

# COMMONWEALTH OF VIRGINIA

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## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

June 4, 2009

### Administrative Letter 2009-05

**To:** All Insurers and Other Interested Parties

**Re:** Legislation Enacted by the 2009 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2009 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2009, except as otherwise indicated in this letter.** Each organization to which this letter is being sent should review the summaries 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. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission.

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 2009 Session. Each organization is responsible for review of the statutes pertinent to its operations.

Cordially,

Alfred W. Gross  
Commissioner of Insurance

Attachment

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## **AGENT REGULATION**

### **Chapter 140 (House Bill 2568)**

The bill amends §§ 6.1-2.21:1 and 6.1-2.22 of the Consumer Real Estate Settlement Protection Act (CRESPA). The bill makes technical changes to the rights of the purchaser or borrower to select a settlement agent to provide escrow, closing or settlement services in connection with a real estate transaction. Disclosure requirements are also expanded to include statements that the provisions of CRESPA may not be varied by an agreement between the parties; rights conferred by CRESPA may not be waived; and the seller may not require the use of a particular settlement agent as a condition of the sale of the property.

### **Chapter 256 (Senate Bill 938)**

This bill amends §§ 6.1-2.26 and 6.1-2.27 of the Consumer Real Estate Settlement Protection Act (CRESPA) to specify that registration responsibilities for each type of settlement agent will be the sole responsibility of the appropriate licensing authority (the Commission for title insurance agents). The bill requires each licensing authority to provide its settlement agents with guidelines promulgated by the Virginia State Bar to prevent the unauthorized practice of law. This bill also specifies that the licensing authority may terminate administratively the registration of any settlement agent if the settlement agent no longer holds a license, fails to renew its registration or fails to comply with the financial responsibility requirements of § 6.1-2.21.

## **FINANCIAL REGULATION**

### **Chapter 336 (House Bill 1756 and Senate Bill 1372)**

The bill amends §§ 15.2-2703 (Counties, Cities and Towns), 65.2-801 (Workers' Compensation) and 65.2-1203 (Workers' Compensation) to provide for the merger of a local government group self-insurance association (association) into a local government group self-insurance pool (pool) to enable political subdivisions to provide workers' compensation insurance coverage for their employees.

### **Chapter 352 (House Bill 1935)**

The bill enacts § 38.2-221.3 in the Provisions of a General Nature chapter to require the State Corporation Commission to hold company licensing applications and supporting documentation and information obtained during the course of an investigation confidential. The bill further specifies that the materials are not subject to subpoena, and may not be made public by the Commission or any other person. The Commission may grant access to (i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners, its affiliate, or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. Nothing in this section shall prohibit the Commission from (i) using such confidential information in furtherance of any regulatory or legal action; (ii) publishing any decisions, orders, findings, opinions, or judgments; or (iii) publishing any final report or any other report containing aggregated findings, provided that such reports, decisions, orders, findings, opinions, or judgments shall not disclose any such confidential information.

### **Chapter 602 (Senate Bill 1044)**

The bill amends §38.2-1300 in the Reports, Reserves and Examinations chapter to give the State Corporation Commission the discretion to permit insurers to file their annual financial statements electronically.

### **Chapter 642 (House Bill 1971)**

The bill amends the requirements outlined in § 38.2-3723 in the Credit Life, Credit Accident and Sickness Insurance chapter for determining the minimum standard for the valuation for credit life insurance reserves and for credit accident and sickness insurance reserves. Amendments to § 38.2-3723 A provide for the use of the 2001 Commissioners' Standard Ordinary Male Composite Ultimate Mortality Table for determining the minimum standard for the valuation of credit life insurance reserves. Amendments also set forth the requirements for interest rate calculations. Amendments to § 38.2-3723 B provide for the use of the 1985 Commissioners' Individual Disability Table A for determining the minimum standard for the valuation of single premium credit disability contract reserves. Amendments also set forth the requirements for interest rate calculations. A new subsection C in § 38.2-3723 adds a provision requiring an insurer to establish an additional reserve liability for all credit life and disability contracts in the aggregate when the net premium refund liability exceeds the aggregate recorded contract reserve.

### **Chapter 717 (Senate Bill 1352)**

The bill amends § 38.2-1329 in the Reports, Reserves and Examinations chapter as to the declaration of a dividend or distribution by an insurer that is a member of an insurance holding company system to its shareholders. Such a declaration shall confer no rights upon shareholders until the Commission has approved the payment of the ordinary dividend or other distribution, or until 30 days have passed since the Commission has received written notification of the declaration from the insurer. The bill requires that the Commission act on a disclaimer of affiliation that contains all the information required by the Commission within 30 days of receiving such information.

## **LIFE AND HEALTH**

### **Chapter 226 (House Bill 2655)**

The bill amends and reenacts § 38.2-3407.1 in the Accident and Sickness Insurance chapter relating to interest on accident and sickness claims proceeds. The bill provides that the section shall not apply to claims proceeds payable to an out-of-state provider of pharmacy services for pharmacy services rendered outside of the Commonwealth. The section shall apply, however, to claims proceeds payable to such an out-of-state provider if the state where the services are rendered fails to provide for the payment of interest on the claims proceeds, in which case the interest payable to the policyholder, insured, claimant, or assignee will be computed daily at the legal rate of interest from the 30<sup>th</sup> day following the insurer's receipt of proof of loss to the date of claim payment.

