

COMMONWEALTH OF VIRGINIA

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May 1, 2002

Administrative Letter 2002-5

TO: All Insurers, Health Services Plans, Health Maintenance Organizations (HMOs) and Other Interested Parties

RE: Legislation Enacted by the 2002 Virginia General Assembly

We have attached for your reference staff summaries of certain statutes enacted or amended and re-enacted during the 2002 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2002, except as otherwise indicated in this letter.** Each organization to which this letter is being sent should review the attachments carefully and see that notice of these laws is directed to the proper persons, **including appointed representatives**, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://legis.state.va.us/>. You may enter the bill number (not the Chapter number) on the Virginia General Assembly Home Page and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia.

Please note that this document is a **summary** of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2002 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Cordially,

A handwritten signature in cursive script, appearing to read 'Alfred W. Gross'.

Alfred W. Gross
Commissioner of Insurance

AWG/dpb

Attachment

**BUREAU OF INSURANCE
ADMINISTRATIVE LETTER 2002-5**

TABLE OF CONTENTS

PROPERTY AND CASUALTY BILLS

Chapter 70 – Senate Bill 182	2
Chapter 76 – Senate Bill 240	2
Chapter 145 – Senate Bill 151	2
Chapter 316 – House Bill 140	3
Chapter 323 – House Bill 199	3
Chapter 375 – House Bill 440	3
Chapter 405 – House Bill 580	4
Chapter 437 – Senate Bill 154	4
Chapter 464 – Senate Bill 556	4
Chapter 472 – Senate Bill 670	4
Chapter 599 – Senate Bill 81	5
Chapter 629 – Senate Bill 678	5
Chapter 631 – House Bill 81	5
Chapter 657 – Senate Bill 689	5

FINANCIAL REGULATION BILLS

Chapter 72 – Senate Bill 187	6
Chapter 73 – Senate Bill 188	6
Chapter 147 – Senate Bill 199	6
Chapter 153 – Senate Bill 289	7
Chapter 516 – Senate Bill 680	7

LIFE AND HEALTH BILLS

Chapter 334 – House Bill 1125	8
Chapter 343 – House Bill 1294	8
Chapter 415 – House Bill 662	8
Chapter 745 – Senate Bill 183	9

INSURANCE AGENTS AND CONTINUING EDUCATION

Chapter 296 – House Bill 1195	9
Chapter 456 – Senate Bill 438	10
NOTE	10

**NOTE:
UNLESS OTHERWISE INDICATED, ALL BILLS ARE EFFECTIVE
JULY 1, 2002**

PROPERTY AND CASUALTY BILLS

Chapter 70 (Senate Bill 182)

This bill adds a new section to the Code of Virginia (§ 38.2-323) in the Provisions Relating to Insurance Policies Chapter. It prohibits insurance companies from including a provision in their policies which makes the policy invalid if the policy is not signed or countersigned by an agent or a company representative.

Chapter 76 (Senate Bill 240)

This bill amends §§ 38.2-513.1 in the Unfair Trade Practices Act Chapter, 38.2-604 and 38.2-604.1 in the Insurance Information and Privacy Protection Chapter. This is a clean up of last year's House Bill No. 2157 (enacted as Chapter 371). These changes are being made to be consistent with the federal Gramm-Leach-Bliley Financial Services Modernization Act. Subsection A 10 of § 38.2-513.1 is being amended to clarify that the notice required by this subsection must be given whenever the bank sells insurance, not just when the bank is selling insurance in connection with a loan. Subsection F of § 38.2-604 is being deleted. Subdivision A 3 of § 38.2-604.1 is being amended by changing the words "not less than once in any consecutive twelve-month period" to "not less than once in each calendar year." Finally, subsection C of § 38.2-604.1 is being amended to clarify that the simplified notice must be sent when the policy is issued and annually.

Chapter 145 (Senate Bill 151)

This bill amends §§ 38.2-1902 and 38.2-1904 in the Regulation of Rates Generally Chapter, and, 38.2-2001 and 38.2-2005 in the Regulation of Certain Insurance Rates Chapter by allowing uninsured motorists rates to be regulated under Chapter 19, which is the "file and use" chapter of Title 38.2. Uninsured motorists rates will no longer be subject to the "prior approval" provisions of Chapter 20.

The bill also amends § 38.2-3001 in the Uninsured Motorists Fund Chapter to allow for a more equitable distribution of the refunds from the Uninsured Motorists Fund. Currently, the money is distributed in the proportion that each insurer's premium income for basic uninsured motorists limits coverage bears to the total premium income for basic uninsured motorists limits coverage written in Virginia. The new law will base the distribution in the proportion that each reporting insurer's written car years bears to the total number of written car years by all participating insurers in Virginia.

