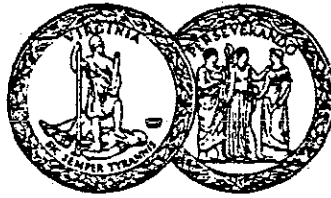


COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

May 18, 1979

ADMINISTRATIVE
LETTER
1979-15

TO: ALL FIRE AND CASUALTY INSURANCE COMPANIES LICENSED
TO TRANSACT BUSINESS IN VIRGINIA

SUBJECT: 1979 LEGISLATION PERTAINING TO FIRE INSURANCE, HOMEOWNERS
INSURANCE AND MOTOR VEHICLE INSURANCE

Attention is called to the following statutes enacted or amended and reenacted by the General Assembly of Virginia during its 1979 Session. These statutes become effective JULY 1, 1979.

I - TITLE 38.1 - INSURANCE

The following amendments to Title 38.1 are applicable to all new and renewal policies that become effective on and after July 1, 1979. Copies of the sections or subsections affected are attached.

(FIRE AND HOMEOWNERS INSURANCE)

Section 38.1-366. Standard provisions, conditions, stipulations and agreements for such policies. The 165-line standard provisions portion is amended with regard to "Requirements in case loss occurs" and "Appraisal". Change in policy form is required.

(MOTOR VEHICLE INSURANCE)

Section 38.1-381(b). (Uninsured Motorists Coverage). The minimum \$5,000 property damage is changed to \$10,000 (inadvertently not changed in 1978); and the permitted exclusion of the first \$200 of such loss or damage applies only in the case of loss or damage in any one accident involving an unidentifiable owner or operator of an uninsured motor vehicle. Change in policy form is required and a standard policy form(s) will be approved for use by all companies.

Section 38.1-381.7. Statement defining rate classifications to be provided by insurer to insured. This Section is amended to require that such statements be provided those insured under the Virginia Automobile Insurance Plan at the time of issuance or renewal. The form of the required statement is subject to prior approval of the

Commissioner of Insurance, and AIPSO has filed a form for use by all companies.

Attention is also called to the following statutes which are of direct concern to fire and casualty insurance companies. Copies of these statutes, also effective JULY 1, 1979, are attached.

II - TITLE 8.01 - CIVIL REMEDIES AND PROCEDURE

Section 8.01-66. Recovery of damages for loss of use of vehicle. Allowance for substitute vehicle required due to loss or destruction of a motor vehicle for which a person is entitled to recovery is changed from "reimbursement per diem" to reasonable cost "which was actually incurred in" hiring a comparable substitute vehicle.

Section 8.01-66.1. Action against insurer for arbitrary refusal of small claim. The maximum amount which may be subject to double payment plus reasonable attorney's fees and expense is increased from \$150 to \$300.

III - TITLE 27 - FIRE PROTECTION

Sections 27-85.3 through 27-85.6. Arson Reporting-Immunity Act. This pertains to the exchange of pertinent information between insurance companies (including the Virginia Property Insurance Association) and municipal or county "authorized agencies", as defined, and includes an immunity provision.

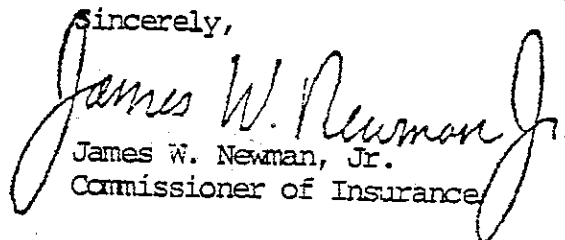
IV - TITLE 46.1 - MOTOR VEHICLES

Section 46.1-400. Driver to make written report of certain accidents and certification of financial responsibility, if any, to Division; supplementary reports; reports by witnesses. The minimum property damage requiring a report of accident to the Division of Motor Vehicles is increased from \$250 to \$350.

This Administrative Letter and the attached legislation should be directed to the proper person(s) in your company to insure that appropriate action is accomplished.

Should you have any questions concerning this new legislation, please write to Mr. Garland L. Hazelwood, Jr., Assistant Commissioner for Property and Casualty Insurance.

