COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

May 12, 1977

1977-8

TO: ALL COMPANIES LICENSED TO WRITE PROPERTY AND CASUALTY INSURANCE IN VIRGINIA

RE: 1977 Acts of the General Assembly of Virginia

At its 1977 Session, the General Assembly of Virginia enacted certain legislation to become effective July 1, 1977, except as otherwise noted, which will affect the manner in which companies conduct the business of insurance in Virginia.

A copy of the new laws is enclosed herewith for your information and record. Such legislation should be directed to the proper person(s), to insure that appropriate action by this company is accomplished.

In this regard, please be advised of the following:

1. Chapter 78 (H 1721) amends §38.1-381 of the Code of Virginia, and provides that motor vehicle liability insurance policies applicable to a motor vehicle afforded a person other than the named insured and his employees in the course of their employment, which are loaned or leased to such other person as a convenience during the repairing or servicing by such business of a motor vehicle for such other person, or leased to such other person for a period of six months or more, shall not be applicable if there is other valid and collectible insurance applicable to the same loss covering such other person under a policy with limits at least equal to the financial responsibility requirements specified in §46.1-504.

+ Copies to Health Care Provider Associat[illegible]
[illegible]

Note that the amended statute is applicable to all new and renewal motor vehicle policies that become effective on and after July 1, 1977.

2. Chapter 154 (H 1883) amends §38.1-781 of the Code of Virginia and provides that any policy issued by the Virginia Medical Malpractice Insurance Joint Underwriting Association which is terminated during the term of the policy shall be entitled to a pro-rata refund of the amount contributed to the Stabilization Reserve Fund in connection with such policy.

   Note that the statutory change became effective when approved on March 9, 1977.

3. Chapter 327 (H 1810) amends §38.1-389.3 of the Code of Virginia, concerning the reporting of medical malpractice claims data to the Commissioner of Insurance, and provides that (1) claims closed without payment must also be reported, (2) the Commissioner of Insurance shall forward a copy of each report to the appropriate licensing board for the health care provider, (3) all such reports are not subject to the Virginia Freedom of Information Act, and (4)civil immunity prevails for persons furnishing information in complying with the required reporting.

   As my November 26, 1976 letter advised, the insurer of the health care provider, rather than the provider, should file the required report since all necessary information is readily available in the insurer's claim file.

   A copy of the Virginia Medical Professional Liability Insurance Uniform Claims Report, which could be reproduced for future use, was forwarded to each company licensed in Virginia to write general liability (other than automobile) insurance with my letter of November 26, 1976, for use in reporting such claims.

   Note that a completed Report for each medical malpractice claim, including claims closed without payment, must be filed with this office within sixty days following final disposition or close of each such claim on or after July 1, 1977.

4. Chapter 530 (H 1697) adds §38.1-279.49:1 to the Code of Virginia, and requires insurance companies writing fire insurance only, or fire insurance in combination with other coverages on owner-occupied dwellings and appurtenant structures with a replacement cost provision under the provisions of Chapter 6.2 of Title 38.1 to give each applicant for such insurance a statement as to the manner in which losses under such policy will be paid when the insured does, or does not, maintain insurance equal to at least 80% of the replacement cost of the owner-occupied dwelling and appurtenant structures.

   The form of the required statement and the content thereof is not subject to approval by this office.

   After reviewing the new law and its intended purpose, the Bureau has concluded that the law relates not only to new applicants for such coverage, but also relates to policyholders that renew their existing policies that provide such coverage.

   Note that the requirement to provide the statement is applicable to all new and renewal policies that become effective on and after July 1, 1977.

Should you have any questions concerning this matter, kindly communicate same to this office in writing.

Very truly yours,

John G. Day
Commissioner of Insurance

JGD:dbh

Enclosures

CHAPTER 18

An Act to amend and reenact § 38.1-381, as amended, of the Code of Virginia, relating to standard provisions of motor vehicle insurance policies.

[H 1721]

Approved March 3, 1977

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-381, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 38.1-381. Liability insurance on motor vehicles, aircraft and watercraft; standard provisions; "omnibus clause"; uninsured motorist coverage.—(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, aircraft or any private pleasure vessel, ship, boat or other watercraft, shall be issued or delivered in this State to the owner of such vehicle, aircraft or such watercraft, or shall be issued or delivered by any insurer licensed in this State upon any motor vehicle, aircraft or any private pleasure vessel, ship, boat or other watercraft then principally garaged or docked or principally used in this State, unless it contains a provision insuring the named insured and any other person responsible for the use of or using the motor vehicle, aircraft or private pleasure vessel, ship, boat or other watercraft with the consent, expressed or implied, of the named insured, against liability for death or injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle, aircraft or such watercraft by the named insured or by any such person; provided, that every automobile liability insurance policy or contract, or endorsement thereto, insuring private passenger automobiles principally garaged and/or used in Virginia, and every policy of liability insurance, contract or endorsement thereto insuring aircraft, private pleasure vessels, ships, boats or other watercraft principally docked or used in Virginia, when the named insured is an individual or husband and wife, which includes, with respect to any liability insurance provided by the policy, contract or endorsement for use of a nonowned automobile, aircraft or private pleasure watercraft, any provision requiring permission or consent of the owner of such automobile or such watercraft in order that such insurance apply shall be construed to include permission or consent of the custodian in such provision requiring permission or consent of the owner; provided, however, that in the case of aircraft liability insurance, such policy or contract may contain the exclusions enumerated in § 38.1-389.2: provided, however, notwithstanding any other provisions of law, no policy or contract shall require pilot experience greater than that prescribed by the Federal Aviation Agency, except for those pilots operating air taxis.

