

COMMONWEALTH OF VIRGINIA



WILLIAM G. FLOURNOY
INTERIM COMMISSIONER OF INSURANCE

BOX 1157
RICHMOND, VA. 23209
TELEPHONE (804) 786 - 3741

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

November 19, 1981

Administrative Letter 1981-17

MEMORANDUM

TO: All Insurance Companies Licensed to Transact
Property and Casualty Insurance in Virginia

RE: 1981 Legislation by the General Assembly of Virginia

A summarization of legislation enacted in 1981 was sent to all insurance companies then licensed in Virginia in Administrative Letter 1981-3 dated May 1, 1981.

It has been indicated that a number of insurers may not have obtained copies of the statutes as enacted or amended so the purpose of this Administrative Letter is to provide additional information on the 1981 enactments or copies of the new laws or the amendments of already existing laws. As previously advised, these enactments became effective July 1, 1981 UNLESS otherwise noted.

AGENTS LICENSING

Section 38.1-327.1 et al (Senate Bill 645 - Chapter 604)

Nonresidents; Qualification to Place Coverage in Residual Plans. This amendment defines "resident" agent (Section 38.1-327.1.13); requires that any person submitting business (as the producer) to any residual market mechanism (e.g., automobile assigned risk, FAIR Plan, workers compensation assigned risk, JUA) must be the holder of a Virginia license for the kind of insurance involved (Section 38.1-327.33); and states the requirements for the procurement of a Virginia license by a nonresident, i.e., one other than a "resident" as defined in Section 38.1-327.1.13 (Section 38.1-327.45) (COPIES OF THESE AMENDMENTS ARE ATTACHED)

AVIATION LIABILITY INSURANCE

Section 38.1-381(a) (Senate Bill 6 - 1981 SPECIAL SESSION)

Pilots operating aircraft as crop dusters or chemical applicators. This amendment - EFFECTIVE MAY 1, 1981 - permits an insurer underwriting this coverage to require

pilot experience greater than that prescribed by the Federal Aviation Agency. (COPY OF THIS AMENDMENT IS ATTACHED)

MOTOR VEHICLES

Section 38.1-380.2.B (House Bill 1559 - Chapter 245)

Notice re: Additional Uninsured Motorist Coverage. This amendment -EFFECTIVE JANUARY 1, 1982 - requires that no original or renewal premium notice for insurance covering liability arising out of the ownership, maintenance or use of any motor vehicles shall be rendered unless it contains on the front of or enclosed with the premium notice in bold-faced type in wording prescribed by the amendment a notice of the possible availability of additional uninsured motorist coverage. NOTE: This notice may be combined with the notice required by Section 38.1-380.2.A. relating to available medical expense and loss of income coverage; and the revised form should NOT be filed with this Bureau. (COPY OF SECTION 38.1-380.2 IN ITS ENTIRETY IS ATTACHED)

Section 46.1-167.1 (House Bill 1829 - Chapter 193)

Registration Fee for Uninsured Motor Vehicles. This amendment increases the fee required of the applicant for registration of an uninsured motor vehicle from \$150 to \$200. (COPY OF SECTIONS 38.1-167.1 AND 38.1-167.4 ARE ATTACHED)

VIRGINIA HOME PROTECTION ACT

Section 38.1-931 through 38.1-948 (House Bill 1416 - Chapter 530)

Establishment of the Virginia Home Protection Company Act. This new law prescribes the procedure for licensing and regulation of "Home Protection Companies", they being organizations which can transact contracts to furnish or arrange for service, repair, or replacement of any and all of the structural components, parts, appliances, or systems of any covered residential dwelling necessitated by wear and tear, deterioration, inherent defect, or by the failure of an inspection to detect the likelihood of failure.