Chapter 316 (House Bill 140)

The bill repeals the third enactment clause of Chapter 590 of the 1998 Acts of Assembly which would have eliminated the Insurance Fraud Unit of the Department of State Police effective January 1, 2003.

Chapter 323 (House Bill 199)

EFFECTIVE SEPTEMBER 1, 2002

This bill adds a new subsection to § 38.2-1812 in the Insurance Agents Chapter by requiring insurers to honor each request from a policyholder to change the agent of record. The change is required to be made on the next policy renewal. The new agent must be duly appointed by the insurer, and the insurer must notify the current agent of record in writing before the effective date of the change. This requirement only applies to property and casualty insurance agents. A provision in the law allows insurers to deviate from the requirements of this subsection provided that (i) insureds are permitted to change the agent of record under terms that are at least as favorable to the insured as the provisions of this subsection and (ii) insurers equitably allocate commissions.

Chapter 375 (House Bill 440)

This bill amends § 6.1-2.20 of the Consumer Real Estate Settlement Protection Act (CRESPA) in the Banking and Finance Title of the Code of Virginia by changing the definition of "settlement agent." A settlement agent will now also include any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money.

Chapter 405 (House Bill 580)

This bill adds a new section to the Liability Insurance Policies Chapter of the Code of Virginia (§ 38.2-2226.1). It requires motor vehicle liability insurers, when compromising, settling, and discharging claims made by persons other than the named insured, to advise every named insured on the policy of the compromise, settlement, and discharge of the claim. This is only required when a named insured makes such a request.

Chapter 437 (Senate Bill 154)

This bill amends § 38.2-1903.1. This section became effective in 2000 and, with certain exceptions, exempts large commercial risks from the policy form approval and rate filing requirements of Chapter 19. In order to qualify for the exemption, a large commercial risk must have a risk manager and must meet at least two other criteria. One of these other criteria includes paying annual aggregate nationwide insurance premiums in excess of \$100,000. Currently, this aggregate cannot be made up of premiums from professional liability or workers' compensation insurance. Under the new law, the \$100,000 annual aggregate premium may include professional liability and workers' compensation insurance premiums.

Chapter 464 (Senate Bill 556)

This bill amends § 6.1-2.21 of the Consumer Real Estate Settlement Protection Act (CRESPA). A title insurance company's escrow accounts will not have to be audited annually by an independent CPA as long as the title insurance company's financial statements are audited annually by an independent CPA.

Chapter 472 (Senate Bill 670)

This bill amends § 38.2-1916.1 by giving the Attorney General the authority, consistent with his powers to enforce the laws prohibiting restraint of trade, to investigate any violation of subsection D of § 38.2-1919. (Subsection D of § 38.2-1919 requires every rate service organization that has uniform statistical plans, classification systems, experience rating plans, and manual rules, which are filed and approved by the Commission, to compile the experience of its members for workers' compensation insurance. Subsection D of § 38.2-1919 also requires each member insurer to adhere to the uniform plans, systems, and rules of its designated rate service organization in the recording of its experience and the reporting of such information to the rate service organization.)

Chapter 599 (Senate Bill 81)

This bill amends § 6.1-2.13.1 of the Wet Settlement Act in the Banking and Finance Title and § 38.2-4614 of the Title Insurance Chapter by making it clear that employers may pay their employees for making insurance referrals, and the employees do not have to be licensed as agents provided that the provisions of § 38.2-1821.1 B 8 are followed.

Chapter 629 (Senate Bill 678)

This bill adds a new section to the Code of Virginia (§ 38.2-2233). It requires an insurer to disclose conspicuously the new due date for an installment payment whenever the insurer unilaterally changes the due date. This applies to motor vehicle insurance policies, as defined in § 38.2-2212, issued or renewed on or after October 1, 2002.

Chapter 631 (House Bill 81)

This bill amends § 8.01-66.1 (Article 7, Chapter 3 of the Civil Remedies and Procedures Title) regarding arbitrary refusal to pay a motor vehicle insurance claim. The dollar threshold in the law has been changed from \$2,500 to \$3,500. Consequently, if an insurer refuses to pay a first party or third party motor vehicle insurance claim of \$3,500 or less (in excess of the deductible) and the insurer is found by the courts to have refused to pay the claim in good faith, the insurer will have to pay double the amount otherwise due, plus reasonable attorney's fees. If an insurer refuses to pay a first party claim over \$3,500 (in excess of the deductible) and the insurer is found by the courts to have refused to pay the claim in good faith, the insurer will have to pay the amount otherwise due plus double the interest rate and reasonable attorney's fees.

Chapter 657 (Senate Bill 689)

This bill amends § 38.2-5016 of the Birth-Related Neurological Injury Compensation Act (Chapter 50 of Title 38.2) by requiring the board of directors to report annually on the investment of the Birth-Related Neurological Injury Compensation Fund's assets to the Governor, Clerk of the House of Delegates, and the Clerk of the Senate. This is in addition to the current requirement of reporting to the Speaker of the House of Delegates and the Chairman of the Senate Rules Committee.