Sincerely,


James W. Newman, Jr.
Commissioner of Insurance

JWN:gg

attachments

Section 38.1-366

§ 38.1-366. Standard provisions, conditions, stipulations and agreements for such policies. -Every such policy shall contain the following provisions, conditions, stipulations and agreements, which shall be a standard form for use in all policies of fire insurance issued on property in the State of Virginia:

- 1 Concealment, This entire policy shall be void if, whether
- 2 Fraud. before or after a loss, the insured has wil-
- 3 fully concealed or misrepresented any ma-
- 4 terial fact or circumstance concerning this insurance or the
- 5 subject thereof, or the interest of the insured therein, or in case
- 6 of any fraud or false swearing by the insured relating thereto.
- 7 Uninsurable This policy shall not cover accounts, bills,
- 8 and currency, deeds, evidences of debt, money or
- 9 excepted property. securities; nor, unless specifically named
- 10 hereon in writing, bullion or manuscripts.
- 11 Perils not This Company shall not be liable for loss by
- 12 included. fire or other perils insured against in this
- 13 policy caused, directly or indirectly, by: (a)
- 14 enemy attack by armed forces, including action taken by mili-
- 15 tary, naval or air forces in resisting an actual or an immediately
- 16 impending enemy attack; (b) invasion; (c) insurrection; (d)
- 17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)
- 18 order of any civil authority except acts of destruction at the time
- 19 of and for the purpose of preventing the spread of fire, provided
- 20 that such fire did not originate from any of the perils excluded
- 21 by this policy; (i) neglect of the insured to use all reasonable
- 22 means to save and preserve the property at and after a loss, or
- 23 when the property is endangered by fire in neighboring prem-
- 24 ises; (j) nor shall this Company be liable for loss by theft.
- 25 Other Insurance. Other insurance may be prohibited or the
- 26 amount of insurance may be limited by en-
- 27 dorsement attached hereto.
- 28 Conditions suspending or restricting insurance. Unless other-
- 29 wise provided in writing added hereto this Company shall not
- 30 be liable for loss occurring
- 31 (a) while the hazard is increased by any means within the con-
- 32 trol or knowledge of the insured; or
- 33 (b) while a described building, whether intended for occupancy
- 34 by owner or tenant, is vacant or unoccupied beyond a period of
- 35 sixty consecutive days; or
- 36 (c) as a result of explosion or riot, unless fire ensue, and in
- 37 that event for loss by fire only.
- 38 Other perils Any other peril to be insured against or sub-
- 39 or subjects. ject of insurance to be covered in this policy
- 40 shall be by endorsement in writing hereon or
- 41 added hereto.
- 42 Added provisions. The extent of the application of insurance
- 43 under this policy and of the contribution to
- 44 be made by this Company in case of loss, and any other pro-
- 45 vision or agreement not inconsistent with the provisions of this
- 46 policy, may be provided for in writing added hereto, but no pro-
- 47 vision may be waived except such as by the terms of this policy *
- 48 is subject to change.
- 49 Waiver No permission affecting this insurance shall

51 unless granted herein or expressed in writing
52 added hereto. No provision, stipulation or forfeiture shall be
53 held to be waived by any requirement or proceeding on the part
54 of this Company relating to appraisal or to any examination
55 provided for herein.

56 Cancellation This policy shall be cancelled at any time
57 of policy. at the request of the insured, in which case
58 this Company shall, upon demand and sur-
59 render of this policy, refund the excess of paid premium above
60 the customary short rates for the expired time. This pol-
61 icy may be cancelled at any time by this Company by giving
62 to the insured a five days' written notice of cancellation with
63 or without tender of the excess of paid premium above the pro
64 rata premium for the expired time, which excess, if not ten-
65 dered, shall be refunded on demand. Notice of cancellation shall
66 state that said excess premium (if not tendered) will be re-
67 funded on demand.

68 Mortgagee If loss hereunder is made payable in whole
69 interests and or in part, to a designated mortgagee not
70 obligations. named herein as the insured, such interest in
71 this policy may be cancelled by giving to such
72 mortgagee a ten days' written notice of can-
73 cellation.