Rates are subject to "prior approval" until such time as it is determined that there is sufficient competition in the industry; and an insurer already licensed in Virginia to transact the class of insurance defined by Section 38.1-7 (Miscellaneous Property) may also transact a "home protection" business without additional qualifications or authority, but shall otherwise be subject to the applicable provisions of this new law. (A COPY OF THIS NEW LAW WILL BE SENT UPON REQUEST)

WORKMEN'S COMPENSATION

Sections 65.1-65 and 65.1-70 (Senate Bill 571 - Chapter 247)

Burial and Transportation Expenses - Employee Killed. This amendment increases the maximum burial expense allowance payable by the employer from \$1,000 to \$2,000; and the maximum transportation expense for the deceased from \$300 to \$500. (COPY OF AMENDED SECTION IS ATTACHED)

CONCLUSION

This Administrative Letter and the attached legislation should be directed to the proper persons in your company, including your licensed representatives, as appropriate, to insure that action is or has been taken to effect compliance with these legal requirements.

If you have any questions concerning these matters, please address your inquiries to Mr. Garland L. Hazelwood, Jr., Assistant Commissioner for Property and Casualty Insurance, Bureau of Insurance, Post Office Box 1157, Richmond, Virginia 23209.

Yours sincerely,


W. G. Flournoy
Interim Commissioner of Insurance

WGF:dj
Enclosures

§ 38.1-327.1. **Definitions.** — As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms have the meaning herein ascribed to them, respectively:

* * * * *

13. "Resident"

- (i) If an individual, is one domiciled and residing in Virginia.
- (ii) If a partnership, is one duly formed and recorded in Virginia.
- (iii) If a corporation, is one incorporated and existing under the laws of Virginia.

§ 38.1-327.33. **License required of agents; individual acting for partnership or corporate licensee.** — A. No person shall act, and no insurance company or licensed agent shall knowingly permit a person to act, in this State as an agent of an insurance company licensed to transact insurance in this State without first obtaining a license in a manner and in a form prescribed by the Commission. No person shall submit business to any joint underwriting association or any plan established under this title for the equitable distribution of risks among insurers unless such person is the holder of a valid license to transact the kind of insurance involved.

B. Notwithstanding the requirement above, a life and health insurance agent who has obtained a general certificate of authority may submit business to a licensed company prior to obtaining a license for the company. The company shall promptly appoint the agent using a form prescribed by the Commission.

C. Any individual who acts for either a partnership or a corporation in the transaction of insurance shall be duly licensed as an agent; the existence of the partnership or corporation shall be duly recorded pursuant to law; and the authority of the corporation to act as an insurance agent or agency shall be specifically set forth in its charter.

D. In the case of a nonresident partnership or a nonresident corporation the foregoing requirements shall be attested to by the insurance department of the nonresident's state of domicile as set forth in § 38.1-327.45. (Code 1950, § 38.1-302; 1952, c. 317; 1956, c. 172; 1959, c. 513; 1980, c. 581; 1981, c. 604.)

§ 38.1-327.45. **Licensing nonresidents; Commissioner to be appointed agent for service of process; reciprocal agreements with other states and Canadian provinces.** — A. A person who is not a resident as defined in paragraph 13 of § 38.1-327.1, but who is a resident of another state or a province of Canada, may obtain a license as set forth in § 38.1-327.33; provided, however, the applicant shall first file with the Commission a certificate from the insurance department of the applicant's state or province of domicile setting forth (i) that the applicant is licensed in that state or province to transact the kind or kinds of insurance for which the license is being sought in Virginia; (ii) that the applicant is conducting the business of insurance in such state or province in a satisfactory manner; (iii) if the applicant is a corporation, that it is authorized in its charter or other papers of incorporation to act as an insurance agent; and (iv) that such other state or province will issue a license to a similarly qualified Virginia applicant. In addition, an individual who proposes to become licensed hereunder shall pass a written examination as required of Virginia residents unless a reciprocal agreement waiving such examinations, pursuant to subsection D of this section, exists between Virginia and the applicant's state or province of domicile.

B. For the purpose of this chapter, any person whose place of residence and place of business are in a city or town located partly within this State and partly within another state may be considered as meeting the requirements as a resident of this State, provided such other state has established by law or regulation like requirements as to residence of these persons.

C. No agent's license shall be issued to any nonresident of this State unless such nonresident shall execute a power of attorney appointing the Commissioner of Insurance and his successors in office the agent for service of process of such applicant in any action or proceeding arising in this State out of or in connection with the exercise of such license. The appointment of such agent for service of process shall be irrevocable during the period within which a cause of action against the nonresident may arise out of such nonresident transactions with respect to subjects of insurance resident, located, or to be performed in this State. Service of process on the Commissioner of Insurance may be had as provided in and shall conform to the provisions of article 8 § 38.1-63 et seq. of chapter 1 of this title.

D. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada waiving any written examination required by this chapter of any applicant who is a nonresident of this State provided:

1. That a written examination is required of applicants for an agent's license in such other state or such province;

2. That the appropriate official of such other state or such province certifies that the applicant holds a currently valid license in such other state or such province and has either passed such written examination or was the holder of an agent's license prior to the time such written examination was required; and

3. That the applicant was licensed as an agent prior to the time such written examination was required. (Code 1950, § 38.1-301.9; 1956, c. 541; 1979, c. 513; 1980, c. 743; 1981, c. 604.)

§ 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 or pilots operating aircraft applying chemicals, seed, or fertilizer.

§ 38.1-380.2. (Effective January 1, 1982) Required notice of optional coverage available. — A. On and after January one, nineteen hundred seventy-five, no original or renewal premium notice for insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle shall be rendered unless it contains on the front of or enclosed with the premium notice in boldfaced type, the following legend:

IMPORTANT NOTICE

IN ADDITION TO THE MINIMUM INSURANCE REQUIRED BY LAW YOU MAY PURCHASE ADDITIONAL INSURANCE COVERAGE FOR THE NAMED INSURED AND HIS RELATIVES WHO ARE MEMBERS OF HIS HOUSEHOLD WHILE OCCUPYING OR THROUGH BEING STRUCK BY A MOTOR VEHICLE AS WELL AS OCCUPANTS OF THE INSURED MOTOR VEHICLE. THE FOLLOWING HOSPITAL, MEDICAL AND DISABILITY BENEFITS ARE AVAILABLE FOR EACH ACCIDENT:

(a) PAYMENT OF UP TO TWO THOUSAND DOLLARS PER PERSON FOR ALL REASONABLE AND NECESSARY EXPENSES FOR MEDICAL, HOSPITAL, DENTAL, SURGICAL, AMBULANCE, PROSTHETIC AND REHABILITATION SERVICES, AND FUNERAL EXPENSES RESULTING FROM SUCH ACCIDENT AND WHICH EXPENSES ARE INCURRED WITHIN ONE YEAR AFTER THE DATE OF THE ACCIDENT; AND

(b) AN AMOUNT EQUAL TO THE LOSS OF INCOME UP TO ONE HUNDRED DOLLARS PER WEEK IF THE INJURED PERSON IS ENGAGED IN AN OCCUPATION FOR WHICH HE RECEIVES COMPENSATION, FROM THE FIRST WORKDAY LOST AS A RESULT OF THE ACCIDENT UP TO THE DATE THE PERSON IS ABLE TO RETURN TO HIS USUAL OCCUPATION. SUCH PAYMENTS ARE LIMITED TO A PERIOD OF FIFTY-TWO WEEKS. IF YOU DESIRE TO PURCHASE EITHER OR BOTH OF THESE COVERAGES AT AN ADDITIONAL PREMIUM, YOU MAY DO SO BY CONTACTING THE AGENT OR COMPANY THAT ISSUED YOUR POLICY.

Furthermore, the insurer issuing the premium invoice shall notify the insured by any reasonable means of communication the approximate premium for such additional coverage.

B. On and after January one, nineteen hundred eighty-two, no original or renewal premium notice for insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicles shall be rendered unless it contains on the front of or enclosed with the premium notice in boldfaced type, the following legend:

IMPORTANT NOTICE

YOU MAY PURCHASE INSURANCE COVERAGE IN ADDITION TO THAT REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST. THIS ADDITIONAL INSURANCE COVERAGE WILL ALSO PROTECT YOU AGAINST A LOSS CAUSED BY A MOTORIST WHOSE INSURANCE COVERAGE IS LESS THAN THE ADDITIONAL INSURANCE COVERAGE YOU PURCHASED. THIS ADDITIONAL INSURANCE COVERAGE, WHICH YOU CAN PURCHASE FROM THE AGENT OR COMPANY ISSUING YOUR POLICY, CANNOT EXCEED THE LIMITS OF YOUR OWN LIABILITY COVERAGE. YOU SHOULD GIVE CAREFUL CONSIDERATION TO THIS ADDITIONAL INSURANCE COVERAGE BECAUSE IT MAY PROVIDE IMPORTANT PROTECTION FOR A SMALL PREMIUM. (1974, c. 607; 1977, c. 112; 1981, c. 245.)