### **Chapter 299 (Senate Bill 1480)**

The bill adds § 38.2-3301.1 to the Life Insurance Policies chapter to provide that, for the purpose of determining the commencement of the period when a policy owner of an individual life policy can exercise any statutory right to examine, surrender, or return the policy for cancellation, the delivery date must be:

1. The date of the signed receipt of policy delivery if the policy is (i) delivered by U.S. mail or other postal delivery system; or (ii) physically delivered to the policyowner by a representative of the insurer; or
2. The date of electronic transmission if the transmission is effected electronically according to the insurance title and any other state and federal law. The insurer must retain evidence of electronic transmittal for the life of the policy.

If an insurer does not deliver a policy as provided above, the burden of proof is on the insurer to establish policy delivery, in the event there is a dispute with the policyowner.

Notwithstanding subsections A and B of the bill, a policy is deemed to have been received by the policyowner as of its issue date if six months have passed since issuance and the policyowner has paid premiums for those six months.

### **Chapter 643 (House Bill 1972)**

The bill amends § 38.2-233 in the Provisions of a General Nature Chapter and §§ 38.2-3724, 38.2-3729, 38.2-3735 and 38.2-3737 in the Credit Accident and Sickness Insurance Chapter. The bill adds language to provide that, for single premium credit insurance, the debtor must be given a notice that discloses the right to a refund of premium if the insurance is terminated prior to its scheduled maturity date, or if the debt is terminated or paid off earlier than scheduled. The notice must be provided at the time of contract and must include notice of the debtor's obligation to notify the insurer, as per § 38.2-233 G for credit property or credit involuntary unemployment insurance and § 38.2-3735 E for credit life or credit accident and sickness insurance. The notice must be signed and dated by the debtor and the agent, if any, soliciting the application or by the creditor's representative, if any, soliciting the enrollment request. A copy of the notice must be given to the debtor and a copy must be retained in the insurer's file. Refunds of five dollars or less are not required to be paid. Section 38.2-233 G includes the actual language required in the notice that must be included in any form for credit property or credit involuntary employment insurance. The subsection requires that the unearned premium calculation be calculated on a pro rata basis. Section 38.2-3724 is revised to include the notice language required for each individual policy or group certificate for credit life and credit accident and sickness insurance. Any refund for credit life or credit accident and sickness insurance can be paid or credited to the debtor or person entitled to the refund.

### **Chapter 653 (House Bill 2467)**

The bill adds § 38.2-3100.3 to the Life Insurance chapter to provide requirements for life insurance or annuity contracts used to fund preneed funeral contracts. The bill defines a preneed funeral contract as "any agreement where payment is made by the insured prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) providing funeral services or (ii) the sale of funeral supplies". The bill requires the inclusion within all applicable life insurance and annuity policies or certificates, of a provision specifying the means by which face amounts and death benefits will be adjusted, as per subsection C of § 54.1-2820.

Insurers proposing to issue individual or group life insurance policies or individual or group annuity contracts in Virginia for purposes of funding preneed funeral contracts must clearly disclose the intended purpose and market for such policies and contracts when submitting the forms with the Commission for approval, in accordance with § 38.2-316.

## **Chapter 796 (House Bill 2024) and Chapter 877 (Senate Bill 1411)**

**PLEASE NOTE:** This letter provides only a brief summary of those sections in House Bill 2024 and Senate Bill 1411 that specifically relate to insurance, as addressed in items (1) and (2) below. Both bills also amend § 32.1-102.4 (Health) of the Code of Virginia, relating to a certificate of public need.

The following is a brief summary of the insurance components of the bills. ***With respect to item (1), more detailed information and guidance will be provided by separate Administrative Letter.***

(1) To establish a plan of “basic health insurance coverage” that may be offered, sold or issued by insurers and health services plans to small employers in Virginia, House Bill 2024 and Senate Bill 1411 both add §§ 38.2-3406.1 and 38.2-3406.2 to the Insurance Title and amend § 38.2-4214, the “sweep-in” provision applicable to health services plans. Essentially, with respect to these plans, it is permissible to exclude one or more of the state mandated health benefits, except for those requiring coverage for mammograms, pap smears, PSA testing, and colorectal screening, (§§ 38.2-3418.1, 38.2-3418.1:2, 38.2-3418.7 and 38.2-3418.7:1, respectively). The bills also require that such plans allow for reimbursement to the mandated providers listed in § 38.2-3408, of covered services that such providers can legally render in Virginia. Several key terms are defined in the bills, certain disclosure and form requirements applicable to these plans are identified, and both bills include language specifically stating that the offering, sale or issuance of policies with annual or lifetime benefit caps is not prohibited. Carriers offering plans pursuant to the bill must report to the Bureau annually the number of small employers and individuals covered by plans without mandated benefits, the coverage provided, and the cost of premiums and out-of-pocket expenses. The Bureau must compile the information and evaluate the impact of the plans and report to the Governor and General Assembly on August 1, 2010 and August 1, 2011