(a1) Nor shall any such policy or contract relating to ownership, maintenance or use of a motor vehicle be so issued or delivered unless it contains an endorsement or provision insuring the named insured and any other person responsible for the use of or using the

motor vehicle with the consent, expressed or implied, of the named insured, against liability for death or injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by any such person, notwithstanding the failure or refusal of the named insured or such other person to cooperate with the insurer under the terms of the policy; provided, however, that if such failure or refusal prejudices the insurer in the defense of an action for damages arising from the operation or use of such motor vehicle, then this endorsement or provision shall be void.

(a2) Any endorsement, provision or rider attached to, or included in, any such policy of insurance which purports or seeks in any way to limit or reduce in any respect the coverage afforded by the provisions required therein by this section shall be wholly void.

(a3) Such policy or contract of bodily injury liability insurance, or of property damage liability insurance, which provides insurance to a named insured in connection with the business of selling, *leasing*, repairing, servicing, storing or parking motor vehicles, against liability arising from the ownership, maintenance or use of any motor vehicle incident thereto shall contain a provision that the insurance coverage applicable to such motor vehicles afforded a person other than the named insured and his employees in the course of their employment, ~~including a motor vehicle which are~~ loaned or leased to such other person as a convenience during the repairing or servicing *by such business* of a motor vehicle for such other person, *or leased to such other person for a period of six months or more*, shall not be applicable if there is any other valid and collectible insurance applicable to the same loss covering such other person under a policy with limits at least equal to the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia.

In the event that such other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia, then the coverage afforded a person other than the named insured and his employees in the course of their employment shall be applicable to whatever extent may be necessary to equal the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia.

(a4) Any policy or contract of bodily injury liability insurance or of property damage liability insurance shall exclude coverage to persons other than named insured, directors, stockholders, partners, agents or employees thereof, or residents of the same household of either, while such person is employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles if there is any other valid or collectible insurance applicable to the same loss covering such person under a policy with limits at least equal to the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia.

In the event that such other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia, then the coverage afforded a person other than the named insured while such person is employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles shall be applicable to whatever extent may be necessary to equal the financial responsibility requirements specified in § 46.1-504 of the Code of Virginia.

(b) Except as provided in paragraph (j) of this section, no such policy or contract relating to ownership, maintenance or use of a

motor vehicle shall be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of § 46.1-1 (8), as amended from time to time, of the Code herein; provided, however, that said insured, after January one, nineteen hundred sixty-seven, shall be offered the opportunity to contract, at an additional premium, for limits higher than those provided in § 46.1-1 (8) so long as such limits do not exceed the limits of the automobile liability coverage provided by such policy. Such endorsement or provisions shall also provide for no less than five thousand dollars coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of such loss or damage.

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom; the term "insured" as used in subsections (b), (d), (f), and (g) hereof, means the named insured and, while resident of the same household, the spouse of any such named insured, and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" means a motor vehicle as to which there is no (i) bodily injury liability insurance and property damage liability insurance both in the amounts specified by § 46.1-1 (8), as amended from time to time, or (ii) there is such insurance but the insurance company writing the same denies coverage thereunder for any reason whatsoever including failure or refusal of the insured to cooperate with such company, (iii) there is no bond or deposit of money or securities in lieu of such bodily injury and property damage liability insurance, and (iv) the owner of such motor vehicle has not qualified as a self-insurer under the provisions of § 46.1-395. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown; provided that recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

There shall be a rebuttable presumption that a motor vehicle is uninsured if the Commissioner of the Division of Motor Vehicles certifies that, from the records of the Division of Motor Vehicles, it appears: (i) that there is no bodily injury liability insurance and property damage liability insurance, both in the amounts specified by § 46.1-1 (8), covering the owner or operator thereof; or (ii) that no bond has been given or cash or securities delivered in lieu of such insurance; or (iii) that the owner or operator of such vehicle has not qualified as a self-insurer in accordance with the provisions of § 46.1-395.