§ 46.1-167.1. Additional fee; certificates required of applicants for registration of insured motor vehicles; verification of such certificates; suspension of driver's license, registration certificates and license plates for certain violations. — A. In addition to any other fees prescribed by law, every person registering an uninsured motor vehicle, as hereinafter defined, shall pay at the time of registering the same a fee of two hundred dollars; provided, however, if the uninsured motor vehicle is a passenger car and is being registered or reregistered effective on or after April one, nineteen hundred seventy-three as provided in § 46.1-63 (b), or is a motor vehicle, trailer or semitrailer being registered or reregistered effective on or after April one, nineteen hundred seventy-five as provided in § 46.1-63 (c), a fee of one twelfth of the annual uninsured motor vehicle fee for each month of the registration period. Further provided, if the vehicle is a motor vehicle being registered or reregistered effective January one, nineteen hundred seventy-four as provided in § 46.1-154 (b), the fee shall be one fourth of the annual uninsured motor vehicle fee for each quarter for which the vehicle is registered. Every person applying for registration for a motor vehicle and declaring the same to be an insured motor vehicle shall, under the penalties set forth in § 46.1-167.3, execute and furnish to the Commissioner his certificate that such motor vehicle is an insured motor vehicle as herein defined, or that the Commissioner has issued to the owner thereof, in accordance with the provisions of § 46.1-395, a certificate of self-insurance applicable to the vehicle sought to be registered. The Commissioner, or his duly authorized agent, may require any registered owner of a motor vehicle declared to be insured or any applicant for registration of a motor vehicle declared to be an insured motor vehicle to submit a certificate of insurance on a form prescribed by the Commissioner. The Commissioner shall forward the certificate 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 named in the certificate is currently in force. Thereupon and not later than thirty days following receipt of the certificate of insurance, the insurance company or surety company shall cause to be filed with the Commissioner a written notice if the policy or bond was not applicable as to the named insured. The Commissioner shall prescribe the manner in which the written notice shall be made.

B. The refusal or neglect of any owner to submit, within thirty days, the certificate of insurance when required by the Commissioner or his duly authorized agent or the notification by the insurance company or surety company that the policy or bond named in the certificate of insurance is not in effect shall require the Commissioner to suspend any driver's license and all registration certificates and license plates issued to the owner of the motor vehicle until such person has paid to the Commissioner a fee of two hundred dollars to be disposed of as provided for in § 46.1-167.6 with respect to the motor vehicle determined to be uninsured and furnishes proof of financial responsibility for the future in the manner prescribed in article 6 (§ 46.1-467 et seq.) of chapter 6 of this title; provided further, that no order of suspension required by this section shall become effective until the Commissioner has offered the person an opportunity for an administrative hearing to show cause why the order should not be enforced. Notice of the opportunity for an administrative hearing may be included in the order of suspension. When three years have elapsed from the effective date of the suspension herein required, the Commissioner may relieve such person of the requirement of furnishing proof of financial responsibility for the future.

C. If the Commissioner determines that the fee applicable to the registration of an uninsured motor vehicle has been paid, on the vehicle in question, on or before the date that the insurance certificate was requested, no suspension action shall be taken.

D. The Commissioner shall suspend the driver's license and all registration certificates and license plates of any person upon receiving a record of his conviction of a violation of any provisions of § 46.1-167.3; provided that the Commissioner shall dispense with such suspension when the person is convicted for a violation of § 46.1-167.3 and the Division's records show conclusively (1) that the motor vehicle was insured or that the fee applicable to the registration of an uninsured motor vehicle has been paid by the owner prior to the date and time of the alleged offense; or (2) that the person convicted was only the operator of the vehicle and not the titled owner and that he had not by prearrangement with the titled owner agreed to purchase said vehicle. (1958, c. 407; 1960, c. 188; 1966, c. 181; 1972, cc. 552, 609, 638; 1973, c. 25; 1974, c. 170; 1975, c. 16; 1976, c. 27; 1978, c. 563; 1981, c. 193.)