FINANCIAL REGULATION BILLS

Chapter 72 (Senate Bill 187)

The bill amends § 38.2-3723 in the Credit Life, Credit Accident and Sickness Insurance Chapter to recognize the Insurance Commissioners 1980 Standard Ordinary (1980 CSO) mortality table (the most current mortality table in use) as the acceptable basis for developing reserves for many types of credit life insurance products. The bill also amends the refunds section (§ 38.2-3729) of the Chapter to specify that in calculating reserves and refunds in the event of termination of insurance coverage prior to the scheduled maturity date of the indebtedness, insurers must calculate refunds using the actuarial method as opposed to the Rule of 78.

Chapter 73 (Senate Bill 188)

The bill amends § 38.2-1413 in the Investments Chapter of Title 38.2 to clarify the treatment of cash and cash equivalents and to increase to 10% of admitted assets the per obligor/per issuer restriction with respect to certain short-term investments.

Chapter 147 (Senate Bill 199)

This bill contains technical clean-up amendments to Title 38.2 as follows:

- The Investments Chapter (Chapter 14 of Title 38.2) is amended in three places: an obsolete reference to an “earnings test” is deleted from §38.2-1426; an incomplete reference to the Investment Company Act of 1940 in § 38.2-1427.2 is corrected; and filing requirements under § 38.2-1446 are simplified by an amendment which allows the required attestation to be made by an executive officer of the insurer rather than the chief executive officer.
- The Burial Societies Chapter of the Code (Chapter 40 of Title 38.2) is amended to simplify the licensing renewal requirements for a burial society. The burial society still must obtain a surety bond in an amount not less than \$10,000 to secure the performance of the burial society’s obligation its members, but it would no longer be necessary for the burial society to file a certification of the bond with the Commission except upon Commission request. In addition, an obsolete reference to a requirement for initial licensure is deleted since current law does not permit the licensing of any new burial societies.

- The Fraternal Benefits Societies Chapter of the Code (Chapter 41 of Title 38.2) is amended so that the fraternal benefit societies are no longer required to make filings with the Commission every time amendments are made to a society's charter or bylaws unless the Commissioner of Insurance requests the information from the society.

Chapter 153 (Senate Bill 289)

This bill amends § 38.2-4319 in the Health Maintenance Organizations Chapter to subject HMOs to provisions in §§ 38.2-136 (General Provisions Chapter), 38.2-216 (Provisions of a General Nature Chapter), and 38.2-1316.1 through 38.2-1316.8 (Reinsurance Article of the Reports, Reserves and Examinations Chapter). The sweep-in of these provisions will give HMOs clear reinsurance authority while also assuring that accounting for reinsurance will be subject to the credit for reinsurance provisions in Chapter 13 of Title 38.2 and that a domestic HMO's transfer, whether by reinsurance or otherwise, of substantially all risks, property or business in this Commonwealth will be subject to the Commission's approval.

Chapter 516 (Senate Bill 680)

This bill amends and reenacts §§ 55-531 and 55-532 in the Property and Conveyances Title of the Code of Virginia relating to the notice a nonprofit and other entities are required to give to the Attorney General concerning asset dispositions. Amendments at § 55-531 amend the definition of "asset disposition" to encompass actions "to convert to a for-profit entity." These amendments also expand the definition of "nonprofit entity" to include persons exempt from taxation under 26 U.S.C 501 (c)(3) OR (4). A technical amendment at § 55-532 substitutes reference to the licensed "nonstock corporation" for the current reference to "health services plan.")

LIFE AND HEALTH / EXTERNAL APPEALS BILLS

Chapter 334 (House Bill 1125)

This bill revises § 38.2-5206 in the Long-Term Care Insurance Chapter of the Code of Virginia. The bill requires the Commission's regulation of Long-Term Care Insurance to include standards for initial filings and rate increases that are similar to the standards in the model regulation developed by the National Association of Insurance Commissioners. There is a second enactment clause in the bill that requires the SCC to amend the existing Long-Term Care regulation to implement the provisions of the bill by April 1, 2003. The third enactment clause provides that the bill is effective on January 1, 2003.

Chapter 343 (House Bill 1294)

This bill adds § 38.2-3115.1 in the Life Insurance Chapter of the Code of Virginia. The bill allows every life insurance policy issued in Virginia to offer a policy provision for accelerated payment of benefits to the insured during the lifetime of the insured. If included in a life insurance policy, the benefit must be provided if a qualified health care provider or a court of competent jurisdiction has determined that the insured (1) is no longer able to perform two of the following activities of daily living (i) bathing, (ii) dressing, (iii) incontinence, (iv) eating, (v) toileting, or (vi) transferring or (2) the insured requires the substantial supervision of another person to protect the insured's safety or another person's safety. The bill requires the Commission to adopt rules and regulations to carry out the intent of the bill. The rules and regulations may provide for additional options for the accelerated payment of benefits under any other conditions deemed appropriate by the Commission. The bill does not apply to (i) credit life insurance issued pursuant to Chapter 37.1 or (ii) policies or contracts issued prior to July 1, 2002, but will apply to renewals or reissues of group life policies or contracts after July 1, 2002.