74 If the insured fails to render proof of loss such mortgagee, upon
75 notice, shall render proof of loss in the form herein specified
76 within sixty (60) days thereafter and shall be subject to the pro-
77 visions hereof relating to appraisal and time of payment and of
78 bringing suit. If this Company shall claim that no liability ex-
79 isted as to the mortgagor or owner, it shall, to the extent of pay-
80 ment of loss to the mortgagee, be subrogated to all the mort-
81 gagee's rights of recovery, but without impairing mortgagee's
82 right to sue; or it may pay off the mortgage debt and require
83 an assignment thereof and of the mortgage. Other provisions
84 relating to the interests and obligations of such mortgagee may
85 be added hereto by agreement in writing.

86 Pro rata liability. This Company shall not be liable for a greater
87 proportion of any loss than the amount
88 hereby insured shall bear to the whole insurance covering the
89 property against the peril involved, whether collectible or not.

90 Requirements in The insured shall give immediate written
91 case loss occurs. notice to this Company of any loss, protect
92 the property from further damage, forthwith
93 separate the damaged and undamaged personal property, put
94 it in the best possible order, and furnish a complete inventory
95 of the destroyed or damaged property setting forth for each item,
96 or by category if itemization is not reasonably practicable.
97 the amount of loss claimed. The company may, in addition,
98 require the insured to furnish a complete inventory of
99 the destroyed, damaged and undamaged property, showing in
100 detail quantities, costs, actual cash value and amount of loss
101 claimed; and within sixty days after the loss, unless such time
102 is extended in writing by this Company, the insured shall render
103 to this Company a proof of loss, signed and sworn to by the
104 insured, stating the knowledge and belief of the insured as to
105 the following: the time and origin of the loss, the interest of the
106 insured and of all others in the property, the actual cash value of
107 each item thereof and the amount of loss thereto, all encum-
108 brances thereon, all other contracts of insurance, whether valid
109 or not, covering any of said property, any changes in the title,
110 use, occupation, location, possession or exposures of said prop-
111 erty since the issuing of this policy, by whom and for what
112 purpose any building herein described and the several parts
113 thereof were occupied at the time of loss and whether or not it

114 then stood on leased ground, and shall furnish a copy of all the
 115 descriptions and schedules in all policies and, if required, verified
 116 plans and specifications of any building, fixtures or machinery
 117 destroyed or damaged. The insured, as often as may be reason-
 118 ably required, shall exhibit to any person designated by this
 119 Company all that remains of any property herein described, and
 120 submit to examinations under oath by any person named by this
 121 Company, and subscribe the same; and, as often as may be
 122 reasonably required, shall produce for examination all books of
 123 account, bills, invoices and other vouchers, or certified copies
 124 thereof if originals be lost, at such reasonable time and place as
 125 may be designated by this Company or its representative, and
 126 shall permit extracts and copies thereof to be made.

127 Appraisal. In case the insured and this Company shall
 128 fail to agree as to the actual cash value or
 129 the amount of loss, then, on the written demand of either, each
 130 shall select a competent and disinterested appraiser and notify
 131 the other of the appraiser selected within twenty days of such
 132 demand. The appraisers shall first select a competent and dis-
 133 interested umpire; and failing for fifteen days to agree upon
 134 such umpire, then, on request of the insured or this Company,
 135 such umpire shall be selected by a judge of a court of record in
 136 the state in which the property covered is located. The ap-
 137 praisers shall then appraise the loss, stating separately actual
 138 cash value and loss to each item; and, failing to agree, shall
 139 submit their differences, only, to the umpire. An award in writ-
 140 ing, so itemized, of any two when filed with this Company shall
 141 determine the amount of actual cash value and loss. Each
 142 appraiser shall be paid by the party selecting him and the ex-
 143 penses of appraisal and umpire shall be paid by the parties
 144 equally ; *provided, however, if the written demand is made by this*
 145 *Company, then the insured shall be reimbursed by this Company for*
 146 *the reasonable cost of the insured's appraiser and the insured's*
 147 *portion of the cost of the umpire .*

148 Company's It shall be optional with this Company to
 149 options. take all, or any part, of the property at the
 150 agreed or appraised value, and also to re-
 151 pair, rebuild or replace the property destroyed or damaged with
 152 other of like kind and quality within a reasonable time, on giv-
 153 ing notice of its intention so to do within thirty days after the
 154 receipt of the proof of loss herein required.

