, with no allowance for weaker codes to be adopted by local units;

703 2. Adequate enforcement of risk-appropriate building codes;

704 3. Building methods and materials that prevent or significantly reduce potential damage from a
705 natural or man-made covered loss;

706 4. Focus on prevention and mitigation for any substantially damaged structure, as well as
707 developing and recommending ideas that will aid in the recovery, rebuilding, and renewal process and in
708 analyzing and developing ways to continuously improve the administration and purpose of the fund; and

709 5. Actuarially appropriate insurance discounts that could be offered to individuals who perform
710 mitigation and prevention improvements to structures.

711 G. The State Treasurer shall consider, and to the extent possible implement, the findings of the
712 Council and annually report to the General Assembly on any and all recommendations of the Council
713 that are consistent with the purposes and goals of this chapter.

714 § 38.2-2921. Termination.

715 The fund and the duties of the State Treasurer under this chapter may be terminated only by law.
716 Upon termination of the fund, any and all assets remaining in the fund shall be returned to those insurers
717 who have made contributions to the fund in proportion to the amount each contributed.

718 2. That upon the enactment of federal law providing for the creation of a National Catastrophe
719 Reinsurance Fund, the State Treasurer, pursuant to the Administrative Process Act (§ 2.2-4000 et
720 seq. of the Code of Virginia), shall adopt rules necessary to implement the provisions of this act.
721 The rules adopted by the State Treasurer shall enhance the fund's potential ability to respond to
722 claims for covered events; contain general provisions so that they may be applied with reasonable
723 flexibility so as to accommodate insurers in situations of an unusual nature or where undue

724 hardship may result, except that such flexibility may not in any way impair, override, supersede,
725 or constrain the public purpose of the fund; and be consistent with sound insurance practices.

726 3. That the provisions of this act shall become effective on January 1, 2011.

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