Chapter 415 (House Bill 662)

This bill amends § 38.2-3418.4 in the Accident and Sickness Policies Chapter of the Code of Virginia that requires coverage for reconstructive breast surgery. The bill deletes the language requiring that coverage be included for contracts delivered, issued for delivery or renewed "on or after July 1, 1998." The time period "on or after July 1, 1998" is also deleted from the definition of mastectomy. The bill provides that coverage must be provided in a manner determined by the attending physician and patient. The bill deletes the phrase "as a result of breast cancer" from the definition of mastectomy in the section. The bill defines mastectomy as a meaning "the surgical removal of all or

part of the breast” and “reconstructive breast surgery” as meaning “surgery performed or (i) coincident with or following a mastectomy or (ii) following a mastectomy for reconstructive breast surgery performed on or after October 21, 1998, and to reestablish symmetry between the two breasts while the patient is or was a covered person under the policy, contract, or plan.” The reconstructive surgery includes coverage for prostheses, determined as necessary between physician and patient, and physical complications of mastectomy including treatment of lymphedemas. Notice of availability of this coverage must be given to enrollees upon enrollment. The notice must be prominent. Eligibility for coverage may not be denied solely to avoid the requirements of the section. The attending provider may not be penalized or have reimbursement or other incentives reduced to induce the provider to provide care inconsistent with the bill.

Chapter 745 (Senate Bill 183)

This bill amends provisions of the Adverse Utilization Review Decisions Chapter (Chapter 59 of Title 38.2) of the Code of Virginia. In accordance with this Chapter, the Commissioner of Insurance has the authority to review and uphold/reverse the decisions of the medical review panels reviewing appeals of final adverse decisions of managed care health insurance plans (MCHIPS) on behalf of the Bureau of Insurance. The amendments in this bill would simply provide that if an external appeal decision is rendered at a time when the Commissioner is away from the office for a period of time, there is authority in the statute to permit a qualified designee to act promptly with regard to the decision in the absence of a Commissioner.

INSURANCE AGENTS AND CONTINUING EDUCATION

Chapter 296 (House Bill 1195)

EFFECTIVE SEPTEMBER 1, 2002

This bill clarifies inconsistencies that were inadvertently created by the substantial revisions to the Agents Chapter of Title 38.2 (2001 Senate Bill 913) of the Code of Virginia. Subsection E of § 38.2-1834.1 is amended to clarify that documents obtained by the Commission in an investigation conducted pursuant to any provision of Chapter 18 of Title 38.2 shall be considered confidential. Subsection D of § 38.2-1869 is amended to clarify that an agent must initiate an action to contest the termination of his license for having failed to comply with continuing education (CE) requirements within 60 days or be deemed to have waived the right to contest the license termination. Subsections G and H of § 38.2-1869 are also amended to close a loophole

inadvertently created when the termination date for licenses for non-compliance with CE requirements was changed from May to September to permit agents a longer period for an appeal prior to the termination of their license. With the amendments to subsections G and H of § 38.2-1869, no agent will be able to surrender his old license before it is administratively terminated for having failed to comply with CE requirements and obtain a new license of the same type until he has waited 90 days and then successfully completed the written examination.

Chapter 456 (Senate Bill 438)

This bill revises § 38.2-1822 in the Insurance Agents Chapter of the Code of Virginia both as it currently reads and as it will read when the 2001 “business entity” amendments become effective on September 1, 2002.. The bill deletes the requirement that specific authority to act as an agent or agency be set forth in the articles of organization for a limited liability company, or articles of incorporation for a corporation, or certificate of limited partnership for a limited partnership. The bill requires a nonresident business entity that is a corporation to obtain a certificate of authority to transact business in the Commonwealth pursuant to Chapter 13.1 (Corporations), or a limited liability company or limited partnership to obtain a certificate of registration pursuant to Title 50 (Partnerships), before the Commission issues a license to the entity.

NOTE

The 2001 Administrative Letter on Law Changes, (2001-3, available on the Bureau's website, <http://www.state.va.us/scc/division/boi/webpages/administrativeltrs.htm>) outlined Chapter 706 (Senate Bill 913), the rewrite of Chapter 18 (Insurance Agents) of Title 38.2. Many of the provisions of Chapter 706 are effective September 1, 2002. The Bureau will be sending out a series of administrative letters and other communications regarding the changes.