§ 46.1-167.4. Suspension of operator's license and registration when uninsured motor vehicle is involved in reportable accident; hearing prior to suspension. — When it shall appear to the Commissioner from the records of his office that an uninsured motor vehicle as herein defined, subject to registration in this State, is involved in a reportable accident in this State resulting in death, injury or property damage with respect to which motor vehicle the owner thereof has not paid the uninsured motor vehicle fee as prescribed in § 46.1-167.1, the Commissioner shall, in addition to enforcing the applicable provisions of article 4 (§ 46.1-442 et seq.) of chapter 6 of this title, suspend such owner's, operator's or chauffeur's license and all of his license plates and registration certificates until such person has complied with the provisions of article 4 of chapter 6 of this title and has paid to the Commissioner a fee of two hundred dollars, to be disposed of as provided by § 46.1-167.6, with respect to the motor vehicle involved in the accident and furnishes proof of financial responsibility for the future in the manner prescribed in article 6 (§ 46.1-467 et seq.) of chapter 6 of this title; provided further, that no order of suspension required by this section shall become effective until the Commissioner has offered the person an opportunity for an administrative hearing to show cause why the order should not be enforced. Notice of the opportunity for an administrative hearing may be included in the order of suspension.

However, when three years have elapsed from the date of the suspension herein required, the Commissioner may relieve such person of the requirement of furnishing proof of financial responsibility for the future. The presentation by a person subject to the provisions of this section of a certificate of insurance, executed by an agent or representative of an insurance company qualified to do business in this State, showing that on the date and at the time of the accident the vehicle was an insured motor vehicle as herein defined, or, presentation by such person of evidence that the additional fee applicable to the registration of an uninsured motor vehicle had been paid to the Division prior to the date and time of the accident, shall be sufficient bar to the suspension provided for in this section. (1958, c. 407; 1960, c. 188; 1966, cc. 181, 548; 1970, c. 68; 1972, cc. 552, 638, 729; 1973, c. 25; 1974, c. 604; 1978, c. 563; 1981, c. 193.)

§ 65.1-65. Compensation to dependents of employee killed. — If death results from the accident within nine years, the employer shall pay, or cause to be paid, subject, however, to the provisions of the other sections of this act in one of the methods hereinafter provided, to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident a weekly payment equal to two thirds of his average weekly wages, but not more than one hundred percent of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five percent of the average weekly wage as defined therein for a period of four hundred weeks, from the date of the injury, except, however, those dependents specified in § 65.1-66 (1), (2) and (3) shall be paid, a weekly payment equal to two thirds of the employee's average weekly wages, but not more than one hundred percent of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five percent of the average weekly wage as defined therein for a period of five hundred weeks from the date of the injury, and burial expenses not exceeding two thousand dollars and in addition reasonable transportation expenses for the deceased not exceeding five hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid, as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the extent of partial dependency bears to total dependency. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments but shall not continue more than four hundred weeks from the date of the injury except to those dependents specified in § 65.1-66 (1), (2) and (3) to whom compensation shall not continue more than five hundred weeks from the date of the injury. (Code 1950, § 65-62; 1952, c. 226; 1954, c. 654; 1956, c. 243; 1958, c. 568; 1960, c. 556; 1962, c. 503; 1964, c. 94; 1966, c. 64; 1968, cc. 8, 660; 1970, c. 470; 1972, c. 229; 1973, cc. 401, 542; 1974, c. 560; 1975, c. 447; 1976, c. 166; 1981, c. 247.)

§ 65.1-70. Burial and transportation expenses when no dependents. — If the deceased employee leaves no dependents, the employer shall pay the burial expenses of the deceased, not to exceed two thousand dollars and in addition reasonable transportation expenses for the deceased not exceeding five hundred dollars. (Code 1950, § 65-67; 1952, c. 226; 1968, c. 660; 1970, c. 643; 1972, c. 229; 1976, c. 166; 1981, c. 247.)