155 Abandonment. There can be no abandonment to this Com-
 156 pany of any property.

157 When loss The amount of loss for which this Company
 158 payable. may be liable shall be payable sixty days
 159 after proof of loss, as herein provided, is
 160 received by this Company and ascertainment of the loss is made
 161 either by agreement between the insured and this Company ex-
 162 pressed in writing or by the filing with this Company of an
 163 award as herein provided.

164 Suit. No suit or action on this policy for the recov-
 165 ery of any claim shall be sustainable in any
 166 court of law or equity unless all the requirements of this policy
 167 shall have been complied with, and unless commenced within
 168 two years next after inception of the loss.

169 Subrogation. This Company may require from the insured
 170 an assignment of all right of recovery against
 171 any party for loss to the extent that payment therefor is made
 172 by this Company.

No change shall be made in the sequence of the words and paragraphs of the standard provisions, conditions, stipulations and agreements prescribed herein, or in the arrangement of the words into lines; and the numbers given the lines in the standard form and the catch words placed at the beginning of the paragraphs shall be retained.

Section 38.1-381(b)

(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 ~~ten~~ 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 *where such loss or damage is a result of any one accident involving an unidentifiable owner or operator of an uninsured motor vehicle.*

Section 38.1-381.7

§ 38.1-381.7. Statement defining rate classifications to be provided by insurer to insured. —Any insurer issuing policies of automobile insurance; as defined in § 38.1-381.5, *including those assigned by the Virginia Automobile Insurance Plan* shall provide the named insured at the time of issuance or renewal with a statement defining the rate classifications of the insured. Such a statement shall not be considered a part of the policy and shall not be deemed a warranty or representation by the insurer to the insured.

The Commissioner of Insurance shall approve the form of such statement prior to its use.

Section 8.01-66

§ 8.01-66. Recovery of damages for loss of use of vehicle.—Any person who shall be entitled to recover for damage to or destruction of a motor vehicle shall be entitled to recover, in addition to any other damages to which he may be legally entitled, the reasonable reimbursement per diem cost of *which was actually incurred in hiring a comparable substitute vehicle for the period of time during which such person is deprived of the use of his motor vehicle; provided, that such rental period shall not exceed a reasonable period of time for such repairs to be made or if the original vehicle is a total loss, a reasonable time to purchase a new vehicle; provided further, however, that nothing herein contained shall relieve the claimant of the duty to mitigate damages.*

Section 8.01-66.1

§ 8.01-66.1. Action against insurer for arbitrary refusal of small claim.—A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.1-21 of the Code of Virginia denies, refuses or fails to pay to its insured a claim of ~~one~~ *three* hundred ~~fifty~~ dollars or less in the excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to such insured; and it is subsequently found by the trial judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, such company shall be liable to such insured in an amount double the amount otherwise due and payable under the provisions of such insured's policy of motor vehicle insurance together with reasonable attorney's fees and expenses.

B. Notwithstanding the provisions of paragraph A. herein, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.1-21 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of ~~one~~ *three* hundred ~~fifty~~ dollars or less made by such third party claimant; and if the trial judge of a court of proper jurisdiction finds that such insured is liable for such claim, such third party claimant shall have a cause of action against such insurance company; and if such judge finds that such denial, refusal or failure to pay was not made in good faith, such company, in addition to the liability assumed by such company under the provisions of such insured's policy of motor vehicle liability insurance, shall be liable to such third party claimant in an amount double the amount of the judgment awarded such third party claimant together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of paragraphs A. and B. above, whenever any person who has paid a fee to the Division of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.1-167.1 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.1 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.1 denies, refuses or fails to pay to a claimant a claim of one *three* hundred fifty dollars or less made by such claimant as a result of a motor vehicle accident; and by the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to such claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this paragraph C. "person" shall mean and include any natural person, firm, partnership, association or corporation.