(2) House Bill 2024 also adds § 38.2-3541.1 to the Code of Virginia, addressing special circumstances for the continuation of coverage after involuntary termination of employment. This section became effective immediately upon its passage on April 8, 2009. The section only applies to employees of small employers with less than 20 employees. The bill requires that, for the purpose of meeting the definition of “COBRA continuation coverage” in Title III of Division B of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the Act), employees involuntarily terminated from employment between September 1, 2008 and December 31, 2009 (or any period for which premium assistance specified in the Act as later amended), shall be offered the option to continue their group health coverage subject to the following:

- Coverage shall continue for up to 9 months after the date of (i) involuntary termination for those terminated after enactment of the section or; (ii) after the date of notification required by subdivision 3 of the section; contingent on the employee's eligibility for premium assistance under the Act.
- Premium payments can be paid on a monthly basis to the group policyholder and cannot exceed 102% of the current premium rate for the group policy.
- Employers shall provide notice of availability of continuation. Notice must be provided based on the date of termination.
- The employee must elect the continuation of coverage within 60 days after notice of the plan enrollment options.

### **Chapter 839 (Senate Bill 1116)**

The bill adds § 38.2-3418.15 to the Accident and Sickness chapter and amends § 38.2-3418.15 in the Health Maintenance Organizations (HMOs) chapter to require insurers, corporations and HMOs to offer coverage for medically necessary prosthetic devices, their repair, fitting, replacement, and components. The coverage does not include repair and replacement due to neglect by the enrollee and does not include prosthetic devices designed primarily for athletic purposes. Insurers cannot impose any annual or lifetime dollar maximum on coverage for prosthetic devices other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy. The coverage may be subject to, and no more restrictive than, the provisions that apply to other benefits under the policy. The insurer shall not apply amounts paid for prosthetic devices to any annual or lifetime dollar maximum applicable to other durable medical equipment covered under the policy other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy. No insurer, corporation, or HMO shall impose upon any person receiving benefits any coinsurance in excess of 30% of the carrier's allowable charge for such prosthetic devices or services when provided by an in-network provider. The bill provides that an insurer, corporation, or HMO may require preauthorization to determine medical necessity and the eligibility of benefits for prosthetic devices and components, in the same manner that prior authorization is required for any other covered benefits. The bill applies to insurance policies, contracts or plans delivered, issued for delivery, reissued, or extended in the Commonwealth on or after January 1, 2010, or at any time thereafter when any term of the policy, contract or plan is changed or premium adjustments are made. The bill does not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, or policies or contracts designed for issuance to persons eligible for Medicare, or similar coverage under government plans.

**NOTE: See Also Chapter 642 (House Bill 1971) on Page 4**



## **PROPERTY AND CASUALTY**

### **Chapter 215 (House Bill 2430)**

The bill adds § 38.2-325 (Provisions Relating to Insurance Policies) to allow insurers and their policyholders to agree to communicate electronically. The bill also amends §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, and 38.2-2212 pertaining to nonrenewal notice requirements to allow nonrenewal notices to be provided electronically as long as the insurer and the policyholder mutually agree to this manner of communication. In addition, any nonrenewal notice provided electronically to an insured pursuant to the above referenced Code sections shall also be provided to the agent of record electronically. The notice sent to the agent of record may be a copy of the notice sent to the insured or a list of insureds' names, policy numbers, and termination dates. Notice need not be given to an agent if the agent is an employee of the insurer, is a non-employee exclusive agent of the insurer, or has waived the receipt of such notices in writing. Evidence of transmittal must be retained by the insurer for one year.

### **Chapter 357 (House Bill 1974) and Chapter 545 (Senate Bill 1013)**

The bills amend § 38.2-2217 A to add a provision that a motor vehicle crash prevention course for persons who are fifty-five years of age and older may be delivered through a computer-based medium via the internet or other electronic means that is acceptable to the Department of Motor Vehicles. The medium utilized must have security features to ensure that the person who takes the course and passes the examination is also the person who receives the completion certificate. Insurers may provide a credit for their insureds who take a course via the internet. A credit must be given for classroom courses successfully passed.

### **Chapter 442 (House Bill 1887)**

The bill amends § 38.2-2114 (Fire Insurance Policies) regarding insurer cancellations of policies insuring owner-occupied dwellings. Insurers may cancel a policy during the policy period if there has been a completed foreclosure action by the second party where the property has been sold by the trustee under a deed of trust and the sale has been properly recorded in the land title records of jurisdiction in which the property is located.

**Chapter 664 (House Bill 1982)**

The bill amends § 38.2-1903.1 pertaining to the exemption from certain form approval and filing requirements for policies issued to large commercial risks. Automobile policies issued to large commercial risks will no longer be required to comply with the commercial automobile standard policy forms promulgated by the Commission nor will they have to be filed with the Commission. The bill also allows any officer of the corporation from a large commercial risk to sign the annual certification form.

**NOTE: See Also Chapter 643 (House Bill 1972) on Page 5**