(d) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, and if the damage or injury results from an accident where there has been no contact between such motor vehicle and the motor vehicle occupied by the insured or where there has been no contact with the person of the insured if he was not occupying a motor vehicle, then in order for the insured to recover under the endorsement, the accident shall be reported promptly to either the insurer, the Division of Motor Vehicles, on a form prescribed by the Division for

reporting accidents, or a law-enforcement officer having jurisdiction in the county or city in which the accident occurred, unless it is reasonably impracticable to do so, in which event, such report shall be made as soon as reasonably practicable under the circumstances.

(e) If the owner or operator of any vehicle causing injury or damages be unknown, an action may be instituted against the unknown defendant as "John Doe" and service of process may be made by delivery of a copy of the motion for judgment or other pleadings to the clerk of the court in which the action is brought and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(e1) Any insured intending to rely on the coverage required by paragraph (b) of this section shall, if any action is instituted against the owner or operator of an uninsured motor vehicle, serve a copy of the process upon the insurance company issuing the policy in the manner prescribed by law, as though such insurance company were a party defendant; such company shall thereafter have the right to file pleadings and take other action allowable by law in the name of the owner or operator of the uninsured motor vehicle or in its own name; provided, however that nothing in this paragraph shall prevent such owner or operator from employing counsel of his own choice and taking any action in his own interest in connection with such proceeding.

This subsection shall not apply to any cause of action arising prior to April twenty-seven, nineteen hundred fifty-nine.

(f) Any insurer paying a claim under the endorsement or provisions required by paragraph (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death or damage and such person's insurer, notwithstanding that it may deny coverage for any reason, to the extent that payment was made; provided, that the bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe, or such person's insurer denying coverage for any reason; provided, that any recovery against such owner or operator, or insurer as heretofore referred, shall be paid to the insurance company to the extent that such insurance company paid the named insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expenses incurred in connection therewith including reasonable attorney's fees. Nothing in an endorsement or provisions made under this paragraph nor any other provision of law shall operate to prevent the joining in an action against John Doe of the owner or operator of the motor vehicle causing such injury as a party defendant and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under such endorsement or provisions, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing

CHAPTER 154

An Act to amend and reenact § 38.1-781 of the Code of Virginia, relating to the medical malpractice joint underwriting association.

[H 1883]

Approved March 9, 1977

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-781 of the Code of Virginia is amended and reenacted as follows:

§ 38.1-781. Stabilization reserve fund.—A. There is hereby created a stabilization reserve fund. The fund shall be administered by five directors appointed by the Commission, one of whom shall be a representative of the Commission, two of whom shall be representatives of the association and two of whom shall be representatives of the association's policyholders.

B. The directors shall act by majority vote with three directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the fund. The directors shall not be subject to any personal liability with respect to the administration of the fund.

C. Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-half of the annual premium due for medical malpractice insurance through the association until the fund reaches a level deemed appropriate by the Commission. The means of payment shall be set forth in the plan of operation and such shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge. *Upon the termination of any policy issued on or after April one, nineteen hundred seventy-six, during the term of the policy, payments made to the stabilization reserve fund shall be returned to the policyholder on a pro rata basis identical to that applied in computing that portion of the premium which is returned to the policyholder.*

D. The association shall promptly pay the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan provided for in this chapter.

E. All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the moneys held in trust, subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan provided for in this chapter. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due.

F. Upon dissolution of the association, all moneys remaining in the fund, after final disposition of all claims, expenses and liabilities

legal counsel or instituting legal proceedings.

(h) The provisions of paragraphs (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer under any workmen's compensation law or to the extent that it covers liability to which the Federal Tort Claims Act is applicable, but no provision or application of this section shall be construed to limit the liability of the insurance company, insuring motor vehicles, to an employee or other insured under this section who is injured by an uninsured motor vehicle.

(i) No policy of insurance shall exclude coverage to an employee of the insured in any controversy arising between employees, even though any one employee shall be awarded compensation as provided in Title 65.1 of the Code of Virginia.

(j) Policies of insurance which have as their primary purpose to provide coverage in excess of other valid and collectible insurance or qualified self insurance may, but need not, include uninsured motorist coverage as provided in paragraph (b) of this section.

CHAPTER 530

An Act to amend the Code of Virginia by adding a section numbered 38.1-279.49:1 so as to provide for the requirement of a statement on insurance policies for owner-occupied dwellings and appurtenant structures.

[H 1697]

Approved March 29, 1977

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.1-279.49:1 as follows:

§ 38.1-279.49:1. Required statement on insurance policies for owner-occupied dwellings.—Each insurer writing fire insurance only, or fire insurance in combination with other coverage on owner-occupied dwellings and appurtenant structures with a replacement cost provision under the provisions of this chapter is required to give to each applicant for such insurance a statement to the effect that: (i) when the insured maintains insurance equal to at least eighty per centum of the replacement cost of the owner-occupied dwellings and appurtenant structures, losses will be paid on a cost of repair or replacement basis without deduction for depreciation; and (ii) when the insured does not maintain insurance equal to at least eighty per centum of the replacement cost of the owner-occupied dwelling and appurtenant structures, losses will be paid on a less favorable basis.