Sections 27-85.3 - 27-85.6

Article 3.

Arson Reporting-Immunity Act.

§ 27-85.3. Short title.—*This act shall be known as the Arson Reporting-Immunity Act.*

§ 27-85.4. Definitions.—*For the purposes of this article:*

A. "Authorized agencies" shall mean:

1. *The chief of any municipal or county fire or police department or the sheriff of any county;*

2. *The arson investigator of the State Police Department;*

3. *The Commonwealth's Attorney or other person responsible for prosecutions in the jurisdiction where the fire occurred.*

B. "Action," as used in this article, shall include nonaction or the failure to take action.

C. "Insurance company" includes the Virginia Property Insurance Association.

§ 27-85.5. Disclosure of information.—A. Any authorized agency may, in writing, require an insurance company to release to the requesting agency any or all relevant information or evidence deemed material by the requesting agency in the insurance company's possession relating to the fire loss in question. Relevant information may include, but shall not be limited to:

1. *Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;*

2. *Policy premium payment records;*

3. *History of previous claims made by the insured;*

4. *Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.*

B. 1. *When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss.*

2. *When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of this article.*

C. *The authorized agency provided with information pursuant to subsections A. or B. of § 27-85.5 and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.*

D. *Any insurance company providing information to an authorized agency or agencies pursuant to subsections A. or B. of § 27-85.5 shall have the right to request relevant information and receive, within a reasonable time, not to exceed thirty days, the information requested.*

E. *Any insurance company, or person acting in its behalf or authorized agency who releases information, whether oral or written, pursuant to subsections A. or B. of § 27-85.5 shall be immune from any liability arising out of a civil action, or penalty resulting from a criminal prosecution unless actual malice on the part of the insurance company or authorized agency is present.*

§ 27-85.6. Evidence.—*Any authorized agency and insurance company described in §§ 27-85.4 or 27-85.5 who receives any information furnished pursuant to this article, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding, except release in accordance with subsection C. of § 27-85.5.*

Section 46.1-400

§ 46.1-400. Driver to make written report of certain accidents and certification of financial responsibility, if any, to Division; supplemental reports; reports by witnesses.—(a) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of ~~two~~ *three* hundred fifty dollars, or more, shall, within five days after the accident, make a written report of it to the Division.

(b) The Commissioner may require any driver of a vehicle involved in any accident of which report must be made to file a supplemental report whenever any report is insufficient in his opinion and he may require witnesses of accidents to render reports to the Division. A willful failure to file the report required in this section shall constitute a misdemeanor and be punishable under § 46.1-16.

(b1) If any accident report filed pursuant to the provisions of this chapter is alleged to be false or inaccurate, the Commissioner shall withhold any action under this section or imposition of any penalty and shall investigate and determine the true circumstances of the accident, including a determination of the correct identity of the parties involved.

(c) The driver of a motor vehicle involved in any accident of which report must be made shall execute in detail that portion of the accident report relating to the certification of insurance or bond if there was in effect at the time of the accident with respect to the motor vehicle involved:

(1) A standard provisions automobile liability policy in form approved by the State Corporation Commission and issued by an insurance carrier authorized to do business in this State or, if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or at its most recent renewal, an automobile liability policy acceptable to that Commission as substantially the equivalent of a standard provisions automobile liability policy; provided in either event, that every such automobile liability policy is subject to the limits provided in § 46.1-504.

(2) Any other form of liability insurance policy issued by an insurance carrier authorized to do business in this State or by a bond; provided that every such policy or bond mentioned herein is subject to a limit, exclusive of interest and costs, of twenty *five* thousand dollars because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of ~~forty~~ *fifty* thousand dollars because of bodily injury to or death of two or more persons in any one accident and to a limit of *five ten* thousand dollars because of injury to or destruction of property of others in any one accident.

(d) The Commissioner shall forward the certification of insurance or bond to the insurance company or surety company, whichever is applicable, for verification as to whether or not the policy or bond certified was applicable to any liability that may arise out of the accident as to the named insured; provided, however, a copy of the certification of insurance or bond shall be retained by the Commissioner and shall be disclosed pursuant to § 46.1-410 of this Code.